

ORIGINAL

UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DOCKET NO:

INVESTIGATIVE INTERVIEW of JOHN McDONALD

LOCATION: Chattanooga TVA Complex
Lookout Place
Conference Room S-318
Chattanooga, Tennessee 37402

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EXHIBIT 30

E X A M I N A T I O N

1
2 BY MR. ROBINSON:

3 Q. For the record, it's now 9:15, March 25th,
4 1987. This is an interview of John McDonald, who is
5 employed by TVA, correct?

6 A. That is correct.

7 Q. The location is Chattanooga, Tennessee.
8 Present at this interview are Larry Robinson and Mark
9 Reinhart from NRC and John McDonald, the witness.

10 As agreed, this is being transcribed by a
11 court reporter. The subject matter of the interview
12 concerns your knowledge or involvement in the production
13 of the March 20th, 1986 response from TVA to NRC
14 regarding TVA's compliance with 10 CFR 50, Appendix B at
15 Watt's Bar.

16 Mr. McDonald, will you please stand and
17 raise your right hand?

18 (Witness complies.)

19 Q. Do you solemnly swear or affirm that the
20 information you are about to give is the truth, the whole
21 truth and nothing but the truth, so help you God?

22 A. I do.

23 JOHN McDONALD,
24 having first been duly sworn, was examined and testified
25 as follows:

1 BY MR. ROBINSON:

2 Q. For the purpose of background, would you
3 please state your exact title currently at TVA?

4 A. I am the Watts Bar Site Licensing Manager.

5 Q. And starting from your graduation from
6 college or lower education, would you please briefly
7 trace your career in the nuclear industry?

8 A. Could we defer that for a moment while you
9 identify for me the purpose of this investigation and the
10 purpose of recording this interview?

11 MR. ROBINSON: I have already stated the
12 purpose of investigation is to determine the facts and
13 circumstances surrounding the production of TVA's
14 corporate response to the NRC regarding whether or not
15 they're in compliance with 10 CFR 50, Appendix B and any
16 involvement or part you played or were connected with in
17 the development of that response.

18 THE WITNESS: I understand that is a topic.
19 What is the purpose of the investigation into that topic?

20 MR. ROBINSON: The purpose of the
21 investigation into that topic is to determine whether or
22 not statements made in that response were, in fact,
23 accurate or correct at the time they were made.

24 THE WITNESS: I understand. And the purpose
25 of recording the information?

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MR. ROBINSON: The purpose of recording the information is because it has been deemed, we, the NRC Office of Investigation, have decided to use a court reporter in this investigation.

THE WITNESS: How does that relate to any civil or criminal proceedings?

MR. ROBINSON: Whether or not the results of this interview are recorded or not has no bearing on civil or criminal proceedings or civil or criminal liabilities. Those would be the same whether or not we were recording the interview or whether we weren't.

THE WITNESS: And whether or not it is taken under oath or not?

MR. ROBINSON: The fact that it is taken under oath, and obviously whether or not it is recorded, lends more credence hopefully to the results of the interview.

But once again, if, for example, false or misleading statements are made to the U.S. Government in the course of an investigation, whether they are under oath or whether they are recorded or not recorded, it makes no difference with respect to civil or criminal liability.

THE WITNESS: I believe, in my understanding of the system, there were some implications as to

1 advisement of rights and legal representation if criminal
2 proceedings were being contemplated, but apparently
3 that's not the case.

4 MR. ROBINSON: Advisement of rights -- of
5 course, it's your option. We are not forcing you to be
6 interviewed here. You have the option of declining to be
7 interviewed. There is no necessity for advisement of
8 rights during the course of these interviews because the
9 interviews are non-custodial anyway.

10 At any point in time during the interview,
11 you may feel free to get up and walk out or decline to
12 answer any question. You also have the right to counsel
13 during the interview if you so desire.

14 THE WITNESS: That's enough on the subject.
15 I just wanted to have the ground rules in the record.

16 MR. REINHART: Let me clarify that. Do you
17 wish to have a counsel present?

18 THE WITNESS: No. I do not.

19 MR. ROBINSON: Are you ready to proceed?

20 THE WITNESS: Yes. I am.

21 BY MR. ROBINSON:

22 Q. From your college graduation, if you can, go
23 back and trace your background in the nuclear industry.

24 A. Upon graduating from college, I went through
25 some further training in the Naval nuclear program as a

1 junior Naval officer. I was assigned sea duty on board a
2 cruiser and an aircraft carrier. That covered a period
3 of about five and a half years.

4 Q. What timeframe was that, what year?

5 A. I graduated in 1969. I completed the
6 nuclear power training and reported to my first ship in,
7 I believe, November of 1970.

8 I was transferred to the U.S. Nimmitz around
9 February of 1972 and remained there until around February
10 of 1976.

11 I was transferred to the nuclear power
12 school in Orlando, Florida and remained there until
13 August of 1978 when I left the Navy and joined the
14 Nuclear Regulatory Commission as an inspector in Region
15 II in Atlanta.

16 In February of 1980, Region II assigned me
17 to be the resident inspector at Watts Bar Nuclear Plant
18 where I remained until July of 1982, at which time I left
19 the Nuclear Regulatory Commission and joined TVA as the
20 Chief of the Quality Improvement Staff in the office of
21 Quality Assurance in Knoxville.

22 I remained there until September of 1985
23 when I was assigned as the Plant Compliance Supervisor at
24 Watts Bar Nuclear Plant. From that position I became the
25 Site Licensing Manager in July of 1986.

1 Q. And the position which you currently occupy?

2 A. I am currently occupying that position.

3 Q. Mr. McDonald, I am going to take you back to
4 the late '85 or early 1986 time frame now.

5 When did you first become aware of the NSRS
6 perceptions that were presented to Commissioner
7 Asselstine in mid-December of 1985?

