

January 23, 1996

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: SECRETARY OF LABOR PRELIMINARY ORDER
(Department of Labor Case No. 95-ERA-20)

Dear Mr. Kingsley:

On December 11, 1995, the Secretary of Labor (SOL) issued a Preliminary Order in Department of Labor (DOL) Case No. 95-ERA-020, Robert O. Klock v. Tennessee Valley Authority and United Energy Services Corporation (Enclosed). This Order resulted from a September 29, 1995, DOL Administrative Law Judge's Recommended Decision and Order which found that TVA discriminated against Mr. Klock when his employment was terminated as a result of his engaging in protected activities. The Order required the Tennessee Valley Authority (TVA) to (1) reinstate Mr. Klock either as a contract employee or its own employee for, at a minimum, as long as TVA continues to employ contract workers performing start-up work at Watts Bar and (2) pay Mr. Klock back pay in the amount of \$99,390.41 with interest from the date the payments were due as wages until the actual date of payment.

NRC has previously discussed this case with you in letters dated February 27, 1995 and October 13, 1995. In your responses to these letters you have stated your disagreement with DOL's conclusion that a violation of Section 211 of the Energy Reorganization Act of 1974 occurred. However, as you are aware, the NRC is continuing to monitor the progress of this case. To ensure that we continue to have all pertinent facts for our on-going evaluation, you are requested to provide to the NRC all information regarding TVA's corrective actions or planned corrective actions with regard to the December 11, 1995, SOL Preliminary Order. Your written response should be submitted to this office within 14 days of your receipt of this letter.

Your 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 NRC Public Document Room (PDR). 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. 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

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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).

Your response to this letter, the DOL decisions, and other available information relevant to Mr. Klock's case will be considered by NRC in our overall deliberations and any future actions regarding this matter.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC PDR.

The response directed by this letter is not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

Sincerely,



Ellis W. Merschoff, Director
Division of Reactor Projects

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

Enclosure: As stated

cc w/encl:
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cc w/encl: cont'd on Page 3

TVA

3

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cc w/encl: cont'd on Page 4

TVA

4

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U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: December 11, 1995
CASE NO. 95-ERA-20

IN THE MATTER OF

ROBERT O. KLOCK

COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY and
UNITED ENERGY SERVICES CORP.,

RESPONDENTS.

BEFORE: THE SECRETARY OF LABOR

PRELIMINARY ORDER

On September 29, 1995, the Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. and O.) in this case arising under the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. §5851 (Supp. IV 1992), as amended by the Comprehensive National Energy Policy Act of 1992 (CNEPA), Pub. L. No. 102-486, 106 Stat. 2776, 3123. A final decision on the merits of the R. D. and O. must await a Secretarial decision on the substance of this case, which will be issued in due course.

In 1992 the whistleblower provision of the ERA was amended in several respects by Section 2902 of the CNEPA. The amended provision is applicable to this case, which was filed subsequent

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Enclosure

to the effective date of the CNEPA. It provides in pertinent part:

Upon the conclusion of [a public hearing before an ALJ] and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B), but may not order compensatory damages pending a final order.

* * * *

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) of this section has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

42 U.S.C. § 5851(b)(2)(A) & (B) (1988 and Supp. V).^{1/}

The plain meaning of Section 5851(b)(2)(A) & (B) requires a preliminary order enforcing the R. D. and O. provisions against Respondent Tennessee Valley Authority (TVA) regarding backpay, interest and costs. See *C. D. Varnadore. Oak Ridge National Laboratory and Lockheed Martin Energy Systems, Inc.*, Case Nos.

^{1/} Subparagraph B was not amended by the CNEPA. On March 16, 1994, the Secretary of Labor proposed regulations to implement the CNEPA amendments to the ERA. 59 Fed. Reg. 12506. These regulations have not yet been finalized.

94-CAA-2, 94-CAA-3, Preliminary Order, September 11, 1995, slip op. at 5.

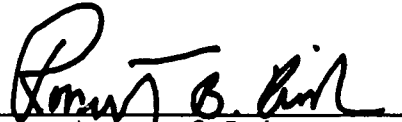
The ALJ has not yet issued a Recommended Supplemental Decision and Order (R. S. D. and O.) concerning the payment of costs and expenses, including attorney fees. Once a R. S. D. and O. is issued I will supplement this preliminary order.

Therefore TVA is preliminarily ordered to:

1) Reinstate Complainant either as a contract employee or its own employee for, at a minimum, so long as TVA continues to employ contract workers performing start up work at Watts Bar; and

2) Pay Complainant back pay in the amount of \$99,390.41 with interest from the date the payments were due as wages until the actual date of payment, in accordance with 26 U.S.C. § 6221.

SO ORDERED.


Secretary of Labor

Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: Robert O. Klock v. Tennessee Valley Authority and
United Energy Services Corporation

Case No. : 95-ERA-20

Document : Preliminary Order

A copy of the above-referenced document was sent to the following
persons on DEC 11 1995.

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telephone call
by J. Gray on 1/22/96