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In The Matter Of:

GARY FISER

WILSON COOPER MCARTHUR
November 22, 1999

CLOSED PREDECISIONAL
ENFORCEMENT CONFERENCE

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In the matter of TVA

Staff	✓	IDENTIFIED	✓
Applicant		RECEIVED	✓
Intervenor		REJECTED	
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[17] Nuclear Regulatory Commission
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[3] MR. DENNIS DAMBLY, Assistant General Counsel for
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[5] MR. LUIS REYES, Regional Administrator for the NRC Office, Atlanta
[6] MR. LOREN PLISCO, Director of Division Rank of
[7] Projects.
[8] MR MICHAEL STEIN, Enforcement Specialist, Office of Enforcement, NRC.
[9] MR WILLIAM McNULTY, Field Office Director for the
[10] Office of Investigations
[11] MR VICTOR McCREE, Deputy Director for Reactor Safety in Region II
[12] MS CAROLYN EVANS, Regional Counsel.
[13] MS JENNIFER EUCHNER, Legal Internal GC
[14] MR SCOTT SPARKS, Senior Enforcement Specialist,
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[16] MR EDWARD VIGLUICCI, Office of General Counsel
[17] MR BRENT MARQUAND, Office of General Counsel
[18] MR MARK BURZYNSKI, Re Affairs
[19] MR EDWARD BOYLES, Manager, Corporate Human Resource Office for TVAM
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1 MR. REYES: Good afternoon, my name is
2 Luis Reyes. I'm the Regional Administrator for the
3 Nuclear Regulatory Commission in the Region 2
4 Office.
5 This afternoon we'll conduct a
6 Predecisional Enforcement Conference between the NRC
7 and Mr. Wilson C. McArthur, which is closed to
8 public observation and it is transcribed.
9 The subject of the conference is an
10 apparent violation of the Commission's regulations
11 regarding deliberate misconduct and employee
12 protection. Specifically at issue is your
13 involvement in apparent discriminatory employment
14 decisions regarding Mr. Gary L. Fiser, a former TVA
15 employee.
16 The agenda for the Predecisional
17 Enforcement Conference is shown on the viewgraph,
18 but we gave you a hard copy.
19 Following my brief opening remarks,
20 Ms. Anne Boland, the Region 2 Enforcement Officer,
21 will discuss the Agency's Enforcement Policy.
22 Mr. Lawrence Plisco, the Director of the Division of
23 Reactor Projects, will then discuss the apparent
24 violation and the NRC perspective on the issue. You
25 will then be given an opportunity to respond to the

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1 apparent violation.
2 In this regard, I wish to reiterate to
3 you that the decision to hold this conference does
4 not mean that the NRC has determined that a
5 violation has occurred or that enforcement action
6 will be taken. This conference is an important step
7 in arriving at that decision.
8 Following your presentation, I plan to
9 take a ten-minute break so that the NRC can briefly
10 review what it has heard and determine if we have
11 any follow-up questions. And lastly, I would
12 provide some concluding remarks.
13 At this point I would like to have the
14 NRC staff introduce themselves and then ask you to
15 introduce your participants.
16 MS. BOLAND: I'm Anne Boland, I'm the
17 Region 2 Enforcement Officer here in Atlanta.
18 MR. DAMBLY: Dennis Dambly, Assistant
19 General Counsel for Materials and Litigation and
20 Enforcement.
21 MR. REYES: Luis Reyes, I'm the Regional
22 Administrator for the NRC Office here in Atlanta.
23 MR. PLISCO: Loren Plisco, Director of
24 Division Rank of Projects.
25 MR. STEIN: Michael Stein, Enforcement

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1 Specialist, Office of Enforcement, NRC.
2 MR. McNULTY: William McNulty, Field
3 Office Director for the Office of Investigations.
4 MR. McCREE: Victor McCree, I'm the
5 Deputy Director for Reactor Safety in Region II.
6 MS. EVANS: Carolyn Evans, Regional
7 Counsel.
8 MS. EUCHNER: Jennifer Euchner, Legal
9 Internal GC.
10 MR. SPARKS: Scott Sparks, Senior
11 Enforcement Specialist, Region 2.
12 MR. McARTHUR: I had introduced Ed
13 Vigluicci on the end there from the Office of
14 General Counsel, and Brent MarQuand from General
15 Counsel, and Mark Burzynski who I've asked to be
16 here and knows all the facts that I'm going to
17 relate today; and I tend to wander sometimes, so
18 he's here to slug me if I wander too much. And then
19 Ed Boyles from our Human Resources organization.
20 I'm Wilson Cooper McArthur.
21 MR. REYES: But what organization is
22 Mr. Burzynski from?
23 MR. BURZYNSKI: Re: Affairs.
24 MR. REYES: Mr. McArthur, I'm going to
25 ask you some questions. Are the attendees other

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1 than yourself here at your request?
2 MR. McARTHUR: Yes.
3 MR. REYES: Do you have any objections to
4 representatives of the TVA organization being
5 present at this conference?
6 MR. McARTHUR: No.
7 MR. REYES: Also I would like to state
8 that this is a conference between Mr. McArthur and
9 the NRC and although counsel is present, we will be
10 directing our questions directly to you; and if you
11 need assistance from somebody, it is acceptable to
12 do that.
13 Ms. Boland will now discuss the
14 Enforcement Policy.
15 MS. BOLAND: We're here today because of
16 your involvement in an apparent violation of NRC
17 requirements. As a former RadCon Chemistry Manager,
18 you were responsible for assuring that NRC
19 requirements were followed.
20 Based on our review of the OI
21 investigation, it appears that you may not have
22 adhered to NRC requirements and, more importantly,
23 that your actions may have been deliberate.
24 The purpose of our conference here today
25 is to provide you an opportunity to address the

[1] apparent violation that we forwarded to you in our
[2] September 20th, 1999 letter. This conference is
[3] essentially the last step of the enforcement process
[4] prior to the staff making an enforcement decision.
[5] Our purpose here today is not to
[6] negotiate an enforcement sanction. We want to hear
[7] your views on the facts and circumstances
[8] surrounding the apparent violation, whether you
[9] believed at the time that your actions were
[10] appropriate and the decisions that were made and
[11] whether now, after having substantial time to
[12] consider those actions, whether you still have that
[13] same view and if not, why not, and any corrective
[14] actions that you have personally taken to prevent
[15] recurrence of the apparent violation.
[16] Based on these discussions as well as
[17] other information, if the NRC concludes that
[18] deliberate violations did in fact occur, the NRC may
[19] take enforcement action against you. In accordance
[20] with our Enforcement Policy, which I believe you
[21] were provided a copy of attached to our letter, the
[22] potential enforcement sanctions can range anywhere
[23] from a Notice Of Violation to an order prohibiting
[24] involvement in future NRC-licensed activities.
[25] In particular, a notice or an order may

[1] be issued if we do conclude that any actions on your
[2] part were deliberate in violation of 10 CFR .5,
[3] deliberate misconduct.
[4] As Mr. Reyes has indicated, we want to
[5] make it clear that we have not made a final agency
[6] determination with regard to this case and we have
[7] not decided if violations, in fact, were committed
[8] or if they were deliberate or whether, in fact, an
[9] enforcement action will be rendered in this case.
[10] During the course of this conference the
[11] NRC staff will have questions relative to the case
[12] posed to you for you to answer to help us reach a
[13] decision in this matter. Should you need a question
[14] clarified or if you have any questions yourself
[15] during this proceeding, please feel free to ask. We
[16] emphasize that we expect from you a complete and
[17] accurate response to all questions. If we fail to
[18] ask a proper question that you feel needs to be
[19] answered which may be relevant to the issues we're
[20] discussing, we expect you to come forward with that
[21] information.
[22] I would also like to make sure that
[23] you're aware that any statements of view or
[24] expressions made by the staff, NRC staff of this
[25] conference, or the lack thereof are not intended to