8 A. I first heard references to that meeting a
9 few days before Christmas of 1985.

10 I had been involved in a presentation to the
11 NRC on December 18th that related to the nuclear
12 performance plan for Watts Bar, a broad scope plan for
13 getting Watts Bar prepared again to go for an operating
14 license.

15 I was not aware of the upcoming meeting on
16 the 19th that the NSRS had with Commissioner Asselstine,
17 but I heard a few days later that there had been a
18 meeting planned and that there were some subjects that
19 were causing a lot of debate.

20 I didn't learn what they were until early in
21 January, as I recall. You will have to help me with the
22 dates, but it was a day or two after NRC's issuance of a
23 letter requesting TVA to provide a position on Appendix
24 B.

25 I saw a telecopy of that letter. And then I

1 started to hear more about the meeting that had occurred
2 and the background on December 19th, 1985, and heard more
3 about how TVA was going to develop a response to and when
4 TVA was going to develop a response to NRC's letter of
5 January the 3rd.

6 Q. How do you come to see a telecopy of the
7 NRC request?

8 A. I believe that the acting site director for
9 Watts Bar, Mr. Ed Ennis, shared a copy of it with me. I
10 was the plant's compliance supervisor at that time and
11 normally dealt with NRC on issues of meeting or not
12 meeting conditions of a construction permit.

13 Q. At that point in time were assigned, or did
14 you accept any specific responsibility in preparing any
15 portion of the response to that letter?

16 A. At that point in time it was my understanding
17 that the issue was going to be handled at a corporate
18 level, and that at that time I had no assignment in
19 responding to it.

20 Q. And there came a point in time when you did
21 receive an assignment. When was that and what were the
22 circumstances?

23 A. As I recall, it was mid to late January. I
24 got a phone call from Tom Burdette in the Division of
25 Quality Assurance, DQA.

1 He advised me that the Division of Quality
2 Assurance had been assigned the lead responsibility for
3 developing the TVA response to the NSRS perception or the
4 Appendix B question or the response to the January 3rd,
5 1985 letter. Those were all viewed as the same thing.

6 And that he had been given my name as as
7 individual to provide a position for one of the eleven
8 NSRS perceptions, that being on nonconformances. I was
9 supposed to develop and provide a plant position on the
10 handling of nonconformances by the operating
11 organization.

12 I am thinking and trying to recall who it
13 was. I am sure he told me how he had gotten my name, but
14 I am trying to remember how that came about.

15 Q. Who were you reporting to in your own chain
16 of command at that time? Who was your immediate
17 supervisor?

18 A. In January of 1985, my immediate supervisor
19 was the site director. The site director officially was
20 Mr. Bill Cottle, but for the last year and a half he had
21 frequently had extended assignments in Chattanooga which
22 resulted in the plant manager, Mr. Ed Ennis, acting as
23 the site director.

24 In January of 1985, we had the arrival of
25 Mr. White as the new manager of the Office of Nuclear

1 Power.

2 Q. 1986?

3 A. Right, 1986. And with him, we also had a
4 change in the licensing organization in TVA.

5 Very shortly after his arrival, Mr. Gridley
6 was brought in as a contract person from General Electric
7 to supervisor the licensing organization. And it was
8 informally stated that groups, including the site plant
9 compliance unit that I was in charge of, would become
10 part of this new licensing organization

11 I say that by way of background because I
12 don't recall where I was getting clear direction at that
13 time because there was definitely a transition going on
14 as to who Compliance worked for.

15 Q. Did Mr. Ennis have any objection to Mr.
16 Burdette involving you in this response activity, or was
17 that even discussed with Mr. Ennis?

18 A. I don't recall discussing that. Certainly,
19 I was involved in no discussion with anyone in which
20 there was a contention about whether or not it was
21 appropriate for me to develop a piece of this response in
22 support of the Division of Quality Assurance's overall
23 development, staffing of a position to be reviewed and
24 approved at the corporate level and to go back to NRC.

25 Q. So, you just accepted the task?

1 A. And tried to understand what it was, what
2 scope I was supposed to be going after and what strategy
3 I was supposed to be using.

4 Q. How much clarification did you have at that
5 time on your scope?

6 A. There really wasn't any clarification beyond
7 my own attempts to identify a boundary for the
8 perception, which quite frankly, I had difficulty doing.

9 I had difficulty looking at the document
10 which was shared with Commissioner Asselstine back in
11 December and understanding what the flavor of the NSRS
12 perception with nonconformancy was.

13 Q. Did you just have that one line perception
14 to work with intially?

15 A. Initially, I had the one line perception,
16 but Mr. Burdette made me aware that NSRS was further
17 trying to clarify for Corporate TVA, Mr. White and his
18 staff just what their perceptions were and the basis for
19 them was and to improve in their articulation so that the
20 organization could respond to that more fixed target.

21 I believe January the 14th was the date of a
22 draft NSRS position paper that I was given by Mr.
23 Burdette that played out in some greater detail what NSRS
24 meant by poor handling of nonconformances.

25 Q. Was there any future clarification beyond

1 that, or was that pretty much it?

2 A. From the NSRS perspective, quite frankly, it
3 kept going. The January 14th position then became
4 superceded or amended by at least two more versions of
5 what NSRS really meant the problem was of nonconformance
6 handling.

7 It was never clear to me if these were
8 additional concerns, or if they were revisions of the
9 statement of concern by NSRS and its basis.

