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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF INVESTIGATIONS

In the Matter of:

TENNESSEE VALLEY AUTHORITY
10 CFR 50, APPENDIX B

INTERVIEW OF JAMES K. ASSELSTINE, taken
at 140 Broadway, New York, New York on Wednesday,
August 5, 1987, before Debra Stevens, a shorthand
reporter in and for the State of New York.

TANKOOS REPORTING COMPANY, INC.
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COMPUTER AIDED TRANSCRIPTION/keyword index

1
2 A-P-P-E-A-R-A-N-C-E-S:

3 DANIEL D. MURPHY

4 LARRY L. ROBINSON

5 F. MARK REINHART

6 U.S. Nuclear Regulatory Commission
7 Washington, D.C.

2 1
2 P.R.O.C.E.E.D.I.N.G.S

3 (10:10 a.m.)

4 MR. MURPHY: For the record, this is an
5 interview of Mr. James K. Asselstine, who is
6 employed by the firm of--

7 THE WITNESS: Donaldson, Lufkin &
8 Jenrette.

9 MR. MURPHY: It is now 10:10, August 5,
10 1987. The interview is in regards to a March 20,
11 1986 letter from Mr. White, who is the manager of
12 Nuclear Power for the Tennessee Valley Authority,
13 regarding whether or not TVA was complying with
14 Appendix B, 10 CFR part 50 at the Watts Bar nuclear
15 facility.

16 Present during the interview are Larry
17 Robinson, Mark Reinhart and Dan Murphy.

18 Mr. Asselstine has agreed his testimony
19 can be recorded by a court reporter, under oath, if
20 you don't mind.

21 THE WITNESS: Fine.

22 Whereupon,

23 JAMES K. ASSELSTINE,
24 having been first duly sworn, was examined and
25 testified as follows:

1 EXAMINATION BY MR. MURPHY:

2 Q. Mr. Asselstine, would you please relate
3 to us your past experience with the Nuclear
4 Regulatory Commission?

5 A. I served most recently as a member of
6 the Nuclear Regulatory Commission from May 17, 1982,
7 until June 30, 1987. Prior to that I was employed
8 on two separate occasions with the NRC in a staff
9 capacity.

10 Q. As I mentioned, the nature of this
11 interview involves Mr. White's response to a January
12 3, 1985 letter from the NRC to TVA requesting that
13 they give to the NRC their position as to whether
14 they are meeting the requirements of Appendix B at
15 Watts Bar. It did involve some perceptions or
16 concerns raised by a member of the NSR staff at TVA
17 to you, I think, on December 19th.

18 Could you tell us a little about that
19 event?

20 A. Sure. I visited TVA in December of
21 1985, and I had basically two stops on my trip. One
22 stop was in Knoxville, to meet with the Nuclear
23 Safety Review Staff of TVA. The second part of the
24 trip was to tour the Watts Bar plant the following
25 day.

1 During my visit with the Nuclear Safety
2 Review Staff I received a presentation from them on
3 a variety of matters affecting the safety of the TVA
4 nuclear facilities and their compliance with the
5 NRC's regulations. Among other things, I had asked
6 the Nuclear Safety Review Staff, in advance, to be
7 prepared to brief me during my December visit on
8 their own perceptions of the status of construction
9 at the Watts Bar Nuclear Facility and the compliance
10 by the utility with the Commission's quality
11 assurance requirements or regulations.

12 The Nuclear Safety Review Staff made
13 that presentation to me during the December visit
14 and it included a written presentation which
15 summarized major issues at the Watts Bar nuclear
16 plant concerning quality assurance and which
17 included a bottom line judgment by the Nuclear
18 Safety Review Staff that our regulations, most
19 specifically 10 CFR Appendix B requirements, were
20 not being met in the construction of Watts Bar.

21 During the presentation, the NSRS
22 representatives explained to me that this conclusion
23 and the supporting information was the judgment of
24 the NSRS staff people who had been most directly
25 involved in reviewing the Watts Bar plant, but that

1 these judgments and conclusions had not yet been
2 reviewed or approved by the NSRS management or by
3 TVA management in general.

4 I was accompanied on the trip by
5 representatives of NRC's region two staff, and
6 following the presentation I commented to the region
7 two staff about the importance of these conclusions
8 by the NSRS staff.

9 The region two staff, following our
10 visit, informed the NRC headquarters staff about
11 these conclusions and provided the written briefing
12 materials to them. And the NRC staff felt that this
13 information was sufficiently significant to issue a
14 50.54(f) letter to TVA, which, in essence called for
15 TVA's management judgment on the validity of these
16 NSRS conclusions and required a written response
17 under oath by TVA's senior management.

18 Q. Did you have any part in the decision
19 that that letter was sent? Did you request that
20 letter be forwarded?

21 A. I did not request that the letter be
22 forwarded. I clearly felt that this was a
23 significant matter and I so stated to the region two
24 people who were with me on the trip. I was told by
25 the NRC headquarters staff that they were sending

1 the letter. I can't remember whether I was told
2 either before or afterwards. And I certainly agreed
3 at the time that that was the appropriate thing to
4 do and supported it entirely.

5 C. In your opinion, was it valid to send
6 that type of request to TVA taking into
7 consideration what some people have said, that the
8 NRC already knew they were not in compliance with
9 Appendix B, therefore, we were asking them a
10 question to which we already knew the answer and
11 that wasn't fair?

12 A. Okay. I absolutely believed that it
13 was the appropriate thing to do and the necessary
14 thing to do, and, in fact, while some individuals
15 may have had serious concerns about whether TVA was
16 complying with Appendix B, I am not aware of any
17 judgment at the time by the NRC staff that TVA was
18 not in compliance with Appendix B.

