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

FEB 1 8 1999

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

Gentlemen:

In the Matter of	)	Docket No. 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 Curtis Overall case. Accordingly, enclosed is TVA's most recent filing. The enclosed filing is entitled, "Reply in Support of Respondent's Motion to Remand."

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

Sincerely,

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P. L. Pace
Manager, Licensing and Industry Affairs

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Enclosure
cc: See page 2

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PDR ADOCK 05000390
P PDR

cc (Enclosure):

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

REPLY IN SUPPORT OF RESPONDENT'S MOTION 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	)	

REPLY IN SUPPORT OF RESPONDENT'S MOTION TO REMAND

Complainant's opposition to the motion to remand filed by respondent Tennessee Valley Authority (TVA) is predicated on the timing of TVA's motion, and not its underlying merits. In essence, complainant argues that TVA's motion goes solely to whether complainant is entitled to different or further relief than that set out in the recommended decision and order (RDO) and therefore should be denied.

The situation is not as simple as complainant now describes it. In his third motion to supplement the record and to remand, he sought to add to the record before this tribunal on the question of TVA's liability his affidavit and several exhibits on the threats he has claimed to receive since the RDO was issued. Now that some information which suggests that he had a role in

manufacturing those threats has been developed by TVA's Office of the Inspector General (OIG), he is reluctant to have the case remanded to fully and fairly explore whether the threats he seeks to add to the record were real.

TVA agrees that this case has gone on for quite some time. However, TVA came to its present position only because of the OIG's investigation of the purported threats reported by complainant. The question of these claimed threats was raised before the ALJ and in this tribunal by complainant, not by TVA. If the threats have no bearing on determining TVA's liability, then why did complainant move to add information about his claims to the record at this time, a motion he has not withdrawn. Although complainant argues (resp. at 3) that he did not request "a hearing on 'additional damages,'" in the same breath he admits that he is seeking "front pay" (resp. at 3). Despite his disclaimer that he is not seeking additional damages, complainant's motion also asserts that he has incurred "psychological harm" and has been "subjected to a hostile work environment" (third motion to supplement at 2, 3).

Complainant also argues (resp. at 4) that TVA's motion is "premature" since the threats "came after the ALJ had already ordered reinstatement" (resp. at 5) and the threats "go only to the issue of . . . relief" (resp. at 4). Complainant is incorrect. At the hearing, complainant testified to threatening

telephone calls and a threatening incident with another vehicle. The ALJ made a specific finding regarding those calls (RDO at 25 ¶ 21). The ALJ also made credibility findings in favor of complainant (e.g., RDO at 27). Complainant has argued to this tribunal that the ALJ's decision on liability should be approved because of the "ALJ's [o]wn [c]redibility [d]eterminations" (Aug. 12, 1998, brief at 3). Obviously, the ALJ should be given the opportunity to consider whether the threats were real and also to consider the impact on complainant's credibility in the context of the liability determination.

TVA's motion to remand should be granted.

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 reply in support of motion to remand 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 2d day of February, 1999.

Thomas F. Fine

Attorney for Respondent