8786

LBP-04-26

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Charles Bechhoefer, Chairman
Dr. Richard F. Cole
Ann Marshall Young

DOCKETED
USNRC

November 10, 2004 (8:42AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

SERVED November 10, 2004

In the Matter of TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 & 2; Browns Ferry Nuclear Plant, Units 1, 2 & 3)	Docket Nos. 50-390-CivP; 50-327 CivP; 50-328-CivP; 50-259-CivP; 50-260-CivP; 50-296-CivP ASLBP No. 04-830-01-R EA 99-234 November 10, 2004

Memorandum and Order
(Approval of Settlement Agreement and Termination of Proceeding)

On February 7, 2000, the NRC Staff issued a Notice of Violation (NOV) citing the Tennessee Valley Authority ("TVA") for a violation of 10 CFR § 50.7 and in a May 4, 2001 order imposed a civil monetary penalty of $110,000. Also on February 7, 2000, the NRC Staff issued related NOVs to two individuals, both TVA managers, for violations of 10 CFR § 50.5. TVA requested a hearing before an Atomic Safety and Licensing Board. A hearing before this Board was held between April 23 and September 13, 2002. In our Initial Decision in this proceeding, LBP-03-10, 57 NRC 553 (2003), we determined (with Judge Young concurring in part and dissenting in part) that TVA had violated 10 CFR § 50.7 by discriminating against an employee on account of his whistleblowing activities (i.e., his engagement in "protected activities.") The Board imposed a civil penalty of $44,000 on TVA (reduced from the $110,000 initially sought by the Staff).

TVA appealed the Board's decision. In a Memorandum and Order dated August 18, 2004, CLI-04-24, 60 NRC 160, the Commission affirmed the Board's decision in part, reversed it in part, and remanded the case to the Board for further proceedings, seeking further findings on specified questions (see CLI-04-24, 60 NRC at 221).

By joint motion dated November 2, 2004, the parties advised that they entered into negotiations which resulted in a proposed settlement agreement, which they submitted for our review and approval. The agreement provides in part that the NOV against TVA remains in effect and that the civil penalty and the two individual NOVs are withdrawn. Further, TVA represents that it has taken action to foster a safety conscious work environment (SCWE), set forth in greater detail in the agreement. The NRC Staff has reviewed TVA's actions and finds that, subsequent to the events that gave rise to the above-mentioned matters, TVA has committed to fostering SCWE and that its actions in that regard are acceptable for promoting the public health and safety. Accordingly, the NRC Staff is satisfied that its goals of identifying and effectuating lasting corrective action have been addressed by TVA's actions. TVA and the NRC Staff state that it is in the public interest to terminate this proceeding without further litigation, subject to the approval of the Board.

The Board has reviewed the proposed settlement agreement, a copy of which is attached. We agree with the parties that it is in the public interest to terminate this proceeding. Further, the settlement accords due weight to the interest of the Staff, which has strongly backed the settlement. Accordingly, pursuant to 10 CFR §§ 2.203 and 2.205(g), the Licensing

Board hereby approves the settlement agreement submitted to us by the parties and thereby terminates this proceeding.

It is so ORDERED.

The Atomic Safety and Licensing Board

Charles Bechhoefer

Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Richard F. Cole

Richard F. Cole
ADMINISTRATIVE JUDGE

Ann Marshall Young

Ann Marshall Young
ADMINISTRATIVE JUDGE

Rockville, MD.
November 10, 2004

[Copies of this Memorandum and Order have been transmitted by e-mail to counsel of record.]