10 My perception, if it's appropriate for me to
11 offer my perceptions --

12 Q. Sure.

13 A. Was that the NSRS staff was working
14 furiously to develop a basis for the perceptions that
15 they had shared with Mr. Asselstine, perhaps prematurely,
16 not that the perception could not be defended, but that
17 they had not developed and defended them before sharing
18 them with the commissioner.

19 Nevertheless, my task was to figure out what
20 the NSRS perception was and to help develop a position
21 with respect to that perception.

22 So, I took the information from the January
23 14th position. And from that I concluded that the area
24 of the NSRS perception was that the nonconforming
25 conditions, those which had been being processed on a

1 form that is called an NCR.

2 There were other problem solving processes
3 or other problem solving administrative processes being
4 used in TVA at that time. But from what I saw in the
5 NSRS perception as written out on January 14th, I
6 concluded that the concern was with the adequate handling
7 of generic implications of those problems which had been
8 administered through the NCR system.

9 So, given that boundary, I went off to look
10 at how the operating organization should feel about the
11 handling of the nonconformances which it had indentified
12 on the NCR form with respect to the adequacy of the
13 generic handling, or that part of corrective action which
14 goes beyond fixing the individual problem and looks at
15 the root cause and uses the root cause to find other
16 similar examples and corrects them. And that was what I
17 focused on.

18 Q. What were your findings?

19 A. My perception going into it, once I bounded
20 it, was that those nonconformances which numbered at that
21 time approximately three hundred.

22 Through the history of the operating
23 organization, having identified problems on that NCR
24 form, my perception was that the handling of those had
25 been essentially the same as the handling of several

1 thousand that had been identified by the construction
2 organization and the engineering organization and had
3 been dispositioned by them affecting Watts Bar.

4 The reason for that perception was because
5 by procedure, if design or construction caused the
6 problem, the operating organization's nonconformance
7 would be essentially turned over to the design and
8 construction organization to determine the disposition,
9 determine the generic implications just as if
10 construction or design had identified the problems
11 themselves.

12 The nonconformance form was typically used
13 by the operating organization to document those problems
14 which were design and construction ones, rather than
15 operation ones.

16 Q. Is the reason you concentrated on the
17 operations aspect of it, because you were in operations
18 or because that's what you read as the NERS concern?

19 A. I concentrated on operations because Mr.
20 Burdette showed me the assignment list for handling the
21 eleven NERS perceptions.

22 When it came to the one on nonconformancy,
23 it was sub-divided into three owners for providing input,
24 and I was assigned -- my assignment was limited to the
25 operations organization perspective.

1 Other individuals were assigned
2 responsibilities for providing a position from
3 construction and engineering.

4 Q. Okay.

5 A. I didn't complete the last answer. I said I
6 went into it with a perception that that was the
7 condition.

8 I'm trying to figure out how not to answer
9 everything within this one question, so we can come back
10 here.

11 Q. Feel free to expand if you feel the
12 information --

13 A. I went on a trip or missed a day of work,
14 and Mr. Burdette needed an input around January 29th, for
15 some reason, that I wasn't sensitive to. And he got one
16 of my staff members to create a position on January 29th
17 which was not well thought out and which I did not agree
18 with.

19 So, as soon as I got back to work, I started
20 undoing that position and put in the one that I was
21 developing.

22 Q. Who was that staff member?

23 A. Charles Rutzler. I believe that he worked
24 with Les Ottinger, also of my staff.

25 Q. Did they kind of present a representation of

1 a draft of operation view at that point that you had to
2 correct with Burdette, or what was the mechanics of that?

3 A. They did. I don't recall, but I brought the
4 working file here. I believe that there is a copy of
5 that position in here. If it would be useful to discuss
6 that, I'll look for it.

7 Q. Well, briefly. You said it was not well
8 thought out.

9 What were the aspects of that position that
10 you disagreed with?

11 A. Let me first read from a paper that I typed
12 up apparently within the first couple of days February in
13 1986.

14 It says, "While the statements provided by
15 C.W. Hutzler on January 29, 1986 and J.A. McDonald on
16 February 12, 1986 are accurate and true, their
17 completeness is a subjective opinion.

18 "In my opinion, the February 20, 1986 draft
19 corporate position is not complete because it does not
20 clearly identify the issue to which it responds. It does
21 not establish a clear position with respect to what I
22 believe the issue is.

23 "It largely does not provide sufficient
24 information with respect to program implementation to
25 support the needed corporate position, and it does not

1 incorporate the statements provided by J.A. McDonald on
2 February 12, 1986.*

3 And so this gets bound up and both my staff
4 had not provided what I wanted them to provide, as well
5 as I had a personal opinion that the direction for the
6 effort was not what I would have elected had I been in
7 charge of setting the strategy for the response.

8 Q. Was that document that you were quoting from
9 addressed to Burdette or Licensing, or who did you send
10 it to?

11 A. This document was not addressed. I typed
12 it up so that I could discuss from it.

13 Let me recall who I did have discussion in
14 this area with. I believe now that the reason why I
15 typed this up was because I felt that I needed to force
16 the issue with Mr. Burdette to get the draft corporate
17 position to include the revised position that I had given
18 him on February 12th, which for one reason or another had
19 not shown up in the collective corporate position on
20 February 20th.

21 I did not know if it was an administrative
22 issue that had caused an oversight, or if there was some
23 reluctance to incorporate what I had provided on the
24 12th.

25 I was concerned that, in my opinion, the

1 draft corporate position was not taking a clear stand
2 like I thought it ought to take a clear stand on the NSRS
3 perception.

4 The structure was providing a discussion of
5 the programs which were in place or planned to be in
6 place largely. I felt that it was more appropriate to
7 talk about the performance which had occurred in the past
8 and take a clear position on whether or not TVA agreed
9 with the NSRS perception.

