TENNESSEE VALLEY AUTHORITY
CHATTANOOGA, TENNESSEE 37401

6N 38A Lookout Place

MAR 30 1990

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

Gentlemen:

In the Matter of	)	Docket Nos. 50-259 50-390
Tennessee Valley Authority	)	50-260 50-391
	)	50-296 50-438
	)	50-327 50-439
	)	50-328

REPLY TO NOTICE OF VIOLATION, NRC INVESTIGATION REPORT NO. 86-015

This is in response to the NRC's February 1, 1990 Notice of Violation to TVA regarding statements made at a March 11, 1986 NRC Commission meeting and in investigatory interviews with the NRC's Office of Investigations. TVA is not challenging or seeking further review of this Notice of Violation. Our specific responses to each of the alleged violations are set forth in the Enclosure.

In accordance with the NRC's letter of March 7, 1990, TVA is responding to the Notice of Violation within 30 days of receipt of NRC Investigation Report No. 86-015.

Very truly yours,

TENNESSEE VALLEY AUTHORITY

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

Enclosure
cc (Enclosure):
Mr. Dennis M. Crutchfield, Associate Director
for Special Projects
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. James Lieberman, Director
Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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Enclosure

Reply to Notice of Violation (EA 89-199)

NRC Statement of the Alleged Violations

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 [March] 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 allegers.

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 186 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) 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).

Admission or Denial of the Alleged Violations

TVA does not wish to challenge this Notice of Violation or to pursue this matter further. TVA fully recognizes its responsibility to provide to the NRC information which is complete and accurate in all material respects, whether such information is provided orally or in writing. Specific responses to each of the alleged violations are set forth below.

Information Relating to the Alleged Violations

The events which are the subject of the Notice of Violation occurred nearly four years ago and involved several individuals who are no longer associated with TVA. After a preliminary evaluation of the information available to TVA to respond to the alleged violations, on February 12, 1990, TVA requested a copy of OI's report and any supporting transcripts or documents on which the NRC relied in issuing this Notice of Violation. On March 7, 1990, TVA received a copy of the OI report and its associated documents. TVA has relied on that report, as well as its own records and files, in preparing this response to the Notice of Violation.

Violation A is comprised of two separate allegations. One allegation (Violation A-1) is that in responding to the Commissioners' questions at a March 11, 1986 Commission meeting, TVA's former General Counsel did not "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." The thrust of Violation A-1 is the omission of any mention at the March 11 meeting of possible bias of DOL investigators as an explanation for TVA's decision to appeal Section 210 cases. As discussed below, the difficulty TVA was having obtaining information about the allegations raised in Section 210 complaints involving individuals from the Nuclear Safety Review Staff (NSRS) was a consideration in the decisions to appeal Section 210 cases to the next level of the administrative process where there was opportunity for discovery and a full evidentary hearing. TVA admits that the issue of possible bias was not mentioned at the March 11, 1986 meeting and that this issue also was a consideration in the decisions to appeal Section 210 cases.

While the belief that certain DOL investigations were biased was not mentioned at the March 11 Commission meeting, as pointed out in OI's report, in the week following that meeting, senior members of the NRC staff were made aware of the bias issue. An internal memorandum from the NRC's Executive Legal Director to the NRC's Acting Executive Director for Operations dated March 17, 1986, indicates that in telephone conversations with TVA's former General Counsel, the Executive Legal Director was informed in some detail about the bias issue. Shortly thereafter, on March 21, the NRC took the action of forwarding this information to the DOL Inspector General.

The other part of Violation A is the alleged failure to inform the Commission that TVA's Office of the General Counsel (OGC) had conducted independent investigations of several Section 210 complaints and had independently developed substantial evidence on the culpability of individual TVA supervisors (Violation A-2). The OI report focuses on two NSRS cases that were appealed in March of 1986. TVA admits that the fact that it had already gathered a substantial amount of information in its own investigations of the complaints in these cases was not fully disclosed at the March 11, 1986 Commission meeting. While TVA was able to obtain substantial information from various sources about the allegations raised in these cases, TVA is having difficulty obtaining all of the information it believed was necessary. Based on TVA's review of the facts, it appears that at the time the two NSRS cases in question were appealed, TVA had not reached a decision as to whether discrimination in violation of Section 210 had occurred.

Violation B alleges that the former General Counsel, contrary to statements made by him in investigatory interviews with NRC OI personnel, stated that he would not share the results of OGC investigations and associated depositions with TVA's Office of the Inspector General (OIG) until after the Section 210 appeal process was completed. The interviews conducted by OI of several other TVA officials indicate that the former General Counsel stated in a March 17, 1986 meeting that he did not intend to share with TVA's OIG the information obtained by OGC during discovery

in DOL proceedings until after the appeal process had been completed. TVA acknowledges that this differs from the former General Counsel's statements in his interviews as recorded by OI.

Corrective Steps That Have Been Taken and Results Achieved

TVA has implemented extensive remedial programs addressing the handling of employee concerns and has developed standard processes to assure that complete and accurate information is supplied to the NRC. TVA's efforts to effectively deal with both the safety issues raised by employees and allegations of intimidation and harassment are frequently being evaluated and improved. These efforts were most recently described by TVA in its meeting with the NRC on January 31, 1990, and in a February 22, 1990 letter from O. D. Kingsley, Jr. to Dennis M. Crutchfield. In this meeting and in the follow-up letter, TVA outlined the measures it is taking to involve senior Nuclear Power management early in the investigation of allegations and described the process used to investigate and resolve allegations of intimidation and harassment in a timely manner. Issues which are deemed to constitute possible intimidation and harassment by TVA's Employee Concern Program will be promptly referred for investigation to TVA's OIG, whose findings will be considered by senior Nuclear Power management. If Nuclear Power senior management concludes that improper management conduct occurred, prompt corrective action will be taken, including any needed disciplinary action for the responsible individuals.

With regard to Violation B, the TVA Code vests with TVA's OIG full authority to investigate, among other things, the misconduct of TVA personnel, including supervisors. To perform this function, the February 1987 delegations of responsibility from the TVA Board to the OIG authorize the OIG immediate access to and copies of all TVA records, which include those of OGC. The delegation further provides that records may not be withheld for any reason other than an express statutory, regulatory, or other legal prohibition. In addition, TVA's OIG has the authority to investigate allegations of intimidation and harassment or any other form of alleged discrimination. The TVA OIG's role as the investigator of intimidation and harassment allegations was recently clarified to provide, in addition to certain allegations arising from the TVA Employee Concern Program, for referrals to the OIG by Nuclear Power of Section 210 complaints filed against TVA and accepted by the DOL for investigation.

Date When Full Compliance Will Be Achieved

TVA believes it is in compliance with the requirement that oral statements and written submittals to the NRC be complete and accurate in all material respects.