

November 8, 1995

EA 95-220

Tennessee Valley Authority  
ATTN: Mr. Oliver D. Kingsley, Jr.  
President, TVA Nuclear and  
Chief Nuclear Officer  
6A Lookout Place  
1101 Market Street  
Chattanooga, TN 37402-2801

SUBJECT: BROWNS FERRY PREDECISIONAL ENFORCEMENT CONFERENCE SUMMARY

Dear Mr. Kingsley:

On October 30, 1995, the NRC staff met with representatives of the Tennessee Valley Authority (TVA) and the Stone and Webster Engineering Corporation to discuss an apparent violation of 10 CFR Part 50.5 and 10 CFR Part 50.7 at the Browns Ferry Nuclear Plant.

Enclosure 1 is a list of the individuals who attended the meeting and Enclosure 2 is the handout material supplied by TVA.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10 Code of Federal Regulations, a copy of this letter and its enclosures will be placed in the NRC Public Document Room.

Should you have any questions concerning this letter, please contact us.

Sincerely,

(Original signed by M. Lesser)

Mark S. Lesser, Chief  
Reactor Project Branch 6  
Division of Reactor Projects

Docket Nos. 50-259, 50-260, 50-296  
License Nos. DPR-33, DPR-52, DPR-68

Enclosures: 1. List of Attendees  
2. Presentation Notes

cc w/encls: (See page 2)

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cc w/encls:

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Mr. D. E. Nunn, Vice Pres.  
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Tennessee Valley Authority  
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Limestone County Commission  
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Mr. S. Ehele  
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Under 10 CFR 2.790]

Distribution w/encls: (See page 3)

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LIST OF ATTENDEES

NRC

J. R. Johnson, Acting Deputy Regional Administrator, Region II (RII)  
E. W. Merschoff, Director, Division of Reactor Projects (DRP), RII  
M. S. Lesser, Chief, Branch 6, DRP, RII  
J. T. Munday, Resident Inspector, Branch 6, DRP, RII  
B. Uryc, Director, Enforcement and Investigation Coordination Staff (EICS),  
RII  
L. J. Watson, EICS, RII  
C. F. Evans, Regional Counsel, RII

TVA

M. Medford, Vice President, Engineering and Technical Services  
R. Machon, Site Vice President, Browns Ferry Nuclear Plant  
P. Salas, Licensing Manager  
E. Vigluicci, Attorney  
M. Harding, Concerns Resolution Staff Manager

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W. Dodson, Vice President, Nuclear Operations, Stone & Webster Engineering  
Corporation (SWEC)  
C. Bishop, SWEC Browns Ferry  
S. Ehele, SWEC Browns Ferry  
S. Salowitz, SWEC Browns Ferry

OTHER

R. Rader, Winston and Strawn

**PREDECISIONAL ENFORCEMENT CONFERENCE**

**ATLANTA, GEORGIA**

**OCTOBER 30, 1995**

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**POTENTIAL VIOLATION OF 10 CFR § 50.7**

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**PRESENTATION OF**

**TENNESSEE VALLEY AUTHORITY**

**BROWNS FERRY NUCLEAR PLANT**

## PREDECISIONAL ENFORCEMENT CONFERENCE

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|----|-------------------------------|-----------|
| 1. | INTRODUCTION                  | R. MACHON |
| 2. | TVA MANAGEMENT<br>PERSPECTIVE | R. MACHON |

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### STONE & WEBSTER ENGINEERING CORPORATION PRESENTATION

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|----|---|------------|
| 3. | TVA'S ASSESSMENT OF THE<br>BFN WORK ENVIRONMENT | M. MEDFORD |
| 4. | CONTRACTOR REQUIREMENTS<br>IMPOSED BY TVA       | M. MEDFORD |
| 5. | ACTIONS TAKEN BY TVA                            | M. MEDFORD |
| 6. | SUMMARY   | M. MEDFORD |

## **TVA MANAGEMENT PERSPECTIVE**

- **TVA IS COMMITTED TO AN OPEN WORK ENVIRONMENT FREE OF INTIMIDATION AND HARASSMENT**
- **INDICATIONS POINT TO A POSITIVE WORK ENVIRONMENT AT BROWNS FERRY**
- **CIRCUMSTANCES OF THIS CASE LEAD TO THE CONCLUSION THAT NO DISCRIMINATION OCCURRED ON SWEC'S BEHALF**

