

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title: Predecisional Enforcement Conference  
RE Tennessee Valley Authority

Docket Number: EA-19-092

Location: teleconference

Date: Thursday, July 23, 2020

Work Order No.: NRC-0998

Pages 1-111

**NEAL R. GROSS AND CO., INC.**  
**Court Reporters and Transcribers**  
**1323 Rhode Island Avenue, N.W.**  
**Washington, D.C. 20005**  
**(202) 234-4433**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
+ + + + +  
PRE-DECISIONAL ENFORCEMENT CONFERENCE  
RE  
TENNESSEE VALLEY AUTHORITY (TVA)  
(DOCKET NO. EA-19-092)

+ + + + +

THURSDAY

JULY 23, 2020

+ + + + +

The conference was convened at 8:00 a.m.  
EDT via Video Teleconference, Kenneth O'Brien, Region  
III, Deputy Regional Administrator, presiding.

NRC STAFF PRESENT:

KENNETH O'BRIEN, Region III,

Deputy Regional Administrator

ALEX ECHAVARRIA, Region II,

Office of Investigations

IAN GIFFORD, Office of Enforcement

JOE GILLESPIE, Attorney,

Office of the General Counsel

NICK HILTON, Senior Enforcement Advisor,

Office of Enforcement

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 CRAIG KONTZ, Region II,  
2 Office of Investigations  
3 MARK MILLER, Region II, Director,  
4 Division of Reactor Projects  
5 MARCIA SIMON, Senior Attorney,  
6 Office of the General Counsel  
7 ANDY SHUTTLEWORTH, Director,  
8 Office of Investigations  
9 SCOTT SPARKS, Region II,  
10 Senior Enforcement Specialist  
11  
12 ALSO PRESENT:  
13 JIM BARSTOW, TVA, Vice President,  
14 Nuclear Regulatory Affairs  
15 TIM RAUSCH, TVA, Chief Nuclear Officer  
16 TRICIA ROELOFS, TVA, Director,  
17 Data Governance & Analytics  
18 CHRIS RICE, TVA, Director, Plant Operations,  
19 Watts Bar Nuclear Plant  
20 RANDY STAGGS, TVA, Director, Plant Support,  
21 Watts Bar Nuclear Plant  
22 TONY WILLIAMS, TVA, Site Vice President,  
23 Watts Bar Nuclear Plant  
24 BRENDAN HENNESSEY, Pillsbury Winthrop Shaw  
25 Pittman

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MONICA HERNANDEZ, Pillsbury Winthrop Shaw

Pittman

TOM HILL, Pillsbury Winthrop Shaw Pittman

MICHAEL LEPRE, Pillsbury Winthrop Shaw Pittman

DAVID LEWIS, Pillsbury Winthrop Shaw Pittman

DREW NAVIKAS, Pillsbury Winthrop Shaw Pittman

HOWARD FELDMAN, Blank Rome

BARRY LEVINE, Blank Rome

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CONTENTS

Opening Remarks . . . . . 5  
 - Director, Office of Enforcement

Enforcement Policy Overview . . . . . 5  
 - Office of Enforcement Staff

Apparent Violation . . . . . 6  
 - Office of Enforcement Staff

External Presentation . . . . . 6

Complainant Comments . . . . . 32

External Response to Complainant Comments . . . . 55

Questions . . . . . 78

Closing Remarks . . . . . 103  
 - Director, Office of Enforcement

## P R O C E E D I N G S

8:00 a.m.

1  
2  
3 MR. O'BRIEN: Good morning, everybody.  
4 It's top of the hour, so I'd like to begin if we  
5 could. This is Ken O'Brien again. We are going to  
6 conduct a PEC today, a continuation of yesterday so we  
7 are going to go back on the record.

8 Before we begin, I want to make sure  
9 everybody's available. I'll check my team first.

10 Marcia?

11 MS. SIMON: I'm here.

12 MR. O'BRIEN: Nick?

13 MR. HILTON: Good morning.

14 MR. O'BRIEN: Scott?

15 MR. SPARKS: Yes, Ken. Good morning.

16 MR. O'BRIEN: Good morning.

17 And then, Mr. Rausch and Mr. Barstow, do  
18 you have everybody that you need?

19 MR. BARSTOW: Yes, we do. Thank you.

20 MR. O'BRIEN: Thank you. I just have a  
21 brief opening statement and then I am going to turn it  
22 back over to you.

23 As we continue to today, the PEC started  
24 yesterday, we are back on the record and the court  
25 reporter is available, we are going to discuss the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 NRC's letter to the TVA dated March 9th. It  
2 documented 12 apparent violations that included  
3 factual summaries for those. Today, as I understand  
4 it, we are going to discuss three of the 12 apparent  
5 violations, apparent violations 4, 7 and 9.

6 In summary, these apparent violations  
7 involved the deliberate failure to follow procedures  
8 associated with not ensuring that shift operations  
9 were conducted in a safe and conservative manner, not  
10 stopping operations when unsure and only proceeding in  
11 a deliberate and controlled manner, not validating  
12 available information, allowing production to override  
13 safety and proceeding in the face of uncertainty, and  
14 two examples of a deliberate failure to provide the  
15 Commission complete and accurate information in all  
16 material respects.

17 With that, I'll turn the meeting over to  
18 you, Mr. Rausch and Mr. Barstow, for your  
19 presentations.

20 MR. WILLIAMS: Thank you. Good morning.  
21 This is Tony Williams. Before I turn it over to our  
22 attorneys to respond to apparent violation 4, I want  
23 to briefly go back over some of my points that I made  
24 in my opening statement yesterday.

25 In 2015, Watts Bar was not where it needed

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 to be. We lacked conservative bias in decision  
2 making, we had weaknesses in operative fundamentals  
3 and we did not maintain a strong safety-conscious work  
4 environment. These organizational failures  
5 contributed to the RHR event.

6 It was not a conservative decision to heat  
7 up without verified, effective, pressurizer level  
8 control of (audio interference). While the  
9 environment at that time may have contributed to poor  
10 decision making, our employees did not intentionally  
11 violate procedures or NRC requirements.

12 While many of us were not here at the  
13 time, we take responsibility for ensuring that these  
14 failures have been and remain corrected today. Our  
15 operators understand that a proposed action must be  
16 determined to be safe in order to proceed, rather than  
17 unsafe in order to stop.

18 Management behaviors have been changed to  
19 ensure employees feel free to raise concerns without  
20 fear of retaliation. Our safety culture monitoring  
21 program has the tools to ensure subtle work  
22 environment issues are identified and acted upon.

23 This event or similar events simply would  
24 not occur at Watts Bar today. If faced with a similar  
25 operation decision making, our organization would

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 react very different. We would evaluate a condition  
2 as an infrequently performed test or evolution and  
3 additional controls that could be put in place for the  
4 infrequently performed test or evolution.

5 We have senior leaders assigned to an  
6 evolution oversight commission with roles and  
7 responsibilities clearly established. Standalone  
8 procedure would be developed and there would be  
9 formalities in the development of calculations and  
10 contingency steps.

11 Just-in-time training would be performed  
12 in the simulator to address operators' proficiency.  
13 There would be use of an operation decision making  
14 index that has been -- that would be developed. There  
15 would also be station alignment with the on-watch  
16 operations crew authorizing -- with the authorization  
17 requirements.

18 As I described to you yesterday, TVA has  
19 worked hard over the last several years to fix these  
20 deficiencies identified in the RHR event. We at Watts  
21 Bar are confident that we have fixed those issues by  
22 ensuring our nuclear safety is an ongoing mission.

23 Today, we are a different site with a  
24 different leadership. Our operators' fundamentals and  
25 performance are the best they've ever been. In

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 particular, we've taken significant steps to improve  
2 our nuclear safety culture. Some of those steps are  
3 discussed in our written response to the apparent  
4 violations form.

5 I am proud to say that TVA's improvements  
6 have been recognized by industry groups as well as the  
7 NRC. At the same time, I am concerned that the NRC is  
8 seeking to revisit these events despite all the work  
9 and cooperation between TVA and the NRC to improve the  
10 work environment at Watts Bar.

11 I would like to turn it over to our  
12 counsel to set out TVA's position in more detail and  
13 to also address the concerns as I just stated from a  
14 legal perspective.

15 MR. LEWIS: Thank you, Tony.

16 As you've just heard from Mr. Williams,  
17 TVA acknowledges that its employees engaged in  
18 nonconservative decision making at Watts Bar on  
19 November 11th, 2015. In response, TVA has taken  
20 extensive corrective action and the safety culture at  
21 Watts Bar today is light-years ahead of where it was  
22 in 2015.

23 Although TVA does not deny that there were  
24 nonconservative actions at Watts Bar on November 11th,  
25 TVA denies apparent violation 4 on both legal and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 policy grounds. And TVA also denies that the  
2 nonconservative decision making was the result of any  
3 deliberate misconduct.

4 First, TVA denies the apparent violation  
5 because the NRC has chosen not to regulate adherence  
6 to its safety culture policy statement. As I will  
7 explain, the provisions in OPDP-1, on which this  
8 apparent violation are based, are safety culture  
9 traits and their inclusion as part of TVA's efforts to  
10 promote positive safety culture consistent with the  
11 NRC's safety culture policy statement and the  
12 expectations therein.

