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U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, DC 20515

November 10, 1988

The Honorable Lando W. Zech, Jr.
Chairman
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chairman:

This is in regard to the Commission's failure to deal in a competent and timely manner with the Tennessee Valley Authority's March 20, 1986 letter concerning TVA'S compliance with the Commission's Quality Assurance requirements.

In bringing this matter to your attention, I refer you to the Commission's testimony at a November 19, 1981 hearing before the House Interior Committee's Subcommittee on Energy and the Environment. The subject matter of the November 19 hearing was Quality Assurance in Nuclear Powerplant Construction. At this hearing, Mr. William Dircks, who was then the NRC Executive Director for Operations, described what was necessary in order to comply with the NRC's quality assurance requirements specified in 10 CFR 50, Appendix B. Mr. Dircks also described what he called serious quality assurance breakdowns at five nuclear projects.

On December 19, 1985, members of TVA'S Nuclear Safety Review Staff (NSRS) informed Commissioner Asselstine that, at Watts Bar, TVA failed in significant respects to comply with Appendix B. On January 3, 1986, after hearing of the presentation to Commissioner Asselstine, the NRC staff, in a letter signed by Mr. Eisenhut, requested TVA to state its corporate position with respect to the information provided to Mr. Asselstine. TVA responded on March 20, 1986, stating that there had been "no pervasive breakdown" of the QA program at Watts Bar and that "...the overall QA program is in compliance with 10 CFR 50, Appendix B."

No special genius was required to perceive that the March 20 letter and its attachments misrepresented and obfuscated the status of Watts Bar. At that time, TVA and NRC documents, testimony of numerous TVA employees, and the idleness of Watts

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Bar notwithstanding TVA's February 1985 certification of completion of construction, painted a picture of a plant that met the criteria for a serious quality assurance breakdown such as described by Mr. Dircks in November 1981.

Yet, while the March 20 letter was false on its face, nearly two months elapsed before the NRC informed TVA that the letter was not an adequate response to the January 3, 1986 request for information; nearly ten months elapsed before the matter was referred to the Office of Investigation (OI); and more than one year elapsed between the time the Commission was briefed on the OI findings and the issuance of a Notice of Violation.

Instead of confronting the matter directly, which I believe could have promptly laid it to rest with a reprimand, the Commission itself sowed confusion as to what was required of licensees with regard to compliance with Appendix B and with respect to accuracy and completeness of licensee submittal. Instead of immediately informing TVA that its response was unacceptable, the Commission procrastinated; it did not state its position as to what was required to comply with Appendix B; it needlessly delayed documenting the deficiencies and inaccuracies in the March 20 letter; it did not respond substantively to an analysis by a TVA contractor, the Quality Technology Company, which concluded that Appendix B had not been complied with; and it allowed itself to become entangled in specious argumentation concerning definitions of "pervasive", "overall compliance", and the time span to which the TVA March 20 letter applied.

Moreover, and particularly troubling, is that the Commission and its present and former staff, seem taken with the idea that the March 20 letter was not material to the regulatory process since the NRC was aware on March 20, 1986 that a quality assurance breakdown had occurred at Watts Bar. This posture holds that a false statement, even if sworn, is of trivial regulatory significance if the NRC knew the statement to be false; this is tantamount to saying an intentional false statement is not a lie since it was known not to be true. I would add, that if the Commission and its staff knew that a quality assurance breakdown of the type describe by Mr. Dircks had occurred at Watts Bar, why did the staff send its January 3 inquiry to TVA? Why, in this case, did the Commission fail to inform me at the Subcommittee's October 1, 1986 hearing that the NRC was aware in January 1986 that a serious QA breakdown had occurred at Watts Bar?

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Finally, I am concerned about circumstances that led to the Commission's downgrading of the staff's recommended enforcement action.

The staff, in SECY Paper 88-283, recommended designating the conclusions in the March 20 letter and their reiteration on June 5, 1986 as material false statements that constituted very significant violations of the NRC regulations. The staff also recommended that these and other material false statements concerning the extent of TVA's review of the Appendix B matter be the subject of a fine totalling \$160,000.

