RAS 6237 50-390-CIVP, et al. — Staff Exhibit 133 — Rec'd 6/18/02

DOCKETED
USNRC

2003 MAR 11 PM 4:03

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In The Matter Of:

GARY FISER

THOMAS MCGRATH
November 22, 1999

CLOSED PREDECISIONAL
ENFORCEMENT CONFERENCE

BROWN REPORTING, INC.
ATLANTA, AUGUSTA, CARROLLTON, LaGRANGE, ROME
1740 PEACHTREE STREET, N.W.
ATLANTA, GA USA 30309
(404) 876-8979 or (800) 637-0293

Original File 1122NRC1.ASC, 102 Pages
Min-U-Script® File ID 0147322660

Word Index included with this Min-U-Script®

Template = SECY-028

SECY-02

NUCLEAR REGULATORY COMMISSION

Docket No. 50-390 Official Exh. No. Staff 133

In the matter of TVA

Staff ✓ IDENTIFIED ✓

Applicant RECEIVED

Intervenor REJECTED

Other WITHDRAWN

DATE 6/18/04 Witness

Clerk

[1]
[2]
[3] CLOSED PREDECISIONAL ENFORCEMENT CONFERENCE
[4] RE: GARY FISER
[5]
[6]
[7] THOMAS McGRATH
[8]
[9]
[10]
[11] November 22, 1999
[12] 10 05 a m.
[13]
[14]
[15]
[16]
[17] Nuclear Regulatory Commission
Atlanta Federal Center
[18] Suite 23T-85
61 Forsyth Street, S W.
[19] Atlanta, Georgia
[20]
[21]
[22] Colleen B Seidl, RPR, CRR, CCR-B-1113
[23]
BROWN REPORTING, INC
[24] 1740 PEACHTREE STREET, N W.
ATLANTA GEORGIA 30309
[25] (404) 876-8979

[1] APPEARANCES
[2] MS ANNE T. BOLAND, Region 2 Enforcement Officer, Atlanta
[3] MR DENNIS C DAMBLY, Assistant General Counsel for
[4] Materials Litigation and Enforcement
[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 M 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,
[15] Region 2
[16] MR EDWARD VIGLUICCI, Office of General Counsel TVA
[17] MR BRENT MARQUAND, Office of General Counsel, TVA
[18] MR JAMES BOYLES, Manager, Corporate Human Resource Office for TVAM
[19]
[20]
[21]
[22]
[23]
[24]
[25]

Page 3

[1] MR. REYES: Good morning. My name is
[2] Luis Reyes. I'm the Regional Administrator for the
[3] Nuclear Regulatory Commission's Region II office.
[4] This morning we will conduct a Predecisional
[5] Enforcement Conference between the NRC and
[6] Mr. Thomas McGrath, which is closed to public
[7] observation and which will be transcribed.
[8] This subject of the conference is an
[9] apparent violation of the Commission's regulations
[10] regarding deliberate misconduct and employee
[11] protection. Specifically, at issue is your
[12] involvement in an apparent discriminatory employment
[13] decision regarding Mr. Gary L. Fiser, a former TVA
[14] employee.
[15] The agenda for the predecisional
[16] enforcement conference is shown in the viewgraph and
[17] if you need a copy of that, we can provide you with
[18] one.
[19] Following my brief opening remarks,
[20] Ms. Anne Boland, to my right, the Region II
[21] Enforcement Officer, will discuss the Agency's
[22] enforcement policy. Mr. Loren Plisco, to my left,
[23] who is Director of the Division of Reactor Projects,
[24] will then discuss the apparent violation and the
[25] NRC's perspective on the issue. You will then be

Page 4

[1] given an opportunity to respond to the apparent
[2] violation. 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 about a ten-minute break so that the NRC can
[10] briefly review what it has heard and determine if we
[11] have any follow-up questions, and we physically will
[12] leave the room to take that break.
[13] Lastly, I will provide some concluding
[14] remarks.
[15] At this point I would like to have the
[16] NRC introduce themselves and then ask you to
[17] introduce your participants.
[18] MS. BOLAND: I'm Anne Boland, the Region
[19] 2 Enforcement Officer.
[20] MR. DAMBLY: Dennis Dambly, Assistant
[21] General Counsel for Materials Litigation and
[22] Enforcement.
[23] MR. REYES: Luis Reyes. I'm the Regional
[24] Administrator for the NRC office in Atlanta.
[25] MR. PLISCO: Lawrence Plisco, Director of

Page 5

[1] the Division of Reactor Projects, Region 2.
[2] MR. STEIN: Michael Stein, Enforcement
[3] Specialist in the NRC.
[4] MR. McNULTY: William McNulty. I'm a
[5] Field Office Director for the Office of
[6] Investigations.
[7] MR. McCREE: Victor McCree, I'm the
[8] Deputy Director for Reactor Safety in Region II.
[9] MS. EVANS: Carolyn Evans, Regional
[10] Counsel.
[11] MS. EUCHNER: Jennifer Euchner, attorney,
[12] OGC.
[13] MR. SPARKS: Scott Sparks, Senior
[14] Enforcement Specialist, Region 2.
[15] MR. VIGLUICCI: Mr. McGrath, my name is
[16] Ed Vigluicci, Senior Licensing Counsel for Tennessee
[17] Valley Authority.
[18] MR. MARQUAND: I'm Brent MarQuand. I'm
[19] Senior Litigation Attorney for the Tennessee Valley
[20] Authority.
[21] MR. McGRATH: I'm Tom McGrath. A few
[22] months ago I left the Nuclear Power Program. I was
[23] the portfolio manager in the power training
[24] organization.
[25] MR. BOYLES: I'm Ed Boyles. I manage the

Page 6

[1] Corporate Human Resource Office for TVAM.
[2] MR. REYES: Mr. McGrath, are the
[3] attendees, other than yourself, here at your
[4] request?
[5] MR. McGRATH: Yes, they are.
[6] MR. REYES: Do you have any objections to
[7] representatives of the Tennessee Valley Authority
[8] being present at this conference?
[9] MR. McGRATH: I have no objection
[10] whatsoever.
[11] MR. REYES: Also, I would like to state
[12] that this is a conference between Mr. McGrath and
[13] the NRC and although counsel is present, we will be
[14] directing the questions to Mr. McGrath and, of
[15] course, he can pass the question to somebody else,
[16] but we'll be asking you the questions.
[17] MR. McGRATH: I understand.
[18] MR. REYES: It's your choice whether you
[19] want to answer them yourself or turn them over to
[20] one of your representatives.
[21] We can go on and continue with the
[22] agenda.
[23] MS. BOLAND: I would like to just take a
[24] few moments to go through the enforcement policy,
[25] which I believe we provided you a copy of attached

[1] to some of our correspondence to you. It has been
[2] recently reissued November 9th, 1999, so if anyone
[3] does need a copy of it, we can make copies available
[4] to you.
[5] As Mr. Reyes has indicated, we're here
[6] today because of your apparent involvement in an
[7] apparent violation of NRC requirements. As the
[8] former manager of Operations Support, you were
[9] responsible for assuring that NRC requirements were
[10] followed. Based on our review of the OI
[11] investigation, it appears that you may not have
[12] adhered to these requirements and, more importantly,
[13] your actions may have been deliberate.
[14] The purpose of this Predecisional
[15] Enforcement Conference today is to provide you the
[16] opportunity to address the apparent violation which
[17] Mr. Plisco will go through in more detail and we
[18] communicated to you in our September 20th, 1999
[19] letter.
[20] This conference is essentially the last
[21] step of our enforcement process before the staff
[22] makes an initial enforcement decision. Our purpose
[23] here is not to negotiate a sanction. We want to
[24] hear your views on the facts and circumstances
[25] surrounding the decision-making regarding Mr. Fiser,

[1] the circumstances surrounding the apparent
[2] violation, whether at the time you believed that
[3] your actions were appropriate, and whether now after
[4] having substantial time to consider those actions,
[5] whether your views have changed in that regard and
[6] if so, why And the corrective actions that you
[7] have personally taken or plan to take to prevent
[8] recurrence if you are involved in NRC activities in
[9] the future.
[10] Based on these discussions as well as
[11] other information, if we conclude that deliberate
[12] violations did in fact occur, the NRC may take
[13] various enforcement sanctions against you. In
[14] accordance with the NRC enforcement policy and the
[15] commission requirements, enforcement action could
[16] range from a notice of violation to an order
[17] prohibiting your involvement in future NRC
[18] activities should we, in fact, conclude that a
[19] deliberate violation of 50.5 deliberate misconduct
[20] occurred. As I mentioned, if you do need a copy of
[21] any of our regulations 10 CFR 50.5 or the
[22] enforcement policy, we'll be glad to provide them to
[23] you before you depart today.
[24] As Mr. Reyes has indicated, we want to
[25] emphasize to you that we have not, in fact, decided

[1] that a violation occurred or whether it was
[2] deliberate or whether enforcement action will, in
[3] fact, be taken. That's what this enforcement
[4] conference is about, to ensure that we have all
[5] relevant information on which to formulate a final
[6] decision.
[7] During this conference we will have
[8] various questions for you to answer to assist us on
[9] reaching that decision. Should you need any
[10] question clarified or if you have any questions
[11] before this proceeding, please feel free to ask. We
[12] want to emphasize that we expect from you a complete
[13] and accurate response to all our questions. If we
[14] fail to ask a proper question, I'll put that
[15] question in context for you, or you need additional
[16] explanation or you feel that there is additional
[17] relevant information that needs to be presented, we
[18] expect you to come forward with that information and
[19] address that.
[20] I also would like to note that any
[21] statements of view or expressions of opinion or lack
[22] thereof by any members of the NRC staff at this
[23] conference are not intended to represent any final
[24] agency determinations or beliefs relative to this
[25] matter.

[1] Following the conference, Mr. Reyes in
[2] conjunction with our Office of General Counsel, our
[3] Office of Enforcement, will make a final enforcement
[4] decision in this case, an initial staff enforcement
[5] decision in this case. This process generally takes
[6] about four weeks to accomplish.
[7] Lastly, if that enforcement action does
[8] involved a proposed order, the NRC will issue a
[9] press release announcing the issuance of that order,
[10] but will hold that press release for 24 hours after
[11] we've provided that order to you.
[12] One administrative matter. As Mr Reyes
[13] has indicated, we are transcribing this conference.
[14] A copy of the transcript may be made available to
[15] you after the NRC has made a final enforcement
[16] decision. If we do, however, make the transcript
[17] available to you, it also becomes a matter of public
[18] record and is placed in the public document room
[19] If you have any questions that you would
[20] like me to address, I'll be happy to at this time or
[21] at any time during or after the conference.
[22] MR. McGRATH: I have no questions right
[23] now.
[24] MR. REYES: We're going to continue with
[25] the agenda and Loren was going to summarize the

Page 11

1 allegations.
2 MR. PLISCO: Good morning. Before we get
3 started, I'll take a moment to summarize the
4 allegations.
5 The NRC's Office of Investigation
6 completed an investigation in August of 1999
7 regarding Mr. Gary Fiser, a former TVA Nuclear
8 Chemistry and Environmental Specialist, who was not
9 selected to fill one of two Chemistry Program
10 Manager positions during a 1996 reorganization.
11 Mr. Fiser was allegedly not selected to
12 fill the position for engaging in protected
13 activity. The evidence gathered by the Office of
14 Investigations indicated that as Mr. Fiser's second
15 line supervisor, you influenced the selection
16 process to preclude the selection of Mr. Fiser for
17 one of the Chemistry Program Manager positions.
18 Further, the evidence revealed that the
19 individual selected for the position of PWR
20 Chemistry Program Manager was preselected for the
21 position and that the same individual could have
22 been placed in a vacant site chemistry position.
23 Such a placement would have resulted in all
24 employees affected by the reorganization retaining
25 their job The evidence revealed that you rejected

Page 12

1 the request for placement of this individual at the
2 site.
3 The evidence also indicated that you
4 subjected Mr. Fiser to disparate treatment. In this
5 regard, the evidence reflected that you appointed an
6 individual to the position of RadCon Chemistry
7 Manager without competition while Mr. Fiser was
8 required to compete for one of the two Chemistry
9 Program Manager positions that were also created in
10 1996.
11 The evidence indicated that these actions
12 were taken in retaliation for Mr. Fiser's engagement
13 in protected activity, which was Mr. Fiser's filing
14 of a discrimination complaint with the Department of
15 Labor in September of 1993. This issue appears to
16 be an apparent violation of 10 CFR 50.5, deliberate
17 misconduct, and 10 CFR 50.7, employee protection.
18 The apparent violation is shown on the handout and
19 was documented in our letter to you dated September
20 20th, 1999.
21 We place a high value on nuclear industry
22 employees feeling free to raise safety concerns to
23 management as well as the NRC without the fear of
24 reprisals. The Energy Reorganization Act and the
25 Code of Federal Regulations establish strict