10 But that was my opinion on how to package
11 TVA's opinion of the NSRS perception and send it back to
12 NRC.

13 I did meet with Mr. Richard Kelley and
14 shared my concern with him. He was, of course, in charge
15 of the strategy for this response. He indicated that he
16 was desirous of sharing with NRC enough information so
17 that NRC could draw the conclusions it needed to.

18 Q. Did your point of view, or your desired
19 additions to that section ever get implemented into the
20 final edition?

21 A. My position did get into the position. I'm
22 sorry. Let me try to speak more clearly.

23 The position which I offered for the Watts
24 Bar operating organization was incorporated accurately in
25 the March 20th submittal by TVA. It was devised and

1 incorporated consistent with strategy which Mr. Kelley
2 had for the entire package.

3 Q. What was that strategy, to your knowledge?

4 A. My opinion was that strategy was to share
5 with NRC TVA's opinion of the program it had in place, or
6 was going to have in place in the area of NSRS's
7 perception without much further discussion.

8 Q. As opposed to past performance?

9 A. As opposed to discussing past or current
10 performance or making clear statements to agree or
11 disagree with the NSRS perceptions.

12 Now, a little while ago you had me looking
13 for what my staff had presented on January 29th, and
14 thus far I have not come across that. Let me look for a
15 moment here. I found it. Let me review it for a moment.

16 I reviewed again what Mr. Hutzler of my
17 staff provided to Mr. Willie Brown's staff which I don't
18 recall the specific relationship, but this was to Mr.
19 Burdette on January the 29th.

20 When I reviewed it again, I once again
21 concluded that it is a discussion that is limited to
22 describing the procedural controls which were in place
23 for handling conditions adverse to quality with no other
24 perspective of nonconformance handling being discussed.

25 Q. May I review that?

1 A. Yes.

2 Q. To your knowledge, Mr. McDonald, is a copy
3 of this included in these binders that were prepared by
4 Mr. Burdette regarding the backup information and the
5 development of the technical responses?

6 Do you have any knowledge of whether or not
7 this particular document include those binders, if you're
8 familiar with those?

9 A. I specifically am aware of the time frame in
10 which NRC requested that TVA develop and present binders
11 of backup information which would demonstrate the
12 information that TVA utilized in developing the March 20,
13 1986 letter. Mr. Burdette had a key role in developing
14 those findings.

15 My specific involvement in that specific
16 exercise was to collect, label and provide the file which
17 you are looking at now to Mr. Ralph Shill of the Division
18 of Nuclear Safety and Licensing in Chattanooga, who was
19 to then pass it on to Mr. Burdette.

20 I am not aware of what from this file did or
21 did not get to Mr. Burdette, or did or did not wind up in
22 the backup material which NRC received.

23 Q. Okay.

24 A. Wait one minute. Let me correct something.
25 Mr. Shill did tell me that he had not

1 included in that package information that I had in my
2 files that was related to a subsequent letter from QTC on
3 May 30, 1986 because that was not part of, per se, what
4 NRC had asked for. Therefore he had taken that part out
5 of my file.

6 Q. I see.

7 A. I don't recall, any other pieces -- myself
8 being advised of any other pieces being removed from the
9 working file that was going to NRC.

10 Q. And if I understand correctly, your basic
11 problem with this response that was prepared by Mr.
12 Hutzler evidently, was that it only addressed the
13 procedures that were in place to handle nonconformance
14 reporting and did not delve into the actual
15 implementation of the procedures?

16 A. Yes, and the adequacy of that
17 implementation.

18 From there I developed some additional words
19 to both revise some of the program descriptions that Mr.
20 Hutzler had made because I didn't think that they were
21 focused as neatly as they should have been. I don't
22 remember. They were editorial changes.

23 I think that there was a reference to the
24 Plant Operations Review Committee in there that I thought
25 might have been a little misleading, and I revised that.

1 But the key thing I did was to develop a
2 statement that said that the manner in which these three
3 hundred nonconformances had been handled was the same or
4 much the same as the several thousand handled by the
5 other organizations.

6 In order to confirm -- because as I said a
7 while ago, that was a perception that I had, a perception
8 based upon my experience as an NRC inspector, my
9 experience working in Quality Assurance and the
10 experiences I had gained in the short time I had been
11 back at Watts Bar in the handling of nonconformances.

12 I walked over to a file drawer in my office
13 in which there were nonconformances issued by the
14 operating organization from amongst that body of three
15 hundred, and I randomly reached into the drawer in the
16 1983 time frame and pulled out approximately ten
17 nonconformances and reviewed them for their relevance to
18 the current condition at Watts Bar to see if there was a
19 correlation that could be made about the adequacy of the
20 handling of generic implications, which, once again, I
21 thought was the NSRS point that I should be responding
22 to.

23 As I recall, I found at least three
24 instrumentation problems with slope and fitting problems,
25 technical deficiencies. I was aware that such

1 instrumentation problems had been raised, closed formally
2 and then raised again more than once during the life of
3 the Watts Bar plant, apparently indicating lack of
4 adequate generic corrective action to make the problem
5 actually get resolved.

6 We were, at that point in time at Watts Bar,
7 just undertaking a broad scope plantwide program to
8 resolve instrumentation slope problems in early 1986. To
9 me that completely confirmed that there had been
10 inadequate generic corrective action for nonconformances
11 identified in that range of three hundred by the
12 operating organization that had been dispositioned and
13 resolved generically by the engineering construction
14 organization.

15 So, I proceeded to work to get a statement
16 put in the NSRS perception of non-conformances that
17 indicated that those initiated by the operating
18 organization had received similar handling to those
19 initiated by the construction and engineering
20 organizations.