## **TVA'S ASSESSMENT OF THE BROWNS FERRY WORK ENVIRONMENT**

- RECENT DATA INDICATE THE ABSENCE OF  
ANY CHILLING EFFECT

NRC SURVEY OF DECEMBER 1993

TVA OIG SURVEY OF JULY 1994

TVA OIG SURVEY OF SEPTEMBER 1995

- WORK ENVIRONMENT NOT AFFECTED BY THE  
HARRISON CASE



## **CONTRACTOR REQUIREMENTS IMPOSED BY TVA**

- **TVA REQUIRES CONTRACTORS TO PROTECT RIGHTS OF EMPLOYEES**

**MUST COMPLY WITH SECTION 211**

**MUST FULLY INVESTIGATE ALLEGATIONS**

**MUST COOPERATE WITH TVA'S OIG**

**MUST DESCRIBE MANAGEMENT ACTION**

- **MAJOR CONTRACTORS MUST ESTABLISH THEIR OWN EMPLOYEE CONCERN PROGRAMS**
- **CONTRACTOR EMPLOYEE CONCERN PROGRAMS ARE AUDITED BY TVA'S OIG AND CONCERNS RESOLUTION STAFF**
- **FREQUENT COMMUNICATION BETWEEN CONTRACTOR CONCERN PROGRAMS AND TVA CONCERN PROGRAM**

## **ACTIONS TAKEN BY TVA**

- INVESTIGATION OF COMPLAINT BY TVA'S OIG
- MONITORED PROGRESS OF CASE THROUGH DOL PROCESS
- REQUESTED SWEC TO ADDRESS POTENTIAL CHILLING EFFECT OF SECRETARY'S DECISION
- ASSESSED SWEC'S RESPONSE AND REQUIRED FOLLOW-UP ACTION

## SUMMARY

- THE BROWNS FERRY WORK ENVIRONMENT IS OPEN TO THE EXPRESSION OF EMPLOYEE CONCERNS
- CIRCUMSTANCES OF THE HARRISON CASE DO NOT POINT TO DISCRIMINATION ON BEHALF OF SWEC
- TVA AND SWEC HAVE TAKEN PROPER ACTION TO ASSESS AND DISPEL ANY POTENTIAL CHILLING EFFECT
- NO VIOLATION OF 10 CFR § 50.7 EXISTS

**NRC ENFORCEMENT CONFERENCE**

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**POTENTIAL VIOLATION OF 10 C.F.R. § 50.7  
RELATING TO DOUGLAS HARRISON CASE**

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**PRESENTATION OF**

**STONE & WEBSTER  
ENGINEERING CORPORATION**

**BROWNS FERRY NUCLEAR PROJECT**

**October 30, 1995**

# NRC ENFORCEMENT CONFERENCE

## AGENDA

- INTRODUCTION AND OVERVIEW B. DODSON  
VICE PRESIDENT - NUCLEAR
- SEQUENCE OF EVENTS C.R. BISHOP  
VICE PRESIDENT -  
BROWNS FERRY SITE DIRECTOR
- STATEMENT OF STEVEN EHELE
- ASSESSMENT OF ALLEGED DISCRIMINATION BY SWEC C.R. BISHOP
- DEPARTMENT OF LABOR ACTIONS C.R. BISHOP
- SWEC PETITION FOR REVIEW OF SECRETARY'S DECISION IN U.S. COURT OF APPEALS R. RADER  
WINSTON & STRAWN
- ACTIONS TO ENCOURAGE REPORTING OF SAFETY CONCERNS C.R. BISHOP
- ACTIONS TO VERIFY EFFECTIVENESS OF SWEC EMPLOYEE CONCERNS PROGRAM C.R. BISHOP
- NRC ENFORCEMENT CONSIDERATIONS B. DODSON
- SUMMARY AND CLOSING REMARKS B. DODSON

