



Tennessee Valley Authority, Post Office Box 2000, Spring City, Tennessee 37381

NOV 02 1998

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20555

Gentlemen:

In the Matter of) Docket Nos. 50-390
Tennessee Valley Authority)

WATTS BAR NUCLEAR PLANT (WBN) - UNIT 1 - DEPARTMENT OF LABOR (DOL)
CASE NO. 97-ERA-53 (CURTIS C. OVERALL V. TENNESSEE VALLEY
AUTHORITY)

In letters to J. A. Scalice dated July 17, 1998 and
September 4, 1998, NRC requested that TVA provide copies of future
filings made to DOL by TVA in the Overall case. Accordingly,
enclosed are TVA's most recent filings. Enclosure 1 is entitled,
"Respondent's Response to Complainant's Third Motion to Supplement
the Record and to Remand." Enclosure 2 is entitled "Declaration
of Richard T. Purcell."

If you have any questions concerning these latest filings, please
contact me at (423) 365-1824.

Sincerely,

P. L. Pace
Site Licensing and Industry Affairs

Enclosures
cc: See page 2

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for available
Re Paul Pace (TVA)

U.S. Nuclear Regulatory Commission

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cc (Enclosures):

Mr. Luis A. Reyes
U.S. Nuclear Regulatory Commission
Region II
Atlanta Federal Center
61 Forsyth St., Suite 23T85
Atlanta, Georgia 30323

Mr. James Lieberman, Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

NRC Resident Inspector
Watts Bar Nuclear Plant
1260 Nuclear Plant Road
Spring City, Tennessee 37381

Mr. Robert E. Martin, Senior Project Manager
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

ENCLOSURE 1
ADMINISTRATIVE REVIEW BOARD (ARB) BRIEF
ARB CASE NOS. 98-111 AND 98-128
(ALJ CASE NO. 97-ERA-53)

RESPONDENT'S RESPONSE TO COMPLAINANT'S THIRD MOTION
TO SUPPLEMENT THE RECORD AND TO REMAND

**BEFORE THE ADMINISTRATIVE REVIEW BOARD
UNITED STATES OF AMERICA
DEPARTMENT OF LABOR**

IN THE MATTER OF)	
)	
CURTIS C. OVERALL)	
)	
Complainant)	
)	
v.)	ARB Case Nos. 98-111 and
)	98-128
TENNESSEE VALLEY AUTHORITY)	(ALJ Case No. 97-ERA-53)
)	
Respondent)	

**RESPONDENT'S RESPONSE TO COMPLAINANT'S THIRD MOTION
TO SUPPLEMENT THE RECORD AND TO REMAND**

Once again, this tribunal is faced with a motion from complainant Curtis C. Overall to supplement the record in this case, his third. He also requests a remand of this proceeding for a reconsideration of the relief ordered based on events occurring after the closing of the record. It is respondent Tennessee Valley Authority's (TVA) position that this motion should be denied.

As with the materials tendered with the two previous motions, neither of the two proposed exhibits (proposed CX55 and CX56) shed any light on the issues presented to the ALJ for decision, namely TVA's state of knowledge about his concern in 1995 or the state of mind of the TVA managers who decided in 1994

that Mr. Overall's job was surplus. While Mr. Overall attempted to make an issue about several telephone calls he testified he had received in June 1995 in his posthearing brief, the ALJ rejected the argument that these calls created a hostile work environment (RDO at 14-15 & n.10), and Mr. Overall did not appeal that decision.

Mr. Overall now seeks to add a new issue to this case-- Mr. Overall's allegations about harassment by unnamed persons since he was scheduled to return to work under the preliminary order on interim relief. This effort should be rebuffed for the reasons TVA has set out in its responses to Mr. Overall's first two motions.