October 29, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket Nos. 50-390-CivP;
	)	50-327-CivP; 50-328-CivP;
TENNESSEE VALLEY AUTHORITY	)	50-259-CivP; 50-260-CivP;
	)	50-296-CivP
(Watts Bar Nuclear Plant, Unit 1	)	
Sequoyah Nuclear Plant, Units 1 & 2	)	ASLBP No. 01-791-01-CivP
Browns Ferry Nuclear Plant, Units 1, 2 & 3	)	
	)	EA 99-234

SETTLEMENT AGREEMENT

The Tennessee Valley Authority (TVA) and Nuclear Regulatory Commission (NRC) Staff, (individually, "party" and together, "parties") enter into this Settlement Agreement freely and voluntarily and state as follows:

1. Whereas on February 7, 2000, the NRC Staff issued a Notice of Violation (NOV) citing TVA for a violation of 10 CFR §50.7 (Section 50.7) and, in a May 4, 2001, order imposed a civil monetary penalty (civil penalty) of $110,000.

2. Whereas on February 7, 2000, the NRC Staff also issued related NOVs to two individuals, both TVA managers, for violations of 10 CFR §50.5 (Section 50.5).

3. Whereas at the time of issuance of the NOVs, the NRC Staff had a good faith basis for taking such enforcement actions.

4. Whereas at the time the NOVs were issued, TVA disagreed and continues to disagree that it violated Section 50.7 and that its two managers cited in the individual NOVs violated Section 50.5, and, requested a hearing before the Atomic Safety Licensing Board (the Board).

5. Whereas between April 23 and September 13, 2002, the parties participated in a hearing before the Board.

6. Whereas the Board rendered a decision on June 26, 2003, LBP-03-10, in which it sustained the NOV against TVA and sustained the civil penalty, which it mitigated from $110,000 to $44,000.

7. Whereas after TVA appealed the Board decision, the United States Nuclear Regulatory Commission (Commission) issued a Memorandum and Order, CLI-04-24, dated August 18, 2004, affirming in part and reversing in part the Board decision and remanding the case to the Board.

8. Whereas the relevant events in this matter occurred some years ago; the employee/alleger and one of the managers named in the individual NOV are no longer employed by TVA; and the other manager named in the individual NOV no longer occupies the position he held at times relevant to the above-captioned matters.

9. Whereas subsequent to events giving rise to the above-referenced matters, TVA's nuclear organization (TVAN) has taken actions toward fostering and maintaining a safety conscious work environment (SCWE) as follows: no discrimination complaints have been filed with NRC Staff against TVAN in the last two years; TVAN represents that it has periodically provided SCWE/employee protection training to its workforce, such as "Do What's Right" training and, during recent weeks, "Employee Protection & Promoting A Safety Conscious Work Environment" training for TVAN's supervisory managers; TVA represents that it has trained the majority of TVAN's supervisory managers and intends to complete the training of such managers in the near future; and TVAN represents that it has revised its job selection process to provide increased objectivity.

10. Whereas NRC Staff has reviewed the TVA Office of Inspector General "Audit Report: Concerns Resolution Program-TVA Nuclear 2004," dated August 16, 2004, which found that TVA employees with unescorted access to TVA's nuclear facilities generally felt free to raise nuclear safety and quality issues, which is consistent with the NRC Staff's data that no discrimination complaints were filed with NRC Staff about TVAN within the last two years; the NRC Staff has reviewed TVA guidance on job selection process and observed that it is intended to promote

objectivity in the selection process; the NRC Staff has reviewed materials used by TVA in training its managers on SCWE and finds them to be appropriate; and NRC Staff plan to verify the quality of manager training by observing training sessions at a time mutually agreeable to the parties.

11. Whereas the parties have engaged in negotiation and agree that it is in the public interest to terminate this proceeding without further litigation, subject to approval of the Board.

NOW THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

A. The NOV against TVA, issued February 7, 2000, remains in effect. Further, effective upon the execution of this Settlement Agreement, the NRC Staff, exercising its discretion pursuant to Section VII B.6 of the NRC Enforcement Policy, hereby withdraws the civil penalty against TVA as well as the February 7, 2000, NOVs issued to the two individuals.

