

April 25, 1995

EA 94-263

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

SUBJECT: ENFORCEMENT DECISION CONCERNING THE APPARENT VIOLATION OF
10 CFR 50.7, EMPLOYEE PROTECTION
(Office of Investigations Case No. 2-93-057R)

This letter refers to an apparent violation of 10 CFR 50.7, "Employee Protection," discussed with you during the February 9, 1995, enforcement conference in the NRC Region II Office in Atlanta, Georgia. The apparent violation discussed at this conference involved the alleged deliberate discrimination by a former Watts Bar Operations Manager against the former Superintendent of Chemistry, Mr. Donald Ralph Matthews. On January 25, 1993, Mr. Matthews was advised by the Watts Bar Operations Manager that he would be removed from his position effective March 1, 1993. This adverse employment action was initiated soon after Mr. Matthews voiced reservations during an internal TVA meeting regarding possible inadequacy of identified corrective actions associated with the Micro-biologically Induced Corrosion (MIC) project at Watts Bar.

On February 16, 1993, Mr. Matthews filed a complaint with the U.S. Department of Labor (DOL). The TVA Office of Inspector General (OIG) conducted an investigation and determined that the Watts Bar Operations Manager had violated TVA Code II, Expression of Staff Views. The NRC Office of Investigations (OI) conducted an investigation during the period February 24, 1994 through November 17, 1994. The NRC OI investigation substantiated the allegation that the TVA Watts Bar Operations Manager had deliberately discriminated against Mr. Matthews.

Based on the information provided to the NRC and after a careful review of all the facts and circumstances associated with the alleged discrimination by TVA against Mr. Matthews, the NRC staff has concluded there was no violation of 10 CFR 50.7. However, while we do not believe that an act of discrimination occurred in this case, we are concerned with the potential chilling effect that may have been created by Mr. Matthews' termination and subsequent demotion. We are reviewing your letter dated February 16, 1995 which provided the results of TVA's review of potential chilling effects at TVA and will inform you of the results of our review at a later date.

At the Enforcement Conference, you asked the NRC staff whether there had been a recent revision to the Enforcement Policy that stated that settlements of complaints of discrimination would be taken into account when the NRC was

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considering enforcement action. The answer that you were given, that that provision was not in the Enforcement Policy but that procedures required that settlements be taken into consideration, was not entirely correct. In fact, the Enforcement Policy was revised last year (see 59 Fed. Reg. 60697, November 28, 1994) to state that the NRC may exercise its discretion not to take enforcement action in certain circumstances where the licensee has, among other things, settled the matter to the satisfaction of the employee before the commencement of a Department of Labor adjudicatory hearing. That policy did not come into play in this case because the staff concluded that there was no discrimination here. Nevertheless, we regret our erroneous response to your question on this matter and hope that it has not caused you difficulties or inconvenience.

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 (PDR). Accordingly, should you decide to provide an additional response, the response 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 PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you believe should not be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public. If personal privacy information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the personal privacy-related information and a redacted copy of your response that deletes the personal privacy-related information. If you request withholding of such material, 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., explain why the disclosure of information would create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information).

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

Sincerely,


Stewart D. Ebnetter
Regional Administrator

Docket No. 50-390
License No. CPPR-91

cc: (See next page)

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** J Gray concurred 4/19/85
 per telephone call with
 D. Rosano 4/19/85
 JGaudon*

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NAME	AIGNATONIS	JJAUDON	BURYC	CEVANS	LREYES	JGRAY*
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