## NRC ENFORCEMENT CONFERENCE

### INTRODUCTION AND OVERVIEW

- SWEC PROGRAMS AND ACTIVITIES, ALONG WITH TVA, ASSURE CONTINUED ABILITY OF EMPLOYEES TO RAISE SAFETY CONCERNS FREELY.
- PREDECISIONAL ENFORCEMENT CONFERENCE RESULTS FROM SECRETARY OF LABOR DECISION UNDER SECTION 211.
  - ISSUE IS WHETHER AN IRONWORKER LEAD FOREMAN AT BROWNS FERRY UNIT 3 WAS DEMOTED TO FOREMAN AND REASSIGNED BECAUSE HE RAISED A CONCERN ABOUT FIRE WATCH REQUIREMENTS.
- FINDINGS BY SECRETARY OF LABOR DISAGREE WITH ADMINISTRATIVE LAW JUDGE AND WAGE AND HOUR DIVISION.
- SWEC HAS APPEALED TO COURT OF APPEALS, BASED ON SIGNIFICANT LEGAL ISSUES AND LACK OF EVIDENCE TO FIND DISCRIMINATION.
- FACTS IN THIS CASE LEAD TO A FINDING OF NO DISCRIMINATION.

## NRC ENFORCEMENT CONFERENCE

### SEQUENCE OF EVENTS

- JUNE 1992
  - HARRISON HIRED BY SWEC AS JOURNEYMAN IRONWORKER.
- OCTOBER 6, 1992
  - HARRISON DESIGNATED SECOND LEAD FOREMAN FOR UNIT 3 DRYWELL IRONWORKERS; HARRISON SPECIFICALLY TOLD HE WOULD BE FIRST ONE CUT BACK IN FUTURE REDUCTION OF LEAD FOREMEN, BASED ON SENIORITY.
- NOVEMBER 11, 1992
  - HARRISON CUT BACK FROM LEAD FOREMAN TO FOREMAN, BUMPING A MORE JUNIOR FOREMAN TO JOURNEYMAN.
- JANUARY 6, 1993
  - HARRISON REDESIGNATED LEAD FOREMAN FOR A SINGLE CREW OF IRONWORKERS; AGAIN ADVISED HE WOULD BE FIRST ONE CUT BACK DUE TO SENIORITY.
- JANUARY 27-29, 1993
  - SWEC FIELD SITE MANAGER ASKS STEVE EHELE AND OTHER CRAFT SUPERVISORS TO CONSIDER FOREMEN/LEAD FOREMEN CUTBACKS.
- JANUARY 29-30, 1993
  - EHELE MEETS WITH SUPERVISORS TO CHECK ROSTERS FOR CREWS "TOP HEAVY" WITH FOREMEN/LEAD FOREMEN.
  - NO PARTICULAR POSITION OR INDIVIDUAL SUGGESTED FOR REDUCTION.
  - SUPERVISORS MEET WITH EHELE SAME DAY AND RECOMMEND REDUCING HARRISON TO FOREMAN .

- FEBRUARY 1, 1993
  - EHELE LEARNS FROM HARRISON FOR FIRST TIME AT ROUTINE MEETING THAT IRONWORKERS ARE CONCERNED ABOUT WHICH GROUP PERFORMS FIRE WATCH DURING THE COOL-DOWN PERIOD, BUT NO SAFETY CONCERN EXPRESSED.
  
- FEBRUARY 2, 1993
  - HARRISON INFORMED OF HIS REDUCTION TO FOREMAN AS A RESULT OF SENIORITY, BUT REJECTS FOREMAN POSITION.
  - HARRISON AND UNION REPRESENTATIVE APPROACH EHELE AND SUPERVISORS TO REQUEST HARRISON'S REASSIGNMENT TO AN AREA OTHER THAN UNIT 3 DRYWELL.
  