B. Each party waives its rights to proceed on the above-captioned matters and matters that are or could be based on the facts that gave rise to the above-mentioned matters before the Board, the Commission and in any other forum, including seeking judicial review.

C. The NRC Staff finds that subsequent to the events that gave rise to the above-captioned matters, TVA has committed to fostering a safety conscious work environment as evidenced by the recent training of managers described above, the 2004 TVA OIG Audit on employee concerns and the revised job selection process and that the NRC Staff finds that these actions are acceptable for promoting the public health and safety. Accordingly, subject to the verification of training discussed in Paragraph 10 above, the NRC Staff is satisfied that its goals of identifying and effecting lasting corrective action have been addressed by TVA whose actions provide reasonable assurance that a SCWE will be maintained. Consequently, the NRC Staff finds no need for further corrective action by TVA.

D. In light of the actions taken and SCWE fostered by TVAN described in Paragraphs 9 and 10 above, corrective actions by TVA that may have been otherwise warranted in connection with a matter related to the above-captioned matters are not now required and the NRC Staff agrees not

to initiate further action in regard to any matter related to Office of Investigation Report Number 2-2000-035 and the letter from the NRC Staff to TVA, dated January 13, 2003.

E. The NRC Staff finds that the resolution of these matters is in the public interest.

F. TVA recognizes the importance of fostering a safety conscious work environment and affirms its commitment to do so.

G. This Settlement Agreement sets forth the entire agreement between the parties and all prior contemporaneous oral or written negotiations, representations, statements, agreements or understandings between the parties are merged into this Settlement Agreement.

H. The parties will submit this Settlement Agreement to the Board for its approval together with a Joint Motion to Approve Settlement and Terminate Proceeding with the Board based on the resolution of matters in this Settlement Agreement. This Settlement Agreement will become effective upon its execution by both parties; however, the Settlement Agreement is contingent upon its approval by the Board and will become null and void if not approved or is changed in any manner by the Board. The parties agree that if the Board does not approve this Settlement Agreement, they will negotiate in good faith to resolve any obstacles to its approval by the Board.

IN WITNESS WHEREOF, TVA and the NRC Staff have caused this Settlement Agreement to be executed by their duly authorized representatives on the dates shown below.

James Luehman 10/29/04

James Luehman Date
Deputy Director, Office of Enforcement

NRC Staff

John C Fornicola

10/29/04

John C. Fornicola Date
Manager, Nuclear Assurance and Licensing
Tennessee Valley Authority

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
TENNESSEE VALLEY AUTHORITY	)	Docket Nos. 50-390-CIVP,
	)	50-327/328-CIVP and
(Watts Bar Nuclear Plant, Unit 1;	)	50-259/260/296-CIVP
Sequoyah Nuclear Plant, Units 1 & 2; and	)	
Browns Ferry Nuclear Plant, Units 1, 2 & 3)	)	
(Order Imposing Civil Monetary Penalty)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (APPROVAL OF SETTLEMENT AGREEMENT AND TERMINATION OF PROCEEDING) (LBP-04-26) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Charles Bechhoefer, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Ann Marshall Young
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Jack R. Goldberg, Esq.
Shelly D. Cole, Esq.
Sara McAndrew, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Mark J. Burzynski, Manager
Nuclear Licensing
Tennessee Valley Authority
1101 Market Street
Chattanooga, TN 37402-2801

Docket Nos. 50-390-CIVP
50-327/328-CIVP and
50-259/260/296-CIVP
LB MEMORANDUM AND ORDER (APPROVAL
OF SETTLEMENT AGREEMENT AND
TERMINATION OF PROCEEDING (LBP-04-26)

Thomas F. Fine, Esq.
Assistant General Counsel
Brent R. Marquand, Esq.
Office of the General Counsel
Tennessee Valley Authority
400 W. Summit Hill Drive
Knoxville, TN 37902

Evangeline S. Ngbea
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 10th day of November 2004