

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DD-95-20

OFFICE OF ENFORCEMENT

James Lieberman, Director

In the Matter of

TENNESSEE VALLEY AUTHORITY  
(Watts Bar Nuclear Plant)

Docket Nos. 50-390, 50-391

DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. INTRODUCTION

On February 25, 1994, George M. Gillilan (Petitioner) filed a request for enforcement action pursuant to 10 CFR 2.206 (Petition). The Petitioner requested that the Nuclear Regulatory Commission (NRC or Commission): (1) immediately impose a \$25,000 per day fine on Tennessee Valley Authority (TVA or Licensee) until all reprisal, intimidation, harassment and discrimination actions involving Petitioner are settled to his satisfaction, and (2) appoint an independent arbitration board to review all past DOL suits and EEO complaints filed against TVA concerning Watts Bar. Since the latter remedy is beyond the scope of the Commission's authority, it was denied in a letter to Petitioner dated April 7, 1994, which acknowledged receipt of the Petition.<sup>1</sup>

Petitioner supplemented his Petition by letter dated June 16, 1994, rebutting the Licensee's May 20, 1994 letter responding to the Petition. On June 28 and July 6, 1994, Petitioner reiterated his allegation that the Licensee was continuing to discriminate against him and described the Licensee's actions to deny Petitioner his nuclear plant access security clearance. In a letter dated February 24, 1995, Petitioner stated that TVA's continued pattern of harassment and intimidation had resulted in Petitioner's being "blackballed" in the nuclear industry. In a letter dated February 28, 1995, Petitioner advised the NRC that he had been terminated by TVA.

II. BACKGROUND

As the basis for his February 25, 1994 request, Petitioner asserted that he had reported safety concerns to the Commission and that, as a result, TVA management had subjected him to continuous intimidation, harassment, discrimination and reprisal actions, that his name had been placed on a blackball list that had been circulated nationwide preventing him from obtaining suitable employment outside of TVA, and that these actions by TVA had affected his mental and physical health. In a letter dated February 28, 1995, Petitioner asserted that TVA's pattern of harassment and intimidation had culminated in the termination of his employment with TVA.

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<sup>1</sup> The letter also denied Petitioner's request for immediate action.

### III. DISCUSSION

#### *Specific Allegations*

Petitioner bases his requests for sanctions on his assertion that he was a victim of unlawful discrimination pursuant to 10 CFR 50.7. Petitioner alleges a general pattern of discrimination, and mentions several specific acts by TVA: (1) putting his name on TVA's list of whistleblowers (Petitioner's February 24, 1995 letter), (2) failure to select Petitioner for a position (Petitioner's June 16, 1994 letter), (3) denying him plant access by withholding his security clearance (Petitioner's June 28 and July 6, 1994 letters), and (4) terminating him (Petitioner's February 28, 1995 letter).

The allegation that Petitioner was subjected to discrimination by having his name put on a list of whistleblowers<sup>2</sup> by TVA was investigated by the TVA Inspector General (TVA/IG) which concluded that the creation of this list was not discriminatory. Furthermore, the Department of Labor (DOL) investigated a complaint with respect to the same list filed by another individual and found that creation of the list of individuals who had filed complaints under Section 210/211 of the Energy Reorganization Act (ERA) with DOL did not constitute discrimination (Case No. 90-ERA-024, Secretary of Labor's Final Decision and Order of Dismissal, July 3, 1991, slip op. at 4-6). The staff finds that the inclusion of Petitioner's name on a list of ERA cases did not constitute discrimination or violate 10 CFR 50.7.

Petitioner also alleges that he was blacklisted from the industry because the list discussed above was distributed nationwide. In Case No. 90-ERA-024 discussed above, the Secretary of Labor said that "the record contains no evidence that TVA disseminated these documents to the newspaper or to other outside sources," concluding that Petitioner did not establish a prima facie case that the TVA memorandum and accompanying list of ERA cases was used for a discriminatory purpose (*id.* at 4-5). Petitioner has not provided to the NRC evidence that shows that the list was used to "blackball" those on the list. Therefore, we are not able to find that the creation and alleged distribution of the list was discrimination against Petitioner or warrants the enforcement action requested by Petitioner.