- FEBRUARY 3, 1993
  - HARRISON SPEAKS WITH IRONWORKERS IN DRYWELL BEFORE MORNING SHIFT; IRONWORKERS REFUSE TO ENTER DRYWELL "UNTIL PROBLEMS RESOLVED."
  - EHELE CONVENES MORNING MEETING WITH IRONWORKERS' BARGAINING UNIT REPRESENTATIVES ON REFUSAL TO WORK.
  - LATER, EHELE LEARNS FROM FIRE WATCH GENERAL FOREMAN OF LABORERS, FOR FIRST TIME, OF IRONWORKERS' CONCERN THAT LABORERS WERE NOT SIGNING ON TO HOT WORK PERMITS.
  - SWEC FIELD MANAGER FINDS NO EVIDENCE THAT LABORERS WERE FAILING TO SIGN ON TO HOT WORK PERMITS.
  - EHELE PURSUES DISCUSSIONS WITH LABORERS' SUPERVISION AND BARGAINING REPRESENTATIVES; NEW ARRANGEMENTS MADE TO COVER FIRE WATCH IN UNIT 3 DRYWELL STRICTLY WITH LABORERS.
  - SWEC UNDERSTOOD IRONWORKERS AS CONCERNED ONLY WITH RELIEF FROM DRYWELL
  
- FEBRUARY 8, 1993
  - LABORERS AGAIN ASSUME FULL RESPONSIBILITY FOR FIRE WATCHES IN THE UNIT 3 DRYWELL.



## **NRC ENFORCEMENT CONFERENCE**

### **SWEC INVESTIGATION FINDS NO DISCRIMINATION**

- ON FEBRUARY 4, 1993, HARRISON CONTACTS STEVEN SALOWITZ, MANAGER OF SWEC EMPLOYEE CONCERNS PROGRAM.
- SALOWITZ INVESTIGATES FEBRUARY 4-12, 1993 BY INTERVIEWING SWEC MANAGERS AND SUPERVISORS, WHO ADVISE OF ROSTER REVIEW AND DECISION TO ELIMINATE A LEAD FOREMAN.
- SALOWITZ CONCLUDES NO REPRISAL OCCURRED; CUTBACKS IN PROGRESS HAD BEGUN PRIOR TO HARRISON'S DISCUSSING FIRE WATCH CONCERNS.
- SALOWITZ ALSO CONCLUDES HARRISON REDUCED FROM LEAD FOREMAN TO FOREMAN BASED ON SENIORITY, LIKE PREVIOUS REDUCTION IN NOVEMBER 1992.

- SALOWITZ INVESTIGATES POSSIBLE FAILURE OF LABORERS TO SIGN HOT WORK PERMITS.
  - HE FIRST FINDS THAT HOT WORK PERMITS FOR FEBRUARY 3, 1993 AND AFTERWARDS WERE SIGNED. LATER FINDS PERMITS FOR FEBRUARY 1-2, 1993 SIGNED, BUT ILLEGIBLE.
  - SALOWITZ CONFIRMS THAT EHELE HAD TAKEN ADEQUATE CORRECTIVE ACTION AFTER MEETINGS ON FEBRUARY 3, 1993 TO ASSURE LABORERS WERE SIGNING PERMITS. SALOWITZ AND TVA QA CONCUR NO CORRECTIVE ACTION DOCUMENT NEEDED.
  - NO EVIDENCE FOUND THAT LABORERS IN DRYWELL FAILED TO COVER HOT SPOTS DURING ABSENCE OF IRONWORKERS.
- ON APRIL 16, 1993, WHEN HARRISON RETURNS FROM EXTENDED SICK LEAVE, SALOWITZ INFORMS HARRISON OF INVESTIGATION RESULTS.
  - HARRISON TOLD HE HAD DONE GOOD JOB AS LEAD FOREMAN AND REDUCED ONLY FOR COST-SAVINGS.
  - HARRISON RAISES NO CONCERN ABOUT HANDLING OF COMPLAINT OR SUBSTANTIVE FINDINGS.