In addition, Mr. Overall's motion does not claim that TVA is responsible, and there is no basis to seek relief from TVA. Even if Mr. Overall believes that TVA is responsible for the incidents he has reported, then the appropriate remedy would be for him to file a new complaint under the Energy Reorganization Act.¹ He has advanced no reason why this proceeding, which has already gone on for quite some time, should be further burdened with a new theory of liability. Nor has he explained why he should be

¹ Mr. Overall has presented no evidence that TVA management has participated in or condoned any of the incidents he has reported. He even admits that the persons he can identify have done "everything possible" to make his return to work "easier" and have treated him with "understanding and kindness" (motion at 4 n.3).

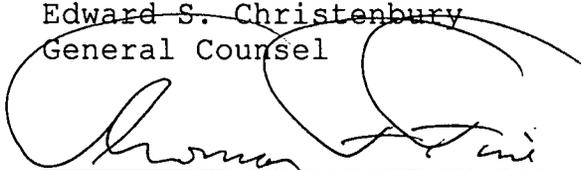
allowed to forgo the established process of an investigation by the Occupational Health and Safety Administration and, if necessary, a full development of the record before an administrative law judge.

In the alternative, if proposed CX55 and CX56 are added to the record, then TVA should be allowed to add proposed respondent's exhibit 19, the declaration of Richard T. Purcell and its attached exhibits, which is tendered with this response. Mr. Purcell is TVA's Watts Bar Site Vice President and has taken a number of prompt corrective actions in response to the incidents reported by Mr. Overall and stands ready to take further appropriate action against any TVA employee who is shown to have participated in any of these incidents.

Based on the foregoing, Mr. Overall's third motion to supplement the record and to remand should be denied.

Respectfully submitted,

~~Edward S. Christenbury~~
General Counsel



Thomas F. Fine
Assistant General Counsel



Brent R. Marquand
Senior Litigation Attorney

Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902-1499
Telephone No. 423-632-2061

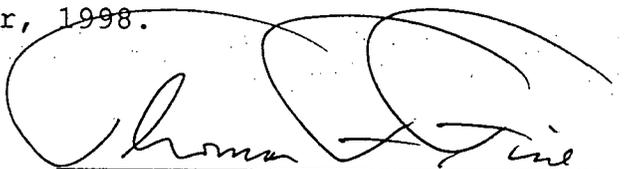
Attorneys for Respondent

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing response to complainant's third motion to supplement the record and to remand and the declaration of Richard T. Purcell have been served on complainant by mailing copies to Charles W. Van Beke, Esq., Wagner, Myers & Sanger, P.C., 1801 First Tennessee Plaza, P.O. Box 1308, Knoxville, Tennessee 37901-1308, on the Chief Administrative Law Judge by mailing copies to The Honorable John Vittone, Office of Administrative Law Judges, United States Department of Labor, Suite 400 North, 800 K Street, Washington, D.C. 20001-8002, on the Assistant Secretary, Occupational Safety and Health Division, by mailing copies to Charles N. Jeffress, United States Department of Labor, 200 Constitution Avenue, NW, Room S2315, Washington, D.C. 20210, and on the Associate Solicitor, Division of Fair Labor Standards, by mailing copies to Steven J. Mandel, Esq., United States Department of Labor, 200 Constitution Avenue, NW, Room N2716, Washington, D.C. 20210.

This 9th day of October, 1998.


Attorney for Respondent

ENCLOSURE 2
ADMINISTRATIVE REVIEW BOARD (ARB) BRIEF
ARB CASE NOS. 98-111 AND 98-128
(ALJ CASE NO. 97-ERA-53)

DECLARATION OF RICHARD T. PURCELL

BEFORE THE ADMINISTRATIVE REVIEW BOARD
UNITED STATES OF AMERICA
DEPARTMENT OF LABOR

IN THE MATTER OF)	
)	
CURTIS C. OVERALL)	
)	
Complainant)	
)	
v.)	ARB Case Nos. 98-111 and
)	98-128
TENNESSEE VALLEY AUTHORITY)	(ALJ Case No. 97-ERA-53)
)	
Respondent)	

DECLARATION OF RICHARD T. PURCELL

Richard T. Purcell subscribes and declares:

