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

SEP 24 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 is TVA's most recent filing entitled, "Respondent's Response to Complainant's Second Motion to Supplement the Record."

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

Sincerely,

P. L. Pace
Site Licensing and Industry Affairs

Enclosure
cc: See page 2

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U.S. Nuclear Regulatory Commission

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cc (Enclosure):

Mr. Luis A. Reyes
U.S. Nuclear Regulatory Commission
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Mr. James Lieberman, Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
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Rockville, Maryland 20852

ENCLOSURE

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 SECOND MOTION
TO SUPPLEMENT THE RECORD

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 SECOND MOTION
TO SUPPLEMENT THE RECORD

Complainant Curtis C. Overall has filed another motion to supplement the record in this case. This motion is not well taken for many of the same reasons as advanced by respondent Tennessee Valley Authority (TVA) in its response to the first motion, which TVA adopts for purposes of responding to this second motion. Several additional points need to be made.

This motion seeks to add to the record portions of a Problem Evaluation Report (PER) from TVA's Watts Bar Nuclear Plant (Watts Bar) which appears to have been initiated in July 1998 (proposed CX53 at 1)¹ and further speculation from Mr. Overall about

¹ The copy of CX53 provided to TVA shows on its face that it is in fact a five-page document. However, the copy served on TVA

conditions in the ice condenser at Watts Bar (proposed CX54). Neither of these documents should be added to the record and neither is relevant to the issues before this tribunal.

Mr. Overall's main argument is that he needs to add these materials to the record to correct an impression he asserts was created by TVA about whether additional broken screws were found in the ice condenser after April 1995. This argument shows that the materials should not be added to the record.

In the first instance, Mr. Overall continues in his effort to litigate the technical merits of the PER on ice basket screws which he initiated in April 1995 (PER 246, CX23). As TVA has argued in its briefs on its petition for review and in response to Mr. Overall's first motion to supplement the record, the technical merits of the April 1995 PER are irrelevant to this proceeding. Further information on this subject would burden, rather than add to, the record.

Mr. Overall also is blowing TVA's proof on broken ice basket screws out of proportion. As the hearing transcript shows (tr. 230, 237), Gary Jordan, the degreed engineer who was responsible for the ice condenser system after Mr. Overall was transferred to TVA Services, testified at the hearing that no

(. . . continued) includes only two pages, denominated "1 of 5" and "3 of 5." Thus, the exhibit should be excluded because of its incompleteness, if for no other reason.

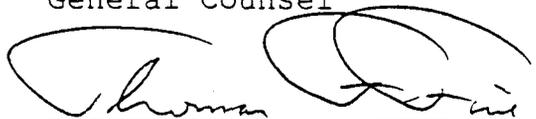
additional broken screws had been found up to that time. Whatever relevance that information has (and it was offered solely because of Mr. Overall's focus on the technical merit of the April 1995 PER), the fact that some additional broken screws were found in July 1998 (proposed RX53 at 1), over three years after Mr. Overall initiated the PER which is the basis for his claim here, is completely irrelevant to TVA's state of knowledge about his concern in 1995 or to the state of mind of the TVA managers who decided in 1994 that Mr. Overall's job was surplus.

Mr. Overall's declaration (proposed CX54) suffers from the same defects as proposed CX53 and has its own unique flaws. It contains his speculations about conditions in the ice condenser during a period of time he was admittedly not at Watts Bar or even employed by TVA. His testimony is thus not based on personal knowledge. In addition, TVA has not had (and will not have) any opportunity either to cross-examine him on these matters or to present additional evidence of its own unless this tribunal remands the matter for an additional hearing, an option which probably neither party has requested.

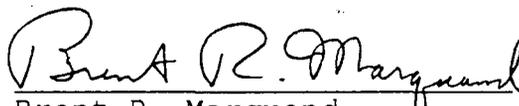
Based on the foregoing, Mr. Overall's second motion to supplement the record should be denied.

Respectfully submitted,

Edward S. Christenbury
General Counsel



Thomas F. Fine
Assistant General Counsel



Brent R. Marquand
Senior Litigation Attorney

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Attorneys for Respondent

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing response to complainant's second motion to supplement the record has been served on complainant by mailing a copy 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 a copy 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 a copy 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 a copy to Steven J. Mandel, Esq., United States Department of Labor, 200 Constitution Avenue, NW, Room N2716, Washington, D.C. 20210.

This 16th day of September, 1998.



Attorney for Respondent