19 This really was new information, and I
20 think one of the things that lends support to my
21 view that, in fact, this letter was perfectly
22 appropriate was the staff's reaction. The NSRS
23 presentation had a very potent impact on the
24 staff. And the senior staff was very surprised to
25 see that conclusion and felt that it was a very

1 significant conclusion by TVA.

2 So, all of that leads me to believe
3 that, in fact, sending the 50.54(f) letter was the
4 right thing to do and that it was a very significant
5 decision.

6 Q. Did any member of the staff brief you
7 in regards to the TVA's compliance with Appendix B,
8 prior to your trip to Knoxville?

9 A. I had several conversations with people
10 in the staff about the overall situation at TVA.
11 Some of that certainly may have touched upon quality
12 assurance and compliance with Appendix B. I don't
13 recall a specific discussion or discussions where I
14 talked with the staff about, "Do you feel that they
15 are not in compliance with Appendix B right now?" I
16 don't remember that.

17 But clearly, the agency was getting
18 information throughout 1985 that raised serious
19 questions about the construction program at Watts
20 Bar and about quality assurance in particular.

21 I, probably more so than most people on
22 the NRC staff, and certainly more so than other
23 members of the Commission, felt that there were
24 serious problems at TVA and I had sought
25 unsuccessfully through much of 1985 to get the NRC

1 to take a more active role in pursuing the problems
2 at TVA.

3 So, I certainly had some discussions
4 with staff people within the agency, also with
5 people at region two about the situation at TVA,
6 both on the operating side, with Frowls Ferry and
7 then Sequoia, and also on the construction side with
8 Watts Bar. And a lot of those touched on quality
9 assurance issues. But in terms of a very detailed
10 discussion about, "Do they meet Appendix B or don't
11 they" and in which respects, no, I don't think I had
12 that kind of detailed discussion.

13 Q. Then there was no preconceived notion
14 on the part of the Commission or staff members that
15 the NRC response for writing the January 3rd letter
16 to TVA, that they were not in compliance at the
17 time?

18 A. No, I don't think so. And, in fact,
19 even after we received Mr. White's letter, I took
20 the view at that point that there were serious
21 problems with Mr. White's letter and I felt that the
22 conclusions in White's letter did not--first, did
23 not answer the Commission's questions and, second,
24 were inconsistent with the facts.

25 My own view at the time was that TVA

1 was not in compliance with Appendix B to part 50,
2 that the Nuclear Safety Review Staff conclusion was
3 absolutely correct, and I expressed that view
4 repeatedly both inside the agency and in
5 communications with Congress.

6 I remember at least one letter to
7 Congressman Dingle to that effect. Interestingly
8 enough, even after Mr. White's letter came in, the
9 Commission and NRC staff continued to insist that
10 they couldn't make the same judgment I made, that
11 they were not yet in a position to reach a
12 conclusion on whether TVA was in compliance with
13 appendix B at Watts Bar or not. So, if they
14 couldn't make that conclusion in 1986, I think, they
15 couldn't make that conclusion in 1985.

16 MR. MURPHY: Larry?

17 EXAMINATION BY MR. ROBINSON:

18 Q. When NSRS made the presentation or the
19 perceptions to you, Mr. Asselstine, were those
20 general perceptions a surprise to you or were you
21 expecting something of that nature?

22 A. I was expecting something of that
23 nature. I had been led to believe, prior to that
24 actual meeting, that there were people in the
25 Nuclear Safety Review Staff who had serious

1 questions about the adequacy of TVA's design and
2 construction program and their compliance with at
3 least some of our quality assurance requirements.
4 So, I was not surprised that they were able to
5 identify areas where they thought there were
6 problems.

7 I think what surprised me throughout
8 that meeting was the extent of the problems, the
9 many areas of construction and design work
10 associated with Watts Bar that the NSRS staff felt
11 were really of indeterminate quality, and the
12 strength of their bottom line conclusion that TVA
13 was not in compliance with the requirements of
14 Appendix B in many of these areas, that there was
15 really a pervasive problem throughout the
16 construction of the plant.

17 There were other aspects of the
18 briefing that also surprised me. We learned, for
19 example, during the briefing, that the Nuclear
20 Safety Review Staff, in the years after it was
21 formed, had conducted a number of very detailed
22 reviews of the TVA nuclear program, both its
23 operating program and its design and construction
24 program. And we learned that NSRS had prepared a
25 number of very detailed reports on those reviews,

1 that those reports had been provided to senior NRC
2 staff people and that those reports had concluded
3 increasingly, over the years, that there were
4 fundamental problems in the way the TVA nuclear
5 program was being managed and operated.

6 I was very surprised to hear of the
7 detail of those reports and the extent to which they
8 covered virtually every aspect of the TVA program,
9 and I was shocked to learn that those reports had
10 been given to the highest levels of the TVA
11 management and to high levels of the NRC staff
12 management and had virtually been ignored for
13 several years. So, there were a number of aspects
14 about the briefing that really surprised me and
15 startled me.

16 Q. Were the perceptions themselves--and I
17 refer to that last page of the briefing again--were
18 those perceptions more in the context of NSRS
19 management of the employee concern program, or, in
20 your mind, were they overall NSRS concerns
21 irrespective of whether or not they had come up
22 through the employee concern question?

23 A. My impression at the time was that the
24 latter interpretation is correct, that these were
25 not based only on TVA's management of the employee

1 concern programs, but rather that these were based
2 on the broader aspect of TVA's overall operations.