The Commission rejected the staff's recommendations concerning compliance with Appendix B and the imposition of the \$160,000 fine. The Commission said that it "... has concluded that under the circumstances, that a civil penalty for this matter is not necessary to further focus the attention of either TVA or the industry on the importance of complete candor in dealing with the NRC."

One can only wonder about what led the Commission to conclude that the civil penalty was not necessary, particularly in view of TVA's immediate response that it was "disappointed that TVA received a Notice of Violation of statements relating to Appendix B. We continue to believe that Admiral White did not intend to mislead the NRC on this or any matter."

I am curious as to why the October 21, 1988 Notice of Violation was released in what appears to have been a hurried manner even though the issuance date was one week after the date that SECY 88-283 had set as a deadline for Commission action on the staff's recommendation. Certain of the language in the Notice of Violation does not make sense, making it appear that the staff's recommended NOV was subjected to a hurried and careless concurrence and editing process.

We would appreciate your providing the following information prior to December 5, 1988.

- I. Records, including a chronology, of Commission deliberations and staff documents pertaining to the NRC staff's recommended enforcement action; e.g., transcripts of meetings, intra-Commission memoranda, evidence and/or analyses leading to a conclusion that a civil penalty was not necessary to focus TVA's attention upon the importance of candor, and analyses leading to the NRC's finding that TVA's March 20 conclusory statements

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- concerning compliance with Appendix B were not inaccurate and/or incomplete statements made with the intent to mislead.
- II. NRC staff analyses and comments thereon (including comments of the Office of Investigations) leading NRC staff to conclude that TVA's March 20 conclusions concerning compliance with Appendix B were not inaccurate and/or incomplete statements made with the intent to mislead.
 - III. Records of NRC analyses and conclusions concerning the existence (or non-existence) of documents that support TVA's March 20 and June 5 submittals.
 - IV. Records of any NRC review or analysis of the May 30, 1986 Quality Technology Company (QTC) 73 page report describing widespread noncompliance with Appendix B at Watts Bar.
 - V. A statement of the Commission positions with respect to what constitutes a "pervasive" QA breakdown, a serious QA breakdown, a widespread QA breakdown, and "overall compliance" with Appendix B.
 - VI. Any staff or Commission analysis and/or discussions of TVA assertions that there was a regulatory basis for claiming there had been no "pervasive" QA breakdown at Watts Bar; e.g., enumeration of "pervasive" QA breakdowns at reactors licensed by the NRC, comparisons made by TVA or the NRC of the Watts Bar situation with the situations at other plants where the word "pervasive" had been used to describe the QA situation, etc.
 - VII. A statement of the Commission position with respect to the extent to which the 11 allegedly non-complying items described to Commissioner Asselstine were in fact examples of failures of the Watts Bar QA program.
 - VIII. A statement of the Commission position with respect to the extent to which the Quality Assurance situation at Watts Bar compared in late 1985 with the QA situations at Zimmer, Diablo Canyon, Midland, South Texas, and Marble Hill which the Commission designated in November 1981 testimony as having experienced serious QA breakdowns.

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- IX. A statement of the Commission position with respect to the extent of compliance with Appendix B at Watts Bar on December 19, 1985, on January 3, 1986, and on March 20, 1986; e.g., a position and analysis with respect to whether the Commission considers that a widespread QA breakdown had occurred at Watts Bar, whether the Commission believes that a plant in the condition such as that at Watts Bar in January 1986 could be characterized as being in overall compliance with Appendix B.
- X. Any staff or Commission analysis that would support the proposition that the QA program at Watts Bar was in overall compliance with Appendix B on January 3, 1986 although more than four years will have transpired between TVA's February 20, 1985 certification of Watts Bar readiness for issuance of an Operating License and actual issuance of such a license.

Mr. Chairman, I can only conclude by commenting that the Subcommittee has been reviewing NRC's capability and willingness to regulate independently its utilities for almost four years. I had been personally encouraged that you would eliminate the malaise that was so pervasive under former Chairman Palladino. I hope I will not be disappointed.

Sincerely,



John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

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