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TENNESSEE VALLEY AUTHORITY

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JUL 20 1990

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

Gentlemen:

In the Matter of the Application of) Docket Nos. 50-390
Tennessee Valley Authority) 50-391

SUPPLEMENTAL ANSWER TO NOTICE OF VIOLATION (NOV) AND PROPOSED IMPOSITION OF CIVIL PENALTY EA 89-201 (NRC INVESTIGATION REPORT NO. 2-85-031)

On May 14, 1990, TVA submitted its reply and answer to a NOV and Proposed Imposition of Civil Penalty issued by the NRC on April 12, 1990, regarding alleged acts of discrimination against members of TVA's Nuclear Safety Review Staff (NSRS). In that response, TVA did not contest or challenge the NOV. TVA requested, however, that the proposed civil penalty of \$240,000 be mitigated in its entirety. This letter supplements TVA's May 14 response.

As indicated in our May 14 response, TVA questions whether any regulatory purpose is served by imposition of a civil penalty. TVA does not quarrel with vigorous enforcement action, including appropriate civil penalties, when the enforcement action is taken promptly after the violation occurs. Imposing a penalty under such circumstances certainly serves one of the principal objectives of the NRC's Enforcement Policy - to obtain prompt correction of violations which may affect safety. Had the civil penalty at issue here been proposed some months after the NSRS reorganization, TVA would have no difficulty understanding its purpose. However, in the four years between the NSRS reorganization and issuance of the NOV, TVA has taken extensive corrective action and focused significant attention on ensuring that TVA employees feel free to express safety concerns without fear of discrimination. For that reason, TVA does not believe that the imposition of a civil penalty furthers the objectives stated in the NRC's Enforcement Policy, particularly the objective of obtaining prompt correction of violations.

Furthermore, imposition of a civil penalty for events dating back four years creates the impression, with TVA's own employees and the public, that TVA employees may still have reason to be fearful if they raise safety concerns. Thus, we question whether a civil penalty serves what TVA believes to be the

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ultimate goal of Section 210 and 10 CFR 50.7, namely, to ensure that employees feel free to raise safety concerns without fear of retaliation for having done so.

The progress TVA has made in resolving this problem also causes us to question what further regulatory purpose is served by imposition of a civil penalty. A principal reason the licensing process was halted at Watts Bar in 1985 was because many Watts Bar employees lacked the confidence in Nuclear Power management to voice their safety concerns without fear of reprisal for doing so. As indicated in our May 14 response, the NRC's January 1990 inspection of the Employee Concern Program at Watts Bar paints a vastly different picture from the situation at Watts Bar at the start of TVA's nuclear recovery program. The difference is so marked we believe it is worthwhile to refer here to some of the findings of that report. Based on a survey of 100 randomly selected nonmanagement employees and contractors, the NRC inspection team concluded that "Watts Bar non-management personnel were well aware of the Employee Concern Program, a high percentage of them would use the program without fear of reprisal, [and] a very high percentage of employees would take their concern to their first line management before going to the Employee Concern Program and have confidence these managers would resolve their concerns." The NRC team's survey of 27 first-line supervisors indicated that these persons were well aware of the Employee Concern Program and a "large fraction would use the program but only after exhausting other avenues to resolve their concerns." The NRC team also found that "[a]ll of the first-line supervisors would report safety concerns to their management and felt confident the concerns would be resolved. The team did not identify any fear of reprisal for reporting safety concerns to their management." Although TVA still has work to do, the situation today is sufficiently different from that of February 1986 to raise a substantial question as to whether imposition of a civil penalty now furthers any regulatory purpose.

The existence of information which casts substantial doubt on whether discrimination in violation of Section 210 occurred also causes TVA to question the appropriateness of the civil penalty. As stated in TVA's Reply to the NOV, TVA's Inspector General investigated allegations of discrimination arising from the NSRS reorganization raised by one of the three NSRS engineers (Mr. Washer) involved in the briefing of Commissioner Asselstine, and concluded that the evidence did not support those allegations. Because the Inspector General's findings are quite different from those of the Department of Labor Wage and Hour Division on which the NRC relies, a copy of the Inspector General's investigatory report on this matter is enclosed. I have also enclosed a redacted version of the Inspector General's report from which

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material has been deleted based on Freedom of Information Act standards. These deletions have been made to protect personal privacy, particularly in light of the fact that all of the allegations in the report are unsubstantiated. Consistent with 10 CFR 2.790(a), TVA requests that the full text of the Inspector General's report not be placed in the NRC's Public Document Room (PDR) or otherwise be disclosed to the public. However, TVA has no objection to the redacted version of the report being placed in the PDR as appropriate.

