

December 27, 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: ORDER DENYING APPLICATION FOR STAY
(Department of Labor Case No. 93-ERA-044)

Dear Mr. Kingsley:

On December 13, 1995, the Secretary of Labor (SOL) issued an Order denying Stone and Webster Engineering Corporation's (SWEC) application for a stay in Department of Labor (DOL) Case No. 93-ERA-044, Douglas Harrison v. Stone & Webster Engineering Group. This latest action arose following an August 22, 1995, Order by the Secretary of Labor which (1) concluded that SWEC discriminated against Mr. Douglas Harrison, a former ironworker general foreman at Tennessee Valley Authority's (TVA) Browns Ferry Nuclear Plant, when he was demoted because he raised concerns related to firewatch requirements and (2) awarded Mr. Harrison monetary compensation including backpay and the costs and expenses incurred in bringing his complaint. Following the August 1995 SOL decision, SWEC did not comply with the Order and instead applied for a stay pending judicial review of the case in the United States Court of Appeals for the Eleventh Circuit.

As discussed with you and SWEC in our letters of October 18, 1995, and at the predecisional enforcement conference conducted on October 30, 1995, the act of discrimination that DOL found to have occurred against Mr. Harrison constitutes an apparent violation of 10 CFR 50.7 for which NRC is presently considering escalated enforcement action. NRC deliberations on this matter are continuing. However, to ensure that we have all the pertinent facts on which to base our final decision, you are requested to provide to the NRC all information regarding TVA's corrective actions or planned corrective actions with regard to the August 22, 1995 SOL Order and the December 13, 1995 SOL decision denying SWEC's application for a stay of that Order. If there are no plans to comply with the Secretary's Order and in the absence of a stay of that Order by the Court of Appeals, you should address the question as to why the NRC, in deciding on enforcement action in this case, should consider your corrective actions to be adequate. This response should be in writing and under oath or affirmation and should be submitted to this office within 7 days of your receipt of this letter.

Your response should not, to the extent possible, include any personal privacy, proprietary, or safeguards information so that it can be released to the public and placed in the NRC Public Document Room (PDR). If personal privacy

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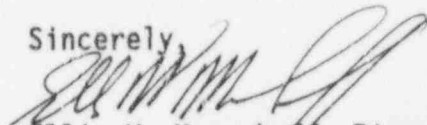
information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the personal privacy-related information and a redacted copy of your response that deletes the personal privacy-related information. Identify the particular portions of the response in question which, if disclosed, would create an unwarranted invasion of personal privacy, identify the individual whose privacy would be invaded in each instance, describe the nature of the privacy invasion, and indicate why, considering the public interest in the matter, the invasion of privacy is unwarranted. If you request withholding on any other grounds, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information).

After reviewing your response as well as the previous information obtained from TVA and SWEC at the predecisional enforcement conference, we will inform you of our final enforcement decision in this case.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC PDR.

The response directed by this letter is not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

Sincerely,



Ellis W. Merschhoff, Director
Division of Reactor Projects

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

Enclosure: SOL Decision dated
December 13, 1995

cc w/encl:
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Associate Solicitor
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Washington, D. C. 20210

James Lieberman, Director
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(cc w/encl cont'd on Page 3)

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State Health Officer
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Montgomery, AL 36130-1701

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Distribution w/encl:

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NRC Senior Resident Inspector
 U.S. Nuclear Regulatory Commission
 10833 Shaw Road
 Athens, AL 35611

** SEE PREVIOUS CONCURRENCE

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
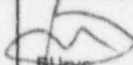
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NRC Senior Resident Inspector
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SIGNATURE						
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DATE	12/21/95	12/22/95	12 / / 95	12 / / 95		
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U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: December 13, 1995
CASE NO. 93-ERA-44

RECEIVED
REGISTRY
BY:  DATE: DEC 18 1995

IN THE MATTER OF

DOUGLAS HARRISON,

COMPLAINANT,

v.

STONE & WEBSTER ENGINEERING GROUP,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER DENYING APPLICATION FOR STAY

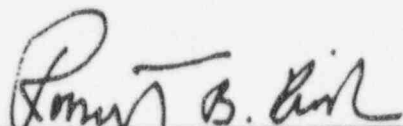
On August 22, 1995, I issued a Decision and Order in this case arising under section 211 (employee protection provision) of the Energy Reorganization Act, as amended (ERA), 42 U.S.C. § 5851 (1988 & Supp. V 1993). In the Decision, I found that Complainant had been demoted, in part, because of his participation in a protected safety complaint and that Respondent had failed to demonstrate that it would have demoted him even if he had not engaged in that activity. I also awarded Complainant backpay and costs and expenses, including attorney fees, reasonably incurred in bringing the complaint. Complainant subsequently petitioned for costs and expenses. Respondent has not yet responded. It has, however, applied for a stay of the decision pending judicial review in the United States Court of Appeals for the Eleventh Circuit.

Enclosure

An agency may postpone the effective date of its orders pending judicial review upon finding "that justice so requires" 5 U.S.C. § 705 (1988); *WMATC v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). Whether a stay is warranted turns on balancing four factors: (1) the likelihood that the movant will prevail on the merits of the appeal; (2) the likelihood that the movant will suffer irreparable harm absent a stay; (3) the prospect that others will be harmed if the agency order is stayed; and (4) the public interest in granting a stay. *State of Ohio ex rel. Celebrezze v. NRC*, 812 F.2d 288, 290-292 (6th Cir. 1987); *Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958). A movant is required to address each factor as it pertains to the circumstances of the case regardless of how compelling the factor may be in support of a stay, and must provide facts and affidavits supporting its assertions so that the record contains evidence upon which to base specific findings. *State of Ohio ex. rel. Celebrezze v. NRC*, 812 F.2d at 290-291.

Respondent, which bases its application on administrative efficiency, lack of prejudice to Complainant, and the presence of "significant" issues, simply has not demonstrated the necessity for granting a stay. Accordingly, the application IS DENIED.

SO ORDERED.


Secretary of Labor

Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: *Douglas Harrison v. Stone & Webster Engineering Group*

Case No.: 93-ERA-44

Document: Order Denying Application for Stay

A copy of the above-referenced document was sent to the following persons on DEC 13 1995.

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