With respect to TVA's failure to select Petitioner for a position for which he had applied, Petitioner's complaint on this matter (dated October 10, 1991) was dismissed by the Secretary of Labor as untimely filed (Case Nos. 92-ERA-046 and 50, Final Decision and Order, April 20, 1995, slip op. at 3-5). The TVA/IG investigated this complaint and found that Petitioner did not return phone calls or respond to a registered letter inviting him to schedule an interview for the position and, thus, the individual was not selected. The TVA/IG consequently concluded that the failure to select Petitioner was not discriminatory. Based on a review of the TVA/IG investigation and the limited

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<sup>2</sup> The list was a status report of complaints filed by TVA employees with the Department of Labor.

information provided by the Petitioner, the NRC staff concludes that Petitioner has not provided information that would show that he was discriminated against in this instance.

With respect to withholding Petitioner's security clearance, Petitioner filed a complaint with the DOL on September 1, 1994. On November 4, 1994, the DOL Area Director concluded there was no discrimination in that case and his ruling was not appealed by Petitioner. The TVA/IG investigated this issue and determined that Petitioner's security clearance was suspended following a psychological evaluation relating to fitness-for-duty issues and the TVA/IG concluded that the suspension was not discriminatory. After reviewing the TVA/IG investigation and information provided by the Petitioner, the staff concludes that Petitioner has not provided information that would show that TVA's suspension of Petitioner's security clearance was discriminatory.

With respect to Petitioner's allegation of discriminatory termination in September 1994, on April 27, 1995 the DOL Area Director dismissed Petitioner's complaint as untimely filed. Petitioner appealed this finding and the appeal is pending before the DOL Administrative Law Judge (ALJ) (Case No. 95-ERA-026). The issue was investigated by the TVA/IG who concluded that Petitioner's termination was due to his arrest for carrying a concealed weapon. The NRC's Office of Investigations (OI) reviewed documentation from the DOL and TVA/IG on this matter and concluded that there was insufficient evidence to substantiate Petitioner's allegation that his termination was discriminatory (OI Case No. 2-94-042, April 24, 1995). Based on a review of documentation by OI, DOL, and TVA/IG, the NRC staff concludes that there is not sufficient evidence to establish that TVA's termination of Petitioner's employment was discriminatory.

### *General Allegations*

In addition to the specific acts of discrimination alleged by Petitioner, he also referred to a continuing pattern of discrimination by the licensee against him. While such general allegations are difficult to investigate, the staff decided to review all the Department of Labor complaints filed by Petitioner to assess the likelihood that there is some form of generalized discriminatory treatment of Petitioner that goes beyond the specific acts which he alleges in the Petition. This broader review was undertaken as an attempt to evaluate Petitioner's otherwise unsupported general claim that he was subject to a continuing pattern of discrimination and to determine whether some action against the licensee would be appropriate at this time.

TVA notes, in its May 20, 1994 response to the Petition, that Mr. Gillilan has filed thirteen complaints with the Department of Labor (DOL). NRC's records reflect that some of these were filed as supplements to earlier complaints; only nine are distinct complaints. Three of these complaints deal directly with the specific acts of discrimination alleged by Petitioner, as discussed above. In addition, Petitioner filed several complaints with DOL dealing with allegations of discrimination not raised in his Petition. These complaints allege a pattern of behavior purported to demonstrate that TVA has discriminated against Petitioner. They are addressed below.