Page 13

1 requirements for the protection of employees against
2 discrimination for raising nuclear safety concerns.
3 At this conference we're giving you the
4 opportunity to provide information regarding your
5 involvement in this issue and the events described
6 in the summary of the Office of Investigation report
7 provided to you previously.
8 As Anne discussed, due to the
9 significance of the apparent violation and your
10 substantial role in the matter, you should provide
11 an explanation as to why you should be permitted to
12 engage in NRC licensed activities in the future.
13 Are there any further comments?
14 MR. REYES: I think we concluded the part
15 in the agenda where we talk about the enforcement
16 and the apparent violation, Mr. McGrath, so we would
17 like to turn over the conference to you to make your
18 presentation.
19 MR. McGRATH: Thank you. I appreciate
20 the opportunity to come be able to talk with you
21 this morning. I believe there have been some
22 misunderstandings of the facts and circumstances
23 involved in this case and I hope we can clarify
24 those this morning.
25 I would like to discuss with you a little

Page 14

1 bit about my background and then the process that
2 was used for the reorganization of the Operations
3 Support Department and the selection of the
4 Chemistry positions in 1996, and then I would also
5 like to address some of these specific findings that
6 are listed in the summary report.
7 To begin with my background, I have spent
8 about 30 years in nuclear power, I have been in it,
9 until, as I mentioned earlier, just about the
10 beginning of July, in our Power Training
11 Organization.
12 I clearly understand the importance of
13 reactor safety, the importance of employees being
14 able to — in fact, are encouraged to identify and
15 document any kind of problem that could potentially
16 impact reactor safety, and I also understand the
17 importance of management support of both of those
18 principles.
19 Since 1968, most of the positions I've
20 held in nuclear power have been directly related to
21 reactor safety. I began in the Naval Reactors
22 Program in 1968. I spent many years reporting
23 directly to Admiral Rikover, he ran that program for
24 sometime.
25 The last eight years there I was a field

[1] representative. As a field representative, my
[2] responsibilities relative to reactor safety were
[3] very similar to those of one of your senior
[4] residents.
[5] One thing that happened there to me that
[6] I have to relate shows the importance of management
[7] involvement in safety. The program had been set up
[8] with a field representative office on shipyards and
[9] we had very clear authority in the shipyards that
[10] were well defined. We decided to increase the scope
[11] of our activities to provide monitoring, not unlike
[12] what your residents do, a number of the operating
[13] nuclear power ships and I began a program of
[14] traveling to San Diego once a quarter with a few of
[15] my assistants to monitor the operations of ships
[16] that were in port.
[17] But this was an informal program. I had
[18] no defined authority at all. I was just down there
[19] monitoring it. I ran into a problem of observing a
[20] ship, which happened to be doing steam generator
[21] hydrostatic tests, and I had a number of safety
[22] concerns with how they were doing it. There were
[23] issues of command in control, failure to follow
[24] regulations, failure to follow their own procedures,
[25] but I decided to direct them to shut down and stop

[1] the operation. Now as I say, I didn't have any
[2] authority down there, but the only reason I felt I
[3] could do it, I had no doubt in my mind that I had
[4] full management support for anything that I needed
[5] to do where there was a reactor safety concern
[6] involved. So I proceeded to do that.
[7] I subsequently got feedback that my
[8] actions were evaluated and it was concluded, as I
[9] thought, that I had no authority to do what I did,
[10] but I did the right thing. In fact, what I did on
[11] that became part of the training program of field
[12] reps in the future of what was expected of them.
[13] When I left the Naval Reactors Program, I
[14] went to work for a couple years out of nuclear
[15] power. I worked for Lockheed Ship Building Company.
[16] I was the Quality Assurance Director there for a
[17] while. One of the main problems there I had to
[18] correct was a reluctance on the part of many of the
[19] Quality Assurance Inspectors to document quality
[20] problems. We had to get that fixed and get that
[21] documented and into the Corrective Action Program in
[22] that company.
[23] In 1987 I came to TVA. In all my time in
[24] nuclear power there I was in positions where reactor
[25] safety was my primary responsibility. I either

[1] participated in or led all of the operational
[2] maintenance reviews for the re-start up of units,
[3] both Browns Ferry units and the initial start-up of
[4] North Palm. I also participated in several other
[5] reviews when there were problems, such as the 1993
[6] problems at Sequoia.
[7] In 1989 I was appointed as the nuclear
[8] Safety Review Board chairman, because at that time
[9] the TVA management, the NRC and INPO had all
[10] concluded that our Safety Review Boards were
[11] ineffective. I remained as chairman of that board
[12] through 1997 and I continued on as a member until
[13] mid-1999, when I left the Nuclear Power Program at
[14] TVA. In that area I made the NSRB a very effective
[15] organization and, in fact, the inspection reports
[16] issued by NRC for that entire period noted no
[17] deficiencies and consistently noted that the board
[18] was effective in looking into and raising safety
[19] issues.
[20] In those positions I probably have
[21] personally raised numerous, I don't know what the
[22] number are, of potential reactor safety issues
[23] myself, and I understand the need to go and do
[24] that. I understand the importance of employees
[25] being able to do that, because something like the

[1] Safety Review Board, which will only meet for a
[2] couple of days at a time, is very dependent upon
[3] either employees having used the Corrective Action
[4] Program or being willing to talk to the board
[5] members and tell them about what is going on in
[6] order for us to effectively do our job.
[7] While I was Nuclear Safety Review Board
[8] Chairman, I did have other responsibilities at TVA.
[9] I also tried to use these same principles in those
[10] jobs. In fact, the only unsatisfactory performance
[11] rating I ever gave a manager was due to a recurrent
[12] problem with him not documenting issues in the
[13] Corrective Action Program.
[14] In summary, my entire career has been
[15] focused on nuclear safety and I understand the
[16] importance of it and the importance of employees
[17] being free to raise any sort of issue.
[18] I would like to go on now and discuss the
[19] reorganizational selection process with you.
[20] In October of 1995 I was appointed as the
[21] Acting General Manager of Operations Support,
[22] because the incumbent had health problems and, in
[23] fact, a few months later he died from cancer. When
[24] I first took the job, the Chief Nuclear Officer at
[25] the time requested that I look at the organization.

Page 19

[1] He had requested the incumbent to do it, but because
[2] of his health problems, he was not able to finish
[3] that review. So he turned that over to me, so right
[4] about that time I started looking at the
[5] reorganization.
[6] In early '96, I think about the first
[7] week of March is when it came out, we got the budget
[8] guidelines for fiscal year '97, including projected
[9] targets all the way out through 2001. The guidance
[10] I had was basically to reduce the budget of the
[11] organization by at least 17 percent. The budget of
[12] a corporate organization is overwhelmingly personnel
[13] salaries and benefits, so the only way to reduce
[14] that is to reduce the number of people.
[15] The approach I elected to take was to try
[16] to look at where should we be in 2001, which was a
[17] targeted 40 percent reduction from where you are
[18] now, and take the logical first step to get there.
[19] I feel it's unfair to employees to get all these
[20] little increments while sitting there waiting for
[21] the next shoe to drop, and when it's my job, we will
[22] try to target where we were going to be in 2001 and
[23] take a logical step to go there.
[24] In looking at the organization, the
[25] purpose of the reorganization was to better align

Page 20

[1] the corporate organization with the needs of the
[2] sites and we looked all the way across all of
[3] Operations Support. In the Chattanooga office, on
[4] average we reduced the number of people by 24
[5] percent. Now that varied between different
[6] organizations. The RadCon Chemistry area did reduce
[7] from twelve to six, but a comparable number in the
[8] maintenance area went from seventeen to nine. The
[9] Steam Generator area actually increased from three
[10] to five, because that was a time period where not
[11] only were we bringing more generators into service
[12] at Watts Bar, but steam generators were becoming a
[13] much bigger problem in the industry and we felt we
[14] needed more resources added to it. So there's quite
[15] a bit of variability throughout the organization as
[16] to the size of the change in any one place.
[17] We created new position discriptions for
[18] all of those positions and provided them to union
[19] resources for review to determine which positions
[20] were required to be posted and repeated. The answer
[21] I got back from Mr. Boyles and his staff was that we
[22] needed to post all of the new positions.
[23] I would like Ed now to tell you what
[24] process they used to make that determination.
[25] MR. BOYLES: Again I'm Ed Boyles, I

Page 21

[1] manage the Human Resource Office for TVA Nuclear
[2] Corporate. In 1996 I was also in Human Resources
[3] and was involved in the '96 reorganizations that
[4] were occurring.
[5] As Tom described, we had the budget
[6] guidelines and a business planning process underway
[7] in the spring of '96. We were looking at major
[8] reorganizations in Engineering, Human Resources,
[9] Nuclear Assurance and Licensing, Op Support, and
[10] several areas. The process that we used and we used
[11] the standard process laid out by TVA policy and
[12] total federal regulations is to compare the new
[13] position descriptions that are developed by the line
[14] organization to the existing position descriptions;
[15] and based on those descriptions, we make
[16] determinations, is this job interchangeable, is it
[17] the same, does a person have a right to it or is it
[18] a new position?
[19] And in this case, as I said, we had
[20] several reorganizations going on. I had two
[21] consultants who worked for me and at that time they
[22] would evaluate these position descriptions and do
[23] this comparison. We would make these calls, this
[24] was a fairly routine activity in 1996, so we made
[25] the determination that the Chemistry Program Manager

Page 22

[1] positions required posting at that time and I gave
[2] that information to Tom McGrath.
[3] MR. STEIN: And the RadCon didn't?
[4] Mr. McArthur was transferred into his position and
[5] that position did not require posting?
[6] MR. BOYLES: Early on in the process, Tom
[7] may want to add, Tom McGrath came to me with a
[8] concern that had been expressed by Wilson McArthur.
[9] In the initial discussions of the organization, I
[10] had told him I thought that most of the positions
[11] would require posting. Tom had passed that on to
[12] Wilson McArthur. Tom came to me, and I don't
[13] remember the time frame, but it was early on because
[14] we wanted to resolve the management positions before
[15] we got into the other positions. Tom came to me and
[16] indicated that Wilson had expressed concern about
[17] our decision to post that job. He felt that it was
[18] his position, that he had held the position before
[19] and in his view had performed the position during
[20] this interim time. So Tom McGrath asked me to look
[21] at that position, and I agreed that we would look
[22] and make a determination.
[23] I assigned one of the Human Resources
[24] officers who worked for me to look at the history
[25] and make some determinations. What we found was

Page 23

[1] that Mr. McArthur had held the position Technical
[2] Programs Manager previously. He had been moved into
[3] another position, but he had not been issued a new
[4] position description, so his position description of
[5] record was that of Technical Program Manager. When
[6] I compared the new, the existing position that was
[7] being done by another individual in the interim and
[8] the position that McArthur had previously performed,
[9] we made the decision that he had rights to that job
[10] based on his job description of record.
[11] Again his job description of record was
[12] the 1990 position description. There were some
[13] differences, but I felt that the differences weren't
[14] significant and that he had rights to the job. I
[15] reviewed my assessment with my supervisor, who was a
[16] manager of Human Resource Operations at that time,
[17] and she agreed I was proceeding in the right
[18] direction.
[19] MR. STEIN: Mr. Grover, I believe, also
[20] came to you with some concerns because he was on the
[21] same level as Mr. McArthur and his position had
[22] disappeared when you merged those two positions
[23] together.
[24] MR. BOYLES: He came to us at a later
[25] time, probably weeks, months later, and he was in a

Page 24

[1] situation where once we determined Wilson McArthur
[2] had rights to the position and we didn't
[3] competitively bid it, he was without a position. He
[4] came to me and expressed his disagreement in that.
[5] We discussed this with my supervisor, my
[6] next level supervisor, who was a general manager of
[7] Human Resources at that time. Ron Grover is a
[8] manager we wanted to keep. We sat down and worked
[9] out a compromise where he requested an assignment to
[10] INPO and we worked out the details of that
[11] assignment and ultimately Ron spent 15 months with
[12] INPO. He's currently back in Chattanooga working on
[13] projects and he has a developmental plan that he has
[14] agreed to, so yes, I recognize the problem with
[15] Mr Grover's position and the fact that not
[16] competitively bidding the McArthur position caused
[17] him a problem, but I think we did the right thing
[18] with Wilson McArthur. I think ultimately he had
[19] rights to the job and he had already expressed
[20] concern.
[21] It was a situation, Wilson McArthur
[22] should have been given a position description when
[23] he was placed in another job. He was not. It was a
[24] situation we inherited and we tried to do the right
[25] thing.

Page 25

[1] MR. STEIN: Well, you found a place for
[2] Mr. Grover, but in Mr. Fiser's example, when you
[3] look at what actually occurred, someone wasn't
[4] transferred to the site, so you had three becoming
[5] two. What's the difference? Why wasn't Mr. Fiser
[6] treated in a similar fashion as Mr. Grover?
[7] MR. McGRATH: I believe we need to talk
[8] about two different things. If you go back to
[9] Mr. McArthur's's position, the position in which he
[10] was placed was not a new position created in 1996.
[11] The particular position had been created sometime in
[12] early '95, before he was involved. An individual
[13] had been placed in there on an acting basis who
[14] retired about February or March of '96, so there was
[15] an existing position to which the RadCon Chemistry
[16] Manager reported. So we're not creating a new
[17] position.
[18] Mr. McArthur asked the question and the
[19] reason I thought it was reasonable to refer it to HR
[20] and also the answer I got back was reasonable,
[21] several years before having been involved in a
[22] reorganization and getting HR's advice as to how to
[23] go about it, one thing I was cautioned about was the
[24] way we were going to go. If you created a situation
[25] where you eliminated a position, then shortly

Page 26

[1] thereafter re-created the same or a very similar
[2] position, a person who had been eliminated for it
[3] would have rights to that position.
[4] What I knew of the circumstances with
[5] McArthur, there had been a reorganization in 1994
[6] which had eliminated his position and in which he
[7] was the RadCon Manager or had a comparable position,
[8] a different title but it was the same position.
[9] When there was a change in general managers over
[10] Operations Support and a new individual coming in
[11] re-created that position and placed someone in on an
[12] acting basis, who subsequently retired within about
[13] a year.
[14] From what I had been advised before, when
[15] that position was re-created at that time, at that
[16] time McArthur had rights to that position and
[17] probably should have been put in that position back
[18] in 1995.
[19] The situation you talk about at a site,
[20] the OI report is factually incorrect stating that
[21] there was a vacancy at the site. There was no
[22] vacant position at the site. We have confirmed that
[23] with Human Resources at the site and with the
[24] manager who is over there. So there was no position
[25] to transfer someone to.