3 And I say that because, as I recall the
4 presentation, basically, what I was told was that
5 these were the impressions or perceptions of all of
6 the people within NSRS at the working level and the
7 first line supervisors who had been involved in
8 looking at the Watts Bar program over the years;
9 that these were the things, the conclusions that
10 they had come to based upon everything that they had
11 seen.

12 Clearly, a major part of that was their
13 involvement in the employee concerns program and in
14 looking at some of the items that had come out of
15 that program. But I recall specific references to
16 other, broader reviews by NSRS looking at the
17 overall quality of the TVA design program, as well
18 as the construction program.

19 So, I think, it is the broader
20 interpretation.

21 Q. Do you recall--Mr. Robert Sauer was the
22 man that presented that part of the interview?

23 A. That's right.

24 Q. Do you recall him referring to any
25 specific NSRS--I am not asking for numbers, of

1 course, but during that presentation, referring to
2 specific MORS reports as a basis for those
3 perceptions?

4 A. I think I did on a couple occasions,
5 though I have to say that with the passage of time
6 my memory of the details of that meeting isn't as
7 good as I would like.

8 But I thought that he did mention the
9 work that a few individuals had done in particular
10 areas.

11 Q. And when you say you reviewed the March
12 20th letter that Mr. White finally sent in response
13 to the January 3rd request, I believe, you indicated
14 that you thought that the letter was not responsive
15 to those perceptions or whether or not 10 CFR 50
16 Appendix E requirements were being met at Watts Bar?

17 A. That's exactly right.

18 Q. Can you recall generically--and you can
19 review--we have the specific responses to each of
20 those individual bullets if you want to review
21 those. But in your mind, can you recall why you
22 felt the individual responses didn't really answer
23 the questions in the general bullets?

24 A. Yes. Well, first, I think you go back
25 to a generic problem with the TVA letter.

1 First, the Commission's letter to TVA,
2 to which the March 20th TVA letter responded, wasn't
3 complicated. It wasn't difficult to understand. It
4 was a very straightforward letter. It said, "we
5 have received this information from the Nuclear
6 Safety Review Staff and we want to know whether
7 TVA's management agrees with this position or not.
8 And we want to know, in particular, whether TVA's
9 management agrees or disagrees with the bottom line
10 conclusion that the construction at Watts Bar is not
11 being conducted in compliance with the Commission's
12 quality assurance requirements."

13 It is not complicated. It is not
14 confusing. It is nothing but a straightforward
15 question. And that is not the answer that we got
16 back from TVA. TVA never did answer that question.
17 Instead, they tried to, in my view, obfuscate and
18 confuse the issue. They answered a totally
19 different question. And, then, they provided
20 supporting information that was developed through a
21 process that I don't fully understand within TVA,
22 that provided their assessment at least of the
23 situation in some of the areas based upon the
24 information coming out of the employee concern
25 program.

1 In my view, they didn't address the
2 questions the Commission asked and the information
3 that they did provide was, at best, ambiguous and
4 probably, more accurately, directly misleading.

5 MR. ROBINSON: That is all I have.

6 EXAMINATION BY MR. REINHART:

7 Q. When Mr. Sauer made that presentation,
8 could you characterize for us his sincerity? Was he
9 scared? Was he pressured? Was he halfhearted, or
10 did he really mean it?

11 A. Well, he clearly really meant it. I
12 did get the sense from him that he was really
13 sticking his neck out in making this kind of a
14 presentation to me. He was very candid, very up
15 front in terms of what he was telling me and what it
16 was based upon. He pointed out that he originally
17 was not the person who was supposed to make this
18 presentation, that he'd been asked to do it sort of
19 at the last minute, that he'd only had a limited
20 amount of time to prepare.

21 And he said that what he had done is he
22 had gone personally to each of the people who had
23 been directly involved in reviewing Watts Bar
24 issues. He had prepared the presentation based upon
25 what those people had told him, and that he thought

1 that this represented their best judgment--that is,
2 the people who had been directly involved with Watts
3 Bar on the NSRS staff -- of what the situation was
4 at Watts Bar. And.

5 He was quite clear in pointing out to
6 me that his management had not seen it. And, I
7 think, he even specifically referred to Kermit
8 Whitt, who was there in the room during the
9 presentation.

10 Throughout the presentation, my view
11 was that Mr. Sauer was very sincere and very candid,
12 very open in his answers and his presentation to me,
13 and that he recognized the significance and
14 seriousness of what he was telling me.

15 Q. Okay.

16 A. That was underscored by the fact that
17 his supervisor, Mr. Whitt, sort of sat off on the
18 side of the room and audibly groaned through several
19 parts of the presentation. Everybody knew how
20 important this was and what a significant
21 development it was, on our side of the table as well
22 as on theirs.

23 Q. Did Mr. Whitt have any comments
24 afterward, other than--

25 A. Not really, other than just-- I think he

1 may have reemphasized that he had not seen or heard
2 this presentation before that time, before I heard
3 it, and that it didn't represent any kind of a
4 management judgment. That was clearly understood.
5 I think he may have reiterated that. But beyond
6 that, I don't think he participated much at all in
7 the discussion.

8 Q. Did he give any facts or refute
9 anything specifically that Mr. Sauer had said?

10 A. Not that I recall. And I think I would
11 remember it if he had.

12 MR. REINHART: That is all I have on
13 that point.

14 BY MR. MURPHY:

15 Q. Most recently, we interviewed Mr.
16 White. Mr. White indicated to us that he felt he
17 was under some degree of pressure to respond. He
18 indicated a couple of things. First off, he said
19 that during a presentation to the NRC Commissioner
20 on March 11th some questions that you asked him
21 would clearly indicate to him and to us that you
22 were pressuring him to respond to the Appendix B
23 letter.