13 The policy statement and the statement by  
14 the commissioners when it was issued clearly indicate  
15 that the policy statement does not create enforceable  
16 requirements and this implementation should not result  
17 in de facto requirements. Issuing a notice of  
18 violation based on violations of the safety culture  
19 traits in OPDP-1 would thus contradict the  
20 Commission's directions.

21 Second, TVA denies the allegations of  
22 deliberate misconduct by Messrs Johnson, Blankenship,  
23 (b)(7)(C), (b)(7)(C) and (b)(7)(C). Even if the safety  
24 culture traits that have been inserted into OPDP-1 to  
25 promote good safety culture were treated as

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 enforceable regulatory requirements, which they should  
2 not be, any violations of those traits were non-  
3 deliberate. TVA has found no evidence including the  
4 PEC presentations over the past two weeks that would  
5 lead it to conclude that any employee deliberately  
6 violated the provisions of OPDP-1 cited in this  
7 apparent violation.

8 I'll now explain our legal argument  
9 regarding OPDP-1. The NRC bases this violation on  
10 certain provisions of OPDP-1, a procedure governing  
11 conduct of operations for operations personnel.  
12 Specifically, the NRC has identified violations of  
13 sub-parts A and E in Section 3.3 dedicated to  
14 conservative decision making.

15 This section of the procedure incorporates  
16 into OPDP-1 safety culture traits which the Commission  
17 through its safety culture policy statement has  
18 encouraged all licensees to foster.

19 As I will discuss, the Commission has  
20 specifically chosen in its safety culture policy  
21 statement to encourage licensees to promote and foster  
22 safety culture as a matter of policy, but not to  
23 establish enforceable requirements. Consequently,  
24 safety culture traits do not constitute enforceable  
25 requirements or provide the basis for violations.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           The NRC's safety culture policy statement  
2           lays out various policy safety culture traits that the  
3           Commission expects licensees to foster. As the  
4           Commission's policy statement explains, safety culture  
5           traits describe a pattern of thinking, feeling and  
6           behaving that emphasize safety.

7           OPDP-1 Section 3.3 sub-parts A and E are  
8           exactly that, traits of thinking, feeling and behaving  
9           that emphasize safety, in particular conservative  
10          decision making that Watts Bar operators should  
11          exhibit.

12          The NRC has developed NUREG-2165 to  
13          present a common language agreed upon by the NRC and  
14          the nuclear industry for classifying and grouping  
15          traits and attributes for healthy safety culture.  
16          There is a clear correlation between the provisions in  
17          OPDP-1 cited by the NRC and the traits described in  
18          both the policy statement and NUREG-2165.

19          While the Commission's safety culture  
20          policy statement sets forth expectations and  
21          encourages licensees to foster good safety culture, it  
22          does not create enforceable requirements. In  
23          promulgating the safety culture policy statement, the  
24          Commission explicitly stated its policy statements do  
25          not constitute rules and are not enforceable against

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 licensees.

2           The policy statement also states that the  
3 traits of positive safety culture were not developed  
4 to be used for inspection purposes. This statement  
5 that the traits were not developed for inspection  
6 purposes implies that they were not developed for  
7 enforcement.

8           In addition, the policy statement states  
9 that the NRC will not monitor or trend values. These  
10 will be the organization's responsibility as part of  
11 its safety culture program. This statement too  
12 implies that the Commission did not expect that the  
13 staff would be treating values as enforceable  
14 requirements.

15           In this regard, when the draft policy  
16 statement was presented to the Commission and at that  
17 time it included a statement, the draft policy  
18 statement did, the statement that the NRC will include  
19 appropriate means to monitor safety culture in its  
20 oversight programs and internal management processes.  
21 Then-Commissioner, now Chairman Svinicki, observed  
22 that this statement is fundamentally inconsistent with  
23 the statement that the safety culture traits are not  
24 necessarily inspectable and were not developed for  
25 that purpose, and the statement inserting monitoring

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 safety culture in oversight programs was deleted.

2 Commissioner Ostendorff expressed similar  
3 views. He cautioned against implementation in a  
4 manner that could result in de facto requirements and  
5 he advised that the staff should come back to the  
6 Commission for further review and approval before any  
7 broader implementation. That TVA has incorporated the  
8 safety culture traits into OPDP-1 should not convert  
9 those traits to requirements enforced under 10 CFR  
10 Part 50 Index B Criterion 5.

11 The safety culture policy statement states  
12 the Commission's expectations that licensees take  
13 necessary steps to promote safety culture by fostering  
14 those traits as they apply to their organizational  
15 environments.

16 Emphasizing safety culture traits by  
17 emphasizing them in a procedure is a key means to do  
18 so, to apply the procedures in the operations  
19 department's organizational environment, what method  
20 to do so.

21 Further, the NRC staff's inspection  
22 procedures provide an example of the NRC encouraging  
23 licensees to incorporate safety culture traits into  
24 their procedures. NRC Inspection Procedure 95003.02  
25 Appendix A, which is in sample inspection

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 requirements, tells the inspector, review policies or  
2 procedures which address proceeding in the face of  
3 uncertainty or unexpected circumstances to verify that  
4 related guidance is adequate. This is the very trait  
5 that's before us today.

6 Consequently, reflecting safety culture  
7 traits and procedures is simply part of a licensee's  
8 implementation of the policy statement, a licensee's  
9 implementation of the Commission's expectations, not  
10 requirements, and thus not subject to enforcement.

11 10 CFR Part 50 Appendix B Criterion 5 does  
12 not and should not alter that result. Its well-  
13 established legal maxim recognized by the Commission  
14 that the specific prevails over the general, and I'm  
15 sure that Murray (phonetic) and Marcia will understand  
16 this is primarily for their benefit.

17 Criterion 5 establishes a general  
18 requirement that activities affecting quality be  
19 implemented in accordance with established procedure.  
20 That general requirement gives way to the Commission's  
21 specific direction that the promotion of safety  
22 culture traits under its policy statement does not  
23 create enforceable requirements, nor is it reasonable  
24 to interpret the requirement in Criterion 5 to  
25 accomplish activities affecting quality in accordance

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 with these procedures as applying to expected patterns  
2 of thinking, feeling and behaving embodied in safety  
3 culture traits.

4 The logical interpretation of Criterion 5  
5 is that a licensee must prescribe and adhere to  
6 specific steps of actions required to accomplish  
7 activities affecting quality and nothing more.

8 In this regard, as stated in Section 1 of  
9 OPDP-1, OPDP-1 provides both instructions and  
10 guidelines. The expected behaviors in Section 3.3  
11 sub-parts A and E are in the nature of guidelines  
12 reflecting general principles of behavior and  
13 expectations.

14 These provisions are markedly different  
15 from the procedural steps in a continuous use  
16 procedure, for example, compliance with which is  
17 required under Criterion 5.

18 Indeed, when you look at the alleged  
19 violations, the issue is not so much whether the  
20 behaviors were applied, but rather whether the  
21 behaviors were sufficiently applied. Not whether the  
22 operators stopped, but whether they stopped long  
23 enough.

24 Not whether they questioned assumptions,  
25 but whether they were questioning enough. Not whether

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 they proceeded in a controlled manner, but whether it  
2 was controlled enough. Further, as a matter of  
3 policy, if the NRC turns safety culture traits into  
4 enforceable requirements when they are incorporated by  
5 licensees into written procedures or to emphasize them  
6 before operators it would be counterproductive.

7 Using voluntary reference to safety  
8 culture traits in a licensee's procedure as the basis  
9 for violations might encourage licensees to remove any  
10 mention of those traits from any quality-related  
11 procedure or instruction.

12 Further, it would be doing exactly what  
13 the Commission has said not to do, create de facto  
14 requirements without first coming back to the  
15 Commission and proceeding through appropriate  
16 rulemaking.

17 And last but not least, the NRC would be  
18 entering into the realm of regulating attitude.  
19 Fundamentally, the NRC would be regulating licensees'  
20 employees' subjective judgments. When is some action  
21 conservative enough? When is an individual  
22 questioning enough?

23 This would represent a marked expansion of  
24 the NRC's enforcement regime, one that is  
25 unprecedented. NRC enforcement under Criterion 5 has

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 always focused on whether an operator has objectively  
2 follows specific procedures. The NRC has never tried  
3 as far as we are aware to regulate the subjective  
4 values of operators who are trying to follow  
5 procedures, perhaps not in NRC's estimation trying  
6 hard enough.

7 It would be a sea change for the industry  
8 to expose operators to this degree of management by  
9 the NRC staff. Rather, as the Commission's policy  
10 statement indicates, managing safety culture is left  
11 to the organization.

12 Further, the subjective standard created  
13 by safety culture traits is fundamentally incompatible  
14 with the NRC's deliberate misconduct rule. The  
15 deliberate misconduct rule prohibits knowing and  
16 intentional violations.

17 That standard presumes that licensees and  
18 their employees knows what constitute a violation,  
19 that the safety culture traits are so fundamentally  
20 subjective and susceptible to armchair quarterbacking  
21 that individuals at risk of sanctions under the  
22 deliberate misconduct rule can hardly be expected to  
23 know what the NRC will decide was, in hindsight,  
24 conservative enough.