Page 27

[1] In fact, a question was asked of me,
[2] moving on, what I said to him was that if Sequoia
[3] site had a position, they would have to advertise it
[4] just as we do in Corporate. They never advertised
[5] it because there was no position.
[6] MR. STEIN: Then why was Mr. Charles Kent
[7] asking for Mr. Harvey to be transferred to Sequoia
[8] if there wasn't a position there?
[9] MR. BOYLES: Let me try to address that.
[10] The Human Resource officer that worked for me and
[11] Tom McGrath came to me when that question came up.
[12] What they asked for was that an individual be
[13] transferred to Sequoia as a transfer function. They
[14] didn't have a vacancy in Chemistry at Sequoia. They
[15] asked us to transfer the function, the Chemistry
[16] Organization out of Chattanooga there. There were
[17] three incumbents at that time. You cannot transfer
[18] the function of that organization to another
[19] competitive area without eliminating the functions
[20] in the organization that the position is leaving.
[21] So Charles Kent is a line manager, I
[22] don't expect him to implement a chart of
[23] regulations. He made a request and we didn't think
[24] we could legally abide by that request. Again,
[25] there was no vacancy. We could not transfer the

Page 28

[1] function and that was our response to the site.
[2] MS. BOLAND: Before you move on, I had a
[3] question regarding Mr. McArthur.
[4] You said that Mr. Boyles, that the PD, I
[5] guess, for Mr. McArthur being in the Technical
[6] Services Manager position was his official PD of
[7] record and that he had occupied another position,
[8] but that the PDs were never updated.
[9] Had his PD been updated appropriately,
[10] would that have changed the process?
[11] MR. BOYLES: We would have compared the
[12] position description of record at that time with the
[13] new one.
[14] MS. BOLAND: And what would that have
[15] required you to do if this PD was different, had the
[16] current PD been in the file?
[17] MR. BOYLES: We would have utilized the
[18] current PD to do the comparison with the new PD.
[19] MS. BOLAND: And it would have had to
[20] have compared directly?
[21] MR. BOYLES: When you say directly, but
[22] to use terms as preponderance or the majority of the
[23] activities, that it be interchangeable and that an
[24] individual can do this job within a reasonable
[25] period of time.

Page 29

[1] MS. BOLAND: What position was he in at
[2] that time?
[3] MR. BOYLES: I believe it was the RadCon
[4] Manager.
[5] MR. McGRATH: Yes.
[6] MR. DAMBLY: Is that the same position as
[7] Mr. Grover was in?
[8] MR. BOYLES: No. He was Chemistry.
[9] MR. DAMBLY: He was Chemistry Manager?
[10] MR. BOYLES: Yes.
[11] MR. REYES: I'm confused.
[12] MS. BOLAND: Yeah, I am too.
[13] MR. REYES: Let me ask another question.
[14] You say that Mr. McArthur's PD was not
[15] updated when he was in another position, but
[16] somebody also stated that since Mr. McArthur had
[17] previously held the position and it was not a new
[18] position being created, it was a position that was
[19] vacant and in your view he had the right to be
[20] moving into that position. Did I understand that
[21] right?
[22] MR. BOYLES: Could you restate the
[23] question? Maybe I can —
[24] MR. McGRATH: The scenario was in the
[25] early 1990's, I think about 1994, Mr. McArthur held

Page 30

[1] a position, the title of which was Technical
[2] Programs Manager. In a long line of reorganizations
[3] that position was eliminated and Mr. McArthur became
[4] the Radiological Controls Manager. He was not given
[5] a position description for that, so the Technical
[6] Programs Manager one stayed on the books as his
[7] official position.
[8] Sometimes in early 1995, I don't know the
[9] date, the position of Radiological Controls and
[10] Chemistry Manager, which was essentially equivalent
[11] to Technical Programs Manager, was created and
[12] another individual was placed in that on an acting
[13] basis. That individual retired in early 1996,
[14] leaving that position vacant.
[15] I believe had the review that Mr. Boyles
[16] did as part of this been done in 1995 when that
[17] position was re-created, at that time it would have
[18] been determined that Mr. McArthur had rights to that
[19] position and he should have been put in that
[20] position rather than the individual that was put in
[21] there on an acting basis.
[22] MR. REYES: So the decision to move
[23] Mr. McArthur to that position was based on, if I
[24] understand you right, two issues. One, he was not
[25] given a new position description for the position he

Page 31

[1] held and, two, you were of the view that he had
[2] rights to the position that was vacated based on
[3] similarity of the position. Is that the point
[4] you're trying to make?
[5] MR. BOYLES: Correct.
[6] MR. REYES: I'm not agreeing with you,
[7] I'm just restating it, because we're all a bit
[8] confused.
[9] MR. BOYLES: Similarities with his
[10] position description of record.
[11] MS. BOLAND: But Mr. McArthur did not
[12] have to be reevaluated when you made that decision
[13] because he had an incorrect position of record.
[14] MR. BOYLES: Correct. We didn't look at
[15] qualifications.
[16] MS. BOLAND: Had he had a correct PD, he
[17] would have had to have been evaluated?
[18] MR. BOYLES: The PDs would have had to
[19] have been evaluated.
[20] MS. BOLAND: And there was a difference,
[21] if I understood what you said, the difference was
[22] Chemistry.
[23] MR. BOYLES: Yes.
[24] MR. DAMBLY: Let me ask a question. I'm
[25] kind of confused here on Mr. Fiser. His position

Page 32

[1] was Chemistry and Environmental Program Manager and
[2] then you changed it to drop environmental, so the
[3] new one initially had less duties ostensibly than
[4] the old one? Although Mr. Fiser said he wasn't
[5] doing any environmental.
[6] So if you decrease the scope of work, you
[7] have to compete that, somebody's held to that and
[8] something else would have to be competed for a
[9] lesser scope?
[10] MR. BOYLES: In my view, the position,
[11] you are talking about two specialties, Environmental
[12] and Chemistry. From a PD standpoint they are
[13] significantly different. In the process that
[14] occurred when Mr. Fiser was moved to Chattanooga, he
[15] was placed in a position. Shortly thereafter there
[16] was a reorganization that put the Chemistry and
[17] Environmental together. They posted those jobs
[18] because they were viewed as different. He applied.
[19] MR. DAMBLY: Before that he had the
[20] Chemical Program Manager position?
[21] MR. BOYLES: Correct.
[22] MR. DAMBLY: Just like Mr. McArthur
[23] before that had a RadCon position.
[24] MR. BOYLES: And what occurred in '96 was
[25] much the opposite of that, and again they posted the

Page 33

[1] positions just as they had previously and incumbents
[2] had to compete.
[3] MR. DAMBLY: My concern here is
[4] Mr. Fiser, and apparently as a result of a DOL
[5] complaint in '93, there was a position for Chemistry
[6] Program Manager created Then that got reorganized
[7] somehow out of it and he had to compete for
[8] Chemistry and Environmental Program.
[9] MR. BOYLES: Correct.
[10] MR. DAMBLY: Now you reinstate the former
[11] position and he has to compete for that again even
[12] though you're reducing his duties and he's held it
[13] in the past.
[14] MR. BOYLES: That's correct.
[15] MR. DAMBLY: But Mr. McArthur in a
[16] parallel situation because of the screwup in his PD
[17] didn't have to do that?
[18] MR. BOYLES: The fact that he didn't have
[19] a current position description was a major factor.
[20] It was an important issue. Now under the Code Of
[21] Federal Regulations it says the official position.
[22] In our practice we view that as the position
[23] description of record.
[24] MR. DAMBLY: When you say the Code Of
[25] Federal Regulations, are you speaking TVA? TVA

Page 34

[1] follows OPM?
[2] MR. BOYLES: Yes.
[3] MR. STEIN: Mr. Boyles, there was not
[4] total agreement among members of your staff. There
[5] were people on your staff who thought that it should
[6] have been posted.
[7] MR. BOYLES: When I initially had it and
[8] I have, I think I brought copies of some notes that
[9] we utilized to make this decision. They are rough
[10] notes, but Ms. Boland, if I could, these are a part
[11] of the record.
[12] MS. BOLAND: Okay. As long as you are
[13] aware that they become part of our record.
[14] MR. BOYLES: They already are. They are
[15] a part of the record. I just thought that this
[16] would....
[17] When I initially was contacted by
[18] Mr. McGrath to look at this, I consulted with my
[19] staff, a Human Resource Officer on my staff named
[20] Ben Easley to look at that. I had come into the
[21] position in 1994 and was not totally familiar with
[22] the history of the organization. He pulled up most
[23] of the history for me. He did the research and gave
[24] me the background that I utilized to make the
[25] decision.

Page 35

[1] Initially Ben had no problem with that.
[2] He did come to me later on, after I had already made
[3] the decision, and told me that we should post that
[4] position according to Wes Motley, which was a poor
[5] case we had previously decided. I didn't agree. I
[6] didn't agree because I thought that Ben Easley, who
[7] had worked for me for a short period of time, I
[8] thought he was focusing on an individual and a
[9] friend that he had that he had become concerned
[10] about, Ron Grover, who was without a position at
[11] that time, and I've already talked about how we
[12] addressed Ron Grover's situation.
[13] Again I thought he was focusing on an
[14] individual. We would have had to have posted the
[15] job had we not decided that Wilson McArthur had
[16] rights to the job. Once we decided that, posting no
[17] longer was an issue.
[18] MR. DAMBLY: If you're under OPM, why
[19] didn't you follow RIF regulations if you had gone
[20] from three positions to two?
[21] MR. BOYLES: We do follow RIF regulations
[22] in establishing competitive areas, because
[23] ultimately those reorganizations can result in
[24] downsizing and loss of positions. So in the three
[25] Chemistry-Environmental Program Managers, that was

Page 36

[1] one competitive area, so we did that.
[2] MR. DAMBLY: And if all three of them
[3] qualified for the two positions, why didn't you
[4] follow seniority?
[5] MR. BOYLES: The new positions were
[6] different.
[7] MR. DAMBLY: They had reduced
[8] responsibilities from the old positions.
[9] MR. BOYLES: Again, in our view this was
[10] very similar to what we had done previously and they
[11] were different. And I think that Mr. Easley, who
[12] made that call, still agrees in that area.
[13] MR. STEIN: Mr. McGrath, can you describe
[14] your relationship with Mr. McArthur, your work
[15] relationship, your social relationship?
[16] MR. McGRATH: For one thing I have
[17] absolutely no social relationship with
[18] Mr. McArthur.
[19] My relationship at work, he was a
[20] subordinate manager for the period of time that I
[21] was the General Manager of Operations Support. I
[22] had previously worked with him since he had been a
[23] member of the Safety Review Board for a number of
[24] years. I would describe my relationship with him as
[25] being professional, as well as with several managers

Page 37

[1] working for him.
[2] Mr. Dambly, let me bring up one thing
[3] that may help you. We have one very similar
[4] position to the Chemistry one, if I might. It had
[5] to do with the Steam Generator Program, and I think
[6] some of the staff here is familiar with David
[7] Getches. It was a very similar item where he had
[8] been the Steam Generator Program Manager. As a
[9] result of a reorganization, he had been promoted to
[10] a position of a Technical Manager over steam
[11] generator and other maintenance areas. We decided,
[12] as I mentioned to you earlier, to increase the Steam
[13] Generator staffing to what was going on and, in
[14] fact, he was probably, he was spending a vast
[15] majority of his time on steam generator issues only
[16] at this time because of what was going on, to go
[17] back to a single Steam Generator manager,
[18] essentially the identical position to what he had
[19] held a few years before that.
[20] However, the decision from Human
[21] Resources was that it was a different position from
[22] the one he was currently in. The decision was not
[23] based on what he was actually doing day-to-day, it
[24] was based on what his position description said. We
[25] made that decision even though we knew that he was

Page 38

[1] probably one of only a handful of people in the
[2] entire country who were qualified to hold the job,
[3] but that same one, just like the chemistry ones, we
[4] advertised that position and competed it. And it
[5] was based upon what the position description said.
[6] My understanding, as Mr. Boyles has
[7] talked to you, by our process, the decisions are
[8] based on what the position description said.
[9] Mr. McArthur's situation was complicated
[10] that in the past there had been an error made, so
[11] his current position description was not current,
[12] but that was the situation that HR had to deal
[13] with. As Ed said, he even took it to his supervisor
[14] to make sure he was making the proper decision and
[15] he tried to make that decision in accordance with
[16] the rules under which they operated.
[17] MR. DAMBLY: Do you all have bumping and
[18] retrieve rights under OPM?
[19] MR. MARQUAND: You raised an issue I
[20] wanted to address, and that is throughout nuclear at
[21] that time while they were reorganizing, what they
[22] would do, as he indicated, is they would rewrite
[23] position descriptions. Of course, there were a
[24] number of early outs going on at TVA, but what would
[25] happen was that employees who were in existing jobs

Page 39

would be informed that their positions were surplus and that they might be subject to a reduction in force at some point in time.