## NRC ENFORCEMENT CONFERENCE

### DEPARTMENT OF LABOR ACTIONS

- ON MARCH 30, 1993, HARRISON FILES SECTION 211 COMPLAINT WITH DOL, RECEIVED BY SWEC MAY 28, 1993.
- DOL WAGE AND HOUR DIVISION FINDS ON JUNE 16, 1993, BY CLEAR AND CONVINCING EVIDENCE, NO DISCRIMINATION OCCURRED.
  - STANDARD REVIEW OF PERSONNEL ASSIGNMENTS AND LABOR COSTS LED TO HARRISON'S DEMOTION; ONLY OTHER LEAD FOREMAN MAINTAINED HIS POSITION BECAUSE OF SENIORITY.
  - DECISION TO DEMOTE HARRISON AND FOREMEN IN OTHER CRAFTS MADE PRIOR TO HARRISON'S RAISING ANY FIRE WATCH CONCERNS ON FEBRUARY 1, 1993.
- AFTER FULL HEARING WITH LIVE TESTIMONY, ADMINISTRATIVE LAW JUDGE RICHARD K. MALAMPHY ISSUES RECOMMENDED DECISION ON NOVEMBER 8, 1994, FINDING NO DISCRIMINATION OR RETALIATION AGAINST HARRISON.
  - COMPLAINANT MADE A LEAD FOREMAN TO FINISH THE "LOWER STEEL" PROJECT AT ELEVATION 563. WHEN NEAR COMPLETION, SWEC REVIEWED ITS ROSTERS AND DECIDED FEWER FOREMEN NEEDED. HENCE, NO DISCRIMINATION IN HARRISON'S REDUCTION FROM LEAD FOREMAN.
  - HARRISON'S REDUCTION WAS IN ACCORDANCE WITH ACCEPTED SENIORITY PRINCIPLES.
  - HARRISON'S SUBSEQUENT TRANSFER TO AN OUTSIDE CREW CAME EITHER AT HIS OWN REQUEST OR AFTER HIS MEETING WITH IRONWORKERS RESULTED IN WORK STOPPAGE.
- DECISION AND ORDER OF THE SECRETARY OF LABOR OF AUGUST 22, 1995, REJECTS THE ALJ'S CONCLUSIONS.

## NRC ENFORCEMENT CONFERENCE

### SWEC PETITION FOR REVIEW OF SECRETARY'S DECISION IN U.S. COURT OF APPEALS

- PETITION FOR REVIEW FILED OCTOBER 13, 1995 WITH UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT.
- SIGNIFICANT ISSUES ON APPEAL RELATING TO "PROTECTED ACTIVITY."
  - NO EVIDENCE THAT EHELE AND SWEC SUPERVISORS UNDERSTOOD HARRISON'S CONCERNS TO INVOLVE SAFETY ISSUE.
  - SECRETARY ACKNOWLEDGED THAT IRONWORKERS INITIALLY COMPLAINED ABOUT FIRE WATCHES AS A DIVISION OF LABOR, BUT NEVER EXPLAINED HOW THIS CONCERN EVOLVED INTO PERCEIVED SAFETY ISSUE.
  - EVEN WHEN IRONWORKERS' CONCERN WAS CLARIFIED, ONLY QUESTION OF ADEQUATE FIRE WATCH COVERAGE SO IRONWORKERS COULD LEAVE DRYWELL.
  - NO BASIS FOR SECRETARY'S FINDING THAT THERE WAS A VIOLATION OF FIRE PROTECTION PLAN.
  - ERRONEOUS FINDING THAT COMMUNICATION TO CO-WORKER CONSTITUTES "PROTECTED ACTIVITY" UNDER SECTION 211.

- SIGNIFICANT ISSUES ON APPEAL RELATING TO LACK OF "SUBSTANTIAL EVIDENCE" TO SUPPORT SECRETARY'S DECISION.
  - SECRETARY SUBSTITUTED HIS JUDGMENT ON WITNESS CREDIBILITY FOR THAT OF ADMINISTRATIVE LAW JUDGE, WHO ALONE HEARD THE WITNESSES' LIVE TESTIMONY. EXAMPLES BELOW.
  - CUTBACKS LEADING TO HARRISON'S DEMOTION STARTED BEFORE HARRISON RAISED CONCERNS.
  - EHELE DID NOT SELECT OR SUGGEST ANY PARTICULAR FOREMAN/LEAD FOREMAN FOR DEMOTION.
  - SECRETARY IMPROPERLY DISCREDITED FIELD MANAGER'S TESTIMONY OF THE DESIRABLE FOREMAN/CRAFTSMAN RATIO SIMPLY BECAUSE EXACT RATIO NOT ACHIEVED.
  - SECRETARY IGNORED EVIDENCE THAT SWEC CONSIDERED DEMOTIONS IN OTHER SKILLED CRAFTS AND SUPPORT CRAFTS
  - EHELE SAID THAT HARRISON WAS ACTING LIKE "MOSES PARTING THE RED SEA" BECAUSE OF UNAUTHORIZED WORK STOPPAGE, NOT FIRE WATCH CONCERNS.
  - ADMINISTRATIVE LAW JUDGE FOUND THAT HARRISON'S TRANSFER WAS EITHER VOLUNTARY OR RESULT OF HIS INITIATING UNAUTHORIZED WORK STOPPAGE.