25 Even without the strong legal and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 prudential reasons for the NRC to refrain from  
2 enforcing safety culture, under 10 CFR Part 50  
3 Appendix B, Criterion 5, a factual record does not  
4 support a finding of deliberate misconduct.

5 Viewed fairly, the evidence does not  
6 support the allegations that TVA's employees knowingly  
7 and intentionally violated the cited provisions of  
8 OPDP-1 on November 11th, 2015.

9 As has been discussed but bears repeating,  
10 deliberate misconduct requires an intentional act or  
11 omission that the individual knows would cause a  
12 licensee to violate an NRC requirement. Given the  
13 Commission's statements that its safety culture policy  
14 statement is not a rule, it's difficult to know, to  
15 see how any employee would know that not being  
16 conservative enough would cause TVA to be in violation  
17 of an NRC rule.

18 Regardless, it appears that the accused  
19 individuals believed on November 11th that they were  
20 acting appropriately. They may have been wrong, but  
21 they were not deliberately violating the cited  
22 provisions of OPDP-1.

23 I'll discuss the evidence with regard to  
24 each individual argued by apparent violation 4  
25 starting with the operators in the control room and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 then turn to plant management.

2 Apparent violation 4 targets two operators  
3 in the control room on November 11th, Mr. Billy  
4 Johnson, the shift manager, and Mr. Todd Blankenship,  
5 a reactor operator.

6 With respect to Mr. Johnson, he stopped,  
7 he deliberated about the evolution before proceeding.  
8 He discussed the plan with other control room  
9 operators and with the OCC operations representative.  
10 It appears he also discussed the plan with the  
11 operations director.

12 He heard from the OCC operations  
13 representative and the operations director that the  
14 plant evolution would work. Mr. Johnson reviewed the  
15 plant procedures and could not identify any  
16 restriction on the proposed evolution.

17 Although it appears he may not have been  
18 confident in the evolution, he did not view it as  
19 posing a safety risk because he was confident that he  
20 could control the pressurizer level by restoring RHR  
21 letdown, for example. He directed the operators to  
22 proceed with the evolution knowing that he could  
23 control pressurizer level, and the operators reduced  
24 the pressurizer level before doing so. They proceeded  
25 with a heat-up very slowly.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           These points I've just made and the points  
2 I'm going to make on the other individuals are set out  
3 in more detail in our written response, so I am not  
4 going to go through all the quotes on which these are  
5 based. But if you look at our written response,  
6 you'll see them laid out.

7           So were Mr. Johnson's actions non-  
8 conservative? Yes. Did he make mistakes? Yes. But  
9 did he intentionally, knowingly violate NRC  
10 requirements? Of course not. He showed poor judgment  
11 and weaknesses in operator fundamentals.

12           He should have done more to confirm  
13 assumptions. He should have ensured the evolution was  
14 properly evaluated including with a simulator. He  
15 should have put a procedure in place for the untried  
16 evolution including provisions controlling the  
17 pressurizer level.

18           But there's no evidence that Mr. Johnson  
19 considered taking those steps, knew that failing to do  
20 so would violate NRC requirements, and decided just to  
21 go ahead and violate them. His conduct thus did not  
22 rise to the level of deliberate misconduct in TVA's  
23 estimation.

24           Mr. Blankenship. Mr. Blankenship thought  
25 and deliberated about the evolution before proceeding

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 and he ultimately proceeded at his shift manager's  
2 direction. Mr. Blankenship had questions about the  
3 ability to control pressurizer level and he raised  
4 those questions appropriately with his shift manager,  
5 Mr. Johnson.

6 He was led to believe by Mr. Johnson that  
7 those concerns had been addressed by the OCC and  
8 engineering. As the operator at the controls during  
9 a busy startup, Mr. Blankenship was not in the  
10 position to be personally performing an engineering  
11 analysis. The shift manager directed Mr. Blankenship  
12 to proceed.

13 Mr. Blankenship had no reason to suspect  
14 that his questions had not been adequately addressed  
15 or that his shift manager, Mr. Johnson, still harbored  
16 his own concerns. Nothing suggests that Mr.  
17 Blankenship could have or should have known, let alone  
18 actually knew that his conduct would violate an NRC  
19 rule.

20 Further, Mr. Blankenship was not part of  
21 the non-conservative decision making that occurred on  
22 November 11th. Mr. Blankenship was merely an operator  
23 who properly raised concerns, thought they had been  
24 addressed, and then complied with the instructions of  
25 his shift manager.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Further, Mr. Johnson had the command  
2 function. Therefore, the decision should not be  
3 attributed to Mr. Blankenship. Indeed, the  
4 enforcement policy provides this very situation as an  
5 example where enforcement should not be taken against  
6 an individual.

7 I'll now turn to Watts Bar plant  
8 management. Apparent violation 4 also targets three  
9 former members of Watts Bar plant management, Mr.  
10 (b)(7)(C), the (b)(7)(C), Mr. (b)(7)(C)  
11 (b)(7)(C), the (b)(7)(C), and Mr. (b)(7)(C), the  
12 (b)(7)(C), none of whom are current TVA  
13 employees.

14 While TVA expects all of its employees to  
15 exhibit the traits of good safety culture, of the  
16 three, only Mr. (b)(7)(C) was part of the operating  
17 personnel to which OPDP-1 applies. But strictly  
18 speaking, the safety culture provisions in Section  
19 3.3(e) of OPDP-1 apply only to the control room team.  
20 I am just saying that procedure applies. It's clearly  
21 that the expectations for safety culture applies to  
22 the entire site.

23 Regardless, there's no evidence that any  
24 of these three managers deliberately violated the  
25 cited provisions of OPDP-1 or otherwise deliberately

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 acted non-conservatively.

2 Mr. (b)(7)(C) . Mr. (b)(7)(C) deliberated  
3 about the violation before encouraging proceeding. In  
4 his position as (b)(7)(C) , Mr. (b)(7)(C) was  
5 on site to provide support and oversight to the shift  
6 manager. He was not part of the OCC. He thus was not  
7 responsible for either manipulation of the plant  
8 controls or for the planning and scheduling functions  
9 of the OCC.

10 But Mr. (b)(7)(C) supported the plan to heat  
11 up on excess letdown based on his understanding that  
12 the plan had been validated by the OCC, including  
13 representatives from operations and engineering  
14 departments. He was aware of questions from the  
15 control room operators, but he believed they had been  
16 answered by the work of the OCC.

17 He thought they could proceed safely. He  
18 understood the plan. He thought it was thought out.  
19 After a heat-up of about 25 degrees, the steam  
20 generators would be able to provide cooling and they  
21 estimated that a one percent increase in RCS  
22 temperature would correspond to a one-degree increase  
23 in pressurizer level.

24 To accommodate this expected rise, the  
25 operators reduced the pressurizer level to about 43

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 percent prior to removing RHR from service. If the  
2 correlation between the temperature increase and the  
3 pressurizer level had been correct, the evolution may  
4 have been successful. Unfortunately, that correlation  
5 was incorrect and Mr. (b)(7)(C) was mistaken, but it was  
6 just a technical mistake, not a deliberate act.

7 Consistent with his belief that the  
8 evolution would be successful, Mr. (b)(7)(C) encouraged  
9 Mr. Johnson to proceed with the plan to heat up. The  
10 apparent violation seems to suggest that Mr. (b)(7)(C)  
11 urging Mr. Johnson to proceed was improper.

12 As a general matter, it's not improper for  
13 an (b)(7)(C) to urge the shift managers to  
14 stay on schedule by performing an evolution that the  
15 (b)(7)(C) believes has been appropriately  
16 validated.

17 We've looked at this interaction closely  
18 and as best we can determine, Mr. (b)(7)(C) did not  
19 direct Mr. Johnson to proceed or coerce him. Mr.  
20 (b)(7)(C) is adamant about this and we have found his  
21 accounts forthright.

22 What is particularly telling is that Mr.  
23 Johnson in many interviews prior to 2017 made no  
24 mention of Mr. (b)(7)(C) having any particular  
25 involvement in proceeding with the heat-up. It seems

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 inconceivable if the heat-up had occurred as Mr.  
2 (b)(7)(C) directed or coerced Mr. Johnson into doing so  
3 that Mr. Johnson would not have said so.

4 In his 2016 interviews when he was laying  
5 his actions off on the OCC and Watts Bar senior  
6 management, and even in his written PEC response, Mr.  
7 Johnson makes no mention of Mr. (b)(7)(C).

8 We have been unable to substantiate the  
9 allegation, which is in the factual summary of  
10 apparent violation 4 provided to Mr. (b)(7)(C), that an  
11 employee witnessed Mr. (b)(7)(C) telling Mr. Johnson  
12 that he wanted RHR removed from service as soon as  
13 possible and then challenging a resistant Mr. Johnson.

14 We are aware of a statement by an  
15 (b)(7)(C) who, according to the statement,  
16 recalled witnessing an exchange between Mr. Johnson  
17 and an unidentified OCC staff member in the control  
18 room on November 11th, 2015. But the auxiliary  
19 (b)(7)(C) has declined to provide further information,  
20 and we've been unable to ascertain whether the  
21 individual whom he thought he saw was Mr. (b)(7)(C).

22 We've also been unable to determine the  
23 nature of the challenge or how the auxiliary operator  
24 would challenge, would describe his recollection in  
25 his own words. As you are aware, we requested release

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 of the OI report and other interviews, summaries, and  
2 transcripts. This is one of the items that we are  
3 particularly interested in, but we do not have the  
4 benefit of that information.