21 BY MR. REINHART:

22 Q. When you say the same, from the examples you
23 have found there was inadequate action to prevent
24 recurrence of generic corrective action?

25 A. That's true.

1 Q. Are you then saying that the same as that
2 the design and construction also had inadequate action to
3 prevent recurrence?

4 A. I am telling you that my opinion was that
5 those were inadequate programs. I had, as a TVA employee
6 and as a NRC employee previously told TVA that, in my
7 opinion, those were inadequate programs.

8 But when it comes to this particular
9 exercise in early 1986 commenting and developing the
10 position on the design and construction handling of
11 nonconformances was beyond the scope of my assignment or
12 boundary to operate in. I could only comment on the
13 operating organizations three hundred nonconformances.

14 Q. I guess I'm confused though. You describe
15 operating as inadequate on generic corrective action, and
16 then you say it is the same as design and construction.

17 The information you were using to say the
18 same as is prior knowledge you had in the design and
19 construction area?

20 A. Prior opinion, not developed as a part of
21 this Appendix B issue. Prior opinion as both chief of
22 the Quality Improvement staff, as well as the resident
23 inspector at Watts Bar.

24 My inspection reports and the quality
25 problems that my staff worked on as part of the TVA

1 Office of Quality Assurance highlighted my concerns with
2 the adequacy of the TVA corrective action program.

3 Q. What I am trying to ask then is why you
4 didn't develop that at this time?

5 These opinions you had of the other
6 portions, were they supportable in your mind by work you
7 had done before?

8 A. Definitely. However, keep in mind that the
9 strategy that I understood was desired for the Appendix B
10 response did not get into the area of offering opinion on
11 adequacy or inadequacy of performance of solving
12 nonconformances.

13 Q. I understand that. I'm searching for your
14 basis for saying the same as.

15 A. If we are looking for documented evidence of
16 my opinion and why I drew it, we can go back to the
17 Office of Assurance files on quality problems.

18 My Quality Improvement staff was changed
19 with developing an administrative system for
20 orchestrating the solution to what my staff perceived
21 were the biggest problems confronting TVA.

22 The very first quality problem we
23 identified, Serial Number 83-1 was deficiencies in
24 corrective action. I'm sorry. Deviation control/
25 corrective action performance.

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And that was based upon not only my experiences as an NRC inspector, but also analyses that I had my staff run based on data bases of NSRS findings, Institute of Nuclear Power findings and NRC inspector findings and what was in the current nonconformance system of TVA.

Based upon evaluating all of those, my staff concluded that that was the number one quality problem that we needed to be pursuing.

Prior to that time, if you review my inspection reports as resident inspector for Watts Bar, I believe you will find a trend from the early 1980 inspection reports where citations were against various criterion of Appendix B for inadequate design or constructing or procurement control or failure to follow procedures to a focus in 1981, which was one largely of citation against Criterion 16 and 15 for inadequate solution or identification and solutions that TVA staff members knew existed and either did not document, or if they were documented they didn't get them solved.

Q. With that background then and what you developed by looking at your operating corrective action system, nonconformance compliance corrective action system, and you went and talked to Mr. Kelley, did you explain this to him?

1 A. I explained to Mr. Kelley that I believed
 2 that in the area that I was assigned, the
 3 nonconformances, that TVA had not done well in handling
 4 nonconformances regardless of who identified them.

5 But that was, from my perspective, just an
 6 example of a collection of draft responses that I had
 7 seen, all of which to me seemed to have the flavor that
 8 we were not going to talk about perceptions of
 9 performance.

10 TVA was intending to talk about perceptions
 11 of our current and past documented program and
 12 identifying how they were supposed to work.

13 Q. Why did Mr. Kelley want to stay away from
 14 performance?

15 A. You will have to ask Mr. Kelley that. His
 16 responses to me were of the flavor that -- and indeed, he
 17 does have a considerably broader and deeper background in
 18 the nuclear program than I do, and he was indeed assigned
 19 to be in charge of this task.

20 He felt that the strategy that he had the
 21 project moving on was going to share enough information
 22 to allow the NRC staff to draw the conclusion that it
 23 needed to draw without going further into the area that I
 24 was recommending that he get into.

25 Q. Mr. McDonald, from your knowledge of 10 CFR

1 50, Appendix B, you may recall Criterion One, the very
2 first sentence, requires a licensee to have a program and
3 to execute that program.

4 Does that mean that the licensee must
5 implement or execute the documented program and
6 procedures, does that mean they have to carry those out
7 through performance?

8 A. A construction permit is issued on the basis
9 that the documented program in its structure and content
10 is acceptable to the commission before the construction
11 permit is issued.

12 And a condition of the construction permit
13 is to follow that program. Therefore -- I am having a
14 little trouble understanding your question, but following
15 the quality assurance program is a condition of the
16 construction permit.

17 Q. So, to then address whether one is in
18 compliance with Appendix B, wouldn't there be a
19 requirement to address performance as well as the written
20 program?

21 A. Compliance with Appendix B, and we're
22 getting very close to getting into a semantics discussion
23 here, but compliance with Appendix B can -- I'm having
24 trouble dealing with all the ramifications of this maybe
25 subtle, maybe not subtle point.

1 You said compliance with Appendix B?

2 Q. To be in compliance, do you have to do what
3 you said you were going to do?

4 A. To be in compliance with Appendix B, by
5 virtue of the way it is crafted, in my opinion -- and
6 incidentally, we were getting into a tough area here, and
7 I want you to make me come back to this -- but in my
8 opinion, compliance with Appendix B includes, as
9 Appendix B provides for and requires doing a good job of
10 identifying and solving one's problems where one is not
11 complying with Appendix B.