[1] represent any final agency determinations or
[2] opinions or conclusions relative to this matter.
[3] Following this Enforcement Conference,
[4] Mr. Reyes in conjunction with the Office of General
[5] Counsel and the Office of Enforcement will reach a
[6] final enforcement decision, and that process takes
[7] approximately four weeks to accomplish.
[8] One thing that I did fail to mention
[9] earlier is that there is another enforcement
[10] conference associated with this, with Tennessee
[11] Valley Authority. We will not be rendering any
[12] decisions in this case until following that
[13] conference and that's scheduled now for December the
[14] 10th. So the four weeks may be a little longer than
[15] four weeks.
[16] If the enforcement decision involves a
[17] proposed order or involves an order against you, the
[18] NRC will issue a press release associated with that
[19] issuance of that order. However, we will not do
[20] that until 24 hours after providing that order to
[21] you.
[22] Lastly, as a kind of administrative
[23] matter, we are transcribing the enforcement
[24] conference and obviously it is closed to the
[25] public. We can make a copy of the enforcement

[1] transcript available to you after we have reached a
[2] final enforcement decision in this case or the staff
[3] has reached an enforcement decision in this case.
[4] If we do make transcripts available to
[5] you, they will be, however, released to the public
[6] and be made available in our public document room.
[7] So I'll be glad to address any questions
[8] related to the Enforcement Policy, if you would
[9] like. We did have a new version of the Enforcement
[10] Policy issued subsequent to our September
[11] correspondence with you. I think TVA has a copy of
[12] that and we'll be glad to provide you one, but
[13] substantively it has the new policy relative to your
[14] case.
[15] MR. REYES: Loren, you want to follow the
[16] agenda.
[17] MR. PLISCO: Our Office of Investigation
[18] completed an investigation in August 1999 regarding
[19] Mr. Gary L. Fiser, a former TVA Nuclear Chemistry
[20] and Environmental Specialist, who was not selected
[21] to fill one of two Chemistry Program Manager
[22] positions created during the 1996 reorganization.
[23] The evidence gathered by the Office of
[24] Investigations indicated that as Mr. Fiser's first
[25] line supervisor, you assisted in implementing and

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[1] influencing the selection process to preclude the
[2] selection of Mr. Fiser to one of the Chemistry
[3] Program Manager positions. The evidence indicated
[4] that these actions were taken in retaliation for
[5] Mr. Fiser's engagement in protected activity, which
[6] was the filing of a prior discrimination complaint
[7] with the Department of Labor in September of 1993.
[8] The issue appears to be in apparent
[9] violation in 10 CFR 50.5, deliberate misconduct, and
[10] 10 CFR 50.7, employee protection. The apparent
[11] violation is shown in the handout and it was also
[12] documented in our letter dated September 20th, 1999.
[13] We place a high value on nuclear industry
[14] employees feeling free to raise potential safety
[15] concerns to their management as well as to the NRC.
[16] The Energy Reorganization Act and the Code Of
[17] Federal Regulations establish strict requirements
[18] for protection of employees against discrimination
[19] for raising nuclear safety concerns.
[20] At this conference we're giving you the
[21] opportunity to provide information regarding your
[22] involvement in this issue and the events as
[23] described in our summary of the OI report provided
[24] to you previously.
[25] As discussed earlier, due to the

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[1] significance of the apparent violation and your
[2] substantial role in the matter, you should provide
[3] an explanation as to why you should be permitted to
[4] engage in NCR-licensed activities in the future.
[5] MR. REYES: Mr. McArthur, following the
[6] agenda, we're going to turn over the meeting to you
[7] to respond.
[8] MR. McARTHUR: I'm going to give you a
[9] little background about myself. My name is Wilson
[0] Cooper McArthur, and I was until recently the RadCon
[1] Chemistry Services Manager of TVA. I had been
[2] placed in another position as a Senior Staff
[3] Manager. I have an MS degree in nuclear engineering
[4] and radiological physics from the University of
[5] North Carolina and North Carolina State, and a Ph.D.
[6] in nuclear engineering and beta protection from
[7] Perdue University.
[8] My first job after leaving Purdue was as
[9] a principal engineer for Carolina Power and Light
[0] Company on the Sharon Harris Project, and later was
[1] engineering manager for the Harris project and for
[2] the South River Project, which was later canceled.
[3] I was there for eight or nine years and left there
[4] to go to work with Hitman Nuclear Development
[5] Corporation as vice-president and general manager of

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[1] Hitman Nuclear and stayed there until they sold the
[2] company to Westinghouse, and left and worked with
[3] two different consulting companies out on the West
[4] Coast, Tara, which some of you have probably heard
[5] of before, and EDS Nuclear, who now I can't remember
[6] the name of the new company, but they were bought
[7] out a few years back.
[8] Then I decided if I can do it for
[9] somebody, why can't I do it for myself, so I started
[10] my own company, KLM Engineering, on the West Coast,
[11] and we were involved primarily with utilities, some
[12] hazardous waste industry stuff and some robotics.
[13] We developed robotics. We sold that company after
[14] about eight years to Quadrex, and I went with
[15] Quadrex for a year to position them to get into the
[16] decommissioning business, that was my primary
[17] assignment, and then I left Quadrex.
[18] Ike Drake, who is now the chief UCA
[19] officer of TVA, used to work for me at CP&L, so
[20] you've got to watch out for yourself all the time.
[21] He asked me to come to TVA to set up a technical
[22] programs organization and that's what I did. I came
[23] as a Manager of Technical Programs.
[24] I have just a few months left in the
[25] business. I am very close, I've been in the business

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[1] 40 years, and intend to teach. I have three offers
[2] from three universities, primarily Brigham Young,
[3] we're Mormons, and so I expect probably I'll end up
[4] teaching at Brigham Young University in the Nuclear
[5] Physics Department.
[6] I've done a lot of work in an
[7] International Atomic Energy Agency. I guess to sum
[8] that up, my career has been either in nuclear
[9] engineering, nuclear safety, and then I've tended in
[10] the last 20 years or so to focus primarily on
[11] radiation safety and chemistry, which has to do with
[12] operations and exposure, people and the public,
[13] workers and the public.
[14] In working with the International Atomic
[15] Energy Agency, I worked for Mexico, Laguna Verdi,
[16] Argentina and some other countries directly through
[17] them on several occasions. I am presently the
[18] president of American Nuclear Society in Chattanooga
[19] and have been for, they just won't let me get out,
[20] so I've been in there for a number of years. And
[21] previous to that, I was president of local chapters
[22] in Indiana and in North Carolina and Health Physics
[23] Society and the American Nuclear Society.
[24] I have over 200 published papers mostly
[25] dealing with radiation safety.