5 It's possible that the auxiliary  
6 operator's account relates to some interaction between  
7 Mr. Johnson and Mr. (b)(7)(C), as Mr. (b)(7)(C) has freely  
8 admitted both in his PEC presentation and in past  
9 statements that he had a discussion with Mr. Johnson  
10 in the control room on November 11th, 2015, but as  
11 already discussed, Mr. (b)(7)(C) has stated that he  
12 neither directed nor coerced Mr. Johnson.

13 That he understood from the discussion  
14 that Mr. Johnson was comfortable proceeding and that  
15 Mr. Johnson decided to do so. In his own PEC  
16 statement, Mr. Johnson acknowledges that he made the  
17 decision to proceed himself and he does not attribute  
18 any influence on his decision to Mr. (b)(7)(C).

19 In sum, the interaction between Mr.  
20 (b)(7)(C) and Mr. Johnson does not appear to TVA to have  
21 been improper based on the available evidence. The  
22 (b)(7)(C) expressing to the  
23 shift manager a desire to move forward and stay on  
24 schedule does not amount to a direction to proceed.

25 Although TVA has acknowledged in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 connection with this apparent violation 4 and in our  
2 root cause analysis that personnel in the OCC and MCR  
3 made non-conservative decision making, TVA has not  
4 found any intentional effort to override or ignore  
5 operators' concerns.

6 I'll now turn to Mr. (b)(7)(C) and Mr.  
7 (b)(7)(C). TVA has not identified any evidence they need  
8 to conclude that Mr. (b)(7)(C) or Mr. (b)(7)(C) were aware  
9 that operators expressed concerns with the heat-up on  
10 November 11th, 2015.

11 It seems that Mr. (b)(7)(C) and Mr. (b)(7)(C)  
12 were likely briefed on the plan to heat up. That  
13 would be normal, given their positions at the plant,  
14 but there's no evidence of which TVA is aware that  
15 they directed the plan for heating up on excess  
16 letdown, and there's no evidence of which TVA is aware  
17 that they directed Mr. Johnson to proceed with heating  
18 up, or that they told anyone else to direct Mr.  
19 Johnson to do so.

20 In fact, Mr. (b)(7)(C) has stated that he  
21 was not told to direct Mr. Johnson to proceed, and Mr.  
22 Johnson has stated that he did not have any  
23 communications with senior management. Rather, Mr.  
24 Johnson appears to simply infer that Mr. (b)(7)(C) would  
25 be upset with any delay, and thus he took it upon

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 himself to avoid Mr. (b)(7)(C) attention by deciding to  
2 heat up on excess letdown. Further, there's no  
3 indication that either Mr. (b)(7)(C) or Mr. (b)(7)(C)  
4 recognized that the continued heat up might result in  
5 an uncontrolled rise in the pressurizer level.

6 Instead, it appears that apparent  
7 violation 4 is accusing Mr. (b)(7)(C) and Mr. (b)(7)(C) of  
8 deliberate misconduct again of intentionally taking  
9 actions that they knew would cause a violation of an  
10 NRC rule by virtue of their management styles. This  
11 is a pretty remarkable basis for alleging deliberate  
12 misconduct.

13 I don't think there's any dispute that,  
14 when Mr. (b)(7)(C) and Mr. (b)(7)(C) became senior managers  
15 at Watts Bar in mid-2014, the plant was performing  
16 poorly, and I don't think there was any dispute that  
17 in late 2015, operational procedure errors were still  
18 occurring in the operations department at Watts Bar.

19 So it should not be surprising that Mr.  
20 (b)(7)(C) and Mr. (b)(7)(C) were taking actions to hold  
21 employees, include operations personnel, accountable  
22 for their performance, and it should not be surprising  
23 that some operators did not like it.

24 But for the NRC to then suggest that such  
25 efforts to improve performance constituted deliberate

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 misconduct is wrong. One can disagree with their  
2 management styles, but there's little doubt that their  
3 actions were intended to improve performance and  
4 there's no evidence that their actions were intended  
5 to cause a violation to occur. That is no indication  
6 that they took deliberate actions that they knew would  
7 cause the reactor operators to violate any procedures.

8 To sum it up, the five individuals  
9 targeted by apparent violation 4 do not appear to have  
10 engaged in deliberate violations of NRC requirements.

11 Mr. Blankenship appears to have done  
12 nothing wrong. Both Mr. Johnson and Mr. (b)(7)(C)  
13 appear to have believed that they were retaining plant  
14 safety, and Mr. (b)(7)(C) and Mr. (b)(7)(C) were engaged in  
15 efforts to turn around the performance at Watts Bar to  
16 improve safety, the complete opposite of alleged  
17 deliberate misconduct.

18 Accordingly, this scenario is a good  
19 example of why the NRC was correct to decide not to  
20 enforce safety culture traits as a regulation, as  
21 requirements. Anybody's performance can be criticized  
22 and found wanting when scrutinized under subjective  
23 behavioral standards, but that should not expose them  
24 to charges of deliberate misconduct.

25 Thank you for your time and attention and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 I'll now hand it back over to Mr. Williams.

2 MR. WILLIAMS: Thank you, Mr. Lewis.

3 As just explained, TVA contests apparent  
4 violation 4. TVA has acknowledged that the non-  
5 conservative decision making incurred on November 11th  
6 and has implemented corrective actions to fix the  
7 failures that occurred that day.

8 But as Mr. Lewis explained, none of the  
9 individuals implicated in apparent violation 4  
10 deliberately made non-conservative decisions. Mr.  
11 Johnson stopped and deliberated about the evolution  
12 before proceeding. And while he acted in poor  
13 judgment, he thought his actions were consistent with  
14 NRC's requirements.

15 Mr. Blankenship stopped and deliberated  
16 about the evolution before proceeding and only  
17 proceeded after being led to believe his concerns were  
18 addressed and being given the express direction to  
19 proceed. Mr. (b)(7)(C) also deliberated about the  
20 evolution, and while he encouraged proceeding, he only  
21 did so because he understood that the heat-up could  
22 proceed safely.

23 And while it seems likely that Mr. (b)(7)(C)  
24 and Mr. (b)(7)(C) were briefed on the heat-up given their  
25 positions, there's no evidence that they directed the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 plant to heat up on excess letdown. Finally, as Mr.  
2 Lewis discussed, since the NRC has chosen not to  
3 enforce safety culture traits against the licensees,  
4 it cannot do so here.

5 This concludes our presentation on  
6 apparent violation 4. Of course, we are happy to  
7 answer any questions you have.

8 MR. O'BRIEN: Thank you, Mr. Williams.  
9 Consistent with our schedule, I believe the next point  
10 is for us to take a caucus, so why don't we do that?  
11 Why don't we take and have a caucus for the next hour,  
12 and we'll reconvene and come back on the record at 20  
13 minutes before the hour. Is that acceptable to you?

14 MR. WILLIAMS: Yes, it is.

15 MR. O'BRIEN: Thank you very much. We are  
16 off the record. We'll come back at 20 minutes before  
17 the hour.

18 (Whereupon, the above-entitled matter went  
19 off the record at 8:36 a.m. and resumed at 9:15 a.m.)

20 MR. O'BRIEN: Good morning. It's 15  
21 minutes after the hour, as we agreed on a side call  
22 that we begin now. Let me make sure my team is ready.

23 Marcia? Nick?

24 MS. SIMON: Sorry. Sorry, Ken. I'm ready.  
25 I just couldn't find my name on the list. Too many

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 people.

2 MR. O'BRIEN: Thank you. Next, Scott.

3 MR. WARRINGTON: Yeah, Ken, ready to go.

4 MR. O'BRIEN: Thank you. Mr. Williams, are  
5 we ready to go from your perspective?

6 MR. WILLIAMS: Yes. We are ready to go.

7 MR. O'BRIEN: Thank you, sir. We have but  
8 one, maybe two questions. And I'll take the questions  
9 myself, if that's okay with everybody.

10 The first question -- and I'm not sure who  
11 might be able to answer, but we're trying to  
12 understand your knowledge of who was in the OCC on the  
13 11th of November of 2015 from an engineering  
14 perspective.

15 MS. ROELOFS: Mr. O'Brien, this is Ms.  
16 Roelofs. We will turn that over to our counsel to  
17 answer based on their investigation.

18 MR. O'BRIEN: Thank you, Ms. Roelofs.

19 MR. LEWIS: Yeah. This is Mr. Lewis. We  
20 have been unable to identify because Mr. (b)(7)(C) does  
21 not recall who were the engineering people he recalls  
22 writing input on that day. We do believe that -- and  
23 I've asked TVA to remain because I can't quite  
24 remember, I think it's (b)(7)(C) may have been the  
25 engineering rep that day. Tony, did I get that name

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 right? I can't remember exactly. I think it's (b)(7)(C)  
2 or (b)(7)(C).

3 MR. WILLIAMS: I believe it's Mr. (b)(7)(C)  
4 (b)(7)(C).

5 MR. LEWIS: Casner. Thank you.

6  
7 MS. ROELOFS: Yes. (b)(7)(C) for the  
8 record.

