

NOTICE OF VIOLATION

Tennessee Valley Authority
6N 38A Lookout Place
1101 Market Street
Chattanooga, Tennessee 37402-2801

Docket Nos. 50-259, 50-260, 50-296,
50-327, 50-328, 50-390,
50-391, 50-438, and
50-439

EA 89-199

As a result of NRC investigations conducted April 28, 1986 through September 16, 1986, violations of NRC requirements have been identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C (1987), the particular violations are set forth below.

Section 186 of the Atomic Energy Act of 1954, as amended, requires licensees to ensure that information submitted to the NRC is complete and accurate in all material respects.

- A. During the April 11, 1986 Commission meeting with TVA, several Commissioners requested an explanation for TVA's apparent policy of appealing all Department of Labor (DOL) Area Director's decisions concluding that TVA had discriminated against its employees in violation of Section 210 of the Energy Reorganization Act of 1974. Mr. Sanger, TVA's General Counsel, responded that such appeals were necessary in order for TVA to develop a full factual record to take appropriate action against individuals responsible for the intimidation because TVA had been unable to discuss the matters directly with all of the alleged.

TVA's General Counsel failed to inform the Commission that he had concluded that DOL's area investigators were biased against TVA and that, principally for this reason, all DOL Area Director's decisions should be appealed as a matter of policy. Further, Mr. Sanger failed to inform the Commission that TVA's Office of the General Counsel had conducted independent investigations of several of these cases and independently developed substantial evidence on the culpability of individual supervisors. These omissions were material. When this Commission meeting was held, the issue of harassment and intimidation at TVA facilities was a major focus of the Commission. There were concerns that automatic appeals of cases delayed justice to the employees and that these actions by the licensee raised questions as to the fairness of TVA's handling employee concerns. Further, the TVA policy created the appearance of unfairness and arbitrariness. Had the Commission known the actual reasons for TVA's actions, the Commission would have investigated and considered the matter further. For these reasons, Mr. Sanger's answers were so misleading and incomplete as to be deliberately false and constituted a material false statement within the meaning of Section 185 of the Atomic Energy Act of 1954, as amended.

- B. In response to questions from the NRC Office of Investigations (OI) investigators regarding the degree of cooperation and the nature of interaction between the TVA Office of the General Counsel (TVAOGC)

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and its Inspector General (TVAIG) in investigating harassment and intimidation (H&I), Mr. Sanger stated to OI investigators that, to his knowledge, no member of TVAOGC had ever stated that TVAOGC would refuse to share information on such cases with TVAIG. These responses were made in OI interviews dated July 2 and 21, 1986 and September 25, 1986.

Mr. Sanger failed to inform OI on these occasions that he had stated that he would refuse to share the results of TVAOGC investigations and associated depositions with TVAIG until after the appeal process was completed. Had the NRC been aware of the stated refusal by TVAOGC to provide information to TVAIG, the agency would have further pursued the effectiveness and ability of the new Inspector General to function as had been described to the NRC. The NRC also would have further pursued the effectiveness of TVA's general corrective action program in dealing with employee concerns. For these reasons, Mr. Sanger's answers were so misleading and incomplete as to be deliberately false and constituted a material false statement within the meaning of Section 186 of the Atomic Energy Act of 1954, as amended.

These two material false statements are categorized in the aggregate as a Severity Level III problem (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, the Tennessee Valley Authority is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Associate Director for Special Projects, Office of Nuclear Reactor Regulation, and a copy to the Director, Office of Enforcement within 30 days of the date of the letter transmitting this Notice. This reply should be clearly marked as a "Reply to a Notice of Violation" and should include: (1) admission or denial of the alleged violations, (2) the reason for the violations if admitted, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order may be issued to show cause why the licenses should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

FOR THE NUCLEAR REGULATORY COMMISSION


Dennis M. Crutchfield, Associate Director
for Special Projects
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland
this 1st day of February 1990.

SYNOPSIS

This investigation was initiated based upon a request from the U.S. Nuclear Regulatory Commission (NRC) Executive Director for Operations that an investigation be conducted into an allegation that the Tennessee Valley Authority (TVA) Manager of Nuclear Power and/or the TVA General Counsel intentionally misled the Commission about TVA's handling and investigation of the charges of harassment and intimidation by four engineers in TVA's Nuclear Safety Review Staff. An allegation to this effect was contained in an April 10, 1986, letter to the NRC from the attorney for the four engineers who had filed Energy Reorganization Act (ERA) complaints with the Department of Labor.

This investigation determined that the TVA General Counsel intentionally misled the Commission regarding TVA's handling of these ERA complaints and knowingly provided false testimony to the NRC investigators during the course of this investigation. Evidence developed during this investigation was not sufficient to conclude that the Manager of Nuclear Power intentionally misled the NRC.

In addition, the TVA General Counsel provided false testimony to the Commission regarding the legality of the TVA employment contracts of the Manager of Nuclear Power and his key advisors.