1. I am currently employed by the Tennessee Valley Authority (TVA) as the Site Vice President at TVA's Watts Bar Nuclear Plant (Watts Bar), a position I have held since January 1998. I have been employed by TVA since May 1990. Prior to my present position, I was employed in the following positions at TVA: Watts Bar Plant Manager, September 1994 to January 1998; Assistant Plant Manager, November 1993 to September 1994; Startup Test Manager, May 1992 to November 1993; NRC Interface Manager, January 1991 to May 1992; and Plant Program Manager reporting directly to the Plant Manager, May 1990 to January 1991. Prior to my coming to TVA, I was employed by the Long Island Lighting Company in the following positions: Assistant Department Manager

for New Business, December 1989 to May 1990; Operations Manager, April 1989 to December 1989; Outage and Modifications Manager, January 1987 to April 1989; Modifications Engineer, May 1985 to January 1987; Startup Manager, April 1984 to May 1985; Assistant Startup Manager, April 1983 to April 1984; Startup Engineer, October 1978 to April 1983; and Instrument Engineer, June 1975 to October 1978. As Watts Bar Site Vice President, my responsibilities include management of all activities associated with the safe operation of Watts Bar including plant operations, maintenance and modifications to plant equipment, engineering and design, work scheduling and planning, radiological control, chemistry control, nuclear security, and general administrative functions. I have personal knowledge of the matters stated herein.

2. The safe operation of Watts Bar is my highest priority and a matter of continuing attention for me. In order to ensure the safe operation of the plant, it is vital that all employees and contractors feel free to identify safety concerns, since the only way to deal with potential problems is to identify them as they arise and once they are identified to resolve them in an appropriate fashion. TVA Nuclear has a formal policy which encourages open communication and the expression of differing views, including the unfettered ability to raise safety and quality concerns without any fear of reprisal. Accordingly,

anything which discourages employees and contractors from coming forward with safety concerns is contrary to TVA Nuclear policy and poses a potential problem for the safe operation of Watts Bar.

3. In late May 1998, I was informed that Curtis C. Overall, the complainant in this proceeding, had received some communications which he perceived to be threats. At that time, Mr. Overall was scheduled to report back to work at Watts Bar under the terms of the preliminary order on interim relief issued by the administrative law judge in this action. Based on this report, Mr. Overall requested, and was given, an extension of time before he was actually scheduled to report to Watts Bar. Thereafter, Mr. Overall reported for work on August 5, 1998.

4. Also based on Mr. Overall's report of receiving threatening communications, Phillip L. Reynolds, who was then serving as General Manager of Nuclear Human Resources, acting in the name of and at the request of John A. Scalice, who was then serving as TVA's Acting Chief Nuclear Officer and was my superior, sent a memorandum dated June 3, 1998, to TVA's Inspector General, George Prosser, confirming an earlier oral request for an investigation by the Office of the Inspector General (OIG) into the allegations Mr. Overall had made. A copy of that request is attached as exhibit 1.

5. On June 10, 1998, Mr. Scalice sent a memorandum to me and other senior managers in TVA Nuclear on reinforcing TVA Nuclear's policy against intimidation and harassment. A copy of that memorandum is attached as exhibit 2. As directed in that memorandum, the points covered in it were raised with my managers and supervisors at Watts Bar in June 1998, and they were directed to communicate the same points throughout the Watts Bar workforce. I was told that they carried out this assignment.

6. On August 27, 1998, I was told that Mr. Overall had received a note in the TVA interoffice mail of a threatening nature that day. The incident was reported to the OIG, TVA's Office of the General Counsel, and TVA's Concerns Resolution Staff. The OIG was asked to investigate this incident. On August 28, 1998, I met with the Watts Bar managers and supervisors to express my concern about the incident and to reemphasize TVA Nuclear's zero tolerance policy towards intimidation in the workplace. Copies of the August 28, 1998, memorandum I sent to those managers and supervisors and of the handout each of the attendees received are attached as collective exhibit 3. I directed the managers and supervisors to "roll down" the messages from the meeting and the memorandum to all of their employees as soon as possible and was informed that this "roll down" occurred as directed.