**THE SECRETARY'S LEGAL CONCLUSIONS AND FACTUAL FINDINGS ARE ERRONEOUS.**

**NRC ENFORCEMENT CONFERENCE**

**SWEC PROGRAM ENCOURAGES**  
**REPORTING OF SAFETY CONCERNS**

- SWEC EMPLOYEE CONCERNS PROGRAM (ECP).
  - ECP IMPLEMENTED TO INVESTIGATE SWEC EMPLOYEES' NUCLEAR SAFETY/QUALITY CONCERNS NOT RESOLVED BY SUPERVISOR OR MANAGER.
  - EMPLOYEE CONCERNS REPRESENTATIVE (ECR) FUNCTIONS INDEPENDENTLY OF SWEC SITE MANAGEMENT IN INVESTIGATING/RESOLVING NUCLEAR SAFETY/QUALITY CONCERNS AND ALLEGATIONS OF INTIMIDATION/HARASSMENT.
  - SWEC ECR COORDINATES AND SHARES INVESTIGATIVE RESULTS WITH TVA.
- SWEC ECP INVOLVEMENT IN HARRISON'S CASE.
  - ECR CONDUCTED THOROUGH INVESTIGATION AND OBTAINED TVA CONCURRENCE ON DISPOSITION OF FIRE WATCH CONCERNS.
  - HARRISON APPARENTLY SATISFIED BY REPORT OF ECR ON APRIL 16, 1993.

## NRC ENFORCEMENT CONFERENCE

### EFFECTIVENESS OF SWEC EMPLOYEE CONCERNS PROGRAM VERIFIED

- SWEC ACTIONS TO IMPROVE QUALITY OF WORK ENVIRONMENT IN RAISING SAFETY CONCERNS IN RESPONSE TO NRC LETTER OF AUGUST 26, 1993 IN UNRELATED SECTION 211 CASE.
  - ISSUED MEMORANDUM OF SEPTEMBER 14, 1993 FROM C.R. BISHOP TO ALL SUPERVISORS AND MANAGERS SUMMARIZING SWEC EMPLOYEE CONCERNS PROGRAM AND INITIATING ROLL-DOWN TO EMPLOYEES.
  - CONDUCTED FOLLOW-UP SURVEY TO DETERMINE KNOWLEDGE AND USE OF ECP ON OCTOBER 6 AND 11, 1993. RESULTS SHOWED NO EVIDENCE OF CHILLING EFFECT IN WILLINGNESS TO REPORT EMPLOYEE CONCERNS.
  - CRAFT AWARENESS OF AVAILABLE PROCESSES FOR REPORTING QUALITY/SAFETY CONCERNS REINFORCED AT MEETING BY SWEC FIELD MANAGER IN OCTOBER 1993.
- INSPECTION ACTIVITIES BY NRC AUDITED EFFECTIVENESS OF SWEC ECP ON NOVEMBER 8-10 AND 22-24, 1993 AND CONFIRMED SWEC PERSONNEL NOT RELUCTANT TO REPORT POTENTIAL SAFETY/QUALITY CONCERNS.
  - EMPLOYEES SURVEYED UNANIMOUSLY (EXCEPT ONE SWEC EMPLOYEE ON FIRST DAY AT BROWNS FERRY) STATE NO RELUCTANCE TO RAISE SAFETY/QUALITY CONCERNS TO SUPERVISION, SWEC ECP OR TVA CRS, OR NRC.
  - NRC CONCLUDES, BASED ON CURRENT AND EARLIER SURVEYS, THAT AWARENESS AND KNOWLEDGE OF CONTRACTOR AND LICENSEE PROGRAMS HAVE INCREASED.