9 MR. O'BRIEN: Thank you, Ms. Roelofs. That  
10 was exactly my next thing to ask. And I was going to  
11 ask it. My follow-up question to that is then did you  
12 get any information from Mr. (b)(7)(C) regarding the 1  
13 percent to 1 degree rule, thumb rule? Is that where  
14 that came from, or other aspects of that?

15 MR. LEWIS: No.

16 MS. ROELOFS: This is Ms. Roelofs. We'll  
17 turn that over to counsel. Looks like he's already  
18 in.

19 MR. O'BRIEN: Thank you.

20 MR. LEWIS: Yes. No, we were unable to  
21 determine where that came from.

22 MR. O'BRIEN: Did you get any information  
23 from Mr. (b)(7)(C) relative to whose involvement in the  
24 discussions in the OCC that day with regard to heat-  
25 up?

1 MR. LEWIS: No.

2 MR. O'BRIEN: Thank you very much. That's  
3 all the questions we have relative to AV 4, Mr.  
4 Williams. If you're ready to move on to the next AV,  
5 that would be fine with us.

6 MR. WILLIAMS: Yes, we are ready to move on  
7 to the next AV.

8 MR. BARSTOW: Good morning. Jim Barstow.  
9 I'll open the comments around Apparent Violations 7 to  
10 9. Before counsel discusses apparent violations 7 to  
11 9 I'd like to share a few thoughts regarding those  
12 apparent violations to reflect some of the important  
13 issues. Get my video on. I'll address that.

14 MR. O'BRIEN: Thank you, sir. I appreciate  
15 your recognizing that. Thank you.

16 MR. BARSTOW: You're welcome. Apparent  
17 Violation 7 essentially alleges that site personnel  
18 intentionally provided an NRC resident inspector with  
19 incomplete and inaccurate information.

20 The TVA management's expectations are  
21 members of the nuclear organization will be responsive  
22 to any NRC inspector questions in a timely and  
23 accurate manner. TVA's review of the circumstances  
24 associated with Apparent Violation 7 indicates that  
25 the individuals who met with the senior resident

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 inspector on December 14th, 2015, were doing exactly  
2 what was inspected of them: answering his questions to  
3 the best of their ability.

4 This apparent violation is deeply  
5 troubling for TVA and for the nuclear industry because  
6 it would set a new precedent for what the NRC  
7 considers evidence of providing incomplete or  
8 inaccurate information. Stated plainly, the NRC is  
9 relying on its own interpretation of an internal TVA  
10 document which site personnel have said would not be  
11 then provided to the resident inspector at the time  
12 alleged, rather than recognizing the intent of the  
13 author of the document and the interpretations that  
14 the intended audience had of the document.

15 The NRC is also substituting its own  
16 interpretation of language in a Condition Report  
17 written to capture the site's understanding of the  
18 inspector's question for that reason held by the  
19 author of the Condition Report. In the case of this  
20 Condition report, the NRC has not only misinterpreted  
21 TVA's words, but also incorrectly understood the date  
22 the CR was initiated. As a result, TVA finds the  
23 basis asserted for Apparent Violation 7 to be entirely  
24 without merit.

25 On the other hand, Apparent Violation 9

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 concerns statements provided to an NRC Office of  
2 Investigations agent on December 18th, 2015. While a  
3 former shift manager has admitted to providing an  
4 incomplete statement, the (b)(7)(C)  
5 has been wrongly accused on the basis of  
6 circumstantial evidence and taking a portion of his  
7 statement out of context.

8 In reviewing this alleged violation, TVA  
9 has been particularly concerned about the use of the  
10 (b)(7)(C) interview as evidence  
11 because of the imprecise questions asked of them, the  
12 numerous interruptions by NRC personnel as they  
13 attempted to answer their questions, and ultimately  
14 the NRC's selective use of a statement taken out of  
15 context. I will now turn the presentation over to Tom  
16 Hill who will take us through the details of these two  
17 apparent violations.

18 MR. HILL: Thanks, Jim. TVA denies  
19 Apparent Violation 7 for two primary reasons:

20 First, TVA has not been able to  
21 substantiate that any written response was provided to  
22 Mr. Nadel on December 14th, 2015. Rather, it appears,  
23 contrary to the NRC's allegations, that Mr. Nadel was  
24 not given any written response.

25 Second, TVA does not find the purported

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 written response described in the apparent violation,  
2 even if given, to be inaccurate or incomplete in  
3 response to Mr. Nadel's questions. Moreover, TVA has  
4 identified no evidence that Mr. (b)(7)(C) or Mr. (b)(7)(C)  
5 knowingly and intentionally provided incomplete or  
6 inaccurate information to Mr. Nadel, even assuming,  
7 for the sake of argument that they did give him the  
8 purported written response and that it was somehow  
9 inaccurate or incomplete.

10 Rather, the evidence available to TVA  
11 shows that Mr. (b)(7)(C) and Mr. (b)(7)(C) worked  
12 diligently over the weekend of December 12th, 2015, to  
13 answer Mr. Nadel's questions, which were focused  
14 primarily on the issue of whether RHR had been  
15 rendered inoperable on November the 11th, not on the  
16 reasons for cycling the RHR valves which Mr. Nadel  
17 already knew and understood when he first approached  
18 (b)(7)(C), TVA senior reactor operator, on Friday,  
19 December 11th.

20 What Mr. Nadel was primarily focused on  
21 was the question he did not already know the answer  
22 to: had RHR been made inoperable? Mr. (b)(7)(C) and  
23 Mr. (b)(7)(C), and other TVA employees, continued working  
24 transparently to answer Mr. Nadel's questions  
25 throughout December 2015, and were able to demonstrate

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that RHR had in fact remained operable.

2 To my first point, the apparent violation  
3 is based on a faulty premise. The NRC alleges a  
4 written response was given to Mr. Nadel, but it has  
5 declined to provide a copy of that document to TVA or  
6 to Mr. (b)(7)(C) or Mr. (b)(7)(C) Mr. (b)(7)(C) and Mr.  
7 (b)(7)(C) both stated clearly at their PECs that they  
8 recall no written document being given to Mr. Nadel on  
9 December the 14th.

10 As Mr. (b)(7)(C) explained, it would have been  
11 contrary to TVA's standard practice, as well as his  
12 own standard practice, to give Mr. Nadel any kind of  
13 draft response or internal TVA document in writing.  
14 And as Mr. (b)(7)(C) explained, he did not prepare any  
15 documents with the intent to give them to Mr. Nadel on  
16 December the 14th.

17 From the language quoted in the NRC's  
18 factual summary it appears to TVA that, in fact, the  
19 document the NRC alleges was given to Mr. Nadel in  
20 truth was actually taken from an internal TVA email  
21 attachment written for internal TVA use to brief TVA's  
22 senior management. Either Mr. (b)(7)(C) or Mr. (b)(7)(C)  
23 believes they even took a copy of that internal email  
24 document at the meeting, so they could not have  
25 accidentally left it behind.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Without more specific information  
2 regarding the document Mr. Nadel believes he received,  
3 and his recollection of the meeting, which of course  
4 would be available in litigation if needed, TVA simply  
5 cannot credit the allegation that Mr. (b)(7)  
(C) or Mr.  
6 (b)(7)(C) gave Mr. Nadel any written response on  
7 December 14th, 2015. And because it appears no  
8 written response that forms the basis for Apparent  
9 Violation 7 allegations was ever given, the apparent  
10 violation should now be dropped.

11 My second point. The internal email that  
12 the NRC mistakenly seems to allege that Mr. Nadel was  
13 given was simply inaccurate. TVA has reviewed the  
14 internal email attachment that appears to be the  
15 source of these allegations, and the facts and  
16 circumstances surrounding its creation. This factual  
17 background and chronology are laid out in TVA's  
18 written response to Apparent Violation 7, and I'll not  
19 repeat them here.

20 The document that appears to be at issue  
21 would certainly not have been incomplete, inaccurate,  
22 or misunderstood had it somehow been provided to Mr.  
23 Nadel when reviewed in the context of the verbal  
24 discussions and ongoing communications with Mr. Nadel  
25 over the weekend of December 12th, 2015, and into the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 following week. To render the purported written  
2 response inaccurate, NRC has seized on a single  
3 sentence in that document, and reading it without any  
4 context, given it an implausible interpretation.

5 The NRR alleges -- the NRC alleges the  
6 purported TVA written response 3B is inaccurate. That  
7 response stated, as you can see on the screen, that  
8 the RHR inlet valves were open for placing RHR letdown  
9 in service, and then goes on in subsection 1 to say  
10 that, this was done to allow the repair of a valve  
11 inside containment on the normal letdown line.

12 NRC then alleges that this was purposely  
13 inaccurate because, in fact, the repair was initiated  
14 hours before the valves were opened. Clearly, had Mr.  
15 (b)(7)(C) been a better and more precise writer, and  
16 had he written in his internal email attachment  
17 because of instead of to allow, we wouldn't be here.  
18 Thus, the sentence of subsection 1 would have read,  
19 This was done because of the repair of a valve inside  
20 containment on the normal letdown line.

