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PDR



Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801

March 15, 1996

Mr. James Lieberman
Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738

Dear Mr. Lieberman:

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

ANSWER TO NOTICES OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTIES -
(DEPARTMENT OF LABOR [DOL] CASE NOS. 93-ERA-44, 92-ERA-19, AND 92-ERA-34)

This letter responds to NRC's letters dated February 14 and February 20, 1996, regarding the Secretary of Labor's (Secretary) decisions in the above DOL cases involving Douglas Harrison (EA 95-220, DOL Case No. 93-ERA-44) and Randolph Frady (EA 95-252, DOL Case Nos. 92-ERA-19 and -34). On the basis of the Secretary's decisions in these cases, the NRC concluded that violations of 10 CFR § 50.7 occurred and issued a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$80,000 for each violation.

Stone & Webster Engineering Corporation has appealed the Secretary's decision in Mr. Harrison's case to the United States Court of Appeals for the Eleventh Circuit, and TVA will appeal the Secretary's decision in Mr. Frady's case to the United States Court of Appeals for the Sixth Circuit. The NRC's letters dated February 14 and February 20 acknowledged these developments and stated that in the event these cases were successfully appealed and the Secretary's decisions reversed, the NRC would reconsider both enforcement actions. In view of the fact that these are pending cases, TVA respectfully requests that the NRC defer the imposition of civil penalties until final decisions are rendered.

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TVA makes this request pursuant to 10 CFR § 2.205 which allows persons to answer Notices by stating facts or circumstances why a penalty should not be imposed. TVA understands the bases for imposition of the civil penalties under the normal civil penalty assessment process set forth in Section VI.B.2 of NRC's Enforcement Policy (NUREG-1600). As we have discussed during each enforcement process, TVA believes that Mr. Harrison's and Mr. Prady's cases involve special circumstances which would favor the reduction or elimination of the civil penalties under Section VII.B.6 of the Enforcement Policy. However, TVA is presently asking only that the NRC defer imposition of the proposed civil penalties given the pending appeals in these cases.

TVA believes there are ample reasons why granting its request would be proper and would in no way compromise the NRC's civil penalty assessment objectives. Under Section VI.B.2 of NRC's Enforcement Policy, civil penalties are designed to, first, emphasize adherence to regulatory requirements and second, reinforce prompt self-identification of problems and prompt and comprehensive correction of violations. With regard to the first consideration, deferring imposition of the civil penalties until these cases are finally adjudicated would not reduce the emphasis placed on regulatory compliance. The adjudicatory process in each case is aimed at determining whether, in fact, a violation of Section 211 of the Energy Reorganization Act took place. As NRC stated in its February 14 and February 20 letters, the NRC adopted the Secretary's decisions in determining that violations of NRC requirements occurred. Delaying imposition of the civil penalties which are based on events that are still being adjudicated cannot be reasonably interpreted to lessen emphasis on regulatory compliance. In addition, TVA fully recognizes the importance of adherence to NRC's regulations in matters involving employee protection. This is clear from the considerable effort and resources TVA has expended over recent years to improve the working environment at TVA's nuclear plants.

With regard to the second civil penalty assessment objective, NRC has already acknowledged in each Notice that TVA's prompt and comprehensive corrective actions warrant favorable consideration as a civil penalty assessment factor. At the October 30, 1995, Stone & Webster/TVA predecisional enforcement conference involving Mr. Harrison's complaint and in TVA's January 12, 1996, letter to the NRC regarding Mr. Prady's complaints, TVA fully described its commitment to educate and inform employees about their freedom and responsibility to raise safety concerns. TVA also described the measures it has instituted to establish a workplace atmosphere in which each employee feels free to voice his or her concerns to management. Progress has been steady and verified by objective survey data gathered by both TVA and the NRC.

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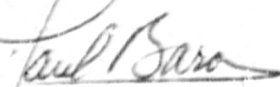
Also, Stone & Webster has paid Mr. Harrison's backpay as ordered by the Secretary. TVA has already returned Mr. Frady to work within TVA Nuclear and has made arrangements to pay his backpay and legal expenses. Deferring the imposition of civil penalties will not affect these individuals' remedies provided under the Energy Reorganization Act.

Finally, there is precedent for allowing a licensee to defer payment of a proposed civil penalty until such time as judicial review of a Secretary's decision has been completed. In the case involving the Section 211 complaint of a subcontractor employee at Donald C. Cook Nuclear Plant (DOL Case No. 92-ERA-37), the NRC proposed imposition of a civil penalty after the Secretary issued its decision in favor of the complainant. After the licensee informed the NRC that the subcontractor was in the process of appealing the Secretary's decision and stated its belief that it would not be appropriate to remit payment until the matter was fully and ultimately resolved, the NRC agreed that the licensee could defer payment of the proposed civil penalty until after judicial review of the matter was completed (letter from Hubert J. Miller, NRC Region III Administrator, to E. E. Fitzpatrick, Indiana Michigan Power Company Senior Vice President, dated August 1, 1995). TVA seeks similar treatment in these cases.

In consideration of the above, TVA respectfully requests that the NRC defer its decision regarding the imposition of the civil penalties in EAs 95-220 and -252 until after the United States Courts of Appeals for the Eleventh and Sixth Circuits have rendered decisions in the subject DOL cases.


If there are any questions, please call me at (423) 751-2051.

Sincerely,



Raul R. Baron
General Manager, Nuclear Licensing

Subscribed and sworn to before me
this 15 day of March 1996


Notary Public

My Commission Expires 9-8-99

cc: See page 4

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cc: U.S. Nuclear Regulatory Commission
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Spring City, Tennessee 37381

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NRC Resident Inspector
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