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[1] I will make a declaration to you here
[2] that I have at no time attempted to treat Gary Fiser
[3] in any incorrect manner. In fact, if you look at
[4] the document that you read from a little earlier,
[5] the fourth paragraph talks about me being a culpable
[6] party in Gary Fiser's DOL. That's totally
[7] incorrect. I don't know if you handed that out
[8] earlier or not, but.
[9] MR. BURZYNSKI: Wilson, yes, I did hand
[10] out the 1993 Department of Labor complaint. I have
[11] additional copies. I think the point we wanted to
[12] make here is, as Wilson did, that it mentions him as
[13] a culpable party in some way. He indeed is
[14] mentioned in the 1993 complaint. All I can do is
[15] pass these out. What I have done is highlighted
[16] sections where his name is mentioned in the 1993 DOL
[17] complaint, and you can briefly review those.
[18] The point we would like to make is that
[19] actually Dr. McArthur was viewed by Gary Fiser as an
[20] ally of his and came to his defense in that time
[21] frame. It only wasn't until 1996 that Gary Fiser
[22] went back and recharacterized Wilson McArthur as
[23] somehow having some sort of animosity toward him.
[24] But in the original 1993 complaint Dr. McArthur is
[25] actually described as someone who came to his

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[1] defense when he was upset and was happy with Gary
[2] Fiser and went out of his way to try to retain him
[3] in the organization.
[4] MR. McARTHUR: I indicated I was planning
[5] on working for another few months and then to leave
[6] and then teach. However, I recognize the
[7] seriousness of these allegations. If I leave TVA
[8] and go to work for the university, I certainly would
[9] have a reactor material license and that would
[10] prevent me from — so I do recognize how serious
[11] this is.
[12] My understanding is that we're here with
[13] the same goal, to come to a common understanding of
[14] facts, and there may be an accusation, but that's
[15] the primary reason we're here.
[16] Since I've not had the opportunity to
[17] review your information, I'm somewhat at a
[18] disadvantage, so what I will tell you is everything
[19] I feel and know from my viewpoint, and I'm sure
[20] you'll have questions that we'll have to address.
[21] I'll do my best to give you the facts as I can give
[22] them to you.
[23] I was going to read this, but I don't
[24] think we need to do that since you have already gone
[25] through the charge. The words just surprise me,

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[1] contrived and disparate treatment and misleading
[2] just don't make any sense to me. Okay? I feel I've
[3] served this industry very well. I'm known at TVA as
[4] the soft puffy guy, the guy that likes everybody.
[5] And one of the first things I wanted to
[6] address is that there is prevalent throughout all
[7] the things I've seen in this regard is something to
[8] say, reporting of two individuals, Gary Fiser and
[9] Ron Grover, indicating that I was very unfair to
[10] Gary and that I periodically in meetings, staff
[11] meetings and other things, in some way put him down
[12] in some way. I can tell you categorically right
[13] here that never happened.
[14] And to provide you with some indication
[15] that others believe that too, I asked all of my
[16] direct reports to address that issue. This is after
[17] I changed positions, so I didn't have any influence
[18] over them. But they all provided their statements
[19] on behalf of me. This is everybody that reported to
[20] me, so you would think if they are in staff meetings
[21] or other meetings, somewhere along the line somebody
[22] would detect me saying something negative about Gary
[23] Fiser. So I'll just pass these out. You might just
[24] read the first one or something just to get a flavor
[25] of the people that work for me.

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[1] MR. REYES: We'll read them at a later
[2] time.
[3] MR. McARTHUR: You'll find that no one
[4] says in this information that I ever — not only
[5] Gary Fiser, but not anybody. It's just my style, I
[6] don't do that kind of thing. I care about the
[7] people that work for me and I always have in every
[8] position I've ever had before. I've always set the
[9] standards for my employees and have welcomed them to
[10] come with any problems or questions they might
[11] have. So you know, it is one thing I would like you
[12] to hear from me.
[13] So I guess in summary, I always liked
[14] Gary. I don't remember ever having any kind of
[15] encounter. He, you know, was a nice guy, a hard
[16] worker. He was a primary water chemist person. I
[17] gave you the letters, and there's no nobody can say
[18] that I didn't like Gary. I don't know of any fact.
[19] I haven't seen yours, so I don't know what you've
[20] got in there.
[21] I'll further talk with Ron Grover, who
[22] was the other person that apparently in a DOL
[23] complaint and in his deposition made the comment
[24] that I didn't like Gary Fiser. I subsequently met
[25] with him prior to coming here and discussed this

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with him. He completely denied it. I don't know what he said in his deposition, but he told me, he says, I always thought you were Gary's ally. I never felt like you were his enemy. So I don't know if there's a disparity there. I just know that's what he told me, and which I believe is true.

I guess another thing is we all conspired. We, TVA personnel, conspired to assure that Gary did not get a job. That doesn't make any sense to me. It's simply not true. I know that I was not involved and my boss, Tom McGrath, HR, the Selection Review Board, we never talked about individuals and who was qualified to hold those positions. It just never happened. I never heard any statement from anybody, the Selection Review Board, Tom McGrath, my boss, or anybody saying you must select these guys and not select those guys. That never happened. There are no facts to support that. I was actually a Selection Review Board member on one of Gary Fiser's jobs previously and selected him, so.

But I think the primary thing that everybody seems to be concerned about, and again I haven't read your files, is the Selection Review Board. I'll briefly review what took place and then

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give you my conclusions from that.

We had an reorganization in 1996 and all the position in my organization, the RadCon Chemistry organization, were to be advertised. I was told that very clearly. And so at one of our RadCon Chemistry Peer Group meetings, we made the decision as a body that the RadCon Chemistry Managers in each of these three sites would be the Selection Review Board members because they were the primary customer. So we had all three of them arrange for that meeting.

Prior to that meeting I had put together some 16 or 17 questions, technical and management in nature. This was a technical position, we had some questions in both areas, and just prior to the Selection Board meeting, we had the Peer Group meeting in the morning, in the afternoon was the only chance to get these three guys together. We had gotten some word from Jack Cox in Watts Bar that he could not attend. He could attend the morning meeting, but he couldn't attend the afternoon meeting, he had some kind of a schedule problem.

I went immediately — which is a process of TVA — to my HR representative and to Tom McGrath, my supervisor, and he said — we decided

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the best thing to do was try and get ahold of the assistant plant manager of Watts Bar, and he was unavailable. So then we made the decision to select Rick Rogers, who knew Gary and Sam, and he had a very high opinion of Gary. He made it clear it me, "I know Gary, he's a good guy. I like him." And along here is the chemistry manager, so he was placed on the Review Board.

I was not a voting member, neither was Tom McGrath as far as the Selection Review Board was concerned, and we went through the process. I observed the process. I understood from HR that if something about the review process wasn't like it should be, that I had the right to intervene. That did not take place. The Review Board members had selected the questions and they rotated them to ask the same question of each person.

I think you've seen a chart that shows the results. Just basically the summary is that they ranked them the same, all three people did, and that was it. As far as I was concerned, I had no reason to disagree with that board.

I know in the Department of Labor complaints they make a comment that the Review Board was a sham. I followed the process. I did exactly

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what was supposed to be done. We were honest. I did not in any way indicate to any of the Review Board members to vote one way or the other. They did not communicate with each other during the process. They were able to communicate their results, and that's all they did, and then sum it up at the end.

So I have no — I have to disagree with the conclusion that you come to, that something took place that wasn't appropriate here. Under the circumstances.

MR. BURZYNSKI: You had wanted to make a point of how the 17 questions came about.

MR. McARTHUR: Well, actually I've got some input from the chemistry manager, Ron Grover, he gave me a few questions, but most of the questions were put together by me, and they were oriented toward the chemistry person in that particular position. So I developed those and then they reviewed, the Selection Review Board reviewed those questions and selected nine and added an additional one, which I agreed with, so there were about ten questions I believe on the, I don't remember exactly, but eight, okay. And so that's how that decision was made.