So what would happen was that old jobs would disappear, new jobs would reappear. Employees in the old jobs did not have reassignment rights or retrieve rights or anything like that to the new jobs unless it was determined to be essentially identical or similar under the OPM regulations that Ed referred to. So if there was not a right to reassignment to the new job, that is, if it wasn't substantially similar, then the employees in the surplus jobs would be subject to reduction in force.

They wouldn't have — the only employees with retrieve rights or rollback rights are employees under the bargaining units that are covered by the contracts. Managers such as Mr. Fiser and his peers do not have those rights because they are not subject to the collective bargaining agreement. Is that right, Ed?

MR. BOYLES: That's correct.

MR. DAMBLY: Then your managers are not under the OPM regs?

MR. MARQUAND: They are under the OPM

Page 40

regs. We have to remember TVA is not a competitive civil service. We're an excepted civil service, so the managers don't have those types of retrieve rights

MR. DAMBLY: Am I correct that Mr. Fiser was the senior of the three?

MR. MARQUAND: He had more TVA seniority was my understanding

MR. McGRATH: Going on to how we handled the Chemistry positions, Mr. McArthur and Mr. Grover recommended that the two positions should be one to support PWRs and one to support BWRs. Mr. Grover with input from the incumbent Chemistry Specialist prepared the position descriptions for those jobs. I had no involvement in what the position description said and I normally would not have any involvement in position descriptions at that level.

As we were proceeding toward advertising them, Mr. Fiser came to Human Resources and he did raise a concern that if we were to go ahead and advertise those positions, that that would not be in accordance with the settlement of his 1993 DOL complaint.

MR. STEIN. How do you know that? Who informed you of this conversation that Mr. Fiser had

Page 41

with HR?

MR. McGRATH: I'll let Mr. Boyles tell you. He came to Mr. Boyles and Mr. Boyles told him that.

MR. STEIN: I'm just thinking about confidentiality and employees going to HR with concerns, this type of concern, that would get back to line management.

MR. McGRATH: Well, we do keep things confidential. At the time when he did come and raise this was the first time that I ever knew, this was in June of '96, that he had even submitted a DOL complaint in 1993. So I had no knowledge of the existence of that complaint prior.

He brought it up and Mr. Boyles needed to come to me because he was affecting the reorganization. It was a decision that had been made to post the positions. What Mr. Boyles told me he was going to do is to bring this information to our Labor Relations people who deal with the DOL and OGC to look at this matter and give us advice.

And, Ed, do you want to cover what you did there?

MR. BOYLES: Yes. After we had made the decision to post the Chemistry positions, Ben Easley

Page 42

came to my office and asked me if I would talk to Gary Fiser. I agreed, and he went back and brought Gary to the office. Gary told me that he had had a DOL complaint previously and that as a part of that complaint he had reached a settlement and was placed in the position in Corporate Office, and that he didn't agree with posting the job and that if we posted the position, that he would file a second DOL complaint.

I told Gary that I would look at it. I was not aware of this. We basically stopped the process for a period of time. I contacted our Labor Relations staff, they handle complaints, grievances and DOL issues. I asked — I told them what was going on and what Mr. Fiser had said to me and they in turn contacted OGC to discuss what the settlement was and how we should proceed.

They came back to me shortly thereafter, a day or so, and told me that they had talked to OGC and that we should proceed as we were, that they'd looked at the settlement and it didn't preclude, it had no guarantee of a permanent position in the organization.

So after we got that feedback, I told Mr. McGrath about it and we moved forward.

[1] MR. STEIN: After meeting with him and
[2] after you spoke with OGC and you got the
[3] information, you proceeded with the posting and the
[4] selection. What was the need to get back to
[5] Mr. Fiser's management to discuss the threat of a
[6] second DOL complaint?
[7] MR. BOYLES: I actually may have told Tom
[8] McGrath before we even heard from OGC and from our
[9] Legal Relations staff. I felt like he needed to
[10] know what the issues were, we had a reorganization
[11] going on, and I discussed this with him.
[12] MR. MARQUAND: I was contacted by Labor
[13] Relations, who was asking whether or not the
[14] previous settlement agreement guaranteed him a new
[15] position and the question was basically, well, is he
[16] guaranteed a position for life? I said, no, the
[17] settlement agreement specifies a specific job he was
[18] to be placed in.
[19] And I learned that after assuming the
[20] Chemistry Program Manager position, that there had
[21] been this subsequent reorganization and that he had
[22] applied and been selected for a new position and
[23] thus abandoned the previous position he had been
[24] given in the settlement agreement. And the question
[25] then was, does he have some right as a result of the

[1] settlement agreement to a new position? And my
[2] response back was no, the settlement agreement
[3] provided the position he was to be given and if he
[4] chose to abandon that or seek a different position
[5] or if it was subsequent reorganization, there's no
[6] guarantee of a position for life. And my advice was
[7] that the right thing to do was to post the position
[8] and to proceed with the selection without regard to
[9] whether he filed the previous DOL complaint. He
[10] should not have anything taken away from him and he
[11] shouldn't have anything added to him by virtue of
[12] the fact that he filed a complaint. You know, we
[13] don't want to be unfair to him or unfair to anyone
[14] else by virtue of the fact that he filed a DOL
[15] complaint.
[16] MR. DAMBLY: Let me ask a question. Your
[17] use of the term "abandoned the prior position that
[18] he got," it's my understanding that position was
[19] eliminated and he was forced to compete for a new
[20] position.
[21] MR. MARQUAND: That's correct, and at the
[22] time he chose not — I mean it's interesting that
[23] when he decided to file a complaint in '96 and say
[24] you're eliminating the position, eliminating my
[25] position and that's unfair and I'm going to go file

[1] a Department of Labor complaint, but in '94 when
[2] they eliminated the Chemistry Program Manager and
[3] combined to make it Chemistry and Environmental, he
[4] did not choose at that time to say that's unfair.
[5] He didn't choose —
[6] MR. DAMBLY: Of course. He got that job.
[7] MR. MARQUAND: But he didn't know ahead
[8] of time. In this case before they even posted the
[9] job, he said I'm going to file a Department of Labor
[10] complaint if you even post it.
[11] MS. BOLAND: Were there numbers being
[12] eliminated in that '94 reorg?
[13] MR. MARQUAND: I don't know that.
[14] MS. BOLAND: I mean clearly we were going
[15] from three to two in the '96 reorg.
[16] MR. MARQUAND: I don't know if ultimately
[17] they eliminated anyone in that reorganization or
[18] not. The three chemistry — the three individuals
[19] who had Chemistry Program Manager jobs all were
[20] successful in obtaining a position in '94, but I
[21] don't know if other individuals lost theirs.
[22] I know that from '94 on we have had an
[23] enormous number of employees leave through early
[24] outs.
[25] MR. STEIN: Mr. MarQuand, there's a very

[1] big difference between 1994 and '96 and it has to do
[2] with the line supervision. In 1994 he was reporting
[3] to different first and second line supervisors than
[4] he was in 1996.
[5] MR. MARQUAND: As I understand, in '94
[6] Mr. McArthur was on the Selection Review Panel that
[7] made the selection and, in fact, was the selecting
[8] manager for that job.
[9] MR. STEIN: But he wasn't reporting to
[10] Mr. McArthur in 1994.
[11] MR. MARQUAND: I don't recall who he was
[12] reporting to, because at some time in '94 McArthur
[13] was made the RadCon manager. But as I said,
[14] Mr. McArthur was on that Selection Review Board and
[15] was a selecting official in 1994 and was responsible
[16] for selecting him.
[17] MS. BOLAND: Did I understand you to say,
[18] Mr. Boyles, that you were not aware of Mr. Fiser's
[19] DOL complaint until Mr. Easley came to you?
[20] MR. BOYLES: The previous?
[21] MS. BOLAND: The '93 complaint? Or when
[22] was the first time you became aware of that?
[23] MR. BOYLES: I don't know if I knew
[24] before. In Human Resources oftentimes we are
[25] aware. I don't know if that was the first time I

Page 47

[1] heard of that or not. It's been a period of time.
[2] Let me say if I did, I knew no details,
[3] was not aware of how the settlement evolved, was
[4] completely unaware of what Mr. Fiser told me on the
[5] day he came to my office.
[6] MS. BOLAND: Mr. McGrath, when was the
[7] first time you became aware of the '93 DOL
[8] complaint?
[9] MR. McGRATH: When Mr. Boyles informed me
[10] of it in June of 1996.
[11] MR. SPARKS: Why did you make your
[12] decision to inform Mr. McGrath of that information?
[13] MR. BOYLES: As I said, we were involved
[14] in a reorganization. I believe I told Mr. McGrath
[15] about the same time that I contacted Labor Relations
[16] and OGC. I felt that it was a concern being
[17] expressed to us about how we would fill in the
[18] position and I felt I should let him know what was
[19] going on as the manager of Op Support.
[20] MR. McGRATH: If I could add, I think
[21] that was a prudent thing for him to do. This was a
[22] situation where an employee was saying, "If you do
[23] something, I will submit a DOL complaint."
[24] Certainly one option would be to not do that
[25] something And, in fact, if the answer reviewed by

Page 48

[1] our Labor Relations and OGC had been that what we
[2] were going to do would somehow infringe upon the
[3] prior settlement of the case, we would have had to
[4] go back and relook at the reorganization and make
[5] some changes.
[6] MR. STEIN: This is a good place for me
[7] to ask this question. We have conflicting testimony
[8] in the OI report. Did you at any time in 1993 or
[9] 1994 tell someone else at TVA that Mr. Fiser is
[10] trouble or something like that and that we need to
[11] get rid of him?
[12] MR. McGRATH: Absolutely not.
[13] MR. STEIN: Thank you.
[14] MR. McGRATH: After I got the advice back
[15] from Human Resources and as I was aware they had
[16] consulted with Labor Relations and OGC that we could
[17] proceed, we proceeded with the selection process.
[18] I'll let you know, however, we did do some
[19] augmentation of the process to ensure it was fair.
[20] I will get to that in a minute.
[21] The next thing that occurred about the
[22] same time of interest is that one of the other
[23] incumbent Chemistry Specialists, Mr. Harvey, came to
[24] Human Resources and complained that the position
[25] descriptions that had been prepared by Mr. Grover

Page 49

[1] were slanted in favor of Mr. Fiser and that he felt
[2] that if we proceeded on, we would be discriminating
[3] against him. So Ed took that view as well.
[4] MR. McNULTY: How would you be
[5] discriminating against Mr. Harvey, just out of
[6] curiosity?
[7] MR. McGRATH: The impression of
[8] discrimination on the issue was Mr. Harvey's
[9] concern. From whatever he read in the position
[10] description, he felt the position description had
[11] been slanted in favor of Mr. Fiser's
[12] qualifications. That was Mr. Harvey's judgment.
[13] MR. McNULTY: Did he use the word favor
[14] or did he use the word discriminate?
[15] MR. McGRATH: I did not talk with
[16] Mr. Harvey. Discriminate is just a term I picked
[17] today. Perhaps that it favored Mr. Fiser.
[18] MR. BOYLES: What happened is Ben Easley,
[19] who worked for me, came to my office and told me
[20] that Sam Harvey had raised an issue on how the job
[21] position descriptions had been written and that he
[22] felt that they were slanted or favored or whatever,
[23] I don't remember the exact term, toward the other
[24] incumbents.
[25] MR. REYES: Which were who?