12 Appendix B recognizes that you will not
13 always be in compliance with some of its provisions and
14 has designed into it, very clearly highlighted --as a
15 matter of fact, two out of the sixteen criteria are
16 devoted to Appendix B requirements for identifying and
17 solving the problems where you do not successfully comply
18 with other parts of Appendix B.

19 So, compliance with Appendix B can be viewed
20 from a point which says you're in compliance with
21 Appendix B as long as you are doing a good job of
22 identifying and correcting your failures.

23 It can also be viewed from another semantics
24 viewpoint to say that any time that you fail to comply
25 with any individual element of a procedure that is in

1 place as part of the construction permit under the
 2 criterion of Appendix B, that any time you had any
 3 minor deviation you are not in compliance with Appendix
 4 B, which is of course the condition under which every
 5 single construction permit has operated and will operate.

6 There's no such thing as any nuclear
 7 facility or utility or plant under any phase of its
 8 design, construction or operation which is totally in
 9 compliance with every element of every procedure that it
 10 appropriate to its quality assurance program.

11 So, compliance with Appendix B would seem to
 12 me, to be more of how well you are complying with the
 13 various criteria of Appendix B, including how well you
 14 are identifying and solving the problems, the conditions
 15 adverse to quality.

16 Q. So, am I correct in assuming that what you
 17 are saying there is that to have a documented program
 18 sitting on the shelf is not enough?

19 A. To have any documented program sitting on
 20 the shelf is enough to get a construction permit. In
 21 order to keep a construction permit, one has to go forward
 22 and implement it, which is a requirement of that
 23 construction permit, and one which this utility has done
 24 and which NRC has reviewed the implementation of for
 25 quite sometime.

1 Q. So, performance of the corrective action
2 program, nonconforming item program, would be part of
3 compliance with Appendix B?

4 A. Performance of all of the elements of
5 Appendix B to me is an integral part of our commitment
6 for a compliance with Appendix B. And I believe that
7 most the criterion read of that flavor.

8 "Measures shall ensure" is a common theme.
9 Measures mean that they have to be established, and
10 measures can't very well ensure unless there's someone
11 there performing them.

12 I believe the whole flavor of the document
13 is one of having the program in place and following it.

14 Q. Then, wouldn't it seem reasonable in
15 answering the question regarding compliance with Appendix
16 B that a person would address performance as well as
17 programs and procedures?

18 A. Obviously I feel that way, or I would not
19 have met with Mr. Kelley and expressed an opinion that I
20 felt that an appropriate response to NRC would include
21 discussion of performance.

22 However, I don't understand why you would
23 ask me to confirm my opinion.

24 Q. I just want to make sure that I understand
25 what you are saying.

1 A. Okay.

2 BY MR. ROBINSON:

3 Q. Mr. Kelley's strategy in preparing the
4 response, was it verbalized to you, or did you infer that
5 from reading some of the other responses?

6 A. I got it largely through inference, the
7 first inference coming from seeing what my staff had
8 developed during my absence on January 29th.

9 As I recall, I asked Mr. Eutzler, why did we
10 only talk about what the procedures are structured to say
11 and not talk about performance?

12 I believe he referred to Mr. Burdette and
13 the other individual from QA who worked closely with Mr.
14 Burdette during this process. I am trying to remember
15 his name. Perhaps you can help me and offer some other
16 names?

17 Mr. Ray Newby. He said that's all they
18 wanted.

19 I got a copy. I believe I went to Mr. Newby
20 and got a copy of the other draft responses which he had
21 at that point in time before going back and working on
22 revising the one that my staff had made. And I first
23 noted that that appeared to be the flavor, that the draft
24 responses submitted on that date were discussions of
25 programs, not of perceptions of their performance or any

1 clear statements as to whether or not those perceptions
2 were in agreement or disagreement with those coming out
3 of NSRS.

4 Now, I've gotten lost. I've forgotten where
5 we were trying to go with the discussion.

6 Q. I guess one of my bottom line questions
7 eventually is I have here the copy of the January 3rd
8 letter that was sent to TVA by the NRC.

9 And in the middle of the second paragraph,
10 it says, "You are requested to furnish under oath or
11 affirmation, TVA's corporate position with respect to
12 whether or not 10 CFR Part 50, Appendix B requirements
13 are being met at the Watts Bar facility."

14 Now, just within your balliwick, at that
15 time in the January/February time frame operation, your
16 random review of the 1983 NCR's, and not even considering
17 your projections of whether or not engineering and
18 construction NCR's were handled the same as the
19 operational, if you were to have answered that letter,
20 would you ever said that TVA was in compliance with
21 Appendix B?

22 A. This is, of course, a hypothetical question.

23 Q. Yes.

24 A. My strategy, had I been given the
25 assignment, would have been to have identified that there

1 were compliance problems in most, if not all of the areas
2 in which NSRS shared perception and indicated what
3 programs improvements were either underway or needed to
4 be developed in each of those areas.

5 When it came to the nonconformances, I would
6 have essentially used that section to make a summary
7 statement that said that one of the reasons why there
8 were protracted significant problems in some of the
9 other areas was because of past ineffectiveness in the
10 problem solving system and identify what was being done
11 or needed to be done in order to improve the performance
12 of the corrective action system.

13 Q. And what would have been your statement as
14 to whether or not Appendix B requirements were being met
15 at the Watts Bar facility at that time?

16 A. That is a tough one because the lack of
17 perfection that anyone gets into.

18 I believe I probably would have irritated
19 the commission by providing a response back that says
20 that we have a documented program in place. That program
21 and its performance is not perfect, which is why we have
22 a corrective action system.