[1] So I have no way of concluding anything
[2] other than we did this in TVA's process, appropriate
[3] manner. Everything that I did involved HR and my
[4] boss at every point in time there was any question.
[5] There's one other item at one point in
[6] time that Jack Cox has indicated that we didn't need
[7] a review board, that I was a Corporate RadCon
[8] Chemistry Manager, I should just be able to pick the
[9] two best and that he would vote for Gary Fiser
[10] anyway, you need to be aware of that. HR felt that
[11] might — and we didn't have to come to that, because
[12] he couldn't make it to the meeting, but that that
[13] might just disqualify him. None of the other Review
[14] Board members ever made a comment in regards to who
[15] they favored, they didn't favor, and I never had any
[16] discussion like that with them.
[17] MR. BOYLES: When you did raise the issue
[18] to us of Mr. Cox not being available, we did
[19] recommend to Mr. McGrath and Dr. Wilson that they
[20] fill that third position on the Selection Board.
[21] They agreed with that and Rick Robbins is the one
[22] they selected, because they felt he was fully
[23] qualified because of his site experience and
[24] technical background. So from that standpoint they
[25] did touch base with us, and we did give them input.

[1] we wanted a third member if at all possible, and
[2] they took our recommendation there.
[3] MR. DAMBLY: Dr. McArthur, before you
[4] leave this, after the Review Board that you watched
[5] but didn't participate in when they did the ranking,
[6] what in addition to that, if anything, did you
[7] consider in reaching your decisions?
[8] MR. McARTHUR: Well, they are all
[9] qualified. From my standpoint, HR provided me with
[10] a comparison sheet to make sure that all individuals
[11] met the educational requirements, years of
[12] experience and those kind of things, and that meant
[13] to me these people were qualified to bid for the
[14] job, and so I accepted that information. And the
[15] next part was how they handled themselves for the
[16] Selection Review Board.
[17] MR. DAMBLY: Yes, but post that, did you
[18] go back and look at anything or you just took the
[19] Review Board's —
[20] MR. McARTHUR: I took the Review Board's.
[21] MR. STEIN: Dr. McArthur, you're their
[22] manager You are the manager that all three of them
[23] report to.
MR. McARTHUR: You mean the Review
Board?

[1] MR. STEIN: No, no. Fiser —
[2] MR. McARTHUR: Yes.
[3] But at that point in time they reported
[4] to Ron Grover, Gary Fiser was. We were going
[5] through a transition I was selected as RadCon
[6] Chemistry Manager. Gary was reporting to Ron Grover
[7] at that time, who was the Chemistry Manager and I
[8] was the RadCon manager. I wasn't both at that point
[9] in time.
[10] MR. STEIN: Had you ever seen their
[11] performance appraisals prior to making the selection
[12] of Mr. Harvey over Mr. Fiser?
[13] MR. McARTHUR: I know that I had seen
[14] some. In fact, I had written some for Gary
[15] previously, because when he transferred to Sequoia
[16] downtown, I was the one who wrote his performance
[17] evaluation. And if they were included in the
[18] package, I don't recall that being the case. I knew
[19] them very well because I had worked with all three
[20] for, most of them for ten years.
[21] Okay. I want to review the points about
[22] the selection process, because it seems to be so
[23] important.
[24] The normal process was used and it was
[25] augmented since DOL complaint filed to ensure

[1] fairness. And, Ed, you might mention something
[2] MR. BOYLES: We typically after a
[3] selection process occurs don't go to Labor Relations
[4] or to OGC. In this case since we had been advised
[5] by Mr. Fiser upfront that if we posted the position
[6] that he would file a DOL complaint and then he
[7] subsequently did prior to the Selection Board.
[8] After this Selection Board results came
[9] in, we referred this issue to our Labor Relations
[10] staff, who in turn discussed it with OGC, to make
[11] sure we had followed the process and that everything
[12] was okay at that point in time. So that was an
[13] extra step we took to try to ensure as much fairness
[14] as we possibly could.
[15] MR. STEIN: Dr. McArthur, as a selecting
[16] official, you had the final say in this selection of
[17] Harvey over Fiser. Did Mr. McGrath have any
[18] influence in this selection?
[19] MR. McARTHUR: None whatsoever.
[20] The SRB, the Selction Review Board, was
[21] made of three qualified members. Neither Tom
[22] McGrath or myself were parties to the selection. I
[23] observed the SRB process, did not evaluate answers
[24] and did not vote, and I did not influence the
[25] Selection Review Board in any way. Mr. Cox removed

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[1] himself due to a schedule conflict. I sought to get
[2] the Watts Bar Assistant Plant Manager to become
[3] involved in and he was unavailable. We then
[4] selected Rick Rogers.
[5] The Selection Review Board scores support
[6] Fiser's nonselection. The same person asked
[7] questions of each candidate. No collaboration on
[8] the scores. And any kind of contrivance here to me
[9] would involve a large number of people; it just
[10] doesn't make any section sense. And Gary had
[11] already filed a second complaint just before all
[12] this took place, and you've seen the display of the
[13] scores which support the selections that we made.
[14] The next issue has to do with Sam Harvey
[15] being preselected. I assume here, and I'm making a
[16] big jump because I haven't seen what you have, but I
[17] know it is true. I know that I never had a
[18] discussion with anybody that was being interviewed.
[19] I have been in this business 40 years and I know and
[20] I have been working for the government for ten years
[21] and I know how strict the rules are, and I knew
[22] beyond any shadow of a doubt that's something you do
[23] not do. So I did not in any way talk with anybody
[24] about "Well, you're going get the job, don't worry,
[25] I'll take care of you." That didn't take place.

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[1] There's been that accusation.
[2] The only thing I conclude is that when
[3] Sam Harvey talked to David Voeller, which he said
[4] I'll be here, I'll probably be here, I don't
[5] remember his exact words, Sam explains that in an
[6] affidavit, which I think you've already seen. He
[7] believed that Gary Fiser said he didn't want to work
[8] any longer with TVA, he was going to leave, so
[9] therefore he assumed he was the only probable
[10] candidate for that position. I don't know. I don't
[11] know anything about it, I'm just relating that. But
[12] if somebody jumped to a conclusion, I must have
[13] talked to Sam and said, "You're going to have a
[14] position," and that is absolutely untrue. It is not
[15] true whatsoever, so I deny that. You've seen
[16] Harvey's declaration.
[17] Now one of the strange things is Harvey
[18] was never, Sam Harvey was never interviewed by the
[19] NRC OI. He's one of the main people in this whole
[20] story, but I believe if that had happened, that
[21] question would have never come up, because he was
[22] very clear in his mind as to what took place and
[23] that I did not in any way guarantee him a position.
[24] Sam Harvey also had difficulty with the
[25] DOL investigators. He was very dismayed with their

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[1] process.
[2] MR. BURZYNSKI: If I might interject, I
[3] filed a request for the Department of Labor
[4] investigative file. In Sam Harvey's affidavit
[5] you'll note that he says that he tried to interview
[6] and he, in fact, marked it up and gave it back to
[7] them. The copy of the investigative file I got from
[8] the Department of Labor does not include Sam
[9] Harvey's statement in there.
[10] MR. McARTHUR: Now the allegation that
[11] Sam Harvey could have been placed in a vacant
[12] Sequoia chemistry position is, you have the wrong
[13] information. There was not a vacant position.
[14] There was no vacant position. I got a call from
[15] Charles Cam, who said would Sam Harvey be able to —
[16] could we transfer him out here? I didn't know if
[17] there was a position or not.
[18] I went to my boss, Tom McGrath, and
[19] passed that information on to him and that was my
[20] total involvement in that situation. But I do know
[21] there was not a vacant position, I found that out
[22] later. It's factually incorrect to say that there
[23] was a position available at Sequoia at that
[24] particular time. I think the record shows that.
[25] The only other issue that I can think of