Page 50

[1] MR. BOYLES: Gary Fiser and Chandra. The
[2] manager who had prepared those was Ron Grover. Ben
[3] Easley met with Ron Grover and discussed how the job
[4] descriptions had been prepared. They ultimately met
[5] with Sam Harvey. I think they did make a minor
[6] change to the position description as was initially
[7] written and they resolved his concern and we were
[8] ultimately given those position descriptions.
[9] MR. McGRATH: We advertised the positions
[10] prior to holding the Selection Review Board and
[11] Mr. Fiser actually filed a DOL complaint, and the
[12] TVA Office, the Inspector General had commensed
[13] their investigation of it.
[14] At the time we were going to make the
[15] selection via Selection Review Board, the Selection
[16] Review Board was being convened to look at five
[17] positions, two in Corporate RadCon and two in
[18] Chemistry, and one which was in Rad Waste
[19] Environmental position.
[20] Mr. McArthur had recommended to me that
[21] we make, that the Selection Review Board make the
[22] members the three site RadChem Managers That
[23] technically made sense to me because they had
[24] responsibility over all three, all of the technical
[25] areas that were being looked at in the five

Page 51

[1] positions.
[2] It's a little unusual, we normally do not
[3] have — Corporate Selection Review Boards are
[4] normally not all site people, but it was a
[5] reasonable board based upon the technical background
[6] of the people who were involved.
[7] A problem we were faced with is a few
[8] days prior to the board, Mr. Cox, who was the Watts
[9] Bar Chemistry and RadCon manager, removed himself
[10] from the board. He stated that he had a schedule
[11] conflict and that he would not be able to sit and
[12] serve on the board. Now we're faced with coming up
[13] with a replacement for him.
[14] MR DAMBLY: How long in advance did he
[15] know?
[16] MR. McGRATH: It was just a few days in
[17] advance that he let us know. I don't remember the
[18] exact date.
[19] MR. DAMBLY: How long in advance was he
[20] notified that was going to be on this board?
[21] MR. McGRATH: I think he had several
[22] weeks' notice. He had agreed to serve on the board
[23] and then some conflict came up. It's really not
[24] that unusual. I serve on a board in my new
[25] organization here and one of the members of the

Page 52

[1] board had a conflict that arose the morning of the
[2] board and could not attend.
[3] We decided and we talked with Mr. Boyles
[4] on it and felt the best way to do this was to
[5] replace him, and just from my experience in my new
[6] job, it's good I didn't do that. The board I ended
[7] up with now only had two members and while we each
[8] had the same top two people, we had them reversed,
[9] so now the selection manager had a 50/50 vote, so
[10] it's better to have the full three members.
[11] And the logistics of moving on was such
[12] because we were reviewing five positions and it must
[13] have been 15 people involved and we did need to get
[14] on with filling the positions in time to have them
[15] replaced for the next fiscal year when we were
[16] implementing the reorganization.
[17] MR. STEIN: They were all Rad-Chem
[18] positions?
[19] MR. McGRATH: Five positions, there were
[20] two RadCon, two Chemistry and the fifth one was a
[21] Rad Waste Environmental position.
[22] So we felt we did need to move on and
[23] meet the schedule. It wasn't practical to go look
[24] for another to substitute. We first tried to get
[25] the Watts Bar System Plan Manager, again someone at

Page 53

[1] a level who would have involvement in all of these
[2] areas; he was not available. We then picked a
[3] qualified manager from Corporate, Mr. Rick Rogers.
[4] MR. STEIN: I want to explore that for a
[5] second, because you did testify that Mr. Rogers was
[6] selected for his chemistry background or that he had
[7] a background in chemistry.
[8] MR. McGRATH: He was selected not for his
[9] chemistry background. He had had positions at both
[10] Watts Bar and Sequoia throughout his career. He was
[11] in the technical support, I believe he was Technical
[12] Support Manager at Sequoia for a while. In that
[13] position he provides support to RadCon and Chemistry
[14] and Environmental, so he was someone by his
[15] background who had a technical background in all of
[16] these areas based on his career.
[17] MR. STEIN: Why wasn't Mr. Voeller asked
[18] to serve since —
[19] MR. McGRATH: Mr. Voeller was a Chemistry
[20] Manager and would not have been qualified to be on
[21] the board for the other three positions.
[22] MR. STEIN: The reason I'm saying this is
[23] because Mr. Corey knew Chandra's background and
[24] Mr. Kent worked very closely with Mr. Harvey and
[25] Mr. Fiser did not have anyone from his Watts Bar.

Page 54

[1] MR. McGRATH: We don't constitute boards
[2] for popularity of the individual. Like I said, it's
[3] unusual to set up a board with representatives from
[4] all three sites. A corporate board will normally
[5] have a couple of corporate managers and one
[6] customer. The board was not selected from each site
[7] to make sure that each site had a representative on
[8] the board.
[9] MR. STEIN: But it was originally
[10] comprised that way.
[11] MR. McGRATH: But that was just because
[12] technically that made sense. It was the way it was
[13] originally comprised, and the reason for it, as
[14] Mr. McArthur told me, and it made sense to me to
[15] have it that way, was that these were the three
[16] individuals who were responsible for those areas
[17] across the company at the current time and they made
[18] sense to be put in there.
[19] If one of them had not been available
[20] from the beginning, I'm sure we would have selected
[21] someone else to fill the position. I don't know who
[22] that would have been, but.
[23] MR. STEIN: And Mr. Voeller was not
[24] qualified to sit on this board with his background?
[25] MR. McGRATH: There were probably

Page 55

[1] hundreds of other selections that could have sat
[2] there, but you seem to be coming from we should have
[3] had a Watts Bar representative. That is not the way
[4] the board is normally set up. The boards are set up
[5] to listen to the answers to questions that are asked
[6] during the board and to rate the people on the
[7] answers to the questions.
[8] MR. STEIN: But the selection was made
[9] strictly on the interview, on the questions that
[10] were asked, not so much on the background and the
[11] resumes and the paper that was supplied to each. Is
[12] that fair?
[13] MR. McGRATH: That's correct. Let me
[14] tell you one more thing, and then I would ask
[15] Mr. MarQuand to cover some of that.
[16] When we went ahead with the board, okay,
[17] the board met and convened with their
[18] recommendations and their recommendations were
[19] Mr. McArthur was to select an officer, but he did
[20] select exactly what the board recommended.
[21] The board did have the normal Human
[22] Resources oversight of having a Human Resources
[23] consultant as they are participating in the board to
[24] facilitate the board and make sure it's handled in
[25] accordance with our requirements.

Page 56

[1] As I mentioned before, we looked at did
[2] we need to augment the process here to ensure we
[3] were doing it fairly. What we did as an extra
[4] review here was the results of the board were then
[5] provided to Labor Relations and Mr. MarQuand in OGC
[6] for their review to ensure that the board did indeed
[7] look and see if it was fair and that we were making
[8] our selection in accordance with the board
[9] recommendation.
[10] I would like Mr. MarQuand to cover what
[11] they did.
[12] MR. DAMBLY: Before you get there, in
[13] terms of assuming the board is fair and followed its
[14] mandate or whatever, since apparently the answers to
[15] technical questions made up a major part, if not the
[16] determining factor in who got selected, what
[17] background would you have to judge the legitimacy of
[18] those questions versus another set of questions that
[19] might have been more favorable to Mr. Fiser?
[20] MR. MARQUAND: I don't have that
[21] background.
[22] MR. DAMBLY: So basically you're looking
[23] at the process devoid of the substance.
MR. MARQUAND: Correct. And what
happened was that following the Selection Board's

Page 57

[1] meeting and making its recommendations, I was
[2] contacted by Labor Relations and what I have learned
[3] is that — and I did not review the questions at the
[4] time and I didn't look at the scores, but what I had
[5] learned is that was contained in these volumes which
[6] have been provided already, that each of these
[7] volumes, one of each of these volumes was given to
[8] each of the Selection Review Board members, one for
[9] Charles Kent, one for John Corey, one for Rick
[10] Rogers, and one for the Human Resource officer who
[11] facilitated. Each of these volumes contains not
[12] just the material for that particular Chemistry
[13] Manager position Mr. Fiser was competing for, but
[14] for all five positions that were being selected on
[15] that particular day.
[16] They sat down and they had a very
[17] detailed agenda of all the people that they were
[18] interviewing from noon until late at night and had
[19] information on each of these individuals. What was
[20] provided to the board looks like simply a resume' or
[21] an application, not even a resume', and what the
[22] board did was then looked at a number of questions
[23] that Dr. McArthur had drafted. He had drafted some
[24] suggested questions, I believe there were sixteen,
[25] and the Board then decided that they would ask eight

Page 58

[1] of those questions and then they made up a ninth
[2] question of their own that they posed. And
[3] Dr. McArthur was not a voting member, he did not
[4] evaluate the individuals. The three evaluators,
[5] Rogers, Corey and Kent, evaluated each individual on
[6] each of those questions. Each evaluator asked the
[7] same question each time to each of the three
[8] candidates and then they scored them. They took
[9] notes of their answers to the questions and they
[10] scored them on the questions. I believe we've got a
[11] chart that I put together.
[12] MR. STEIN: I've got a question for you,
[13] though. You were looking for a manager, two
[14] managers, and you had three qualified candidates.
[15] Did the rating panel get resumes, performance
[16] appraisals and the background material, articles
[17] that these people have written and given at
[18] symposiums, and just who these people actually are
[19] versus a test that was given to them?
[20] MR. MARQUAND: My understanding is the
[21] Selection Review Board received what's in this
[22] package. That is, they got an application and a
[23] short resume' and then they asked the questions that
[24] they chose to ask, and that they evaluated the
[25] individuals based solely — their evaluation is

Page 59

[1] based solely on what happened in that room.
[2] MR. STEIN: Let me flip this on its
[3] head. Why didn't the rating panel get performance
[4] appraisals? I understand Mr. Harvey had some Title
[5] 7 issues at TVA as well. The conduct files, the
[6] OPF.
[7] MR. DAMBLY: Mike, before we go into
[8] that, a different question. Mr. Boyles and then
[9] Mr. MarQuand. You're excepted service, right? So
[0] is NRC. I have a little familiarity. You are
[1] required to have an annual appraisal of record by
[2] OPM, right?
[3] MR. BOYLES: Yes.
[4] MR. DAMBLY: I believe the regulation
[5] requires that that be used, must be used for making
[6] decisions on promotions and selections, et cetera;
[7] is that correct?
[8] MR. MARQUAND: I don't know that that's
[9] correct for management positions or not, but it is
[0] used and it was used, not only the annual
[1] appraisals, but also the past job history is used by
[2] Human Resources with a job description when the job
[3] is posted and advertised and they receive a whole
[4] raft of applications. Somebody in HR normally goes
[5] through that whole sheet of applicants and compares

Page 60

[1] the applicants against the minimum qualifications
[2] required for the position to make sure they meet the
[3] minimum qualifications, and they normally prepare a
[4] spreadsheet that will list minimum qualifications
[5] against the requirements for the job against the
[6] individuals, and then they whittle it down to the
[7] short list of the people who apply or who are going
[8] to be interviewed.
[9] In this case I understand there were six
[0] applicants for the job, but only three, the three
[1] who are listed here, Chandra, Harvey and Fiser, met
[2] the minimum qualifications and based on all their
[3] back, past job history.
[4] MR. DAMBLY: That would not include — in
[5] doing a minimum qual check, you don't check
[6] performance appraisals. You're looking to see what
[7] skills, background, positions they have held, not
[8] how well they did.
[9] MR. McGRATH: While I was not involved in
[0] reviewing the package, other positions that I have
[1] reviewed, the package which is given to you for that
[2] initial review to determine which people will go on
[3] to the interview normally includes the information
[4] about the former performance of persons.
[5] MR. BOYLES: And that's normally

Page 61

[1] provided. The employee provides the package that is
[2] included in here, including copies of any
[3] performance reviews. Typically we like to see the
[4] last three performance reviews. In addition, HR and
[5] the selecting supervisor can go to the personnel
[6] history record and review material there. In our
[7] contract we are required to review that, to look at
[8] performance and other issues.
[9] MR. MARQUAND: The Selection Review
[10] Board, as I said, focuses on what is done in the
[11] room. It then makes a recommendation to the
[12] selecting manager and the selecting manager then can
[13] consider what the Selecting Review Board's
[14] recommendation is plus all of the information in the
[15] individual's personal history record, which would
[16] include performance appraisals.
[17] MR. REYES: Let me ask you a basic
[18] question. We may be confusing your process with
[19] ours. Is your point that you follow the TVA process
[20] that you typically have for situations where
[21] managers are competing for jobs?
[22] MR. MARQUAND: My understanding —
[23] MR. BOYLES: Yes.
[24] MR. REYES: Because we're getting
[25] confused between your process and ours and you need

Page 62

[1] to make it clear.
[2] MR. McGRATH: In our process, we do
[3] follow our process and we tried — in this
[4] particular case, we had Human Resources' involvement
[5] throughout it, and as an extra measure we added the
[6] additional reviews in this particular case to give
[7] us further checks that we were indeed following our
[8] process.
[9] MR. MARQUAND: Normally Labor Relations
[10] is not involved and normally OGC is not called as a
[11] check to see whether the process has been followed.
[12] MR. BOYLES: That was an extra step, but
[13] we had been put on notice by Mr. Fiser that he was
[14] going to file a DOL complaint. From that point on
[15] we did our best to see that it was as fair — and we
[16] do this in every case, we wanted the selection
[17] process to be fair, but we did go an extra step in
[18] this case.
[19] MR. DAMBLY: The reason I asked the
[20] question, maybe I got Luis confused there.
[21] TVA is an excepted service agency and NRC
[22] is an excepted service agency. As an excepted
[23] service agency, there are certain requirements that
[24] we're exempted from and certain ones we have to
[25] comply with, same as they do.