TVA senior management has always recognized that the problem of discrimination could not be corrected in a short timespan, but instead would take some years to correct. TVA recognizes that work remains to be done and is continually tailoring its corrective action to further improve the feeling among employees that they may freely raise safety concerns without fear of retaliation. A recent event illustrates TVA's commitment to a dynamic and effective corrective action program. Subsequent to the submittal of TVA's response to the April 12 NOV, the TVA Inspector General informed Nuclear Power senior management of its conclusion that a vice president in TVA's Nuclear organization violated TVA's policy on "Expression of Staff Views" with respect to a TVA employee. In response to that incident, the TVA Board of Directors ordered that an independent, high-level review of TVA's current practices and procedures for dealing with differing views expressed by employees in the nuclear program be performed on an expedited basis. This review, headed by Warren R. Cobean, Jr., Advisor to the TVA Board, resulted in a July 9 report, copies of which were provided to the Commissioners and senior NRC staff on July 16. Mr. Cobean's review resulted in 26 far-reaching recommendations, all of which have been adopted and action plans have been developed for implementation of these recommendations. For example, Mr. Cobean recommended that an experienced "counselor" report directly to me to assist in this area, and I have this week hired Hudson Ragan, a retired NRC Assistant General Counsel, to fill this role. Mr. Ragan will report directly to me and will interact with the highest levels of Nuclear Power management on my behalf. Nuclear Power's organization has also been modified so that the Manager of the Employee Concern Program reports directly to me. In addition, a succession plan for the Employee Concern Program will be instituted whereby highly valued technical personnel will be rotated through that organization. This will result in future managers having training and experience in handling employee concerns and will emphasize to employees the importance of the Employee Concern Program.

TVA's previous corrective actions with regard to intimidation and harassment are described in our Reply to the NOV. TVA believes that these corrective actions have been timely, self-initiated and comprehensive in scope, thus meeting the criteria for mitigation outlined in the Enforcement

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Policy. The NRC, however, declined to mitigate the proposed civil penalty because this extensive corrective action was offset by the "prior notice" accorded TVA by a NOV issued to TVA in 1986. While the escalation factor of prior notice certainly has its place and is appropriate in many circumstances, TVA believes it has been inappropriately used in this case.

The "prior notice" escalation factor is appropriate when an earlier violation or event provides some opportunity for corrective action to prevent a later violation. An example would be a design defect or a procedural oversight which relates to a concern addressed in a prior violation or NRC communication (such as a bulletin or information notice) which puts the licensee on notice as to the need to investigate and correct any problem in that area. Failure to apply such "lessons learned" would certainly constitute an appropriate use of the prior notice escalation factor. However, the prior notice escalation factor does not seem appropriate when the earlier violation either provides no information applicable to the later violation or the later violation occurs despite having taken prompt and comprehensive corrective actions. Although there is some question whether the July 1986 NOV referenced by the NRC truly provided "prior notice" (the NOV was issued several months after the events giving rise to the present NOV), the key issue is whether incidents of discrimination are the type of situations for which the prior notice escalation factor was intended. TVA questions how the violations identified as providing "prior notice" by the NRC gave TVA any information regarding the likelihood of discrimination in the NSRS organization or would have caused TVA to take additional corrective actions beyond those that were already being implemented.

In sum, TVA believes that its actions should be judged in light of whether TVA has done all it can to achieve the goal of ensuring that employees feel free to raise safety concerns without fear of retaliation for having done so. TVA submits that in considering enforcement action for violations of Section 210 and 10 CFR 50.7, the NRC should consider whether the enforcement action serves, in addition to the purposes of the Enforcement Policy, the underlying purpose of Section 210 and 10 CFR 50.7. In view of the years that have passed since the events which form the basis of the NOV and the extensive corrective actions TVA has taken since that time, TVA believes that a civil penalty in this case does not serve either the objectives of the NRC Enforcement Policy or the objectives of Section 210 and 10 CFR 50.7.

TVA appreciates this opportunity to supplement its May 14 response to the NOV and Proposed Imposition of Civil Penalty. Questions regarding this response

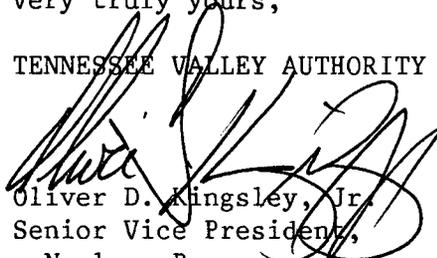
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may be directed to Mark O. Medford, Vice President, Nuclear Technology and Licensing, at (615) 751-4776.

Very truly yours,

TENNESSEE VALLEY AUTHORITY



Oliver D. Kingsley, Jr.
Senior Vice President,
Nuclear Power

Subscribed and sworn to before me
on this 20th day of July 1990.

Sanford D. Brook
Notary Public

My Commission Expires 11/4/92

cc: See page 6

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