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[1] by going through your summary has to do with me
[2] being selected for the RadCon Chemistry Manager's
[3] position. I was told by Tom McGrath on a continuous
[4] basis that position would be advertised, so I
[5] expected that. I knew I was the best qualified. In
[6] fact, because of that, I went to Tom and I said, I
[7] guess I don't understand, I came here as a Manager
[8] of Technical Programs, which included all these
[9] areas, RadCon, Chemistry, Environmental, RAD Waste,
[10] Laboratories, and previous programs consisted of
[11] Industrial Safety, Fire Protection and Security, I
[12] had those areas too. So I had been in that position
[13] before, plus I had worked in my career in all the
[14] areas. The only other possible person that would
[15] have bid for the job was Chemistry, so I went to
[16] Tom.
[17] Tom didn't say anything to me, but I
[18] understand later that he went to HR and presented
[19] that information, and Ed can explain better what
[20] happened after that.
[21] MR. BOYLES: Mr. McGrath approached me
[22] and conveyed Dr. McArthur's concern that in
[23] Dr. McArthur's view, he believed it was his job. He
[24] asked HR to look at that and make a determination.
[25] I asked a Human Resource officer on my staff at the

[1] time to look at the history and help me in making
[2] that decision. I believe I joined HR in November of
[3] '94 and I wasn't fully aware of the past history.
[4] What we did, we looked at the position
[5] descriptions. The position description of record
[6] for Dr. McArthur was a Technical Programs Manager
[7] position. We did a comparison of that with the new,
[8] with the existing position. Actually in '95 we had
[9] re-created that position and there was an individual
[10] who had been placed there on an acting basis for a
[11] period of time until he retired, and so I compared
[12] those two positions with assistance from my Human
[13] Resource officer, and I made the determination that
[14] Dr. McArthur did have rights to the job. I felt
[15] that he had some valid issues there.
[16] Now, I will point out I did review this
[17] with my supervisor at that time, who was the manager
[18] of HR operations and she reviewed what I had done
[19] and felt that I was following process and that that
[20] was the thing to do, and I will indicate that the
[21] consultant or the HR officer who had assisted me in
[22] that, at some point after I made the decision, did
[23] come to me and talk to me about posting the job,
[24] indicating that there was another individual, and
[25] from that standpoint that we should give this other

[1] individual an opportunity.
[2] I didn't agree with that assessment. I
[3] felt like we didn't need to focus on either
[4] individual, but on what the job descriptions stated
[5] and that comparison. So while we did discuss it and
[6] TVA's policy on posting, I didn't feel like I had a
[7] vacancy there to post. So again I made the decision
[8] or I reconfirmed the decision that Dr. McArthur had
[9] a right to that position and I subsequently informed
[10] Tom McGrath of that decision.
[11] MR. McARTHUR: So you see the only
[12] involvement I had was to discuss with Tom McGrath my
[13] feelings, concerns about it. I didn't expect
[14] anything in particular to happen. I just passed on
[15] my feelings to him.
[16] MR. STEIN: If I may ask, what is your
[17] working and social relationship with Tom McGrath.
[18] MR. McARTHUR: He was my boss.
[19] MR. STEIN: Do you go out socially? Do
[20] you go out?
[21] MR. McARTHUR: Never have.
[22] MR. STEIN: Over the years you have
[23] you've worked closely together, and can you
[24] relate —
[25] MR. McARTHUR: When I first came to TVA,

[1] he was in a staff position, a technical staff
[2] position, and we worked together on several
[3] projects, and then he became the manager of
[4] Operation Support, in which I was at that point in
[5] time Technical Programs Manager reporting to him.
[6] I don't think other than riding to a
[7] meeting like this and stopping and having a
[8] sandwich, that's about the only social relationship
[9] we've ever had.
[10] But I will tell you he's a straight and
[11] true guy. I enjoyed working with him as much as
[12] I've ever worked with anybody, because he allowed
[13] you to work within your framework. He never told
[14] you what to do. He disagreed with you, but he would
[15] not tell you what to do.
[16] I think that's the major points I wanted
[17] to cover. I'm saddened to be here. This is the
[18] last year of my career and to face an issue like
[19] this. It's amazing. I can't see any facts that
[20] support the conclusions that are drawn by this
[21] investigator at all. Not one. That's what really
[22] bothers me. It's absolutely wrong on a couple of
[23] facts, that I was a culpable party, I was not, in
[24] the first DOL complaint, and there was no vacancy at
[25] Sequoia, it didn't exist, and the fact that Sam

[1] Harvey was not interviewed to take care of that
[2] particular problem.
[3] How the conclusion was drawn that I have
[4] somehow decided to attack an individual, which is
[5] not my nature anyway, didn't make any sense to me.
[6] It just did not. There was no preselection of Sam
[7] Harvey. I think once you read his testimony and
[8] investigate all the facts, you'll come to that same
[9] conclusion.
[10] The decision about me being put in my
[11] position I had nothing to do with. I just voiced my
[12] opinion, and I do not believe these conclusions that
[13] have been drawn by your Office of Investigation are
[14] consistent with the facts.
[15] MR. REYES: Does that conclude your
[16] prepared statement?
[17] MR. McARTHUR: Yes.
[18] MR. REYES: I'm sure we have some
[19] questions.
[20] MR. DAMBLY: I would be interested in,
[21] you worked with Harvey and Fiser and Chandra over
[22] the years?
[23] MR. McARTHUR: Yes.
[24] MR. DAMBLY: Without this Selection
[25] Review Board results, how would you have ranked

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[1] them.
[2] MR. McARTHUR: You want me to tell you
[3] how I would rank those three guys?
[4] Sam Harvey is probably the best PWR
[5] Chemistry person I've ever known in my life. In
[6] fact, we just lost him to — up in the Northeast and
[7] I think it's the biggest loss I've ever suffered.
[8] He just knows the business.
[9] Chandra is an excellent BWR Chemistry
[10] person, somebody who also understands — he's worked
[11] in both BWRs and PWRs.
[12] Gary Fiser's primary strength is in
[13] primary chemistry, fairly weak in secondary
[14] chemistry and weak in management.
[15] My selection would have been the same as
[16] the Review Board, if I was just to say, if I was
[17] just told the two best guys.
[18] MR. STEIN: Dr. McArthur, what do you
[19] base rating Sam Harvey so high upon? Is it his
[20] published works?
[21] MR. McARTHUR: He is a leading force, he
[22] was a leading force within TVA of any changes to
[23] secondary water chemistry for both sites, Sequoia
[24] and Watts Bar. He was very close to the industry,
[25] very close to EFRE and all the different

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[1] organizations. He knew what was going on and he was
[2] very visionary. In fact, he left me a five-year
[3] plan, that if I was in that position, I would be
[4] working on now, of things to do over the next five
[5] years. He's an extremely intelligent guy and very
[6] well informed. And every time — you know, if a guy
[7] is 90 — a guy told me one time, that guy is only
[8] right 90 percent of the time, I'll take that.
[9] Okay? He was right most of the time.
[10] MR. BURZYNSKI: Wilson, everybody may
[11] assume or we may assume that everybody knows why
[12] secondary chemistry is so important to a PWR, but
[13] you might want to elaborate.
[14] MR. McARTHUR: It's the generators
[15] primarily, and Sam Harvey was very well versed, in
[16] fact, he worked very close to Dave Getches, who was
[17] on our steam generator guru. Every time we had an
[18] outage, Sam would generally go to the site and work
[19] for Dave Getches as a steam generator chemistry
[20] expert. So a very, very high ranking from my
[21] standpoint as a secondary and primary, but much
[22] stronger in secondary work.
[23] MR. DAMBLY: Did he and Mr. Fiser have
[24] basically identical jobs, just with different — for
[25] different plants, supporting different plants before