21 But Mr. (b)(7)(C) superiors, even with  
22 his less-than-perfect choice of language, understood  
23 perfectly well that Mr. (b)(7)(C) was explaining to  
24 them why normal letdown was not available as they  
25 would have expected it to be during the heat-up.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Indeed, in a contemporaneous December 14th memo, TVA  
2 senior reactor operator Mr. (b)(7)(C) uses the exact  
3 same to allow language to explain, and I quote, we had  
4 to remove normal letdown to allow the repair of a  
5 valve.

6 Is the NRC really going to find deliberate  
7 misconduct, an essentially criminal standard, because  
8 Mr. (b)(7)(C) could have chosen two better words in an  
9 email intended for his boss Mr. (b)(7)(C)?

10 The NRC's after-the-fact reading of the  
11 document is nonsensical. Obviously, the RHR inlet  
12 valves were not open to allow repair of normal  
13 letdown, as Mr. McKnapp -- excuse me -- as Mr. Nadel  
14 well knew and understood on December the 14th.  
15 Indeed, that was apparent even to me, someone without  
16 any technical background, let alone anyone familiar  
17 with nuclear power plants, especially someone like Mr.  
18 Nadel who was also already very familiar with the  
19 events of November 11th, 2015, at Watts Bar.

20 As Mr. (b)(7)(C) and Mr. (b)(7)(C) have said in  
21 their PEC statements, Mr. Nadel was familiar with the  
22 plant configuration on November the 11th before he  
23 ever spoke to them on December 12th. But they also  
24 stated that they recall walking through the plant  
25 configuration with him on December 12th, and again on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 December 14th, at the same time this purported written  
2 statement is alleged to have been provided. And as  
3 Mr. Nadel would have well known on December 14th when  
4 he allegedly received this document, the only possible  
5 reason to place the RHR letdown back in service with  
6 the plant in Mode 4 would have been to control  
7 pressurizer level.

8 It's also clear from the documentary  
9 record that Mr. Nadel knew, even before speaking to  
10 Mr. (b)(7)(C) or Mr. (b)(7)(C), that the repairs to normal  
11 letdown had begun well before the RHR valves were  
12 open. Thus, he already knew facts that make the NRC's  
13 now after-the-fact contrived reading of the alleged  
14 written response nonsensical.

15 On December the 11th Mr. Nadel showed  
16 documents to a shift manager (b)(7)(C) that clearly  
17 highlight a log entry reflecting that normal letdown  
18 was already out of service early on November 11th when  
19 the B train of RHR was still in service. You can see  
20 on the slide, normal charging, excess letdown is in  
21 service, normal charging and letdown are out of  
22 service for repair to the valves.

23 By the time they met on December 14th, Mr.  
24 (b)(7)(C) and Mr. (b)(7)(C) had copies of the documents Mr.  
25 Nadel had shown to Mr. (b)(7)(C). The NRC's allegation

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 in Apparent Violation 7 is premised on reading the  
2 purported written response to say that RHR valves were  
3 open to allow the repair on normal letdown to start,  
4 but that obviously wasn't the situation.

5 Mr. Nadel had, before even approaching TVA  
6 to discuss the events of November 11th, determined as  
7 much for himself from the logs, which reflected  
8 clearly that normal letdown was out of service for  
9 repairs hours before the RHR valves were open to  
10 restore letdown. And Mr. (b)(7)(C) and (b)(7)(C) knew that  
11 Mr. Nadel had reviewed the logs. It is simply not  
12 credible that Mr. (b)(7)(C) or Mr. (b)(7)(C) would have  
13 written a document contradicting a log entry that they  
14 knew that Mr. Nadel had and knew about.

15 In the context of the ongoing  
16 communications at Watts Bar over the weekend of  
17 December 12th, 2015, and through that following week,  
18 the language of the purported written response would  
19 and could not have been misunderstood. As Mr.  
20 (b)(7)(C) explained at his PEC, the email attached  
21 language was never meant for Mr. Nadel, rather it was  
22 meant to explain an unusual plant configuration to an  
23 internal audience of TVA management who would have  
24 realized that it was unusual to have RHR letdown in  
25 service in Mode 4, and would have wanted to know why.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 That is exactly what Mr. (b)(7)(C) did on  
2 the morning of December 13th when he emailed the  
3 attachment in question to his boss Mr. (b)(7)(C)  
4 explaining to Mr (b)(7)(C), who unlike Mr. Nadel would  
5 not have known that on November 11th normal letdown  
6 was out of service due to a valve repair.

7 In fact, (b)(7)(C) said at his PEC that he  
8 added 3B1 to his draft summary for Mr. (b)(7)(C) in  
9 response to a similar question that had arisen in one  
10 of his internal verbal communications on the topic.

11 And as Mr. (b)(7)(C) explained at his PEC, he  
12 was not confused by the language, he understood it and  
13 its purpose at the time, probably given to his own  
14 internal correspondence with TVA management. There is  
15 every indication that Mr. (b)(7)(C) and Mr. (b)(7)(C)  
16 thought the purported written response was accurate  
17 and helpful, otherwise there is no explanation for why  
18 they shared it repeatedly within TVA.

19 There is also every indication that Mr.  
20 (b)(7)(C) and Mr (b)(7)(C) thought they were giving Mr.  
21 Nadel a complete response to his questions. Indeed,  
22 the NRC has not alleged that Mr. (b)(7)(C) and Mr.  
23 (b)(7)(C) failed to answer any of Mr. Nadel's  
24 questions. The only allegation is that this specific  
25 purported written response -- again, which TVA

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 believes was never provided -- was not complete  
2 because, in the NRC's words, it omitted the actual  
3 reason why the RHR inlet valves were cycled, which was  
4 to arrest the increase in pressurizer water level  
5 resulting from the inability of excess letdown  
6 pressurizer water level during the heat-up.

7 But the written response, if it was given  
8 at all, was given as part of an ongoing weekend  
9 exchange of information during an in-person meeting.  
10 First, as noted, Mr. (b)(7)(C) and Mr. (b)(7)(C) recall  
11 discussing with Mr. Nadel on December 12th and 14th,  
12 2015, that RHR letdown was used to control the  
13 pressurizer level.

14 Second, given the recognition that RHR  
15 letdown was placed back in service, there can be no  
16 plausible uncertainty about why RHR was placed in  
17 service in Mode 4. The only conceivable purpose is to  
18 control pressurizer level. In effect, the NRC is  
19 accusing TVA of not answering an unasked question,  
20 which was not asked because it was clear that the  
21 answer to it was obvious and not worthy of pursuit.

22 Third, the purported written response, if  
23 it was given to Mr. Nadel, was not a single-page  
24 document. But as with TVA's internal email it  
25 included Dataware graphs. The graphs show plainly

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that pressurizer level was rising until the RHR valves  
2 were opened, at which point pressurizer level was  
3 arrested. The correlation is unmistakable. Of course  
4 Mr. (b)(7)(C) was answering Mr. Nadel's real questions,  
5 which were about RHR operability, not a question about  
6 the pressurizer level, and the handwritten notes are  
7 not targeting the pressurizer level.

8 If there is any confusion about the  
9 relationship between RHR letdown and pressurizer  
10 level, however, it would have been dispelled by the  
11 graphs. Indeed, Mr. (b)(7)(C) and Mr. (b)(7)(C) have said  
12 that they do recall discussing a different graph  
13 prepared by Mr. (b)(7)(C) with Mr. Nadel on December  
14 14th which clearly showed the same correlation.

15 If there is still any question that Mr.  
16 Nadel knew and understood that RHR letdown was put  
17 back in service to arrest pressurizer level on the  
18 very next day, on the very next day, December 15th,  
19 (b)(7)(C) from TVA wrote Mr. Nadel to confirm  
20 TVA's understanding of Mr. Nadel's remaining  
21 questions. In framing the questions, Mr. (b)(7)(C)  
22 stated, and I quote, the MCR operators made the  
23 decision to commence the RHR letdown to manage  
24 pressurizer level and RCS pressure.

25 And Mr. Nadel responded to Mr. (b)(7)(C)

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that same day that Mr. (b)(7)(C) recital of the  
2 questions, quote, they look good. Moreover, the NRC's  
3 accusation that information was omitted from a  
4 response to a specific question, Mr. Nadel had not,  
5 however, asked why RHR letdown was placed in service.  
6 It is thus unreasonable to accuse TVA of providing  
7 incomplete information by failing to answer an unasked  
8 question, especially one that Misters (b)(7)(C) and  
9 (b)(7)(C) understood that Nadel knew the answer to.

10 The NRC should not look back on its  
11 questions and decide that the follow-up questions were  
12 implicitly included, and then allege violations  
13 against licensees who failed to infer the right  
14 follow-up questions that they had to answer,  
15 especially when they believed and understood the NRC  
16 already knew the answer to the unasked questions.  
17 That is simply not the way to approach regulation of  
18 the industry.

19 Mr. (b)(7)(C) has explained in his PEC  
20 statement that (b)(7)(C) on Saturday,  
21 December 12th, after Mr. Nadel's questions, shortly  
22 after he and Mr. (b)(7)(C) spoke to Mr. Nadel by phone  
23 that morning. It was not a response to Mr. Nadel.  
24 Mr. (b)(7)(C) use of the CR in this matter was  
25 consistent with the general practice of Watts Bar at

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 the time.