24 What I have done is--it is merely pages
25 99 through 103 of the March 11th commission meeting.

1 This is recorded testimony. What I would like you
2 to do is review this and tell me if, in your view,
3 were you trying to put any pressure on Mr. White?

4 A. I would be glad to.

5 (Pause.)

6 THE WITNESS: Okay.

7 Q. Were you, during that meeting and
8 during this discussion with Mr. White, trying to
9 pressure him into responding to the 50.54(f) letter?

10 A. No. And I take it your question really
11 has to do with, like, timing?

12 Q. Yes.

13 A. No. No.

14 Let me take it back one step earlier
15 than this and tell you what I did tell Mr. White.

16 Q. Okay.

17 A. And the message that, I think, I
18 conveyed or certainly the message that I was trying
19 to convey on the Appendix B letter.

20 When I first met Mr. White, shortly
21 after he had been selected for the position to head
22 TVA's nuclear power operations, I had the chance to
23 visit with him personally for a few minutes in a
24 face-to-face meeting in my office in Washington.
25 And I told him at that time, which, I think, was in

2
1 January of '86, after the 50.54(f) letter had been
2 sent, that I intended to judge his--that is, Mr.
3 White's--performance based upon three things:
4 First, his response to the 50.54(f) letter, how he
5 answered what I viewed to be very fundamental
6 questions about the TVA quality assurance program at
7 Watts Bar; second, how he dealt with the problems of
8 intimidation and harassment among workers, safety
9 workers, within the TVA organization; and, third,
10 how he dealt with the Nuclear Safety Review Staff
11 and their role within TVA.

12 I told him that I thought each of those
13 were issues of fundamental importance, that they
14 would largely tell me his attitudes and his
15 effectiveness in changing what I viewed to be a
16 rather appalling situation within the TVA nuclear
17 organization. So, I tried to put him on notice
18 right up front that these three issues I thought
19 were of fundamental importance, and they certainly
20 were of great importance to me.

21 Now, the original 50.54(f) letter, as I
22 recall, asked for a response within a very short
23 period of time.

24 Q. Yes.

25 A. I remember the office of the Secretary

1 coming around to my office asking--indicating that
2 Mr. White felt he needed more time to answer the
3 letter properly, or TVA did, and would I have any
4 problem with that. And my response at the time was,
5 "This is a very important matter. TVA and Mr. White
6 should take all of the time they need to answer that
7 letter right. And what matters here is quality. I
8 am looking for a good response on that letter and
9 they should take whatever time they need."

10 I may even have said that to Mr. White,
11 although I can't recall for sure. I had a whole
12 series of phone calls with Mr. White that dealt with
13 a variety of subjects. Certainly, timing questions
14 came up in some of those calls. For example, I had
15 planned a visit to Sequoia in the spring of 1986 and
16 Mr. White called me to say that he was having a hard
17 time dealing with all the issues he had to deal
18 with. He was trying to get prepared for the
19 upcoming Commission meeting and would I be willing
20 to postpone my visit so that he could use the time
21 productively to get ready for the Commission
22 meeting, so that he would be well prepared. And my
23 answer was, "Absolutely. I will postpone the visit
24 without any problem." And that's exactly what I
25 did.

1 Again, the message was, you do what you
2 need to do to be prepared to give the Commission
3 good information at the Commission meeting, and that
4 is what is most important. I think we even slipped
5 the date of the Commission meeting a couple of weeks
6 to give him more time to be prepared. And, I think,
7 the consistent message from me and from the other
8 commissioner was, "Quality and accuracy in your
9 responses and in the information you provide to the
10 Commission is of paramount importance, and you
11 should take what time you need to do the job right."

12 So, that is, I think, within the
13 context of this Commission meeting, that is the
14 context in which I was dealing with Mr. White and, I
15 think, in which the Commission as a whole was
16 dealing with Mr. White. I don't see anything at all
17 in this brief excerpt from the Commission meeting
18 that indicates any pressure on Mr. White to try and
19 speed up his answer to the question.

20 I asked him specifically, "Do you have
21 a plan for when you think you are going to answer
22 the question?" because I was interested, as, I
23 think, other commissioners were, in when TVA was
24 going to be able to provide their response. That
25 was not intended to provide any pressure on Mr.

1 White to hurry up his answer or to sacrifice
2 accuracy or quality in the interest of time. And I
3 don't think any reasonable person could read it that
4 way.

5 Q. Mr. White also, during his testimony,
6 related to us that just prior to sending the letter
7 he had several conversations with staff members, one
8 of which was yourself. I think the date is
9 somewhere around the 19th of March. That may not be
10 the exact date, but this is the date that kind of
11 was arrived at.

12 Did Mr. White ever call you and try to
13 explain the contents of his response to the 50.54(f)
14 request?

15 A. I am quite confident that the answer to
16 that is no. As I just indicated, I did have a
17 series of phone conversations with Mr. White over
18 the spring of 1986, beginning after I had met him in
19 January and extending, I think, until after the
20 50.54(f) letter was sent in.

21 While he, I think, recognized that I
22 was very interested in TVA, I had put him on notice
23 up front that there were specific issues that I was
24 very interested in. He had concerns about timing of
25 my visit, which we resolved by my decision to simply

1 not go to Sequoia until he was ready for me to go,
2 to give him the time to do the things that he was
3 working on.

4 We also had some discussions about
5 his--the difficulties that he saw in dealing with
6 the intimidations and harassment problems. And I
7 remember some phone calls where he said, "I can't
8 get information from the Department of Labor about
9 what they have." I remember phone calls where he
10 was saying, "I am having a hard time finding
11 wrongdoers to punish."