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[1] this?
[2] MR. McARTHUR: They both had the same
[3] PD. Sam spent most of his time at Sequoia. He did
[4] spend of his time at Watts Bar. Gary spent just
[5] about all of his time at Watts Bar. I had one
[6] assigned to each site. They were two PWR guys.
[7] Chandra was the BWR guy and he was assigned to
[8] Browns Ferry.
[9] MR. DAMBLY: Was Grover their immediate
[10] supervisor?
[11] MR. McARTHUR: At that point, just before
[12] this reorganization took place, he was their
[13] supervisor.
[14] MR. DAMBLY: The thing that and I'm sure
[15] you are aware of the issue with the appraisals, but
[16] their supervisor had them rated with Fiser
[17] considerably higher over the past couple ratings
[18] than Harvey.
[19] MR. McARTHUR: There was a lot of
[20] conflict in the Chemistry group. Sam Harvey always
[21] felt that Chandra and Gary received higher
[22] recognition than him. I can't comment on that. I
[23] wasn't that much involved at that point in time.
[24] So from Sam Harvey's standpoint, that
[25] would be a true statement, he would expect that. I

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[1] can't really say because I'm not Ron Grover.
[2] MR. BOYLES: If I can interject, we did
[3] have a concern expressed by Sam Harvey at one point
[4] in time related to the development of the new
[5] position descriptions, and we eventually met with
[6] Ron Grover, who is the supervisor, and were able to
[7] resolve his concerns, but he did express some
[8] concerns of his about how the jobs were being
[9] written.
[10] His concern was that it was to preclude
[11] or not give him an equal chance. We were able to
[12] resolve that between Sam Harvey and his supervisor,
[13] though.
[14] MR. REYES: I have here a question about
[15] the secondary chemistry, if my memory is right,
[16] Watts Bar was not licensed until 1996, so the scope
[17] of the activities were vastly different at Sequoia
[18] than at Watts Bar.
[19] MR. McARTHUR: That's true.
[20] MR. REYES: At Watts Bar it was wet
[21] layup, period, and Sequoia had been running since
[22] 1981. So I'm just trying to understand, you said
[23] Mr. Fiser had about the same job at Watts Bar as
[24] Mr. Harvey at Sequoia, but knowing the history of
[25] the stations, one had more work than the other, not

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1 only in number of reactors and generators, but just
2 the way — the plant had not run.
3 MR. McARTHUR: You'll recall that Sam
4 Harvey was very much involved with Watts Bar along
5 with Gary Fiser. He was very well trusted by the
6 staff there. In fact, I think they liked both Gary
7 and Sam. I didn't see any disparity there. So if
8 there were particular things that Sam had a better
9 feeling for, he would interject himself and become
10 involved, so he was very much involved.
11 And, of course, Sequoia was a running
12 plant. You know, as I said, he spent some of his
13 time there. In fact, even Gary came down to Sequoia
14 on occasion with some primary water problems. I
15 didn't see that there were boundaries that were put
16 up, they could communicate back and forth and help
17 each other. That was the whole idea is to be able
18 to assist whoever needed help.
19 MR. STEIN: Just to continue Mr. Dambly's
20 line of questioning If you look at the
21 individuals, their performance appraisals, their
22 educational backgrounds, it would seem that
23 Mr. Fiser was more qualified. And from what I'm
24 hearing from you, you think so much more highly of
25 Mr. Harvey.

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1 MR. McARTHUR: I didn't say so much more
2 highly. I just saw —
3 MR. STEIN: Could you please elaborate,
4 because if you just look at them from performance
5 appraisal and resume and educational background,
6 you would think that Mr. Fiser would have been
7 selected.
8 MR. McARTHUR: Well, Gary rotated
9 downtown from Sequoia, he was a Chemistry Manager
10 there, and the plant manager had felt that Gary had
11 not done a good job in the chemistry area, so he was
12 rotated with another individual to go out to
13 Sequoia.
14 He came downtown as the Manager of
15 Chemistry and that was okay with me, I didn't know
16 Gary that well, I knew him through the NSRB and a
17 few other contacts and that kind of thing, but it
18 was obvious after a very short period of time he
19 could not manage very well. So I removed him from
20 the management position because he just wasn't
21 performing.
22 MR. PLISCO: People management?
23 MR. McARTHUR: People manager, yeah. So
24 I had written appraisals for him on several
25 occasions, so I knew the guys very well, their

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1 technical capabilities. Whether Gary had a higher
2 degree? I know that Sam had a B.S. in chemistry and
3 Chandra has a Ph.D. in chemistry. Gary I think had
4 a Master's degree, I don't think it was in
5 chemistry, but it was a related area. I looked at
6 how they performed.
7 MR. STEIN: Were you aware of
8 Mr. Harvey's Title 7 issues?
9 MR. McARTHUR: I'm not sure what that
10 is.
11 MR. STEIN: Equal employment opportunity.
12 MR. BOYLES: I think Mr. Stein is
13 referring to an issue that came up involving Sam
14 Harvey that was investigated.
15 MR. McARTHUR: Oh, yes. He was working
16 for Ron Grover at that point in time, but I was
17 involved because we were going to be later making a
18 transition. At TVA we have a progressive type
19 process to deal with these kind of things and he was
20 called in. Although he denied the allegations, he
21 was still given some sensitivity training. I
22 conducted most of that, and involved HR in selecting
23 things for him to read, videos for him to watch.
24 And quarterly for a year, which is in the
25 record, I interviewed Sam, talked to him about

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1 this. He was always very upset because he said I
2 didn't do these things, but we had made the
3 decision.
4 MR. BOYLES: Could I also point out, the
5 individual who initially made the allegation of
6 intimidation and harassment did withdraw it after we
7 got into the issue, we had meetings with the
8 supervisor, she did come to us and ask that we not
9 pursue it. We did deal with it as more of a
10 counseling session, because the direct supervisor
11 did indicate that Mr. Harvey had admitted that maybe
12 some of the things he did could be perceived as
13 improper. So we felt that the initial stage of a
14 progressive disciplinary action policy was about as
15 far as we went.
16 MR. STEIN: Please explain why Mr. Fiser
17 was a poorer people manager than Mr. Harvey.
18 MR. McARTHUR: I guess not getting things
19 done on time primarily. I'm a great believer in
20 setting up a schedule; and if you're not going to
21 meet the schedule, come tell me and tell me why.
22 Gary did not do that very well.
23 A number of his people came to me with
24 complaints about unfairness and that kind of thing.
25 There were several issues that were indicative of

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[1] the fact that he was not doing his job well.
[2] I didn't think he was really on top of
[3] some technical issues. I was more on top of those
[4] technical issues than he was and I do a lot of
[5] reading and things, but certainly you'd expect your
[6] chemistry manager to be on top of industry
[7] problems. There were some problems he just was not
[8] very aware of, so. Of course, that's a technical
[9] issue. But his management style was very laid back,
[10] and again, which is not a problem, but just didn't
[11] get the job done.
[12] MR. BOYLES: In our business we have a
[13] lot of very excellent technical people. Many of
[14] those same people don't make excellent managers,
[15] though.
[16] MR. DAMBLY: Dr. McArthur, could you tell
[17] us — it had been brought up this morning and you
[18] brought it up as well — what was your involvement
[19] in '94 when Mr. Fiser went from, I guess, Chemistry
[20] Program Manager to Chemistry Environmental Program
[21] Manager, had to compete for it? Were you in his
[22] chain, were you on the panel or did you make the
[23] selection?
[24] MR. McARTHUR: I believe that's one where
[25] I made a selection and selected him as one of the