2 Based on Mr. (b)(7)(C) notes of the  
3 Saturday, December 12th call with Mr. Nadel and Mr.  
4 (b)(7)(C), CR1114975 indeed did accurately and  
5 completely reflect Mr. Nadel's questions. The NRC  
6 does not challenge that Mr. (b)(7)(C) correctly  
7 understood and reflected Mr. Nadel's questions. Based  
8 on Mr. (b)(7)(C) recollection of his preliminary  
9 investigation and the related email traffic, it  
10 appears that CR1114975 accurately and completely  
11 reflected his preliminary findings.

12 Question 3, which is highlighted here,  
13 was, why were the RHR valves cycled? As stated  
14 before, Mr. Nadel's first two questions had focused on  
15 RHR operability. The RHR valves were cycled for the  
16 following reasons:

17 The opened for placing RHR letdown  
18 service. In particular, the condition report  
19 accurately and completely answered Mr. Nadel's  
20 questions, as shown on the slide in the type of  
21 thread. Critically, given that he knew the answer,  
22 Mr. Nadel had not asked why RHR letdown was put into  
23 service. There was no reason for Mr. Nadel to ask the  
24 question when he already knew, and it was obvious that  
25 RHR letdown would have been put back into service in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Mode 4 for one reason, and only one reason, to control  
2 pressurizer level. There is no other possible  
3 purpose.

4 Consequently, in a document intended for  
5 the Operations Department and to track Mr. Nadel's  
6 questions like this Condition Report, there would be  
7 no need for Mr. (b)(7)(C) to have stated the obvious.  
8 Even if Mr. Nadel had asked such an unnecessary and  
9 substantive question, TVA did not need Mr. (b)(7)(C) to  
10 write the answer in this Condition Report. Failure to  
11 state the obvious in a Condition Report is not  
12 remotely equivalent to giving the NRC incomplete  
13 information, let alone deliberately.

14 TVA thus finds no fault with CR1114975.  
15 As with the purported written response that I  
16 discussed earlier, it is unreasonable and unworkable  
17 for TVA's Condition Reports to be expected to reflect  
18 all the possible follow-up questions and answers the  
19 NRC might decide were relevant in hindsight.

20 This CR was appropriate at the time it was  
21 written, which as Mr. (b)(7)(C) explained to you was on  
22 Saturday, December 13th, not as the NRC alleges  
23 Tuesday, December 15th. And as you can see on the  
24 slide, the date is reflected in the top right-hand  
25 corner.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Further, TVA objects to the NRC's efforts  
2 to turn TVA's internal tracking system into an after-  
3 the-fact basis for attacking its employees. Mr.  
4 (b)(7)(C) the Condition Report in an effort to  
5 promote transparency with the NRC, and ensure a  
6 complete and timely response to Mr. Nadel's questions.  
7 It is really unfortunate for the NRC to twist his  
8 efforts into a baseless accusation of not only  
9 misconduct but deliberate misconduct.

10 TVA relies on the timely creation of  
11 Condition Reports for tracking important learning at  
12 its facilities.

13 Beyond finding that there was no  
14 misconduct here, TVA cannot understand the allegations  
15 of deliberate misconduct in Apparent Violation 7. The  
16 NRC has offered no direct evidence that Mr. (b)(7)(C) or  
17 Mr. (b)(7)(C) intentionally and knowingly submitted  
18 inaccurate or incomplete information to the NRC or to  
19 TVA. TVA is aware of no such evidence.

20 To the contrary, the record shows that Mr.  
21 (b)(7)(C) and Mr (b)(7)(C) were being highly responsive to  
22 Mr. Nadel's questions, diligently engaging with him  
23 for a Saturday morning teleconference and Monday  
24 meeting following his questions on Friday night.

25 Mr. (b)(7)(C) and Mr. (b)(7)(C) appear to have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 attempted in good faith to answer Mr. Nadel's  
2 questions to the best of their ability and  
3 understanding. Mr. (b)(7)(C) CR1114975 in good  
4 faith, believing it captures Mr. Nadel's questions and  
5 his preliminary investigation completely and  
6 accurately.

7 Nevertheless, the NRC appears to be  
8 relying on an unsupported and contrived reading of the  
9 document, which remember, there appears to be no  
10 evidence was ever actually given to Mr. Nadel on  
11 December 14th, to infer that Messrs. (b)(7)(C) and  
12 (b)(7)(C), both experienced in nuclear plant  
13 operations, must have understood that contrived  
14 reading to be false.

15 That would be equally true of Mr. Nadel.  
16 Mr. (b)(7)(C) and Mr. (b)(7)(C) must have known a reading  
17 of the document was false. So too must Mr. Nadel have  
18 known it to be false at the time. Indeed, the NRC's  
19 allegations would imply there was no confusion at all,  
20 but that Mr. Nadel without any reason assumed that  
21 Messrs. (b)(7)(C) and (b)(7)(C) were trying to deceive him.

22 And again, TVA has seen no evidence that  
23 the document was given to Mr. Nadel or that he did  
24 read it in such a non-cynical -- nonsensical and  
25 cynical manner.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   Moreover, if the document had been  
2 intended for Mr. Nadel, there could have been no  
3 reasonable expectation by Mr. (b)(7)(C) or Mr (b)(7)(C)  
4 that Mr. Nadel would read it in the counter-factual  
5 way that the NRC now proposes. Consequently, the  
6 NRC's reasoning for attributing knowing and  
7 intentional misconduct to Mr. (b)(7)(C) and Mr. (b)(7)(C)  
8 seeks the NRC's own after-the-fact alleged and  
9 contrived reading of the purported written response.

10                   If the document really meant what the NRC  
11 alleges, it would have been pointless to give it to  
12 Mr. Nadel. If the document was so clearly false that  
13 Mr. (b)(7)(C) and Mr. (b)(7)(C) must have known it was  
14 inaccurate, then it could not possibly have confused  
15 Mr. Nadel.

16                   Finally, if the purported written response  
17 was, as the NRC seems to imply, intended to conceal  
18 that there was a pressurizer level rise necessitating  
19 placing RHR letdown in service, it makes no sense that  
20 Mr. (b)(7)(C) included a Dataware graph plainly showing  
21 the timeline of pressurizer level rise. It is  
22 ridiculous to suggest that a document with this graph  
23 attached to it was meant to conceal a pressurizer  
24 level rise.

25                   Even more so, it is simply not believable

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that Mr. (b)(7)(C) or Mr. (b)(7)(C) knowingly gave Mr.  
2 Nadel a document that purposely failed to explain the  
3 relationship between pressurizer level and opening RHR  
4 valves deliberately, and then took this graph and  
5 explained it to Mr. Nadel at the very same meeting.

6 The allegations of deliberate misconduct  
7 here are false and contrived. They should never have  
8 been made, and they certainly cannot be sustained.

9 As I have explained, in the first place  
10 TVA has not identified any basis to believe that a  
11 written response was given to Mr. Nadel on December  
12 14th, 2015.

13 Second, to the extent the NRC alleges  
14 certain language was given to Mr. Nadel in writing,  
15 that such language was inaccurate and incomplete, TVA  
16 strongly disagrees. The language quoted by the NRC in  
17 its allegations was intended for an internal TVA  
18 audience and was complete and accurate, even if Mr.  
19 (b)(7)(C) could have chosen better words and understood  
20 the context of the dialog that weekend between Mr.  
21 Nadel and TVA.

22 Finally, the NRC has alleged deliberate  
23 misconduct by Mr. (b)(7)(C) and Mr. (b)(7)(C), but TVA has  
24 seen absolutely no evidence that either individual  
25 intentionally, knowingly submitted incomplete or

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 inaccurate information to the NRC. Deliberate  
2 misconduct is a very serious allegation, one that  
3 should be based on direct evidence, a subjective  
4 belief, and not based on conjecture, inference, or  
5 suspension of belief.

6 Let me now turn to AV 9. Excuse me for  
7 one second.

8 (Pause.)

9 MR. HILL: Thank you for your indulgence.

10 MR. O'BRIEN: Mr. Hill, would you like to  
11 take a short break?

12 MR. HILL: No. A sip of water was helpful.  
13 But thank you.

14 MR. O'BRIEN: Okay.

15 MR. HILL: Thank you.

16 MR. O'BRIEN: Go ahead.

17 MR. HILL: Okay. Obviously, if the panel  
18 wants to take a break, that's fine. But I'm prepared  
19 to proceed.

20 Apparent Violation 9 combines allegations  
21 of deliberate misconduct against two individuals, to  
22 Billy Johnson, the shift manager who was on shift  
23 during the RHR event; Mr. (b)(7)(C) (b)(7)(C)

24 (b)(7)(C) was not on shift during  
25 the RHR event.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           The NRC interviewed both on December 18th,  
2           2015, and now accuses both of deliberately making  
3           inaccurate and incomplete statements.

4           In his recent written statement to the  
5           NRC, Mr. Johnson acknowledged that portions of his  
6           interview with the NRC were inaccurate or incomplete.  
7           TVA is not in a position to dispute Mr. Johnson's own  
8           account of his own state of mind, so I will only say  
9           a few words regarding the allegations against Mr.  
10          Johnson.

11          In contrast, Mr. (b)(7)(C) has vehemently  
12          denied that he would or did make inaccurate or  
13          incomplete statements, or that he did so deliberately.  
14          TVA certainly concurs.