12 I remember some others where he told me
13 of his efforts to try and meet with some of the NSRS
14 staff members to try and find them jobs, to try and
15 at least compensate for any intimidation or
16 harassment that might have occurred in the past.

17 So, there were a series of those kinds
18 of calls. I can't remember the details of every
19 one, but one thing I can tell you with a high degree
20 of confidence, if Mr. White had called me to discuss
21 the contents of the 50.54(f) letter, I would have
22 remembered it, and I remember no such conversation.

23 Q. Have you ever been told by members of
24 the staff at the NRC that Mr. White called them and
25 had somehow explained how he narrowed the scope of

1 the letter? I will try to explain as best I can
2 what narrowing the scope means.

3 As opposed to addressing the 11
4 perceptions, what he said is, "We are going to
5 narrow the 11 perceptions to those individual
6 employee concerns that are given to us by the NSRS,
7 and addressing that total concept only as far as the
8 specific employee concerns."

9 Has that ever been a product by your
10 staff?

11 A. You mean by the NRC staff?

12 Q. Yes.

13 A. I don't think that anybody in the NRC
14 staff directly told me about that problem. I became
15 aware of it when the investigation was launched
16 about the phone call to Stello in the van. At that
17 point I clearly became aware that some people within
18 the NRC staff knew of at least some conversations
19 concerning the Appendix B letter prior to the time
20 that it was submitted. But, no, nobody ever came to
21 me and said, "hey, White called us," or "White
22 called somebody else and talked about narrowing
23 these things."

24 Since that time I have been become
25 aware that there are questions along those lines and

1 there have been investigations looking at those
2 issues.

3 Q. We are not addressing those issues
4 except from the viewpoint of how it impacts on this
5 particular investigation. But is it appropriate for
6 either White to attempt to do this, call and try to
7 get some preapproval over the telephone? That is
8 one question.

9 Two, on the other hand, is it
10 appropriate for a NRC staff member to even discuss
11 such an issue over the phone?

12 A. My view is that it is totally
13 inappropriate both for White to ask to do something
14 like that and for the NRC staff to agree to do
15 something like that. The fact is, you have a
16 situation where there is a fundamental question
17 about whether TVA complies with the Commission's
18 regulations. TVA had previously told the Commission
19 that Watts Bar was ready for licensing, which
20 involved in that statement the judgment that they
21 were in compliance with the Commission's regulations
22 and that the plant had been built in accordance with
23 the Commission's regulations.

24 The Commission issued a 50.54(f) letter
25 requiring a response from TVA under oath. The

2
1 purpose of that was to get TVA's formal judgment on
2 whether they were complying with Appendix B to part
3 50. In my view, the NRC should not be coaching TVA
4 on what kind of an answer to give or even giving
5 them a reading on whether the answer that TVA is
6 thinking about sending is the right one or not. The
7 whole purpose of the 50.54(f) approach is to make
8 TVA reach their own judgment--go through their own
9 considered review and submit a formal assessment on
10 their part of what the answer is.

11 Moreover, one of the reasons why you
12 ask for a response formally, under oath, under
13 50.54(f) is because you want to preserve the ability
14 to take enforcement action if TVA provides incorrect
15 information, particularly if they provide that
16 information deliberately--that incorrect information
17 deliberately.

18 So, I think that coaching or comments
19 on the response undercuts the ability of the agency
20 to take enforcement action, and it is inappropriate
21 to do that. I agree entirely in that respect, I
22 think, with the statements that--I think it was Jim
23 Taylor and Harold Denton made in the OIA
24 investigation that they thought those kinds of
25 discussions would be inappropriate.

1 MR. ROBINSON: I have one other
2 question, Mr. Asselstine. I want to take you back
3 to when you first received the March 20th letter and
4 were first reading it.

5 I believe you indicated earlier in your
6 testimony that the letter was not really responsive
7 to the question posed in the 50.54(f) letter, but
8 irregardless of its responsiveness, did you get a
9 feeling, when you were reading that letter, for the
10 scope of the answer that that letter had within its
11 bounds?

12 A. I clearly did at some point. And my
13 review of the TVA response extended over a period of
14 time. I went back and reread it several times,
15 discussed it with my staff as well.

16 I'd have to say I probably had several
17 concerns about the letter. Some of them may have
18 evolved a bit over time as we studied it. So, I
19 can't say I reached an immediate conclusion the
20 first time I read it, that first time, on all of
21 these points. One clearly was that it was
22 unresponsive, didn't answer the questions; that it
23 confused the issues and perhaps even deliberately
24 confused the issues.

25 As I read the detailed--the detailed

9

1 supporting information, it became clear, and, I
2 think, probably more clear over time, that the scope
3 of the letter was unduly narrow. And I remember
4 having some discussions with my staff about how this
5 thing was narrowed in focus to the point where it
6 didn't really consider all of the information that
7 was available. And clearly, as time went on and
8 there were some further indications of how the
9 response might have been prepared, I think, that
10 simply underscored those concerns.

11 MR. ROBINSON: If the response had
12 adequately addressed the scope of the perceptions in
13 the NSRS briefing, do you feel, in your opinion,
14 that an adequate statement regarding compliance with
15 Appendix B could even be made based on that scope?
16 Do you understand what I am saying?

17 A. I think you probably could make a
18 judgment on that basis. If you took into account
19 the NSRS conclusions and all of the information that
20 went into developing those conclusions, then, I
21 think, you could make a judgment on compliance with
22 the quality assurance requirements at Watts Bar, at
23 least for periods of time.

24 My own personal view, and certainly
25 what I have told the Congress, is that if you look

1 at all of the information that is available, which
2 includes much of the information that the Nuclear
3 Safety Review Staff had developed and considered,
4 that really leads you to the conclusion that TVA,
5 probably for very substantial periods of time, was
6 not in compliance with the Commission's quality
7 assurance requirements at Watts Bar.