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[1] people, but I believe the record will show that I
[2] was very upset when I found that Gary was not going
[3] to be available to fill a position and actually
[4] complained about it to management because they had
[5] decided to eliminate a position.
[6] I had worked up a way which I thought I
[7] could keep Gary in a position and then that position
[8] went away, and that issue for the first complaint
[9] was primarily a Sequoia issue. I was very little
[10] involved; in fact, didn't even know about it for a
[11] long period of time.
[12] MR. DAMBLY: Now the first issue, I guess
[13] the first complaint was in '93 and there was a
[14] settlement where he got this Chemistry Program
[15] Manager job.
[16] MR. McARTHUR: Right.
[17] MR. DAMBLY: And then in '94 that was
[18] eliminated and the new position of Chemistry and
[19] Environmental Program that he had to compete for.
[20] MR. McARTHUR: That's correct.
[21] MR. DAMBLY: What was your involvement in
[22] that competition?
[23] MR. McARTHUR: I'm trying to remember,
[24] but I'm not really sure. I know I was involved in
[25] one of the selection boards in which Gary was

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[1] selected for a position.
[2] MR. DAMBLY: I thought this morning
[3] Mr. McGrath indicated you were actually the
[4] Selecting Official for that job.
[5] MR. McARTHUR: No. I don't remember that
[6] being the case.
[7] MR. DAMBLY: Were you in Mr. Fiser's
[8] chain of command in 1994 when he had the Chemistry
[9] Program and Environmental Program?
[10] MR. McARTHUR: My recollection is, and I
[11] may be wrong about this, that he was reporting to
[12] Ron Grover. I don't know if you guys can help me.
[13] MR. BOYLES: I was going to say about
[14] that time didn't you go to the RadCon —
[15] MR. McARTHUR: Yeah, I was a RadCon
[16] manager.
[17] MR. BOYLES: So he would have been —
[18] again, I'm not sure of the exact time frame, so he
[19] would have probably been reporting to Ron Grover at
[20] that time.
[21] MR. McARTHUR: Yes, sir, that's my
[22] recollection.
[23] MR. DAMBLY: Mr. McArthur, you were on
[24] the Selection Board.
[25] MR. McARTHUR: Yes. I believe that's

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[1] correct.
[2] MR. DAMBLY: Do you have any recollection
[3] of how many people you interviewed or whatever for
[4] that?
[5] MR. McARTHUR: No. I do know the last
[6] one, when we selected Chandra and Sam, there were
[7] three people that applied for that position and we
[8] were to select two of the three.
[9] MS. BOLAND: A minute ago I thought I
[10] understood you to say something to the effect of,
[11] and I'm not sure what period of time we were talking
[12] about, about losing Mr. Fiser and that you had
[13] talked to someone about that. What period of time
[14] was that? You may have misunderstood —
[15] MR. MARQUAND: He was referring to the
[16] circumstances giving rise to his first Department of
[17] Labor complaint, when Gary was RIF'd; and then as
[18] you see in the highlighted version of the complaint,
[19] it says that Mr. McArthur was dismayed about him
[20] leaving.
[21] MS. BOLAND: Okay, so we're talking 1993
[22] time frame?
[23] MR. MARQUAND: Yes.
[24] MR. McNULTY: Just one question, because
[25] I know you said that you hold no enmity toward

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[1] Mr. Fiser. Were you ever aware of him tape
[2] recording anybody?
[3] MR. McARTHUR: Yes.
[4] MR. McNULTY: Can you tell me about
[5] that?
[6] MR. McARTHUR: All I know is, apparently
[7] it went over a long period of time and I was advised
[8] that he was taping our conversations, and that was
[9] the first I had heard about that.
[10] After that I was just aware that he was
[11] doing that and I thought it was a very
[12] unprofessional and sad situation to do that kind of
[13] thing, but I was aware.
[14] He would make it a point, which was
[15] unusual for him, to come in at lunchtime while I was
[16] eating a sandwich or something and he would ask a
[17] question like, "What do you think of Tom McGrath?"
[18] or, "What do you think of TVA?" And then I would
[19] become aware in my mind he was trying to get me to
[20] say something negative. I don't know why. I had no
[21] idea why he was doing that, because as I said, I
[22] thought it was very unprofessional. But that didn't
[23] change my opinion of his technical capability. I
[24] didn't like what was happening, but that's all I can
[25] tell you about that.

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[1] MR. STEIN: I have two questions.
[2] MR. McNULTY: Can I follow up?
[3] MR. STEIN: Sure.
[4] MR. McNULTY: Do you recall when that
[5] occurred, the tapings?
[6] MR. McARTHUR: Do I recall one?
[7] MR. McNULTY: When?
[8] MR. McARTHUR: Oh. No, I don't know the
[9] exact time. I know that I've heard the tape, some
[10] of the tapes I didn't hear them all.
[11] MR. McNULTY: Have you seen any
[12] transcripts of the tapes?
[13] MR. McARTHUR: We did see some
[14] transcripts. It was very hard to understand and the
[15] transcriptions were not — nothing came out of any
[16] particular interest, from what I recall. I didn't
[17] hear all of them, but I heard a number of them and
[18] read some transcripts.
[19] MR. McNULTY: Did you testify in any
[20] proceedings for TVA in regards to Mr. Jocker?
[21] MR. McARTHUR: Yes.
[22] MR. McNULTY: Did you review tapes of
[23] transcripts in preparation for that testimony?
[24] MR McARTHUR: I don't think so. Not
[25] that I recall. I didn't know anybody was taping

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[1] during that period of time.
[2] MR. STEIN: When you spoke with Mr. Corey
[3] and Mr. Kent about being on the Selection Panel,
[4] both indicated that they had a few weeks' notice in
[5] preparation for the panel.
[6] When you spoke to Mr. Cox about being on
[7] the panel, how much time do you remember?
[8] MR. McARTHUR: It was probably the RadCon
[9] Chemistry Peer Group meeting before, the month
[10] before, when we made the decision that — we made
[11] it, it wasn't my decision, it was the decision of
[12] the group that they would be the members and Cox
[13] indicated — we scheduled in conjunction with the
[14] next RadCon Chemistry meeting so we would have all
[15] the guys there. It was very difficult to get these
[16] three or four gentlemen together for anything.
[17] MR. STEIN: So Mr. Cox had about the same
[18] amount of time as Mr. Kent and Mr. Corey?
[19] MR. McARTHUR: Sure.
[20] MR. STEIN: I have another question and
[21] it has to do with Mr. McGrath. Mr. McGrath's input
[22] into — you said you were the Selecting Official?
[23] MR. McARTHUR: That's correct.
[24] MR. STEIN: You were completely
[25] independent of any input from Mr. McGrath or anybody

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[1] else from TVA?
[2] MR. McARTHUR: That is correct. In fact,
[3] I went to Tom and said these are the people that we
[4] have selected. And if you knew Tom McGrath, you'd
[5] know that he trusts me. I felt that, a very strong
[6] sense of trust. He never said anything.
[7] MR. STEIN: Let's take a step back for a
[8] second. Can you explain to us why this was
[9] necessary?
[10] MR. McARTHUR: Like what?
[11] MR. STEIN: To take three managers and
[12] then to create two positions for those three
[13] managers? You know, budgetary —
[14] MR. McARTHUR: Well, we, TVA —
[15] MR. STEIN: Because we had been going
[16] along fine until Mr. McGrath.
[17] MR. McARTHUR: We're in a competitive
[18] business. I just got through last week spending
[19] three weeks in my new staff position of evaluating
[20] RadCon and Chemistry again. I went to all the
[21] sites, dealt with all the people and said, "What is
[22] the value of Corporate, is it a value add or not?"
[23] So we do this periodically and this is
[24] reorganization, which I think in our industry we are
[25] competitive. We're trying to, you know, to look at

