

JAN 23 1995

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EA 94-263

Tennessee Valley Authority
ATTN: Mr. Oliver D. Kingsley
President, TVA Nuclear and
Chief Nuclear Officer
6A Lookout Place
1101 Market Street
Chattanooga, TN 37402-2801

SUBJECT: OFFICE OF INVESTIGATIONS REPORT NO. 2-93-057R

Gentlemen:

This refers to the investigation conducted by the NRC Office of Investigations during the period February 24, 1994 to November 17, 1994. The investigation involved a review of an employee discrimination case filed by an employee of the Tennessee Valley Authority (TVA) with the U.S. Department of Labor (DOL). The Synopsis of the investigative report is enclosed (Enclosure 1).

The complainant, a former Chemistry supervisor at your Watts Bar facility, alleged that he was engaged in protected activity and was subsequently discriminated against in the terms and conditions of his employment at TVA. More specifically, the subject employee alleged that, shortly after expressing technical concerns during a January 22, 1993 TVA staff meeting at Watts Bar, he was told that he was fired. He was subsequently demoted instead of being terminated from TVA. On October 18, 1993, the DOL's Wage and Hour Division in Knoxville, Tennessee secured an employee/employer conciliation in this matter. This case was investigated by the TVA Office of the Inspector General (OIG).

NRC's OI Report of Investigation, "Watts Bar Nuclear Plant: Alleged Discriminatory Termination of Chemistry Employee," issued on November 17, 1994, found that the complainant had been an employee engaged in protected activity and that he was discriminated against by his immediate supervisor. This finding constitutes an apparent violation of the Code of Federal Regulations, 10 CFR 50.7, Employee Protection, committed by a member of management above the level of first-line supervision. The apparent violation is being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C. Accordingly, no Notice of Violation is presently being issued for this investigative finding. Please be advised that the number and characterization of apparent violations may change as a result of further NRC reviews.

An enforcement conference to discuss the apparent violation has been scheduled for February 9, 1995 at 1:00 p.m. as discussed with Mr. B. Schofield of your staff in a telephone conversation on January 20, 1995. The decision to hold an enforcement conference does not mean that the NRC has determined that a

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violation has occurred or that enforcement action will be taken. The purposes of this conference are to discuss the apparent violation, its cause and safety significance; to provide you the opportunity to point out any errors in the investigative synopsis; and to provide an opportunity for you to present your proposed corrective action(s). Specifically, you should address (1) the circumstances involved, including TVA management's involvement; (2) the basis for the employment action regarding the employee; (3) the immediate and long-term corrective actions taken in response to the employee's discrimination complaint; (4) actions you have taken to ensure that the involved individual(s) are no longer engaging in discriminatory practices; and (5) the actions, if any, taken or planned to assure that this employment action does not have a chilling effect in discouraging other licensee or contractor employees from raising perceived safety concerns. You should provide a copy of any investigation reports you have regarding the circumstances of this case at the enforcement conference.

In addition, this is an opportunity for you to provide any information concerning your perspectives on 1) the severity of the violation(s), 2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.B.2 of the Enforcement Policy, and 3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII. No response regarding the apparent violation is required at this time.

Your presentation documentation should not, to the extent possible, include any personal privacy, proprietary, or safeguards information so that it can be released to the public and placed in the NRC Public Document Room. If personal privacy information is necessary to provide an acceptable response, then please provide a bracketed copy of your presentation that identifies the personal privacy-related information and a redacted copy of your presentation that deletes the personal privacy-related information. Identify the particular portions of the response in question which, if disclosed, would create an unwarranted invasion of personal privacy, identify the individual whose privacy would be invaded in each instance, describe the nature of the privacy invasion, and indicate why, considering the public interest in the matter, the invasion of privacy is unwarranted. If you request withholding on any other grounds, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information).

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be placed in the NRC Public Document Room.

TVA

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Should you have any questions concerning this letter, please contact us.

Sincerely,

Original Signed By:
J. P. Jaudon

Johns P. Jaudon, Deputy Director
TVA Construction
Division of Reactor Projects

Docket Nos. 50-390, 50-391
License Nos. CPPR-91, CPPR-92

Enclosures: 1. OI Synopsis
2. Proposed Enforcement
Conference Agenda

cc w/encls: (See page 4)

cc w/encls:

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NRC Resident Inspector

U.S. Nuclear Regulatory Commission

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Spring City, TN 37381

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SYNOPSIS

On February 24, 1994, the Nuclear Regulatory Commission (NRC) Office of Investigations (OI) initiated an investigation of an allegation that a senior supervisor (department superintendent) at the Watts Bar Nuclear Plant (WBN) was discriminated and/or retaliated against by an NRC licensee, the Tennessee Valley Authority (TVA), for engaging in protected activity. According to a complaint filed with the U.S. Department of Labor (DOL), the involved TVA employee was initially notified by his immediate supervisor, the WBN Operations Manager, that he would be discharged for inadequate job performance. The disciplinary action was subsequently mitigated to demotion. The employee was advised he would be subjected to the adverse employment action less than 72 hours after the employee had voiced reservations at a meeting regarding the possible inadequacy of a WBN plant system and potential failure of the licensee to meet commitments made to the NRC regarding that system.

The circumstances of the employee's demotion were investigated by the TVA Office of the Inspector General (TVA/OIG) which determined that the adverse action against that employee constituted a violation of TVA regulations under TVA Code II, Expression of Staff Views. Based on the TVA/OIG finding and recommendation, the manager who initiated the adverse action was ordered removed from his position and demoted. The manager subsequently resigned his employment with TVA rather than accept the licensee's disciplinary action against him. A settlement of the DOL complaint was mutually agreed upon by the demoted employee and the licensee and the DOL complaint was voluntarily withdrawn by the employee. Further investigation of the entire incident was undertaken by OI.

The OI investigation substantiated the allegation that the TVA WBN Operations Manager, deliberately discriminated against a subordinate supervisor with respect to the terms, conditions, or privileges of his employment as a direct and proximate result of the supervisor engaging in the protected activity of expressing a technical concern regarding the adequacy of a plant system which has regulatory significance to the NRC.

Enclosure 1

ENFORCEMENT CONFERENCE AGENDA
U. S. NUCLEAR REGULATORY COMMISSION
AND
TENNESSEE VALLEY AUTHORITY

FEBRUARY 9, 1995
1:00 PM

- I. INTRODUCTION AND OPENING REMARKS**
S. Ebnetter, Regional Administrator
- II. DISCUSSION OF THE ENFORCEMENT POLICY**
B. Uryc, Director
Enforcement and Investigation Coordination Staff
- III. OVERVIEW**
S. Ebnetter, Regional Administrator
- IV. EXAMPLES OF APPARENT VIOLATIONS AND NRC CONCERNS**
J. Jaudon, Deputy Director
Division of Reactor Projects
- V. LICENSEE PRESENTATION**
Oliver D. Kingsley, President, TVA Nuclear and Chief
Nuclear Officer
- VI. BREAK/NRC CAUCUS**
- VII. NRC FOLLOWUP QUESTIONS**
- VIII. CLOSING**
S. Ebnetter, Regional Administrator