8 I just don't see how you can reach any
9 other conclusion. Even the NRC staff, I think, has
10 finally come around on some of the elements, though
11 not necessarily all of them. And I have clearly
12 said that I go beyond what the staff has been
13 prepared to say, and, I think, that the breakdown
14 affects all of these areas. I think the information
15 is sufficient to reach that conclusion.

16 Now, one of the things that I was
17 trying to get at in the Commission meeting with Mr.
18 White, the item that we discussed just a few minutes
19 ago, was the broader question, and that is, if you
20 look at the overall operation of the TVA nuclear
21 program, can you really say, with any degree of
22 confidence, that there was any point in time in
23 which TVA had a fully effective and working quality
24 assurance program in place that fully met the
25 Commission's requirements? And to this day, I have

1 not seen the evidence that would lead me to conclude
2 that you could make that kind of a positive
3 judgment.

4 If you go back and look at all of the
5 events concerning TVA's nuclear program, starting
6 with the Browns Ferry fire and the conclusions by
7 the NRC that quality assurance deficiencies played a
8 role in that event, if you look at the repeated
9 problems with TVA's quality assurance programs
10 throughout the late seventies and early eighties,
11 the repeated NRC inspections, the repeated
12 conclusions of failures and breakdowns in quality
13 assurance and the repeated efforts on the part of
14 TVA to try and reorganize and solve their problems,
15 only for the NSRS and the NRC staff to find out a
16 few years later that the new organization really
17 wasn't working, it seems to me that the history
18 calls in to question the adequacy of TVA compliance
19 with Appendix B virtually throughout the nuclear
20 program.

21 I tried, unsuccessfully, to get the NRC
22 staff to focus on that issue and to take the broader
23 look and to look back over time to try and reach a
24 judgment on when TVA's nuclear program was in
25 compliance with Appendix B, and Stello said, "we

1 will deal with that issue later on. We can't worry
2 ourselves with that now. We have got to focus on
3 these current plans, Sequoia, Watts Bar. We have to
4 look at those and we can't worry about a broader
5 look at the whole history of TVA's nuclear program."

6 I believe that the broader question is
7 an important one because it calls into question the
8 work that was done on all of their plants, including
9 the operating plants that are most likely to be
10 considered for restart in the near term.

11 MR. ROBINSON: That is all I have.

12 BY MR. REINHART:

13 Q. Mr. Asselstine, you described your
14 concern, then, went really broader than just the
15 NSRS issue. In other words, the NSRS issue was
16 something that should have triggered, "Hey, this is
17 a sample, but it is a bigger problem."

18 A. Yes. Well, I think, two things should
19 have triggered that. First, the NSRS concerns. If
20 those concerns were valid, then was this a problem
21 that was isolated only at the Watts Bar site, or did
22 these problems extend to other parts of TVA's
23 operation?

24 It seems to me now and it seemed to me
25 then that a logical question was and is, if you have

1 these problems at Watts Bar, then why don't you have
2 these problems at Watts Bar's sister plant, Sequoia,
3 and why don't you have these problems at Browns
4 Ferry? After all, we are talking about the same
5 quality assurance organization, the same
6 construction organization, and the same engineering
7 and design organizations.

8 If you have the same organizations and
9 you have breakdown in the way those organizations
10 are functioning, then it seems to me that a fair
11 question is to take the broader look and say, "How
12 far does this go in affecting all of TVA's plants?"
13 And that is one of the reasons why the Watts Bar
14 information was significant.

15 I also think, though, that if you go
16 back and look at the other detailed NSRS reports
17 that were prepared in '82 and '83, as I recall--'81
18 to '83, anyway, of the overall nuclear organization,
19 you see the same kinds of concerns. Those detailed
20 reports demonstrate a pattern of weakness throughout
21 this organization, and they do it in increasingly
22 strident tones. If you look at the first reports,
23 they are fairly mild. The second report was a bit
24 stronger, and the third report was quite strong in
25 trying to highlight the problems within it the TVA

1 nuclear organization. All of those warnings, going
2 back over years, fell on deaf ears both within the
3 NRC and at the highest levels of TVA.

4 Q. When we talk about time frame, in the
5 March 11th Commission meeting at which Mr. White
6 gave his presentation, did he limit the time
7 period--did he get an agreement to limit the time
8 period of his response to just February and March of
9 '86 or something like that?

10 A. Oh, you mean in terms of the time
11 period covered by his conclusion?

12 Q. Yes, sir.

13 A. No, I don't think so. No. I don't
14 read that discussion at all that way. I can take
15 another look at it.

16 MR. MURPHY: Here. He talks a little
17 about...

18 THE WITNESS: I clearly raised the
19 broad issue. That is, going back over time, is
20 there any point in time where you can say, right
21 now, that the quality assurance organization at TVA
22 was working and working effectively, going back to
23 the Browns Ferry fire? And White said, "Of course I
24 can't answer that question. I couldn't possibly
25 answer it. I'd have to go back and look at all of

1 those events over time."

2 But I don't read anything in here as
3 saying that White's judgment as to Watts Bar should
4 be limited to a fixed period of time, particularly a
5 couple of months in '86. No, not at all. And I
6 don't think that's what he was asked to respond to.

7 He was asked to respond, "Is Watts Bar
8 being constructed in compliance with Appendix B?"
9 The Nuclear Safety Review Staff had said no. And it
10 was clear their judgment was based upon the
11 construction program at Watts Bar over time,
12 continuing right up until the present.