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[1] efficiency, look at costs and those kind of things.
[2] And a decision was made by Tom, along with HR, that
[3] they would combine the RadCon and Chemistry Manager
[4] position, all the other positions were to be
[5] advertised.
[6] And I was not surprised at all. Since
[7] I've been with TVA, I've watched my organization go
[8] down from about 60 people to probably on the order
[9] of 20 something. So there's a lot of people because
[10] of reorganizations and things like that, and we're
[11] still getting the job done, so I can't say that
[12] management was wrong. I have to say they must have
[13] had more insight than maybe I did. I always hated
[14] it when people had to leave.
[15] MR. STEIN: But the decision to
[16] reorganize was Ron Grover's?
[17] MR. McARTHUR: We were involved. Ron
[18] Grover and myself were very heavily involved with
[19] it, but certain decisions he made. He made the
[20] decision about combining RadCon and Chemistry, which
[21] made sense. He didn't tell us how to select
[22] people. He did not tell us anything other than get
[23] it done and we got to do it on a timely basis.
[24] MR. REYES: Is that it?
[25] MS. BOLAND: I have a question. With

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[1] respect to the Review Board meeting, I guess as we
[2] understood it, you sat in on that, but were not a
[3] participant?
[4] MR. McARTHUR: That's correct.
[5] MS. BOLAND: Do you recall any
[6] discussions by any of the three members of the board
[7] regarding Mr. Fiser's potential filing of a DOL
[8] complaint or his prior DOL activities?
[9] MR. McARTHUR: Not in the Review Board.
[10] Nothing at all took place during the Review Board.
[11] MS. BOLAND: Prior to the Review Board,
[12] did you hear anything from Mr. Kent or Mr. Corey.
[13] MR. McARTHUR: We were in the hallway
[14] after a RadCon Chemistry meeting and Charles Kent
[15] made the comment, "Are you guys aware of Gary
[16] Fiser's DOL complaint?" and I said, "That's not for
[17] discussion here."
[18] I didn't even know anything about it, but
[19] I knew that was improper, and at least I felt like
[20] it was something we shouldn't discuss. And that was
[21] the end of it.
[22] I felt like he was saying — and this is
[23] just gut feeling, okay? He was saying that we need
[24] to be extra especially careful during this
[25] evaluation because of that complaint. That was the

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[1] way I felt. Now that's no fact at all, that's just
[2] the way I felt.
[3] MS. BOLAND: Did Mr. McGrath at all
[4] discuss with you or provide you any guidance
[5] associated with the prior DOL complaints or the
[6] current DOL complaints or the threat of DOL?
[7] MR. McARTHUR: I do not recall having any
[8] conversation with him. He knew I'd be a fair
[9] person, so I don't think he had a problem with that.
[10] MS. BOLAND: So you all didn't discuss
[11] that at all?
[12] MR. McARTHUR: No.
[13] MR. STEIN: When Mr. Cox couldn't be on
[14] the panel, was there any discussion of Mr. Voeller
[15] replacing him?
[16] MR. McARTHUR: I wouldn't have, because I
[17] was looking— he's a chemistry guy. I was looking
[18] for the big picture guy, the guy that knew RadCon
[19] Chemistry, Environmental; and the RadCon Chemistry
[20] Managers fit that bill and even Rick Rogers fit that
[21] bill. I was not looking for a chemistry and a
[22] RadCon and a RAD Waste guy, I was looking for the
[23] big picture guy.
[24] MR. BURZYNSKI: In fact, you guys were
[25] interviewing for five positions.

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[1] MR. McARTHUR: Right. We were
[2] interviewing for all the Rad Waste, Environmental
[3] and RadCon and Chemistry Manager., in the same
[4] afternoon.
[5] MR. DAMBLY: Just one follow-up question
[6] to something I asked earlier. You may have answered
[7] it, I just wanted to make sure it is clear.
[8] When you were on the Selection Review
[9] Board, panel, whatever, back in '94, did you
[10] recommend that Mr. Fiser get that position?
[11] MR. McARTHUR: Yes, sir.
[12] MR. DAMBLY: That was your
[13] recommendation, okay.
[14] MR. McARTHUR: Yes, sir.
[15] MR. REYES: Is there something else you
[16] want to say that we haven't asked you? I mean is
[17] there something now, that you have been here now for
[18] a little bit over an hour, is there something that
[19] you want to do after your remarks and recollection.
[20] MR. McARTHUR: The only thing I would
[21] say, and I say the same thing again I'm sure, is I
[22] do not see any fact here. The summary letter refers
[23] to facts; I haven't seen those. I have responded to
[24] you as honestly and as openly as I can. I do not
[25] believe there is one shred of evidence that says

[1] that I discriminated against Gary Fiser in any way.
[2] And my people, if you read those letters, will tell you that's just not the kind of person that I am.
MR. REYES: We're going to follow the
[5] proposed agenda we gave you, so I think we're to the
[6] point where we're going to take a small break and
[7] are going to ask you to stay here or go to the
[8] facilities. We just want to caucus and make sure
[9] before we let the group leave we ask you any
[10] questions.
[11] MR. DAMBLY: Are you all going to provide
[12] a Sam Harvey affidavit?
[13] MR. VIGLUICCI: We did.
[14] MR. REYES: We're going to go off the
[15] record and take a break.
[16] (A recess was taken.)
[17] MR. REYES: In closing the Predecisional
[18] Enforcement Conference, I want to remind you of two
[19] things First, the apparent violations discussed at
[20] this Predecisional Enforcement Conference is subject
[21] to further review and may be subject to change prior
[22] to any resulting enforcement action.
[23] And second, the statement of views and
[24] expressions of opinion made by NRC employees at this
[25] Predecisional Enforcement Conference are not

[1] intended to represent final agency determinations.
[2] Now since we have TVA representatives
[3] here, I need to ask you the following question:
[4] Given the presence of TVA at the conference, would
[5] you like to offer — we'd like to offer you the
[6] opportunity to meet with the members of the NRC
[7] privately Would you like to do so?
[8] THE WITNESS: I think I've told you
[9] everything, unless you have some question yourself,
[10] so.
[11] MR. REYES: No. I just want to give you
[12] the opportunity. Thank you. We're going to close
[13] the conference.
[14] (Conference concluded at 2:20 p.m.)
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[1]
[2]
[3] CERTIFICATE
[4]
[5] STATE OF GEORGIA:
[6] COUNTY OF FULTON:
[7] I hereby certify that the foregoing
[8] transcript was taken down, as stated in
[9] the caption, and the questions and answers
[10] thereto were reduced to typewriting under
[11] my direction; that the foregoing pages 1
[12] through 56 represent a true, complete, and
[13] correct transcript of the evidence given
[14] upon said hearing, and I further certify
[15] that I am not of kin or counsel to the
[16] parties in the case; am not in the regular
[17] employ of counsel for any of said parties;
[18] nor am I in anywise interested in the result
[19] of said case.
[20] This, the 2nd day of December, 1999.
[21]
[22]
[23] COLLEEN B. SEIDL, RPR, CCR-B-1113
My commission expires on the
[24] 7th day of October, 2002.
[25]

Lawyer's Notes