Petitioner's complaint to DOL filed on March 2, 1989 was dismissed by the ALJ as settled. The Secretary of Labor disapproved that settlement because one of the conditions required that the record be sealed, a condition that is incompatible with the requirement to make records of discrimination complaints available to the public. The Secretary remanded the case to the ALJ (Case No. 89-ERA-040, Order to Submit Briefs, May 13, 1994, slip op. at 1) and a decision is pending. The DOL Area Director found no discrimination with regard to Petitioner's complaint of November 16, 1990 involving Petitioner's assignment to evening shift and alleged harassment and intimidation by a supervisor. The Area Director also found in that case that the complaint of violation of an earlier settlement agreement was untimely filed. This decision was appealed, assigned Case No. 91-ERA-031, and consolidated with Case No. 91-ERA-034. Ruling in both 91-ERA-031 and 91-ERA-034, the ALJ determined that certain of Petitioner's allegations did not involve discrimination and that the remainder were untimely filed. In accordance with a request by both parties to dismiss 91-ERA-034, the Secretary of Labor dismissed it but remanded 91-ERA-031 to the ALJ for further proceedings, including an evidentiary hearing, noting that in remanding this case, he reached no conclusions regarding the timeliness or the merits of the allegations.<sup>3</sup> (Decision and Remand Order, August 28, 1995). A decision is pending in that case.

Petitioner's combined complaints received by DOL on November 17 and 26, 1991 and January 10, 1992 (combined with that received on October 10, 1991, Case No. 92-ERA-046) were dismissed by the Secretary of Labor, who found that Petitioner had failed to present an issue of material fact with respect to these complaints, and therefore had not demonstrated discrimination.<sup>4</sup> In Petitioner's combined complaints of December 21 and 29, 1993, the DOL Area Director concluded there was no discrimination and the ruling was not appealed. Petitioner's combined complaints of June 10 and August 26, 1993 were originally found by the DOL Area Director to involve discrimination, but after appeal to the ALJ, the hearing was cancelled because Petitioner was deemed "not . . . mentally capable to withstand trial." (Case No. 94-ERA-005, Order Transferring the Record, January 23, 1995, slip op. at 1). A decision is still pending in this case, pending Petitioner's ability to resume the case at trial. In Petitioner's complaint of November 6, 1994, the DOL Area Director concluded that Petitioner's removal was not motivated by his protected activities, therefore there was no discrimination. The ruling was appealed and a decision is pending in that case. See Case No. 95-ERA-009.

Although Petitioner's complaints before DOL are numerous, the DOL findings thus far do not establish a pattern of continuing discrimination against Petitioner. After reviewing the status of Petitioner's DOL

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<sup>3</sup> The Secretary directed that the Acting Chief ALJ first review and decide whether to consolidate Case No. 91-ERA-031 with Case No. 89-ERA-040.

<sup>4</sup> Note that while the Secretary combined the four complaints received October 10, November 17 and 26, 1991, and January 10, 1992, he addressed the October 10 complaint separately. See Case No. 92-ERA-046, Final Decision and Order, April 20, 1995.

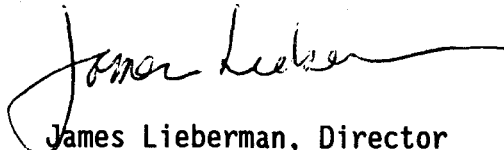
complaints, the NRC cannot conclude that enforcement action is necessary against the licensee at this time. In accordance with its normal practice, the NRC will monitor those complaints that remain before DOL and consider the need for enforcement action based on the results of the DOL proceedings.

#### IV. CONCLUSION

Based on a review of the Petition and supplemental submissions, the Licensee's response dated May 20, 1994, the report of NRC's Office of Investigations (OI Report No. 2-94-042), the results of the investigations of the TVA/IG, and the decisions of the Department of Labor on several of Petitioner's complaints, I have concluded that Petitioner has provided insufficient information or evidence to indicate that TVA has engaged in a pattern of harassment, intimidation, or discrimination against Petitioner in violation of 10 CFR 50.7, or to warrant additional NRC investigation of general harassment and intimidation with regard to Petitioner. I conclude that Petitioner's claims of harassment, intimidation, and discrimination have not been substantiated. Accordingly, the request for daily civil penalties is denied.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided by that regulation, the decision will constitute final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

FOR THE NUCLEAR REGULATORY COMMISSION

  
James Lieberman, Director  
Office of Enforcement

Dated at Rockville, Maryland  
this 13 day of September 1995