UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001

January 12, 2005

IA-99-043

Mr. Wilson C. McArthur
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

SUBJECT: WITHDRAWAL OF NOTICE OF VIOLATION
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 2-98-013)

Dear Mr. McArthur:

This refers to the Notice of Violation (NOV) issued to you and Tennessee Valley Authority (TVA) on February 7, 2000, as a result of an investigation conducted by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigation (OI) on April 29, 1998, and completed on August 4, 1999. Based on the findings of the OI investigation, the NOV was issued to you for a violation of the NRC's deliberate misconduct rule, 10 CFR 50.5, and a NOV for a violation of 10 CFR 50.7, "Employee protection," was issued to TVA for employment discrimination against Mr. Fiser for raising nuclear safety issues. We reviewed the information submitted by TVA and you in response to the NOVs and concluded that the employment actions taken against the individual in this matter were due, in part, to his involvement in activities protected by 10 CFR 50.7. We issued an order to TVA on May 4, 2001, affirming that position and imposing a civil penalty of $110,000.

On June 1, 2001, TVA appealed the decision to the Atomic Safety and Licensing Board (ASLB). On June 26, 2003, the ASLB upheld the staff's finding in a 2 - 1 vote, but reduced the $110,000 civil penalty to $44,000. TVA appealed the ASLB decision to the Commission on July 16, 2003. On August 18, 2004, the Commission issued Memorandum and Order CLI-04-24 (Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2 and 3)) affirming in part and reversing in part the ASLB decision and remanded the case back to ASLB.

On November 10, 2004, the ASLB approved a settlement agreement (see enclosure) submitted by the NRC staff and TVA to resolve this case. In the settlement agreement, the NRC staff agreed to withdraw the NOV issued against you and the other manager named in the individual action, the civil penalty, and agreed not to pursue a related potential discrimination case involving a former TVA Corporate Nuclear Engineering Manager. TVA agreed not to continue contesting the NOV issued to the company and to complete training for TVA managers in the area of safety conscious work environment. As a result of this settlement agreement, we are withdrawing the violation issued to you on February 7, 2000, and closing this enforcement action. Note that the NOV previously issued against you is an official agency record that had been publically available, and as such, will remain in the NRC Public Document Room and the NRC's document system (ADAMS). We have included the NOV with this letter in a package in ADAMS so that they can be electronically linked.

No response to this letter is required. Please feel free to contact Mr. Nick Hilton, NRC, Office of Enforcement at (301) 415-3055 or via e-mail at ndh@nrc.gov if you have any questions.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html.

Sincerely,

/RA/

Frank J. Congel, Director
Office of Enforcement

Enclosure: Settlement Agreement

cc: Edward J. Vigluicci, TVA

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Sincerely,

/RA/

Frank J. Congel, Director
Office of Enforcement

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cc: Edward J. Vigluicci, TVA

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Enclosure
Settlement Agreement