

November 9, 1995

EA 95-199

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

SUBJECT: NRC OFFICE OF INVESTIGATIONS REPORT NO. 2-93-015

This refers to the investigation conducted by the NRC Office of Investigations (OI) during the period July 7, 1994 through August 31, 1995. The investigation consisted of a review of the circumstances surrounding the resignation of a former Tennessee Valley Authority (TVA) employee. Specifically, the investigation involved the alleged discriminatory practices of TVA which resulted in the forced resignation of Mr. William F. Jocher because he raised nuclear chemistry safety issues as part of his normal duties as the Manager, Nuclear Chemistry in the TVA corporate organization and the Chemistry Manager at the Sequoyah Nuclear Plant. The synopsis of the investigation report is provided as Enclosure 1.

The OI investigation report, issued on September 8, 1995, concluded that Mr. Jocher engaged in protected activities at TVA and received an adverse action in the form of a threat of termination by TVA if he did not resign. Further, OI concluded that the reason for the adverse action was related to Mr. Jocher's engaging in protected activities and not for the reason proffered by TVA.

In addition to the OI investigation, Mr. Jocher filed a complaint with the U. S. Department of Labor (DOL) on June 29, 1993, alleging that an April 6, 1993 employment action which resulted in his July 6, 1993 separation from TVA employment was the result of his activities in revealing deficiencies in plant chemistry programs within TVA's overall nuclear program, revealing TVA's non-compliance with NRC-approved guidelines, and revealing inconsistencies between actual facts and TVA management reports to the NRC, INPO, TVA Board of Directors, and internal review groups. On April 29, 1994, the DOL District Director, Nashville, Tennessee, issued the results of its compliance action in the case. DOL concluded that "William F. Jocher was a protected employee engaging in a protected activity within the scope of the Energy Reorganization Act and that discrimination as defined and prohibited by the statute was a factor in the actions which compromise[d] his complaint." NRC recognizes that TVA appealed the District Director's decision on April 29, 1995, and an Administrative Law Judge decision is currently pending in the case (94-ERA-24).

Notwithstanding the ongoing DOL process, based on the results of the OI investigation as well as the supporting DOL District Director's decision, an apparent violation has been identified and is being considered for escalated

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enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. Specifically, the alleged discrimination against Mr. Jocher, committed by senior corporate management, is an apparent violation of 10 CFR 50.7 which prohibits discrimination against an employee who engages in protected activities. Accordingly, no Notice of Violation is presently being issued for this finding. Please be advised that the number and characterization of the apparent violation described above may change as a result of further NRC review.

A predecisional enforcement conference to discuss the apparent violation has been scheduled with TVA for November 29, 1995, at 10:00 a.m. in the Region II office, Atlanta, Georgia. The predecisional enforcement conference schedule was discussed in a telephone call between Mr. Mark Medford of your staff and Mr. Mark Lesser of this office on November 6, 1995, and at this time we also requested that the managers involved in Mr. Jocher's separation from TVA attend the conference. These individuals include Mr. Joseph R. Bynum, Mr. Dan R. Keuter, and Mr. Wilson C. McArthur. A proposed conference agenda is enclosed (Enclosure 2). The predecisional enforcement conference will be closed to public observation and transcribed.

The decision to hold a predecisional enforcement conference does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference is being held to obtain information to enable the NRC to make an enforcement decision, such as a common understanding of the facts, root causes, missed opportunities to identify the apparent violation sooner, corrective actions, significance of the issues and the need for lasting and effective corrective action. In addition, this is an opportunity for you to point out any disagreement with the facts and findings presented in the OI investigation report and the DOL District Director's decision and for you to provide any information concerning your perspectives on 1) the severity of the apparent violation, 2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.B.2 of the Enforcement Policy, and 3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII. In particular, we expect you to address the basis for the adverse employment action taken against Mr. Jocher.

We are also concerned with the potential chilling effect that may have resulted from Mr. Jocher's separation from TVA. Therefore, notwithstanding the information requested above and whether or not you agree with the OI conclusion and DOL decision, we expect you to address the actions taken or planned to assure that this adverse employment action does not have a chilling effect on other licensee employees raising perceived safety concerns.

You will be advised by separate correspondence of the results of our deliberations on this matter. No response regarding the apparent violation is required at this time.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," 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
A.F. GIBSON

Albert F. Gibson, Director
Division of Reactor Safety

Docket Nos. 50-327, 50-328
License Nos. DPR-77, DPR-79

Enclosures: 1. Synopsis of OI Report No. 2-93-015
2. Predecisional Enforcement
Conference Agenda

cc w/encls:

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SYNOPSIS

On July 7, 1994, subsequent to preliminary evaluation by the Office of Investigations (OI), U.S. Nuclear Regulatory Commission, Region II (RII), an investigation was initiated by OI:RII into an alleged discriminatory forced resignation, by threat of termination, of a Tennessee Valley Authority (TVA) Corporate chemistry manager. Allegedly, because this chemistry manager highlighted chemistry training, program, and hardware problems at the Sequoyah Nuclear Plant to Institute of Nuclear Power Operations evaluators, and also because, while in the process of identifying and pursuing the correction of these and other TVA site chemistry problems, he overtly held senior TVA management responsible for lack of corrective action, he was forced to resign by this senior TVA management.

Based upon the evidence collected in this investigation, it is concluded that this chemistry manager was engaged in protected activities at TVA, and received an adverse action in the form of a threat of termination by TVA if he did not resign. It is concluded that the reason proffered by TVA for this adverse action, namely that the chemistry manager's "management style" was unacceptable, was primarily pretextual. It is also concluded that, despite denials by the TVA managers involved, the methodology of the chemistry manager's engagement in protected activity was the primary reason for the adverse action.

PREDECISIONAL ENFORCEMENT CONFERENCE AGENDA
TENNESSEE VALLEY AUTHORITY

November 29, 1995
10:00 a.m.

- I. INTRODUCTION AND OPENING REMARKS
S. D. Ebnetter, Regional Administrator
- II. DISCUSSION OF THE ENFORCEMENT POLICY
B. Uryc, Director
Enforcement and Investigation Coordination Staff
- III. OVERVIEW
Mr. Ebnetter
- IV. APPARENT VIOLATION AND NRC CONCERNS
A. Gibson, Director
Division of Reactor Safety
- V. LICENSEE PRESENTATION
* * * BREAK * * *
- VI. NRC FOLLOWUP QUESTIONS
Mr. Gibson
- VII. CLOSING REMARKS
Mr. Ebnetter