23 That corrective action system is not
24 perfect, as described in the attachment. And we conclude
25 that TVA is meeting its commitment to devise and

1 implement a program that satisfies Appendix B, including
2 one to solve problems.

3 I would not have made a statement of yes, no
4 meets Appendix B because of the semantics, it's too easy
5 to get into the apples and oranges of the meaning of that
6 criteria in 15 and 16.

7 So, I would have limited the response to
8 making a statement that was of the flavor that
9 acknowledge it, that we have problems in certain areas,
10 what we are doing about them and say that is consistent
11 with provisions of Appendix B.

12 Q. In your own mind, without -- we know what
13 you would have responded to the NRC, but in your own mind
14 as of January 1986, early February, 1986, was Watts Bar
15 in compliance with Appendix B, just your opinion?

16 A. The same statement holds now as it did then.

17 If the criteria for compliance with Appendix
18 B is that one has a program in place that covers all
19 eighteen of the criterion, and one is implementing those
20 programs, and included in that program is that one is
21 implementing a corrective action system under Criterion
22 15 and 16, then if one has to say yes or no, one is
23 complying with Appendix B, I would say the answer is yes,
24 one is complying with Appendix B.

25 But then one needs to state and highlight

1 that that means that one does have problems with
2 compliance in certain areas and is working on fixing
3 them, even if some of the problems are with the problem
4 solving system.

5 I think that given a yes/no answer, the
6 answer yes, compliance, but with a lot of explanation
7 that that yes is recognizing the existance of
8 deficiencies, the need for correction of deficiencies and
9 indeed, the need for improvement in the ability to
10 correct deficiencies.

11 That is my experience and my opinion.

12 Q. With that in mind, do you feel that the
13 final March 20th package, the cover letter and the
14 individual's explanation of the NSRS perceptions
15 presented an accurate picture TVA's position with
16 respect to compliance at that time?

17 A. If you would, let me review the cover letter
18 because it's the key to it all in my opinion -- how the
19 cover letter addresses the implications of the problem
20 solving systems performance to the response.

21 I believe that there is a section in here
22 toward the end. I see in here statements which indicate
23 in the second paragraph acknowledgement "that problems
24 have been identified."

25 And in the third paragraph identification

1 that there are problems with the problem solving system.

2 "I recognize that the major thrust of those
3 perceptions is directed towards the ineffectiveness of
4 corrective action."

5 And then I interpret that the submittal goes
6 on to further commit to improvements specifically in that
7 area, because it says, "I intend to continue the
8 examination of QA activities."

9 Then it says, "We'll focus particularly in
10 that programatic area." This is referring to QA
11 activities, right after talking about ineffectiveness in
12 corrective action.

13 So, I believe I conclude what I did before
14 that in my opinion it may be tortuous for NRC to draw the
15 conclusions it needs to draw, as Mr. Kelley indicated, he
16 was intending to provide enough information for NRC to
17 draw the conclusions it needed to.

18 It is not as perhaps as rigidly structured
19 black and white as I would have structured the response,
20 but it does rely on the concept and does not obscure the
21 concept that the position is acknowledging weakness in
22 corrective action performance and committing to improve
23 the program.

24 Q. At the time you took your random sample of
25 the NCR and reviewed them and looked at the generic

1 implications and found the repeated NCR's indicating that
2 the generic situation may not have been properly
3 corrected, if you had to place a confidence level in the
4 corrective action system, operational corrective action
5 system under your purview, what percent of confidence
6 would you have that identified problems had been
7 generically corrected?

8 A. Based upon all of my experiences, or based
9 simply upon that look in the file drawer?

10 Q. Based on all of your experiences, including
11 that look in the file drawer.

12 A. Let's answer this in two parts.

13 Q. Okay.

14 A. The adequacy of generic corrective action is
15 to a degree a subjective matter, because in order to get
16 to the generic examples, one has to evaluate the root
17 cause for the deficiency that is at hand, and then based
18 upon the answer of what root cause you find, look at the
19 other activities to which that root cause may have been
20 applicable to the performance of and perhaps caused a
21 deficiency to occur elsewhere.

22 The evaluation one does to arrive at a root
23 cause is one which is open to considerable judgement.
24 Therefore, adequacy of generic corrective action is, in
25 many respects, an opinion.

1 Now, given my threshold and my approach for
2 identifying root causes and my opinion of what
3 constitutes adequate corrective action, then we are
4 almost out of the realm of talking confidence levels,
5 because what you are asking me to do is to say am I
6 confident that I have the opinion that I have.

7 My opinion is that the generic corrective
8 action has not been desirably effective, what John
9 McDonald feels is appropriate, for designing,
10 constructing and licensing a nuclear unit.

11 My opinion has been that that is not
12 sufficient to get enough of the generic examples and to
13 make enough of the big problems actually go away, then
14 corrective action has been too bandaied or narrow in its
15 focus.

16 Q. What is John McDonald's definition of an
17 acceptable program along those lines?

18 A. An acceptable program would be one in which
19 there is a critique of the nonconformance that is in
20 front of you, and that critique identifies all of the
21 attributes that should have produced a quality product,
22 which includes the training, the procedures, the
23 individual skill levels, the tools, the inspection
24 process and training of the inspectors.

25 The whole focus of the Appendix B program

1 can easily include thirty or forty elements that should
2 have caused that performance to have been adequate rather
3 than resulting in a deficiency.

4 The John McDonald opinion is that when you
5 start with a deficiency, you address those thirty or
6 forty different aspects and see how many supported good
7 performance and how many were contributing factors and
8 let you down, resulting in that deficiency occurring.