13 I should also add that I had one other
14 conversation with Mr. White in late 1986, well after
15 the Appendix B letter was submitted, in which White
16 tried to outline his rationale in providing the
17 response that he did in the March 20th letter. And
18 at that time white premised his remarks by saying
19 that he thought that he and I had a very different
20 view of his response and perhaps even of quality
21 assurance requirements and how those requirements
22 ought to be interpreted. And based upon his
23 analysis, I certainly agreed with that.

24 White tried to argue that compliance
25 with Appendix B was an evolving thing and that you

1 never could really reach a judgment on whether you
2 complied with Appendix B until the last possible
3 minute, and that as long as he had a program in
4 place that was looking at quality assurance and that
5 he felt ultimately would lead to the conclusion that
6 the plant has been fixed to the point where it meets
7 the quality assurance requirements, that he couldn't
8 conclude that they were not in compliance with
9 Appendix B because that is what the whole process
10 was for.

11 My own view is that that interpretation
12 of Appendix B is just dead wrong. It seems to me
13 that if you have a program, a quality assurance
14 program that is not identifying inadequate work,
15 where inadequate work is being done by the
16 construction force, where inadequate work is being
17 signed off on by the quality assurance force, where
18 there are clear defects in the quality assurance
19 organizations--the people aren't qualified to do
20 quality assurance inspections, they aren't doing the
21 work properly--and where this information is not
22 being turned up on a regular and orderly basis, that
23 it is impossible to argue that they are in
24 compliance with the quality assurance requirements
25 of the Commission.

1 That is the whole purpose of Appendix
2 E, to put in place a structure in an organization
3 that will identify construction and design defects
4 and get them corrected through the normal process.
5 So, I just rejected out of hand his interpretation
6 of requirements and, I think, that they are
7 inconsistent with the agency's consistent
8 interpretation and application of those
9 requirements.

10 MR. ROBINSON: And he indicated that
11 with his philosophy of compliance, that as long as
12 he could not conclude that the program was not in
13 compliance, therefore, it must be in compliance?

14 THE WITNESS: That's right. That's
15 right. As long as he had a program underway and he
16 was confident that the program ultimately would
17 reach the conclusion that all of the construction
18 and design problems would be identified and fixed,
19 that you couldn't reach the conclusion that they
20 weren't in compliance.

21 MR. ROBINSON: Did he ever make a
22 direct comment to you about as long as he had a
23 corrective action system that was identifying and
24 correcting problems, he must be in compliance?

25 THE WITNESS: Yes. I think that was

1 part and parcel of the same argument. His argument
2 was, "I have got this program in place, I am putting
3 in these programs to identify and correct problems.
4 And as long as I have got that program and as long
5 as I am satisfied that at the end of the process,
6 that program will reach the right conclusion--that
7 is, that the problems have been identified and
8 fixed--then that, in itself, is a quality assurance
9 program and therefore I am in compliance."

10 That was his--I think, part of his
11 rationale or his argument. This was--I recall this
12 meeting--it was in November or December, I think, of
13 '86, and think of it as the "Your guys are smarter
14 than my guys meeting," because at that point White
15 indicated that he had gone over my letters to
16 Congressman Dingle in great detail and that TVA
17 staff had reviewed them in great detail looking for
18 something that they could find fault with and argue
19 with and that they had been unsuccessful in being
20 able to do that, at which point White concluded that
21 my guys were smarter than his guys were.

22 MR. ROBINSON: Obviously, one of the
23 difficulties in conducting an investigation of a
24 material false statement regarding compliance with
25 Appendix B is receiving various definitions of

1 compliance with Appendix B. Let me ask you one
2 parameter-setting type question.

3 In your opinion or in your definition
4 of compliance with Appendix B, can you be in overall
5 compliance with Appendix B and yet still not be
6 meeting some of the requirements of Appendix B?
7 That is the only bounding question I will ask.

8 A. I think the answer to that is yes, but,
9 and the but is this: I think you can have problems
10 from time to time in individual elements of your
11 quality assurance program and still be in overall
12 compliance with Appendix B. But they can't be
13 widespread and they have to be identified by the
14 quality assurance program and system, and they have
15 to be corrected in a timely manner. That is the way
16 I interpret the requirements of Appendix B.

17 So that, for example, I think that you
18 could probably not qualify one or two quality
19 assurance inspectors properly at a given period of
20 time. But if the system turns up the fact that
21 those people aren't properly qualified and they are
22 removed from the job until they are properly
23 qualified and their work is independently examined,
24 then I would say, sure, the overall system is
25 working. They may not have met that individual

1 element for a limited period of time but overall the
2 system is working.

3 Similarly, if you have one or two
4 items, individual items that make it through the
5 system and the quality assurance inspector just
6 misses the inspection, I'd say that is an example of
7 an individual item where you weren't complying with
8 the detailed requirement of the quality assurance
9 program. But, again, if it is picked up by the
10 program and corrected, then I'd say, overall, the
11 system is working properly.

12 Where I think you have to draw the line
13 is where there are fundamental problems in the
14 quality assurance operation, where there are
15 problems in a number of different areas and where
16 those problems are not picked up by the quality
17 assurance organization and operation and where those
18 problems extend for lengthy periods of time and
19 where they only come to the attention of the
20 licensee or the NRC as a result of people who aren't
21 part of the normal quality assurance process.

22 Then I think you have to fairly
23 conclude that you are meeting--the licensee is not
24 meeting the Commission's quality assurance
25 requirements and is not in compliance with Appendix

1 E.

2 And I think historically, if you look
3 at the cases in which the NRC has concluded that
4 there is a quality assurance breakdown, that the
5 system is not working properly, it's been in those
6 kinds of areas. And I think that there has been a
7 consistent approach in a number of these
8 construction cases that follows just what I have
9 been saying and where you have had problems that
10 have come to light because people go outside the
11 system or where there are widespread problems that
12 have gone on for a lengthy period of time, where the
13 Commission and staff have concluded that this
14 program wasn't working.