- SWEC PERFORMS ANOTHER RANDOM SURVEY TO EVALUATE POTENTIAL CHILLING EFFECTS, WHICH CONCLUDES THAT SWEC EMPLOYEES ARE WILLING TO REPORT SAFETY/QUALITY CONCERNS WITHOUT FEAR OF REPRISAL.
- TVA OIG JULY 1994 SURVEY SHOWS THAT BROWNS FERRY EMPLOYEES "OVERWHELMINGLY FELT FREE TO RAISE NUCLEAR SAFETY CONCERNS TO THEIR SUPERVISION AND MANAGEMENT."
- SWEC DISTRIBUTES JANUARY 1995 MEMORANDUM TO ALL ONSITE EMPLOYEES SUMMARIZING ECP.
- TVA OIG ANNUAL REVIEW OF SWEC ECP ON SEPTEMBER 11-15, 1995 DEMONSTRATES THAT ALL BROWNS FERRY PERSONNEL SURVEYED WOULD REPORT SAFETY/QUALITY CONCERNS TO THEIR SUPERVISORS OR THROUGH OTHER AVAILABLE PROCESSES.
- OCTOBER 2, 1995 TOOL BOX MEETING AND POSTINGS AT KEY SITE LOCATIONS RE-EMPHASIZE SWEC MANAGEMENT EXPECTATION THAT EMPLOYEES WILL REPORT SAFETY/QUALITY CONCERNS AND SHOULD FEEL FREE TO DO SO.

**COMBINED SWEC/TVA PROGRAMS PROVIDE EFFECTIVE ASSURANCE TO EMPLOYEES WISHING TO RAISE SAFETY/QUALITY CONCERNS.**



## NRC ENFORCEMENT CONFERENCE

### NO ENFORCEMENT ACTION IS WARRANTED IN THIS CASE

- NRC SHOULD FIND NO VIOLATION OF SECTION 50.7 OCCURRED FOR REASONS DISCUSSED.
  - EVIDENCE SHOWS NO SECTION 50.7 VIOLATION (E.G., LACK OF SWEC MANAGEMENT UNDERSTANDING OF ANY SAFETY CONCERN; TIMING AND SEQUENCE OF FOREMEN/LEAD FOREMEN REDUCTIONS BEFORE HARRISON RAISED CONCERN; AND EVIDENCE HARRISON TRANSFERRED BECAUSE OF VOLUNTARY REQUEST).
  - ADMINISTRATIVE LAW JUDGE FOUND EHELE AND OTHER SWEC MANAGERS CREDIBLE AND ACTING IN GOOD FAITH WITH HONEST MOTIVES.
  - EVIDENCE SUPPORTS CONCLUSION THAT SWEC MANAGERS ACTED FOR VALID REASONS.
  - SECRETARY ACKNOWLEDGES THAT DISCRIMINATION FINDING IS A "CLOSE QUESTION "
- OTHER INDEPENDENT SOURCES FOUND NO DISCRIMINATION.
  - INVESTIGATIONS BY SWEC AND TVA AND REVIEW BY NRC OF FOUND NO DISCRIMINATION.
  - FINDINGS IN FAVOR OF SWEC BY WAGE AND HOUR DIVISION AND ADMINISTRATIVE LAW JUDGE SHOW MERIT TO SWEC'S APPEAL.
- AT A MINIMUM, CONSIDERATION OF POSSIBLE ENFORCEMENT ACTION SHOULD BE POSTPONED PENDING DECISION BY COURT OF APPEALS.
  - FAIRNESS DICTATES THAT NRC WAIT UNTIL COURT OF APPEALS DECIDES CASE
  - NRC, TVA AND SWEC RESOURCES SHOULD BE CONSERVED PENDING APPEAL.

