

Y. J. ...

JAN 20 1993

EA 93-003

Tennessee Valley Authority
ATTN: Dr. Mark O. Medford
Vice President of Nuclear
Assurance, Licensing and Fuels
3B Lookout Place
1101 Market Street
Chattanooga, TN 37402-2801

Gentlemen:

SUBJECT: ENFORCEMENT CONFERENCE - EMPLOYEE DISCRIMINATION

This letter is to inform you of our intent to schedule an enforcement conference to discuss employee discrimination cases that have been filed by employees of the Tennessee Valley Authority (TVA) with the U. S. Department of Labor (DOL) or which were investigated by the TVA Office of the Inspector General (TVA OIG). Most of these complaints were filed with DOL in accordance with Section 210 of the Energy Reorganization Act (ERA) which is now Section 211 of the ERA by virtue of revisions in accordance with the Energy Policy Act of 1992.

This enforcement conference and any subsequent enforcement action will address only those complaints of discrimination that were filed after November 22, 1988, the date Mr. Steven A. White, the former Manager of Nuclear Power, left TVA. Due to the number of complaints and the lengthy time period involved, this enforcement conference and its ensuing enforcement action will consider the complaints as a group and address the effect of these complaints on the environment at the TVA plants. It is our intent to address any future violations of 10 CFR 50.7 on a case-by-case basis in conformance with the NRC's Enforcement Policy.

In order to facilitate discussion at the enforcement conference, please be prepared to address the cases listed in the enclosures to this letter. Enclosure 1 involves cases in which DOL or the TVA Inspector General's office found discrimination to be a factor in the actions taken against the individuals who brought the complaint. These cases include those where DOL made a finding of discrimination at least at the level of Administrative Law Judge, where the TVA OIG found discrimination, or where an investigation by the DOL District Office found discrimination and you did not contest the finding. You should address the corrective actions taken in each case including what actions, if any, were taken against the individuals who discriminated against the complainants, where these individuals are currently working in the TVA organization and whether they continue to have supervisory responsibilities, and the actions you have taken to ensure that these individuals are no longer engaging in discriminatory practices.

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In addition, there were a series of complaints that were filed after November 22, 1988, in which there was an initial decision by the DOL District Director which found that discrimination was a factor in the actions taken against the complainants. Following that initial decision, an appeal was timely filed; however, TVA and the complainants conciliated the cases. The conciliation effectively terminated any further action by DOL, including any administrative hearing by a DOL Administrative Law Judge on the merits of the case. In these cases, although a settlement was reached, there remains the question of whether a violation of 10 CFR 50.7 occurred as a result of the actions taken against the complainants. Therefore, you are requested to address these cases at the enforcement conference, including whether any investigation was made into the matter and whether any remedial action was taken to counsel the individuals found by DOL to have been responsible for the discriminatory acts, and whether or not TVA admits that the acts were discriminatory. The cases in this group are listed in Enclosure 2.

In addition, there were ten complaints filed after November 22, 1988, in which TVA conciliated the case before any finding was issued by DOL. The NRC is concerned about whether discrimination was involved in the actions taken against these complainants. The NRC recognizes the importance of conciliation in discrimination matters and encourages such settlements wherever possible. However, notwithstanding the conciliation process, there is the question as to whether or not a violation of 10 CFR 50.7 occurred. Therefore, you are requested to address these cases at the enforcement conference, including whether any investigation was made into the matter and whether any remedial action was taken to counsel the individuals alleged to have committed the discriminatory acts, and whether or not TVA admits that the acts were discriminatory. These cases are listed in Enclosure 3.

With regard to the NRC concerns about the individuals allegedly responsible for the acts of discrimination, please be prepared to address the basis for your belief that those individuals are not currently engaging in acts of discrimination against employees who raise safety concerns, and whether any training or monitoring has been implemented to ensure that those individuals are not engaging in discrimination. You should also be prepared to address whether you are satisfied, and the basis thereof, that each of the individuals responsible for acts of discrimination fully understand the consequences of their actions and the seriousness associated with a violation of 10 CFR 50.7, and that they have developed a sensitivity to the important and protected role of individuals who raise safety concerns.

The NRC is also concerned with the potential residual effect that discrimination may have had on employees at TVA with respect to their willingness to identify safety concerns to management given the history of employee concerns and discrimination at TVA. You are expected to address this issue. Finally, you are requested to provide an overview of the TVA Inspector General's parallel investigations of discrimination complaints, the scope of those investigations, and a summary of investigative findings.

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The staff recognizes that numerous programs have been developed by TVA to address discrimination and that there are positive indicators that acts of discrimination are decreasing.

We will contact you soon after your receipt of this letter to arrange a date for the enforcement conference. Our expectation is that the conference will be held during March 1993. After the enforcement conference, the NRC will carefully review all available information to determine what NRC enforcement action is warranted to address employee discrimination at TVA.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, without the enclosures, will be placed in the NRC Public Document Room.

Sincerely,

Original Signed By:
Stewart D. Ebnetter

Stewart D. Ebnetter
Regional Administrator

Enclosures:

1. Cases with Identified Discrimination
2. Conciliated cases with initial
DOL Decision
3. Conciliated cases w/o DOL Decision

cc w/o encls:

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cc w/o encls con't: (see next page)

bcc w/encls:

- E. W. Merschhoff, RII
- J. Wechselberger, EDO
- B. Bordenick, OGC
- M. S. Callahan, GPA/CA
- F. J. Hebdon, NRR
- G. C. Lainas, NRR
- P. S. Tam, NRR
- J. Goldberg, OGC
- L. R. Plisco, EDO
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bcc w/o encls:
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*Per T/C
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