Page 63

[1] The use of performance appraisals, I mean
[2] they said the reason they had to post this is
[3] because OPM regs required it. OPM regs also require
[4] that you use performance appraisals in making
[5] selections. They didn't apparently and that was my
[6] question, why if you're going to follow them one
[7] time don't you follow them the other time? There's
[8] nothing logically to except yourself, that I'm aware
[9] of, from use of performance appraisals.
[10] MR. REYES: I thought you stated you use
[11] it in the front of the process, not necessarily in
[12] the back of the process.
[13] MR. BOYLES: The line manager and HR.
[14] MR. McARTHUR: Yeah, but the front of the
[15] process is determined, do you meet the minimum
[16] qualifications for the job? The performance
[17] appraisal has no part in that.
[18] MR. BOYLES: Oftentimes you may have 20
[19] applicants and 15, 18 may meet the minimum
[20] qualifications. We'll go beyond and identify the
[21] top candidates, maybe five that we're actually going
[22] to interview. So it does when necessary go beyond
[23] the minimum qualifications.
[24] MR. STEIN: Let me ask you about the TVA
[25] process. Do you make it a habit of selecting your

Page 64

[1] management core by a technical test without looking
[2] at the ability to actually manage through
[3] performance?
[4] MR. BOYLES: It is our practice to use
[5] management selection boards to make our selections
[6] for management specialists.
[7] MR. STEIN: The reason I'm asking this is
[8] because you gave all three of these people a
[9] technical chemistry exam and then you selected your
[10] manager by the results of the exam.
[11] MR. McGRATH: Mr. Stein, the way the
[12] process is normally handled, the individual's
[13] qualifications, their former performance appraisals
[14] are normally used at the front end of the process to
[15] determine which candidates will be interviewed. As
[16] Ed pointed out, normally we get 20 people of whom 15
[17] meet the minimum qualifications and then you take
[18] into consideration things like their performance
[19] appraisal in deciding which ones based on the paper
[20] are qualified for the job. But it then goes to the
[21] Selection Review Board to basically say, "You now
[22] have X candidates who based on our review of all the
[23] paperwork appear to be the best candidates we have
[24] for this position." Inherently, that is meeting the
[25] minimum qualifications, but they are also in the

Page 65

[1] judgment of Human Resources and the Selecting
[2] Manager the best ones to meet it. The questions are
[3] questions that are asked by the board —
[4] MR. DAMBLY: Could you help me there.
[5] Again, Luis is saying we're confusing the process.
[6] I'm sure we are. Because the way things work here,
[7] if you met the minimum qualifications, you would go
[8] to rating panel and they would rate everybody from
[9] an A to a C or whatever. C being the lowest, A
[10] being the best, and then they go on to the manager
[11] who makes the selection.
[12] Your process, HR looks at and says
[13] minimum quals, but then they don't send everybody
[14] who meets the minimum, they get together with the
[15] selecting official and choose the best qualified
[16] before it goes to the —
[17] MR. BOYLES: The line manager and HR
[18] typically review the package and determine who the
[19] top candidates are and who should be interviewed.
[20] Let me address one issue that I think
[21] we're coming back to. Did we use a technical
[22] evaluation to determine who was going to be a
[23] manager? These positions are technical positions,
[24] they do not supervise anyone, so from that
[25] standpoint they may manage projects and activities

Page 66

[1] effecting the sites, but they are not what we think
[2] of typically as management positions
[3] MR. MARQUAND: Let me add two sentences
[4] to that. It's not entirely a technical test. The
[5] specific questions they were asked were what
[6] strengths do you have that will benefit this
[7] position? What weaknesses do you have that you need
[8] to address? Describe three projects or programs you
[9] helped to initiate, develop and complete. Describe
[10] the level of responsibility this position should
[11] have in contributing to the success of the site
[12] chemistry program. Discuss your specific management
[13] experience and training And yes, there are some
[14] technical questions on here, such as Describe
[15] jenting and define molar ratio and primary
[16] functions, but there's clearly some issues here that
[17] go beyond beyond simple technical chemistry issues,
[18] but also program management types of things that
[19] they were looking to evaluate. Those were specific
[20] questions that they evaluated these individuals on.
[21] MR. STEIN: And if I have a bad day, I
[22] could be the greatest chemistry, you know, the
[23] leader of my field and I have a bad day, a bad
[24] interview, and all the rating panel sees is that one
[25] day?

Page 67

[1] MR. MARQUAND: That's correct.
[2] MR. REYES: Good or bad, that's your
[3] process?
[4] MS. BOLAND: Just one more question, and
[5] not to belabor this further, on the front end of the
[6] process, is the selecting official involved in
[7] whittling down the list from everybody who applied
[8] to those people that are reviewed by the board?
[9] MR. BOYLES: Typically yes.
[10] MS. BOLAND: Was that the case in this
[11] case?
[12] MR. BOYLES: I don't know the extent that
[13] an HR person assisted. I don't know if that's
[14] something you will have to address to the —
[15] MR. DAMBLY: One other point is, and I
[16] think you answered it earlier, but I don't recall
[17] what the answer was.
[18] Typically, does a Selection Review Board
[19] have appraisals or not?
[20] MR. MARQUAND: I've seen it both ways.
[21] I've litigated these and I've seen where they did a
[22] whole package and I've seen more frequently what we
[23] have here, where they are provided applications and
[24] then a copy of simly where they just go through the
[25] questioning.

Page 68

[1] MR. BOYLES: And they may actually vary.
[2] The employee may provide service performance
[3] evaluations as a part of their resume', they may be
[4] attached to it. Another employee may not, so. It
[5] may vary even from selection board to selection
[6] board.
[7] MR. STEIN: Does Human Resources or OGC
[8] ever share conduct files, history of letters of
[9] reprimand?
[10] MR. MARQUAND: If the letter of reprimand
[11] or suspensions are in the personnel history record,
[12] those would be available certainly to the selecting
[13] manager and HR. If they are not in the PHR,
[14] typically they would not be. I don't believe they
[15] would be considered, would they?
[16] MR. BOYLES: No, they wouldn't.
[17] MR. MARQUAND: You mentioned in this case
[18] Mr. Harvey had some Title 7 issues. I don't know
[19] that those were actually in his PHR. They clearly
[20] had arisen during this selection process and he had
[21] been counseled about some matters and there was some
[22] question as to whether or not those were, in fact,
[23] borne out.
[24] MR. BOYLES: They were not in the
[25] personnel history record. This was in the early

Page 69

[1] stage of any potential disciplinary action and we
[2] use progressive process. This was more of a
[3] counseling stage.
[4] MR. DAMBLY: To finish up. Once you get
[5] the Selection Review Board results here, whatever,
[6] then these folks Corey, Kent, Chandra, Harvey and
[7] Fiser get submitted to Mr. McArthur with their
[8] scores or whatever, does Mr. McArthur then review
[9] everybody's package and appraisals or does he just
[10] go, "Well, this is how they did on the scores," and
[11] pick from there? Is there a normal process?
[12] MR. MARQUAND: The selecting manager
[13] receives a recommendation and then he's free to
[14] consider paper in addition. Is that right, Ed?
[15] MR. BOYLES: Yes.
[16] MS. BOLAND: The books and the files? So
[17] he can see the books and the answers?
[18] MR. BOYLES: Yes.
[19] MR. DAMBLY: But he can also go back and
[20] look at appraisals and anything else.
[21] MR. MARQUAND: In this case, from my
[22] understanding, Mr. McArthur was actually present in
[23] the room but did not participate in any fashion in
[24] asking the questions or evaluating them or in
[25] discussing the evaluations.

Page 70

[1] MR. STEIN: What was the plan to do with
[2] Mr. Fiser since you selected two other individuals?
[3] Is there any thought in HR or OGC or his line
[4] management about, you know, what was going to happen
[5] to Gary Fiser now that he wasn't selected?
[6] MR. BOYLES: At that time TVA had two
[7] programs. One, a service organization where
[8] employees could go utilize their talents and skills
[9] and also help them find jobs within TVA, so we had
[10] the TVA Services Organization. We also had an early
[11] out incentive where an employee could get up to one
[12] year's pay plus the other benefits that they would
[13] be entitled to. Those two things were available to
[14] all those who were affected.
[15] MS. EVANS: I was wondering if this was
[16] the same selection process that was used when
[17] Mr. Fiser applied out of the settlement position in
[18] '94 or if you know?
[19] MR. MARQUAND: There was a Selection
[20] Review Board. I believe we were provided a copy of
[21] one of the Selection Review Board packages for a
[22] different position, but my understanding was there
[23] was about about three or four people on that
[24] Selection Review Board and I don't know what
[25] questions were asked or how they were evaluated, but

Page 71

[1] a Selection Review Board process has been used for
[2] sometime..
[3] MR. BOYLES: We've been using the process
[4] since about 1988.
[5] MR. McGRATH: In summary, on the
[6] selection process we made every effort to make this
[7] process fair. We rigorously followed our HR
[8] requirements and our process we're going through
[9] throughout the entire reorganization. The decision
[10] on which positions had to be advertised and such, we
[11] involved HR throughout that and then followed their
[12] recommendations in all cases.
[13] As we just discussed, after Mr. Fiser
[14] told us he was going to and then actually did submit
[15] a DOL complaint, we did take some extra efforts
[16] involving Labor Relations and OGC in the process to
[17] ensure that we were maintaining it fairly and
[18] following the process.
[19] MR. STEIN: Did you ever go behind the
[20] scenes and speak with managers who had contact and
[21] experience with all three, Mr. Grover, for example,
[22] had experience, and ask him what his advice was as
[23] far as who he would select to have the PWR
[24] positions?
[25] MR. McGRATH: No, I did not. Just like

Page 72

[1] we were probably selecting over a dozen new
[2] positions throughout our entire organization. I do
[3] not go down and canvas people to see who we should
[4] select for various positions. All of those
[5] positions were selected in accordance with our
[6] normal process.
[7] MS. BOLAND: Did you give Mr. McArthur as
[8] a selecting official any expectations or any
[9] guidance, anything along those lines in his
[10] decision-making process?
[11] MR. McGRATH: No. I think I knew that it
[12] very clear to to him at the time that we had to make
[13] this fair. In fact, if you knew Wilson McArthur,
[14] he's one of the fairest people I know. You know,
[15] there was no question in my mind that he wouldn't
[16] have to be counseled to not do something held
[17] inappropriate.
[18] He understood a number of — on this I
[19] knew that he was consulting with both Ed and coming
[20] back and consulting with me on some ones, which you
[21] wouldn't do under a normal selection, just because
[22] he was now aware of the DOL complaint and he also
[23] was making a real effort to make sure that we were
[24] doing all this properly.
MR. STEIN: Let me ask you something

Page 73

[1] else. I've read your views of Mr. Harvey and that
[2] you wanted to keep Mr. Harvey Corporate.
[3] If Mr. Fiser had been selected over
[4] Mr. Harvey by Mr. McArthur, what would have been
[5] your reaction?
[6] MR. McGRATH: First let me address that I
[7] believe that something that occurred in one of the
[8] reports relative to keeping Mr. Harvey in Corporate
[9] may have been a misinterpretation of that I wanted
[10] to keep the function in Corporate.
[11] Secondly, we wouldn't. But in function,
[12] the function in corporate was that we were going to
[13] need a PWR and BWR Chemistry Manager, a Chemistry
[14] Specialist, and that these positions were most
[15] appropriately held in Corporate so that it supports
[16] individual sites.
[17] By talking about the function, we had
[18] decided that we did need a Chemistry Specialist
[19] position to support our PWR plants and a second one
[20] to support RBWR plants and we felt those were most
[21] appropriately maintained in Corporate, as opposed to
[22] an alternate way which would be to try to supplement
[23] the chemistry staff at each individual site, and
[24] that's what we wanted to keep in Corporate.
[25] Whoever was selected for the positions

Page 74

[1] would have been put in the position, whatever
[2] candidates, and recognized while only three
[3] qualified for PWR position, I believe more than
[4] three qualified for the BWR; and more than these
[5] three applied for the position, so they may not have
[6] even been any of these people, it could have been
[7] someone else in the position if that's how it came
[8] out. But we would put the best qualified person for
[9] the Corporate positions in there as determined by
[10] the process.
[11] The other individual, at the time Ed
[12] explained to you there were programs for people who
[13] were leaving, they would be offered those particular
[14] programs. They would have the option of applying
[15] for other jobs in TVA.
[16] MR. STEIN: So, in other words, you
[17] really didn't care whether it was Fiser or Harvey
[18] who was in that position as long as that position
[19] remained in Corporate?
[20] MR. McGRATH: That's correct. In fact,
[21] further, I really didn't care who it was as long as
[22] they were qualified. This one got it down to those
[23] three people and I wanted the best qualified person
[24] in there.
[25] MR. DAMBLY: Let me ask you one other

Page 75

[1] question on appraisals. Let me just check my notes
[2] to be sure. I believe Mr. Easley told OI that at
[3] the time he prepared those folks for the panel, he
[4] included the appraisals and then he provided them to
[5] Mr. McGrath and somehow when they got to the panel,
[6] they didn't have the appraisals.
[7] Does anybody what happened?
[8] MR. MARQUAND: I don't know what
[9] happened.
[10] MR. McGRATH: May I make a correction to
[11] you? You said supplied to me. I had nothing at all
[12] to do with what information was provided to the
[13] board and I normally do not, would not have that for
[14] that level position.
[15] MR. STEIN: Have you ever seen the
[16] appraisals? Have you ever seen Mr. Harvey's
[17] appraisals versus Mr. Fiser's appraisals for the
[18] last couple of years?
[19] MR. McGRATH: No, I did not at the time
[20] we were doing this.
[21] When we responded to the DOL complaint
[22] long after this, since there were some statements by
[23] Mr. Fiser relevant to the context of it, and as a
[24] response, I had some information about Mr. Fiser,
[25] but that was long after this happened.