- EVEN IF A VIOLATION IS DEEMED TO HAVE OCCURRED, NO CIVIL PENALTY SHOULD BE IMPOSED.
  - SWEC EMPLOYEES CONCERN REPRESENTATIVE THOROUGHLY INVESTIGATED AND RESOLVED HARRISON'S SAFETY CONCERN AS WELL AS ALLEGATIONS OF DISCRIMINATION.
  - LACK OF ANY "CHILLING EFFECT" VERIFIED BY NRC, TVA AND SWEC.
  - SWEC HAS A GOOD ENFORCEMENT RECORD.
  - INCIDENT WITH HARRISON INVOLVED SINGLE ISOLATED OCCURRENCE THAT HAD NO IMPACT BEYOND THE COMPLAINANT HIMSELF.
  - NO VIOLATION OF TVA FIRE PROTECTION PLAN; NO SAFETY ISSUE EXISTS.
  - SECRETARY ACKNOWLEDGES THAT HIS REVERSAL OF ADMINISTRATIVE LAW JUDGE'S FACT-FINDING IS CLOSE QUESTION.
  
- ENFORCEMENT DISCRETION IS WARRANTED IN A DISCRIMINATION CASE WHERE, AS HERE, THE EMPLOYER HAS TAKEN PROMPT, COMPREHENSIVE, AND EFFECTIVE CORRECTIVE ACTIONS TO ADDRESS BOTH THE PARTICULAR SITUATION AND THE OVERALL WORK ENVIRONMENT FOR RAISING SAFETY CONCERNS.
  - EFFECTIVENESS OF EMPLOYEE CONCERNS REPRESENTATIVE REVIEW AS DISCUSSED.
  - ONGOING ACTIONS BY SWEC TO ASSURE WORK ENVIRONMENT CONDUCIVE TO RAISING SAFETY CONCERNS AS DISCUSSED.
  - NO FINDING OR EVIDENCE OF ANY PROGRAMMATIC DISCRIMINATION OR "BLATANT OR EGREGIOUS" ACTS OF DISCRIMINATION.

## **NRC ENFORCEMENT CONFERENCE**

### **SUMMARY AND CLOSING REMARKS**

- SWEC MANAGEMENT REMAINS COMMITTED TO FREE AND OPEN EMPLOYEE DISCUSSION OF SAFETY CONCERNS AT ALL LEVELS, AND WILL NOT TOLERATE ANY INTIMIDATION, HARASSMENT OR DISCRIMINATION AGAINST EMPLOYEES.
  - SWEC MANAGEMENT HAS REPEATEDLY REINFORCED ITS EXPECTATION.
  - THE EFFECTIVENESS IN COMMUNICATING MANAGEMENT'S EXPECTATIONS HAS BEEN VERIFIED.
- SWEC WILL CONTINUE TO MONITOR EFFECTIVENESS OF ITS ECP AND TO EMPHASIZE ITS AVAILABILITY TO ALL SWEC EMPLOYEES.

- IN HARRISON'S CASE, THE SWEC ECP REPRESENTATIVE THOROUGHLY INVESTIGATED HARRISON'S FIRE WATCH AND EMPLOYMENT CONCERNS. HARRISON EXPRESSED NO DISSATISFACTION WITH ECP'S HANDLING OF HIS CONCERNS.
- TVA AND NRC OI ALSO REVIEWED ALLEGATIONS AND FOUND NO DISCRIMINATION.
- FIRST AND SECOND LEVEL DOL REVIEWS FOUND THAT SWEC MANAGERS AND SUPERVISORS REDUCED HARRISON FROM LEAD FOREMAN POSITION FOR LEGITIMATE, NON-DISCRIMINATORY REASONS IN REDUCING MANPOWER COSTS.
- SWEC APPEAL TO U.S. COURT OF APPEALS WILL DETERMINE VALIDITY OF SECRETARY'S DECISION REFUSING TO ACCEPT FACT-FINDING BY ADMINISTRATIVE LAW JUDGE.
- IN THIS CASE, NO DISCRIMINATION OCCURRED. BUT IF NRC NOW DISAGREES, COMPELLING REASONS EXIST TO EXERCISE ENFORCEMENT DISCRETION OR, AT A MINIMUM, TO AWAIT COMPLETION OF DOL PROCEEDINGS THROUGH APPEAL.