9 Then based upon the one or five different
10 contributing factors, you look at the time frame in which
11 those contributing factors operated, and you either go
12 out and review a hundred percent, or you sample the other
13 activities to which where performance occurred under the
14 influence of those contributing factors.

15 Q. Maybe I used the word program improperly.

16 What is John McDonald's definition of an
17 acceptable level of the performance of the program?

18 In other words, how many generic
19 deficiencies need to be corrected properly out of how
20 many before the program is successful, or adequate?

21 A. There are at least two or three questions
22 here. Let me go with the first one.

23 I was responding to the concept of a
24 corrective action program and it being adequate. I note
25 that our corrective action program that we have had and

1 currently have lacks those features that I just described
2 to you.

3 Now, in terms of the actual performance, the
4 successful performance of the corrective action, I
5 believe it would be very difficult to develop a
6 quantitative performance measurement criteria which would
7 say that if this particular CAQ defined in terms of the
8 activity which was being performed, the kind of
9 deficiency which occurred and the basic significance of
10 the deficiency were uncorrected that if you identified a
11 CAQ by those kinds of parameters, and then you measured
12 to see how frequently they recurred, that would be a
13 measurement as to whether or not generic corrective
14 action was being done well or not done well by how often
15 one came up and said, "Oh, by the way, we've got another
16 one of those."

17 I don't know what would be a good
18 quantitative number because my efforts to devise
19 performance measures of that sophistication haven't been
20 successful because most people's thinking on the subject
21 is not that sophisticated.

22 And the more fundamental performance
23 measures have not successfully evolved and been used,
24 such as the average ages of open problems and the numbers
25 in the backlogs, and monitoring those things and using

1 them to stimulate improvement of corrective action
2 performance.

3 I've never gotten to the point of
4 successfully designing and putting in place performance
5 measures on recurrence. But if I were to take a shot at
6 this point, I would say that when a deficiency is
7 significant enough, if not corrected, the safety function
8 would have been compromised.

9 Step one is that if in the future -- and
10 it's a design or construction deficiency -- if in the
11 future the deficiency in the same kind of activity, as in
12 civil design for the pump or the piping systems were to
13 occur, it would be a measurement of ineffective
14 corrective action.

15 Q. Okay. Did you have any part at all, Mr.
16 McDonald in drafting the cover letter?

17 A. None.

18 Q. Did you approve the final version of the
19 attachment to the package that referred to the NCR as
20 they address corrective action?

21 A. I concurred with the part of the attachment
22 that was on nonconformance after it was revised to
23 include the address that the handling of those
24 nonconformances were similar to those that have been
25 handled by engineering and construction.

1 Even though that did not draw a clear
 2 picture of adequacy, I was not able to convince myself to
 3 concur in a document, or a piece of a document that I was
 4 personally responsible for that might lead someone to
 5 conclude that because the program description was
 6 adequate, that the program was performing adequately.

7 So, that was the compromise which I as able
 8 to strike in my own mind.

9 Q. Is there a particular portion of this three
 10 page response, and I'm referring to pages 19, 20 and 21
 11 of the March 20th letter that incorporated your --

12 A. The entire scope of the position that I put
 13 into the NSRS perceptions on nonconformance handling
 14 comes, represented on 19, 20 and 21 is the paragraph at
 15 the bottom of page 20 which starts with the ONT plant
 16 staff has in place procedural control.

17 It's that paragraph which ends at the bottom
 18 of page 20.

19 Q. All this really says is that basically the
 20 operation portion of the NCR system is in line with the
 21 engineering and construction situation. It doesn't refer
 22 to the adequacy of the operation.

23 A. Precisely. It does not provide an
 24 assessment of the adequacy of performance for either
 25 those construction and engineering nonconformance or

1 those that had been initiated by the operations
2 organization and subsequently evaluated resolved by
3 design and construction.

4 Q. In your conversation with Mr. Kelley, did
5 you strongly suggest to Mr. Kelley that the adequacy of
6 these programs should be included, or did you just
7 acquiesce to his strategy regarding presenting the fact
8 that the programs were in place and there were plans for
9 improvement in the future?

10 A. Once again, that's a subjective question on
11 how strong.

12 I had previously written a memorandum on the
13 subject, and though I don't know, I am quite confident
14 that I believe I am probably the only one who went to his
15 office to express my concerns over the fundamental
16 strategy that was being involved.

17 I told him why I was concerned and why I
18 thought that there was, in my opinion, a much different
19 way to go that I thought was better.

20 He indicated that he felt that the MRC staff
21 could get the information it needed with the strategy he
22 had, and therefore he planned on staying that way. And I
23 did not argue with him any further. I said my piece and
24 left.

25 BY MR. REINHART:

1 commitment that we made.

2 That situation I have seen in several cases
3 that we have tried to do too much, and when we fell a
4 little bit short, we disproportionately made it a big
5 issue when others in the industry weren't even playing in
6 the same league. And yet we were looking like the bad
7 guys and the poor performers because we fell short of our
8 commitments.

9 Now, his reaction was to cast that out of
10 hand, which didn't surprise me coming from a Navy nuclear
11 background. I believe he regarded that as an excuse for
12 poor performance rather than as an assessment of ways we
13 get ourselves in trouble.

14 But I can say that I have seen a couple of
15 cases where over the last year Mr. White has become a
16 little more wary about over committing and has now
17 started to say that he intends to license Sequoyah based
18 upon the same kind of commitments and same kind of
19 actions that are expected of the rest of the industry,
20 rather than to have the model nuclear plant that meets
21 all the latest industry standards before he can start it
22 up.

23 I don't know if there is an indication in
24 here, but his initial reaction was, "Pooh, pooh. We're
25 just screwing up if we don't meet our commitments."