Page 76

[1] MR. STEIN: In hindsight how do you feel
[2] about the selection after seeing the appraisals and
[3] knowing what is in certain conduct files? I'm
[4] trying to get to —
[5] MR. McGRATH: The conduct file goes back
[6] to Mr. MarQuand. Mr. Harvey had a problem for
[7] which, in our progressive discipline, it was a
[8] counseling thing. He had done what was required of
[9] him and we had no other problems with him afterwards
[10] relative to that.
[11] Some of the things I read later in our
[12] response to DOL relative to Mr. Fiser were
[13] irrelevant to the position. They had to with
[14] management weaknesses he had in various positions in
[15] the past, but we weren't looking for a management
[16] job here, so.
[17] MR. STEIN: So you're maintaining today
[18] that you are still fine with the selection of
[19] Mr. Harvey over Mr. Fiser based on the TVA
[20] policies?
[21] MR. McGRATH: We followed the policy. We
[22] put a qualified person in the job who did the job
[23] well after he was selected for it. There is no
[24] basis on which to compare how well he may have done
[25] the job against another individual who wasn't

Page 77

[1] selected for the job.
[2] MS. EUCHNER: Janet Euchner for the OGC.
[3] I had a question about why Mr. Kent was permitted to
[4] serve on the Selection Panel. Mr. Easley said he
[5] did not serve as the HR representative because he
[6] knew about Fiser's 1993 DOL complaint and wanted to
[7] make it appear fair, so he withdrew from that.
[8] Mr. Kent not only knew about it but had
[9] been interviewed in regard to it and just prior to
[10] the Selection Panel had sought to have Harvey
[11] transferred out to work for him, so quite obviously
[12] thought highly of Mr. Harvey and thought he was a
[13] well qualified person.
[14] So doesn't that sort of suggest a slight
[15] bias in favor of Mr. Harvey that Mr. Fiser could
[16] say, hey, this is not a fair process?
[17] MR. McGRATH: When we set up the boards,
[18] just by the nature of the organizations, people know
[19] each other. I didn't know what involvement
[20] Mr. Harvey had in the 1993 complaint — not
[21] Mr. Harvey, I'm sorry, Mr. Kent.
[22] Perhaps the way to answer your question
[23] is since after you guys told me about the 1993
[24] complaint and I read it, the 1993 complaint was
[25] pointed out that Kent wanted to make Fiser the site

Page 78

[1] chemistry manager, so perhaps he liked Fiser better
[2] than Harvey. There was no reason to doubt that
[3] Mr. Kent could not make a fair selection.
[4] MR. BOYLES: Let me also point out,
[5] Mr. Easley asked for a substitute on the Selection
[6] Board. He came to me and explained to me that he
[7] wanted to make sure that the process was fair and he
[8] asked me to pick another Human Resource officer to
[9] facilitate that selection, and I agreed with him to
[10] do that.
[11] MS. EUCHNER: Also just prior to the
[12] convening of these interviews, there was some
[13] testimony that Mr. Kent announced to the people in
[14] the room that Mr. Fiser had filed a 1993 DOL
[15] complaint. Wasn't that some cause for concern that
[16] maybe you should have said, "Wait a minute, this is
[17] completely not relevant," and done something about
[18] it then, because that gave knowledge to people who
[19] otherwise did not have knowledge of a new
[20] complaint?
[21] MR. BOYLES: I was not present and don't
[22] know the context of what was said.
[23] MR. McGRATH: If he said something, I was
[24] not present there; and prior to our proceeding, I
[25] had no knowledge that he made any kind of complaint.

Page 79

[1] MR. MARQUAND: Obviously by the time of
[2] the Selection Review Board, everybody at TVA was
[3] aware, everybody involved was aware that Mr. Fiser
[4] had filed a Department of Labor complaint and the
[5] concern was let's be sensitive about it, let's be
[6] fair about it.
[7] My understanding from having sat in with
[8] Mr. Kent on a number of occasions is that that was
[9] the context in which he was raising this same
[10] matter.
[11] MR. VIGLUICCI: And also, to say that he
[12] announced it to the room is also incorrect from the
[13] testimony that we looked at, and we did sit in with
[14] each one of the individuals who were interviewed.
[15] For instance, I sat in with Rick Rogers
[16] and he recalled hearing no such statement, and
[17] Mr. Corey could not even recall if he heard such a
[18] statement and that he was generally aware, but he
[19] couldn't tell where that came from or in what
[20] context it was. So to characterize that as
[21] announcing it to the room I think is a
[22] mischaracterization.
[23] MS. BOLAND: Mr. McGrath, were you aware
[24] of or did anybody make you aware of statements made
[25] by any of the three people who were on the board or

Page 80

[1] Mr. Cox about any bias that they may have had toward
[2] a selectee or a good feeling or a bad feeling about
[3] a person who was put in for a job?
[4] MR. McGRATH: After Mr. Cox said that he
[5] could not serve on the board, when Mr. McArthur
[6] reported that to me, he also told me that in the
[7] same conversation that Mr. Cox had indicated a bias
[8] in the Chemistry position and also in the
[9] Environmental positions, that he had already decided
[10] who should have them.
[11] MS. BOLAND: Both positions?
[12] MR. McGRATH: Both positions. Those
[13] things were not, however, relevant to his not being
[14] on the board because he had already taken himself
[15] off the board and would not be able to serve and we
[16] needed to move on.
[17] MR. STEIN: Just to keep the record
[18] straight, I believe that Mr. Corey said that he
[19] drove for two hours from Alabama and that he was
[20] sharing a cup of coffee with Mr. Kent and Mr. Kent
[21] mentioned this 1993 DOL. So I can go back, but I
[22] think that was Mr Corey's testimony.
[23] MR. MARQUAND: I think he was vague about
[24] what he said he heard.
[25] MS. BOLAND. Anyone else that you got

Page 81

[1] information from, even secondhand?
[2] MR. McGRATH: No one else.
[3] If we could go on, I would like to
[4] address some of the specific items in the OI
[5] summary.
[6] Relating to Mr. Fiser's 1993 complaint,
[7] the summary says the employee named as party to his
[8] discrimination the individual who served as chairman
[9] of the organization of Safety Board in 1993. It
[10] goes on to say the individual who served as NSRV
[11] chairman was named as a culpable party in the
[12] Employee's 1993 DOL complaint.
[13] Those statements are factually
[14] incorrect. I have reviewed the complaint of
[15] Mr. Vigluicci and Mr. MarQuand here and I am not
[16] named as a culpable party. In fact, I'm not even
[17] mentioned anywhere in the complaint by name or by
[18] position. If you'd like, Mr. Reyes, a copy, if you
[19] would like a copy of that.
[20] As I mentioned to you earlier, I was not
[21] aware that this complaint even existed until June of
[22] 1996, and, in fact, I was unaware that there was any
[23] characterization of my culpability until I received
[24] the letter from NRC here, the September 20, 1999
[25] letter.

Page 82

[1] Mr. Stein is a little bit worried here
[2] about confidentiality on this. I have never seen
[3] this until after you wrote the letter and said I was
[4] a culpable party. I felt that I ought to go read it
[5] and see what I was accused of doing But as I said,
[6] I can't even find my name or my position anywhere in
[7] this.
[8] I would contest this question as to what
[9] my motivation would be to take retaliation for this
[10] 1993 complaint if it in no way involved me.
[11] MR. MARQUAND: Let me suggest that the
[12] way this issue arose was in 1996, when Mr. Fiser
[13] filed his 1996 Department of Labor complaint,
[14] attached to his complaint or throughout his
[15] complaint and attached to his complaint is a
[16] synopsis in which he characterizes what happened to
[17] him in 1993, and I believe he may have taken some
[18] liberties in 1996 describing what happened to him in
[19] 1993 and recast the events, and certainly that's the
[20] language used I believe in the Department of Labor's
[21] preliminary report about Mr. McGrath being a
[22] culpable party. I don't believe it's found anywhere
[23] in the 1993 complaint.
[24] MR. McGRATH: Additionally, as part of
[25] investigating this, neither our Inspector General's

Page 83

[1] office nor the Department of Labor interviewed me as
[2] part of their investigation of that particular
[3] complaint.
[4] MR. STEIN: Can you, if you can remember
[5] back to 1993, give us your take of this disagreement
[6] that Mr. Fiser had with your Safety Board?
[7] MR. McGRATH: The actual lead-in to which
[8] he refers occurred in November of 1994. He
[9] characterized a disagreement with one of those
[10] subcommittees. The particular issue he brought up
[11] of training I don't recall even being discussed in
[12] the portion of the meeting that I sat in on. But
[13] perhaps it's best to take that whole line of NSRB
[14] and take a look at how that subcommittee
[15] characterized what went on that day.
[16] The minutes prepared by the chairman of
[17] that subcommittee —
[18] MR. STEIN: Who was Mr. McArthur.
[19] MR. McGRATH: It was Mr. Peterson, he was
[20] from outside TVA and served on the Safety Review
[21] Boards in that capacity for a number of other
[22] utilities at the time.
[23] They noted that the subcommittee had
[24] reviewed a number of deficiencies which had been
[25] identified by Quality Assurance and Corporate

Page 84

[1] Chemistry. They identified over half of those in
[2] areas of which data training was one. They
[3] concluded that Corporate Chemistry, the site
[4] chemistry manager who was Mr. Fiser, and the
[5] subcommittee are in agreement that there is an
[6] apparent lack of technical strength in key areas
[7] within the chemistry staff. The subcommittee
[8] concurs with Chemistry Management, which would
[9] include Mr. Fiser, that the series of QA findings
[10] point to programmatic deficiencies that need prompt
[11] attention. They go on to indicate that the
[12] Corporate Chemistry staff is assigned as well to
[13] help them on the training.
[14] The findings of that subcommittee were
[15] bought to the full board meeting the next day on
[16] which I was the chairman. Again, the overall
[17] discussion of it again points out the issue being
[18] deficiencies, which I've already brought up, by Site
[19] Chemistry and Corporate Chemistry identified them
[20] again. I believe we did include again trending,
[21] which was one of those examples, not a specific
[22] item, and pointed out that the Plant Manager and the
[23] Technical Programs Manager, who was Mr. McArthur at
[24] that time, were working together to develop a
[25] Corrective Action Program, and then gave support

Page 85

[1] saying that the Chemistry Improvement Program that
[2] was being considered by the Chemistry staff, which
[3] was Mr. Fiser's staff, should be promptly and
[4] aggressively developed and implemented.
[5] MR. STEIN: You mentioned at the
[6] beginning of this meeting that you have no problem
[7] with people raising safety concerns and issues.
[8] MR. McGRATH: That's correct.
[9] MR. STEIN: So back at that time period
[10] you had no problem with Mr. Fiser raising these
[11] concerns?
[12] MR. McGRATH: None whatsoever. In fact,
[13] his 1993 complaint, one of the issues he brings up
[14] related to the post accident sampling one, which had
[15] actually been an issue brought up by NSRE. That was
[16] an issue he was pursuing that I had no problem
[17] with. I could bring you years of minutes here and
[18] you could see that NSRB routinely raised issues of
[19] potential safety. So we needed to do that to do our
[20] job, that was our role.
[21] But that meeting that he had at the time
[22] really, I don't know what conversation he was
[23] characterizing. I think it's indicated what
[24] happened, the minutes that were issued of the
[25] meeting were a fair reflection of the perspective in

Page 86

[1] which that issue was raised.
[2] I think it's also important to note that
[3] meeting was in November of 1991. The minutes had
[4] been issued. They had been on the street for a long
[5] time and they were widely distributed, so we knew
[6] what was in the minutes. However, when he filed his
[7] 1993 complaint, there was no mention whatsoever of
[8] anything done by NSRB, given the subcommittee, the
[9] board as a whole, or any member of NSRB was in any
[10] way related to his complaint in which he was talking
[11] about him being not given a job some 14 months after
[12] that meeting, and I would contend that there is no
[13] relationship between that meeting and his 1993
[14] complaint.
[15] MR. MARQUAND: Did you make any
[16] recommendations to relieve him or do anything about
[17] Mr. Fiser himself as a result of the meeting?
[18] MR. McGRATH: No. In fact, the NSRB
[19] stays out of the business of making any kind of
[20] recommendation relative to people. Perhaps a bit
[21] like you guys have to do, you may see management
[22] problems, but you can't intervene and say we'll
[23] change this individual. And likewise, that is not
[24] our function.
[25] We will raise issues in an area,

Page 87

[1] programmatic issues, specific technical issues, but
[2] NSRB does not issue recommendations relative to
[3] specific individuals.
[4] MR. McNULTY: During the period of time
[5] that you were chairman of the NSRB, did you have any
[6] other duties?
[7] MR. McGRATH: Sometimes. We had many
[8] reorganizations and, yes, I did have other duties at
[9] times which included the management of various other
[10] technical staffs in Corporate. Technical
[11] administrative staffs.
[12] MR. McNULTY: While you were the chairman
[13] of the NSRB, were you ever Mr. McArthur's
[14] supervisor?
[15] MR. McGRATH: No, sir, I was not. The
[16] first time — well, in October of 1995, when I
[17] assumed that position of the Operations Support
[18] Manager, I was still the Chairman of the NSRB at
[19] that time. So at the time I became the Acting
[20] General Manager of Operations Support in October of
[21] 1995, I was still the Chairman of the NSRB and at
[22] that time I became Mr. McArthur's supervisor.
[23] MR. STEIN: Wasn't Mr. McArthur a
[24] subcommittee chair?
[25] MR. McGRATH: He was a subcommittee