7. The Nuclear Regulatory Commission (NRC) was kept fully informed of the incidents involving Mr. Overall and about TVA's efforts to address the matter. Specifically, the Watts Bar Licensing Staff spoke directly with the NRC's Senior Resident Inspector who is stationed at Watts Bar. I also spoke directly with NRC's Region II Administrator, Luis Reyes, who is located in Atlanta, Georgia, about the incidents and about the actions taken by TVA in response to the incidents. On September 4, 1998, Mr. Reyes sent me a letter acknowledging the actions TVA had taken in response to the August 27, 1998, incident. A copy of that letter is attached as exhibit 4.

8. On September 9, 1998, I learned that Mr. Overall had found a fake bomb in the bed of his truck while it was parked at the Bradley Square Mall in Cleveland, Tennessee, near where Mr. Overall lives. I was informed that various law enforcement agencies and TVA's OIG were already looking into the matter. I also spoke again to Mr. Reyes at NRC Region II to inform him about the incident. I was also informed that Mr. Scalice spoke directly with NRC's Executive Director of Operations, Joseph Callan, located in NRC's headquarters in Rockville, Maryland, about the incident. Based on this incident, I took the following actions. On September 10, 1998, I issued a site-wide bulletin to all Watts Bar employees making it clear that TVA would not tolerate any of its employees from engaging in intimidation or

harassment of anyone who had raised a safety concern and urging that anyone with any knowledge of the events come forward so that we could get the matter resolved. A copy of that bulletin is attached as exhibit 5. On September 15, 1998, I held several site-wide meetings with employees to communicate my personal concerns about the incidents which Mr. Overall had reported to TVA. A copy of the talking points I used at those meetings is attached as exhibit 6. I also wrote to the NRC on September 17, 1998, to update them on developments and the actions we had taken to address the incidents reported by Mr. Overall as well as any potential "chilling effect" these events may be having on workers at the site. A copy of that letter is attached as exhibit 7.

9. Mr. Overall has not reported to work at Watts Bar since September 4, 1998. He is still on TVA's payroll and will be maintained on administrative leave until such time, hopefully in the near future, when he will return to work. Under administrative leave, he continues to be paid at his regular rate of pay and he is not being charged any annual or sick leave.

10. To this date, I am unaware of any evidence which identifies any suspect in these incidents. If any TVA employees are identified as participating in any of these incidents, they will be subject to all appropriate disciplinary action, up to and including termination, and TVA would cooperate fully in any criminal proceedings against such individuals.

11. Pursuant to 28 U.S.C. § 1746 (1994), I declare under penalty of perjury that the foregoing is true and correct.

Richard T. Purcell
Richard T. Purcell

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SENSITIVE INFORMATION

June 3, 1998

G. T. Prosser, ET 4C-K

REQUEST FOR INVESTIGATIONS OF TWO ALLEGATIONS OF THREATS
RECEIVED BY TWO OPEN DEPARTMENT OF LABOR (DOL) COMPLAINANTS

This is to confirm a verbal request for investigations made by TVAN Human Resources, Donna J. Green, to TVA Office of Inspector General (OIG), Ron Taylor, on Monday, June 1, 1998.

I became aware of two DOL complainant allegations of phone threats received at each of their residences. The following is the specific knowledge I became of aware and when:

1. On Friday, May 29, 1998, Tom Fine with the TVA Office of the General Counsel (OGC) informed K. Jill Wallace (Watts Bar Nuclear, Senior Human Resources Consultant) that Curtis C. Overall, through his attorney, Charles VanBeke, had requested an extension (to June 29, 1998) of Mr. Overall's return to work date of Monday, June 1, 1998. The extension was being requested as a result of Mr. Overall allegedly receiving phone threat(s) at his residence. Mr. Overall is returning to work at TVA as a result of DOL's Administrative Law Judge's decision against TVA and preliminary order to provide him with interim relief.
2. On Monday, June 1, 1998, Brent Marquand with OGC was informed by Ann P. Harris's attorney, Lynne Bernabei, that Ms. Harris had received a threat the night before (Sunday, May 31, 1998) at her residence. (See attached e-mail from Brent Marquand.)