15 Ultimately, in some of those cases, we
16 have concluded that the program could be fixed. And
17 after a lengthy verification program of the plant,
18 we have been able to conclude that, notwithstanding
19 the failure to comply with Appendix B, the plant is
20 still built in accordance with the Commission's
21 regulations and can safely operate. But I think
22 that the first judgment has to be made on how the
23 system works and the extent of the problems in it.

24 And what has led me to conclude that
25 TVA was not in compliance with Appendix B at Watts

1 Bar has been the extent of the problem throughout
2 the construction and design program for the plant,
3 the severity of those problems, the fact that they
4 affect not only the work that was done and the
5 records that were kept but the manner in which the
6 quality assurance organization itself functioned or
7 failed to function, and the fact that these things
8 went on for long periods of time and continued even
9 after the point where TVA was telling the NRC that
10 Watts Bar was ready for a license, and that it was
11 only because plant workers and people like the NSRS
12 staff, who were outside of the normal organization,
13 identified the problem and had the courage to stand
14 up and say, "These are very serious problems and
15 they are widespread and they are not being
16 adequately addressed," that we even became aware of
17 them. To me, that constitutes failure to comply
18 with the Commission's quality assurance requirements
19 and that is why I reached that conclusion fairly
20 early last year.

21 I would have to say if the NRC staff
22 had just been willing to reach that conclusion at
23 the same period of time, a lot more attention might
24 have been focused on the construction situation at
25 Watts Bar much earlier than it was and we wouldn't

1 have waited until late last year to get this
2 investigation started.

3 BY MR. REINHART:

4 Q. Just as an example, Mr. Asselstine, in
5 Appendix E there is a requirement to have interfaces
6 defined, job responsibilities defined. If a
7 situation turns up in the interfaces and
8 responsibilities are not defined, not understood, is
9 it proper to say, "Well, that is not really a QA
10 problem, it is a management problem because managers
11 have to do that"?

12 A. Well, the root cause of the problem may
13 be a management failure but that doesn't change the
14 fact that it's a quality assurance problem as well.
15 The fact is, regulations require a number of
16 elements in the quality assurance program and one of
17 those is having effective interfaces. And if, for
18 whatever reason, that is not working, that is a
19 failure to comply with that element of the quality
20 assurance requirements.

21 You clearly want to understand what the
22 root cause is to get it fixed, but it doesn't change
23 the fact that it is a failure to comply.

24 Q. So we can't take every failure to
25 comply and say, "Well, the managers didn't do it,

1 therefore it is a management problem." That may be
2 the root cause--

3 A. But it is not germane to the question
4 of whether or not you were in compliance with the
5 Commission's quality assurance requirements.

6 There are two parts to meeting the
7 Commission's quality assurance requirements. One
8 part is to have a plan, and the second part is how
9 you implement the plan. It is grossly misleading,
10 and I think inaccurate, to argue that you are in
11 compliance with Appendix B to part 50 as long as you
12 have a plan which, on paper, looks good. It matters
13 just as much how you go about implementing the plan.

14 The purpose of the quality assurance
15 requirements is to make sure the plant gets built in
16 compliance with the Commission regulations. You can
17 have the greatest plan in the world on paper. If
18 you have a lousy job implementing it, you are not
19 assuring the plant is built properly. A fundamental
20 element of Appendix B to part 50 is the
21 implementation part. I don't think anyone can
22 reasonably argue you are in compliance with Appendix
23 B as long as you have an adequate plan on paper and
24 that it is irrelevant how you go about implementing
25 the plan. That argument is absurd.

1 Q. I agree.

2 That's all.

3 MR. MURPHY: Just one other question
4 and then we will close this.

5 Have you ever, or a member of your
6 staff, ever heard the suggestion that if TVA's
7 response would have said that they were not
8 complying with the requirements of Appendix B, that
9 it would have been a terrible embarrassment to the
10 NRC?

11 A. I have not heard that. A member of my
12 staff was told that during our visit to Sequoia by
13 one of the people who was involved, I think,
14 preparing the response. And I think that he has
15 documented that.

16 MR. MURPHY: Is that Mr. Austin?

17 THE WITNESS: Yes. As long as you have
18 the documentation of it--John told me about that
19 after it happened and we documented it to make sure
20 that the appropriate people knew about it. That is,
21 obviously, no justification whatsoever for providing
22 a misleading answer to the NRC and, in fact, in my
23 own view it constitutes evidence that in fact the
24 response that TVA provided may have been provided
25 deliberately.

1 MR. MURPHY: Just a few final
2 questions.

3 BY MR. MURPHY:

4 Q. Have I or any other representative of
5 the NRC here threatened you in any manner or offered
6 a reward for this testimony?

7 A. No.

8 Q. Have you given the testimony freely and
9 voluntarily?

10 A. Yes.

11 Q. Are there any additional comments you
12 would like to make?

13 A. No.

14 Q. We appreciate you taking the time to
15 talk with us.

16 A. Glad to help.

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(Time Noted: 11:15 a.m.)

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C E R T I F I C A T I O N

I, DEBRA STEVENS, a shorthand reporter and notary public, within and for the State of New York, do hereby certify:

That JAMES K. ASSELSTINE, the witness whose interview is hereinbefore set forth, was first duly sworn by me, and that transcript of said testimony is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 1987.

DEBRA STEVENS,
Shorthand Reporter