Page 88

[1] member.
[2] MR. STEIN: So really you were overseeing
[3] his work on the committees as the chair of the
[4] overall NSRB?
[5] MR. McGRATH: Yes. As chairman of the
[6] thing, I still had the function of the entire NSRB.
[7] MR. DAMBLY: Let me ask a very important
[8] question. Is your presentation going to take — I
[9] know we've interrupted the heck out of it, but is it
[10] going to take much longer, because the reporter
[11] needs a break. If it's something, if you have a few
[12] more minutes, then we could do that and then take
[13] the break we were going to. But if it's going to
[14] be awhile, we should go ahead and take a break now.
[15] MR. McGRATH: Why don't we go ahead and
[16] take a break. I could use a drink of water anyway.
[17] (A recess was taken.)
[18] MR. REYES: Back on the record.
[19] MR. McGRATH: To continue on with the
[20] summary of your OI investigation, the report states
[21] that the evidence indicated that I influenced a
[22] selection process to preclude the selection of the
[23] employee.
[24] To summarize, and I think we've already
[25] discussed this at length, but we followed the normal

Page 89

[1] TVA HR process for doing this and as we noted, we
[2] augmented it to ensure fairness once we were aware
[3] there was a DOL complaint. The Selection Review
[4] Board was made up of three qualified members and I
[5] was not a party at all to the board.
[6] The question of Mr. Cox's participation,
[7] he removed himself from the board. And as I told
[8] you before, we did try to get a Watts Bar Assistant
[9] Plant Manager and when he was not available, we
[10] selected another qualified replacement.
[11] The SRB made the final decision as to
[12] what questions they would ask and the SRB scores
[13] reflect their recommendation; and Mr. McArthur, who
[14] is the Selecting Official, made that selection in
[15] accordance with the Board's recommendations.
[16] In the letter to the company, the OI
[17] summary states that the process was contrived. I
[18] would really question how we could do that? That
[19] would be asking in an environment where we were
[20] aware there was an active DOL complaint and an
[21] active Inspector General investigation going on,
[22] that I would have somehow tried to influence several
[23] Human Resources managers, three independent
[24] Selection Review Board managers, and the Office of
[25] General Counsel to deviate from our normal selection

Page 90

[1] process and somehow make it unfair, and I don't see
[2] any evidence that I tried to do that.
[3] The report further goes on to say that
[4] the individual who was selected for the position of
[5] PWR Chemistry position, Mr. Harvey was preselected
[6] for that position. We deny that. He was not
[7] preselected for that position.
[8] Ed, do you have something else to add
[9] with regard to that?
[10] MR. VIGLUICCI: Yeah. You'll talk to
[11] Dr. McArthur later this afternoon as part of his
[12] effort to address the concerns raised as far as his
[13] conduct.
[14] One of the issues was, did you speak
[15] favorably in front of staff members and the like
[16] about the fact that you have problems with Gary
[17] Fiser, and Wilson feels very personal about that
[18] and, in fact, he would never do something like
[19] that. And in the course of that, his exercise to
[20] address that, he asked various managers who worked
[21] with him throughout the years to write just a short
[22] testimony about the fact that he's always been fair
[23] and has never spoken unfavorably about anybody in
[24] front of anyone.
[25] When he did that, and he'll present those

Page 91

[1] testimonies to you this afternoon, one of the people
[2] he asked to get testimony from along those lines was
[3] Sam Harvey. Sam is no longer with TVA. In response
[4] back, Mr. McGrath got a fairly lengthy testimony
[5] from — Mr. McArthur did get back from Sam Harvey a
[6] fairly lengthy testimony about what did occur and
[7] why Mr. Harvey felt that he was not preselected. In
[8] fact, he feels that Gary Fiser was the one who
[9] contrived the process, that he confided in him that
[10] he did so.
[11] I'll distribute not only a copy of an
[12] affidavit that was filed — that was filled out by
[13] Sam Harvey, and I would like to distribute that.
[14] It is also important to note that
[15] Mr. Harvey was never interviewed by the Office of
[16] Inspector Investigations or —
[17] MR. STEIN: Was Mr. Harvey's departure
[18] from TVA voluntary?
[19] MR. VIGLUICCI: I don't know all the
[20] details.
[21] MR. BOYLES: Yes, it was. He accepted a
[22] position with another utility.
[23] MR. VIGLUICCI: So I'll provide at least
[24] ten copies to Loren and you can review that. I wish
[25] you would review that, especially before your

Page 92

[1] meeting with Dr. McArthur, and that will put it into
[2] some more context as to Sam Harvey's perspective to
[3] our own position.
[4] MR. McGRATH: To go on and wrap up, the
[5] report also stated that Mr. Harvey could have been
[6] placed in a vacant site chemistry position; and as
[7] we previously discussed, that is factually
[8] incorrect. There was no vacant site chemistry
[9] position.
[10] And finally, the report says we subjected
[11] the employee, that is Mr. Fiser, to disparate
[12] treatment, and that is based upon by the report
[13] Mr. McArthur's position which he says was created in
[14] mid-1996 and he was transferred to this position
[15] without competition in contravention of TVA policy.
[16] As we discussed at length earlier, this
[17] was an existing position and that was reviewed by
[18] Human Resources and it was Human Resources'
[19] recommendation that he be placed into that position
[20] and it indeed was in accordance with our policy,
[21] even the problem of his position descriptions that
[22] had occurred previously.
[23] To wrap up and summarize, I really hope
[24] you would agree that it is inconceivable that I
[25] would take action here to discriminate against

Page 93

[1] someone for raising a safety issue. We've discussed
[2] my background quite a bit. I really spent, almost
[3] 30 years of my primary responsibility was reactor
[4] safety, was raising reactor safety issues. As I
[5] took it on, I clearly understand the importance of
[6] employees being able to do that.
[7] And likewise, I would say the 1993
[8] complaint, I didn't know of the 1993 complaint. Now
[9] that I have seen it, I am not in any way a party to
[10] that complaint, so I would lack any kind of
[11] motivation to take any action against this
[12] individual for something that I didn't even know
[13] about and, in fact, was not a party to.
[14] And finally, as we talk of it, I'd say,
[15] because I don't think it is as strong as the other
[16] two, I would hope the other two are very clear that
[17] I would have no motivation and it would be contrary
[18] to my whole career to try and do it. But as we just
[19] discussed, when we were going through this, we were
[20] clear that Mr. Fiser first said he would and then
[21] actually filed a DOL complaint. Our Inspector
[22] General was actively investigating this process as
[23] we were doing it. And with everyone we involved,
[24] there were several Human Resource Managers and
[25] Specialists involved, the Office of General Counsel,

Page 94

[1] a number of senior managers who were on the
[2] Selection Review Board, I would contend it's
[3] inconceivable I could have influenced or even
[4] attempted to influence that wide a number of people
[5] across TVA in order to go influence who would be
[6] selected for a position.
[7] We really did this whole thing trying to
[8] be fair and trying to ensure that we selected the
[9] best individual for the position.
[10] You asked me earlier why I should remain
[11] in nuclear power. I think it is more, really the
[12] most important to me thing here is that I clear my
[13] name. I've devoted my whole career to reactor
[14] safety. It is very important to me that we clarify
[15] this. I don't believe that I did anything wrong in
[16] this case. We tried our best to do what was
[17] required in accordance with all of our procedures.
[18] I will be glad to provide you whatever
[19] additional information you may feel you need from me
[20] or anything that would help you in your
[21] deliberations on this, and we intend here to pursue
[22] this through whatever forum is available to me to
[23] ensure that I can clear my name.
[24] And I thank you for your attention and
[25] listening to my presentation.

MR. REYES: We have one question that we need to clarify.

MS. DAMBLY: Actually I guess I have two. One, your transfer when you switched out of nuclear, did that have anything to do with any of this at all or?

MR. McGRATH: No, it doesn't. I have been working — we have a large business transformation project. I've been leading a team and had a lot of exposure to other parts of TVA and it was an opportunity available here that I thought would be interesting and consumptive.

MR. DAMBLY: Then the other one is really for Mr. Boyles. I mean you provided us some notes this morning on the prior position Mr. McArthur held, which was Technical Programs/Operations Services Manager, which was the PD of record, I guess, rather than the correct PD of record.

MR. BOYLES: Yes, sir.

MR. DAMBLY: You said by comparing that with the new one, you decided they were essentially the same job, so he was entitled to it.

When I look at what you gave me, in his PD of record, Mr. McArthur had six functions. In the job that he was ultimately slid into, he lost

three of those functions, Industrial Safety, Emergency Preparedness and Protective Services; they were no longer part of it. On the other hand, Mr. Fiser had two functions, Chemistry and Environmental, and he lost one of the two.

I don't see why there's a difference there. Both of them lost half, but in one case you considered it as something you could slide somebody in and the other you couldn't.

MR. BOYLES: I understand the question. Let me describe my perspective on comparing a manager's job which supervises several functions and comparing a job which is more technically oriented.

Our managers supervise possibly six or seven functions, oftentimes we will go and take an industrial safety function and move it to our nuclear support organization. I don't view that as a significant change for that manager. They are still managing an organization, they are still supervising several functions.

I didn't do the comparison on the Chemistry Program Manager, that was done by the Human Resource officer that worked for me, but that is a very technical, specialized position When you change something like the environmental portion of

that, in my opinion, that's more of a significant change, and that was my perspective when we were looking at these positions.

And I hope that answers your question.

MR. DAMBLY: I guess not really, because I still have a problem. If he was qualified and was managing both Chemistry and Environmental and you eliminated a technical manager and not managing as in people and you eliminated half of it so he was doing even less, he certainly would appear to be performing that function before and why he has to compete for half his job I don't understand.

MR. BOYLES: In my view it was very similar to what we had done previously. When the jobs were combined, I viewed it as a significant change. I agreed with the Human Resource officer that did the evaluation and did the evaluation twice of the positions, prior to Mr. Fiser informing us that he was going to file a DOL complaint, and at that time I asked Mr. Easley to look at that job again and come back to me with a recommendation. He returned with the same recommendation after we had talked with the OGC and after we had talked with our Labor Relations staff.

MR. DAMBLY: Mr. Grover was a people

manager, right?

MR. BOYLES: Yes.

MR. DAMBLY: Didn't he have the Chemistry and Environmental function under him?

MR. BOYLES: Yes.

MR. DAMBLY: So he had half of it new duties and he was a manager, so why didn't you consider as a manager picking up a function or whatever is not that important like you figured dropping a function wasn't that important?

MR. BOYLES: As I said, we made the determination that Wilson McArthur had a right to that new position because of the position description of record that he held. It did leave Ron Grover without a position to compete with.

As I said, Ron Grover raised that issue and I think we've addressed his concerns. Mr. Grover is still an employee with TVA and at his request went on an INPO assignment.

So I think we tried to deal with that situation, the situation that we had inherited from previous actions, as fairly as we could for both individuals, for Dr. McArthur and for Ron Grover.

MR. VIGLUICCI: I just want to make sure we have the right focus here.

Tom, did you have any actions whatsoever, responsibilites for deciding whether that job was competed or not?

MR. McGRATH: No, I referred it to Human Resources and I took action based — I went along with their recommendations as to how that should be handled and went ahead based on their determination.

MR. STEIN: Let me ask you one question. We have been exploring your interactions with people who report to you. Have you had any interactions in this matter on who selected the people you report to up the chain of TVA?

MR. McGRATH: No, I do not. When I did the reorganization, the reorganization was reviewed with the chief nuclear officer and the vice-president, senior vice-president of operations at the time; but that was from the organization, not any individuals.

MR. STEIN: So you never discussed individuals with anyone?

MR. McGRATH: No, I did not discuss individuals with anyone I reported to. There was knowledge of what went on obviously when we evolved, [illegible] the DOL complaint became part of it, obviously [illegible]formed my manager that that existed and that I

was proceeding along the line of working with Human Resource and OGC to ensure that we handled that properly.

MR. STEIN: Who was your manager that you were discussing this with?

MR. McGRATH: At the time it was Zeran and the Chief Nuclear Office was Oliver Kingsley at the time.

MR. REYES: I think we covered all the questions, so let me close the conference.

In closing this Predecisional Enforcement Conference, I want to remind you of two things Mr. McGrath. First, the apparent violation discussed at this Predecisional Enforcement Conference is subject to further review and may be subject to change prior to any resulting enforcement action.

And second, the statements of views or expressions of opinion made by NRC employees at this [illegible]edecisional Enforcement Conference or lack thereof [illegible] not intended to represent final agency [illegible]ermunations or beliefs.

Given the presence of TVA at the [illegible]nference, the company representative, we would like to offer you the opportunity to meet with

members of the NRC staff privately. Would you like to do so?

MR. McGRATH: No, sir. I see no need for that.

MR. REYES: With that, we're going to close the enforcement conference. Thank you.

(Conference concluded at 12:20 p.m.)

CERTIFICATE

STATE OF GEORGIA:
COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through ^ NO. represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

This, the 1st day of December, 1999.

COLLEEN B. SEIDL, RPR, CCR-B-1113
My commission expires on the 7th day of October, 2002.