G. T. Prosser

Page 2

June 3, 1998

Please investigate the circumstances surrounding these allegations and provide a written report to me. Also, please acknowledge receipt of this request and the anticipated completion date on these investigations.

P. Z. Reynolds for

J. A. Scalice
Acting Chief Nuclear Officer
LP 6A-C

PLR:DJG:JSS

Attachments

cc (Attachments):

J. E. Boyles, LP 3A-C
T. F. Fine, ET 11A-K
H. K. Fogleman, LP 3A-C
D. J. Green, LP 3A-C
B. R. Marquand, ET 11A-K
R. W. Taylor, ET 4C-K
K. J. Wallace, ADM 1R-WBN

Reynolds, Phillip L.

From: Marquand, Brent R.
Sent: Monday, June 01, 1998 9:50 AM
To: Fox, James E.; Christenbury, Edward S.; Vigluicci, Edward J.; Reynolds, Phillip L.
Cc: Smith, Carole B.; Green, Donna J.; Sales-Long, Linda
Subject: Harris v. TVA

The Ann Harris deposition was scheduled to begin at 10 a.m. today. At about 9:30, I received a telephone call from Lynne Bernabei who said they would be delayed. She said that Ann had received a threat the night before & that they were reporting it to the Roane County Sheriff and the FBI. She also said that Overall had been getting threats. I asked about the nature of the threat & she said that the caller had said that Ann had been talking & that it would stop [or would be stopped]. I reported this information to Ron Taylor in the IG's office. He said he would try to get a copy of the report. I will followup with questions on the subject during the deposition.

June 10, 1998

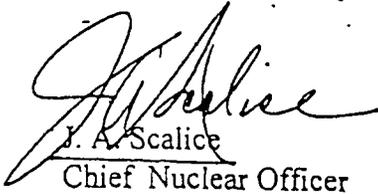
Those listed

REINFORCING TVA NUCLEAR'S (TVAN'S) POLICY AGAINST INTIMIDATION AND HARASSMENT

Recent reports have demonstrated that we cannot emphasize enough the importance of encouraging and protecting the communication of safety concerns among all TVAN employees and contractors. As we have discussed on many occasions, free and open communication among our workforce is a critical part of our nuclear program's continued success. Those who raise concerns are entitled to have them addressed promptly and with respect, no matter the forum in which those concerns are raised. It is up to us to continually reinforce these messages through our words and actions and ensure they reach the entire workforce.

I know that each of you are well aware of my expectations with regard to handling of concerns. Managers and supervisors must, through their day-to-day interactions, set an example and create an atmosphere in which employees feel free to express any problems. You should also be mindful of the manner in which fellow employees treat those who raise, or those who in the past have raised, concerns. Any erosion of employee confidence in our ability to objectively evaluate and resolve a concern has a negative impact on our program. Any retaliation, real or perceived, by any manager, supervisor, or co-worker may also have an impact well beyond the individual target of that retaliation which can affect the safety-consciousness of our workforce.

I am asking each of you to raise these points with your managers and supervisors and have them communicated through your workforce. Please be prepared to discuss the actions you have taken to carry out my direction at our next monthly business meeting, as well as any feedback you receive in communicating these messages.



J. A. Scalice
Chief Nuclear Officer

LP 6A-C

R. J. Adney, LP 6A-C

J. A. Bailey, LP 6A-C

Masoud Bajestani, OPS 4A-SQN

R. R. Baron, LP 5M-C

M. J. Burzynski, BR 4X-C

C. M. Crane, PAB 1E-BFN

R. V. Drake, BR 4X-C

W. R. Hamm, BR 3H-C

R. T. Purcell, ADM 1V-WBN

P. L. Reynolds, LP 3A-C

JAS:JSS

cc: E. J. Vigluicci, ET 10A-K

O. J. Zeringue, ET 12A-K

EDMS, WR 4Q-C

August 28, 1998

Those listed, Watts Bar Nuclear Plant

WATTS BAR NUCLEAR PLANT (WBN) - ZERO TOLERANCE OF INTIMIDATION
IN THE WORKPLACE

This memorandum follows up today's meeting in which we discussed a recent incidence of intimidation in the workplace. I ask that each of you re-read the handout material I provided at the close of the meeting. I would also like to take this opportunity to re-emphasize some of the key points which we discussed at some length:

1. TVA policy strictly forbids any manager or employee from intimidating another for expressing differing views or for raising safety or quality concerns. We have a zero tolerance for such activity, and we will take appropriate disciplinary action against anyone who is found to violate this policy. Also, beyond violating TVA policy, acts of intimidation can run afoul of Federal and State laws and can be penalized by imprisonment.
2. Acts of intimidation against those who raise safety concerns run directly counter to TVAN's constant striving to foster communication among our workers. To achieve world-class status as a nuclear utility, we must be able to find problems first-hand through employee input, and be able to quickly resolve those problems. Employees are our most valuable asset when it comes to identifying and correcting problems. Acts of intimidation lessen the effectiveness of this important communication link, and it is detrimental to the entire TVAN organization.
3. The act of intimidation not only harms the recipient of this inappropriate behavior, it can also have a chilling effect on co-workers who see its effects and who may be less inclined to raise concerns in the future. It is, therefore, up to you as managers to do what you can to promote an atmosphere where employees feel free to raise concerns. This includes setting a good workplace example of tolerance and responsiveness in addressing concerns, as well as keeping an eye out for and correcting inappropriate behavior aimed at anyone who may have raised a concern.
4. TVA has worked long and hard to establish a workplace where employees feel free to express concerns to their supervisors and management. Within TVAN, and especially here at Watts Bar where so much progress has been made in recent years, we must be

very mindful and protective of our healthy workplace environment, and do all we can to protect and maintain it.

As I stated this morning, I expect each of you to roll down these messages and those conveyed to you in this morning's meeting to your employees as soon as possible. After you have done so, please send me a short memorandum telling me how you carried out my direction, as well as how these messages were received.



R. T. Purcell
Site Vice President
ADM 1V-WBN

R. J. Beecken, MOB 2P
J. L. Carne, MDB 1D
K. T. Christman, WTC 1S
W. A. Clothier, MTL 1A
J. W. Cox, WTC 1G
D. C. Jackson, EQB 2V
S. J. Krupski, MOB 2A
D. A. Kulisek, MOB 2M
W. R. Lagergren, MOB 2R
J. E. Maddox, EQB 1A
C. R. McIntosh, ADM 1V
C. D. Nelson, MOB 2Q
N. D. Nelson, ADM 1B
P. L. Pace, ADM 1L
F. L. Pavlechko, WTC 1S
S. W. Spencer, EQB 2V
K. J. Wallace, ADM 1R
J. A. West, MOB 2R
K. W. Whittenburg,, ADM 1V

Intimidation is Absolutely Contrary to TVAN's Mission

- Intimidation of TVA employees for raising safety concerns violates TVA's policy against intimidation and harassment and TVA's policy regarding employee's freedom of expressing differing views.
- Intimidation of TVA employees who raise or who have raised concerns is absolutely contrary to TVA Nuclear's stated goals and objectives - to operate our nuclear units in an efficient and safe manner. To accomplish both goals, we must be able to discover any and all problems and act quickly and efficiently to resolve them. Because employees are the best source of information, we must rely on their ability to engage in free, unfettered identification and communication of problems.
- There are several forums available to raise problems, and TVA policies and practices protect the use of all of them.
- Intimidation not only affects the recipient, it may also send a message to others who accept their obligation to raise problems and concerns and be a part of the problem identification/resolution process. This is of special concern to TVAN as well as the regulator, NRC, since it can have a direct effect on the safety consciousness of the work environment - - an environment we have worked long and hard to establish and maintain here at WBN.
- For these reasons, any violation of TVA and TVAN policy against intimidation and harassment is subject to disciplinary action, up to and including dismissal from employment.
- You should also be aware that threatening and intimidating an individual for doing his/her job here on WBN property may also amount to a State and/or Federal crime, punishable by imprisonment.