15          TVA has reviewed the NRC transcript of Mr.  
16          (b)(7)(C) interview. TVA finds Mr. (b)(7)(C)  
17          defense of the completeness and accuracy of his  
18          statements during the interview to be persuasive and  
19          compelling.

20          Sadly and ironically, TVA also notes that  
21          some of the NRC's allegations about what Mr. (b)(7)(C)  
22          said are themselves inaccurate.

23          TVA also has seen no evidence that Mr.  
24          (b)(7)(C) knowingly or deliberately made incomplete or  
25          inaccurate statements to the NRC. To the contrary, it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 appears that Mr. (b)(7)(C) was meeting with the NRC in  
2 an effort to be transparent and helpful.  
3 Unfortunately, the questions posed to Mr. (b)(7)(C) by  
4 the participants, often speaking over each other and  
5 over Mr. (b)(7)(C), made the interview and the  
6 transcript often confusing and lacking in precision.

7 Precisely, particularly under these  
8 circumstances, TVA finds the NRC efforts now to twist  
9 Mr. (b)(7)(C) words against him to be unwarranted.

10 The NRC alleges that Mr. (b)(7)(C) made  
11 three statements that were inaccurate or incomplete.  
12 Two of those alleged statements are simply  
13 mischaracterizations of his testimony and could be  
14 easily dismissed.

15 The third alleged statement is complete  
16 and accurate, however, when understood, as it  
17 certainly should be, in context of the entire  
18 interview.

19 The NRC alleges that Mr. (b)(7)(C)  
20 represented that the decision to continue with the  
21 heat-up was not influenced by anyone outside the  
22 control room. To our surprise, we could not find any  
23 such statement in the transcript of Mr. (b)(7)(C)  
24 interview. We expected that the NRC, having its own  
25 interview transcript on which to base allegations

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 about the interview, was quoting or at least  
2 paraphrasing what Mr. (b)(7)(C) said.

3 But according to the NRC's transcript of  
4 the interview, NRC never asked Mr. (b)(7)(C) about  
5 whether the heat-up was "influenced" by anyone outside  
6 the control room. And Mr. (b)(7)(C) never said the  
7 heat-up was not influenced by anyone outside the  
8 control room.

9 To the contrary, Mr. (b)(7)(C) discussed at  
10 length the process that led to the plant heat-up,  
11 which included discussions outside the control room.

12 And as you will note in the transcript,  
13 the interview was conducted in such a way that it was  
14 impossible for the court reporter to even indicate who  
15 was asking specific questions. They are identified  
16 usually as Participant.

17 "So who was on both sides of the  
18 discussion?"

19 Mr. (b)(7)(C) answered, "Operations crew-  
20 wide and then, I guess, maintenance decisions."

21 And one of the participants then asked,  
22 "Was any of that documented in like a support or in  
23 any kind of OCC product?"

24 Mr. (b)(7)(C): "Yes, sir. I don't know if  
25 we have a picture of it, but I know that -- so we have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 this, I'll use their words, like a stick and ball or  
2 you know, a white board of here's the layout."

3 And the participant, "I'm visualizing like  
4 a conference room with a big white board or  
5 somewhere?"

6 "Yes, sir."

7 Mr. (b)(7)(C) was specifically asked who  
8 was involved in the discussion of the plant heat-up,  
9 including whether the discussion was documented by the  
10 OCC. Mr. (b)(7)(C) explained that the discussion  
11 involved the OCC and was documented on a white board  
12 for the OCC.

13 One of the investigators, as I just read,  
14 even said on the record that he was visualizing that  
15 OCC room with the big white board.

16 It is obvious from Mr. (b)(7)(C)  
17 interview transcript that he testified the personnel  
18 outside the control room, namely the individuals in  
19 the OCC as well as Maintenance, influenced the  
20 decision to heat-up.

21 And of course, as we have already  
22 discussed in response to Apparent Violation 4, there  
23 is nothing wrong with the OCC influencing the plant to  
24 heat up. The OCC involvement, participation, and  
25 influence is normal and expected, and appropriate.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 This allegation against Mr. (b)(7)(C) is not only  
2 unfounded; it is directly contradicted by the NRC's  
3 own transcript.

4 The NRC also alleges that Mr. (b)(7)(C)  
5 stated that there was no significant pushback from the  
6 control room operator. This allegation similarly has  
7 no basis in the transcript of Mr. (b)(7)(C) 1 hour  
8 and 25 minute interview.

9 The only time the word pushup -- pushback  
10 comes up in Mr. (b)(7)(C) 75-page interview  
11 transcript is when the NRC investigators introduced  
12 it, and Mr. (b)(7)(C) asked for clarification of the  
13 term.

14 Mr. (b)(7)(C): "Pushback for what? I don't  
15 understand."

16 Participant: "Pushback to the heat-up with  
17 only excess letdowns being in service."

18 Another participant, presumably another  
19 one: "Or challenging it, challenging any of this? I'm  
20 not sure if you have any knowledge or understanding of  
21 what."

22 Mr. (b)(7)(C): "No, sir."

23 "Are you aware of anyone challenging that  
24 sequence?"

25 So the NRC changed the words of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 question about pushback to challenges. And when Mr.  
2 (b)(7)(C) answered the NRC's questions regarding  
3 challenges to the plant heat-up, he answered to the  
4 best of his knowledge.

5 Mr. (b)(7)(C) has already explained in his  
6 own PEC how he understood the question, what he knew  
7 at the time. TVA is not aware of any evidence that  
8 Mr. (b)(7)(C) answer was incomplete or inaccurate,  
9 let alone deliberately so.

10 In the NRC's own transcript Mr. (b)(7)(C)  
11 response appears to be a complete and accurate  
12 response to the questions that he was asked.

13 I don't -- Mr. (b)(7)(C): "It was  
14 discussed. I don't know that it was a challenge, but  
15 it was a healthy discussion of we put excess letdown  
16 in."

17 And at the end he concludes, "So I don't  
18 want to mix challenge and discuss."

19 So Mr. (b)(7)(C) explained to the NRC on  
20 December the 18th that he was aware of a healthy  
21 discussion, but not what he would characterize as a  
22 challenge.

23 Mr. (b)(7)(C) never spoke to the level of  
24 pushback, let alone denied that there was significant  
25 pushback -- whatever that means. Indeed, the question

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 was changed to challenge. Rather, he chose his own  
2 words and described a healthy discussion of we put  
3 excess letdown in.

4 The interviewers were, of course, free to  
5 ask more questions, to probe. They chose not to.

6 More than anything, one might speculate  
7 that the NRC may have intended these two allegations  
8 about outside influence and significant pushback to be  
9 intended for Mr. Johnson, then inexplicably left them  
10 in the allegations against Mr. (b)(7)(C). With  
11 allegations of deliberate misconduct that threaten an  
12 individual's livelihood and reputation, one would have  
13 hoped the NRC would have been more careful completing  
14 its transcript.

15 This was an interview that produced a  
16 jumbled and poorly worded transcript with three NRC  
17 interviewers talking over each other and over Mr.  
18 (b)(7)(C), the stenographer not able to even identify  
19 who was speaking. It's certainly troubling that such  
20 a garbled transcript can now serve as the basis for an  
21 allegation of deliberate misconduct.

22 The only allegation that appears to  
23 perhaps have been actually rooted in Mr. (b)(7)(C)  
24 testimony is the NRC's allegation that he stated --  
25 that he "stated that no one had brought forth concerns

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 regarding the Unit 1 startup before, during, or after  
2 the November 11th, 2015 event."

3 There's a passage in Mr. (b)(7)(C)  
4 transcript where he was initially asked a somewhat  
5 similar question. "Did anybody bring any concerns to  
6 you either before, during, or after that they had  
7 hesitations or concerns with the startup or any of the  
8 actions taken on that day?"

9 But that passage is immediately followed  
10 by a lengthy exchange where Mr. (b)(7)(C) tried to  
11 clarify the questions as the investigators talked over  
12 each other and over Mr. (b)(7)(C), and then changed the  
13 question. At times, the reporter could not even make  
14 out what was being said.

15 Again, Mr. (b)(7)(C): "Ask me that again."

16 One of the participants: "Did anybody  
17 either, you know, forward planning to do this, during,  
18 or after this, bring any concerns to you concerning he  
19 actions, saying, you know, hey, I was concerned about  
20 doing this. I don't want to do this, or --"

21 Mr. (b)(7)(C): "No."

22 There's simultaneous speaking.

23 Mr. (b)(7)(C): "Sorry. I didn't know if  
24 you were asking me like the lessons learned. I've  
25 talked to --"

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Participant: "No, sir."  
2 "-- about vacuum or something."  
3 Participant: "No, no."  
4 Mr. (b)(7)(C): "No, sir, not --"  
5 Participant: "Based on these evolutions."  
6 Mr. (b)(7)(C) "No."  
7 "Like being --"  
8 Mr. (b)(7)(C): "I'm kind of worried about  
9 putting excess letdowns in. Is that like what you're  
10 asking me?"  
11 "No."  
12 "Or did my operators or anyone come to you  
13 to say I was uncomfortable doing this and was told to  
14 do this anyway type of stuff?"  
15 Mr. (b)(7)(C): "Oh no. No, sir."  
16 Participant: "Any concerns based on  
17 operators and that --"  
18 Mr. (b)(7)(C): "No, sir."  
19 "-- type of manner?"  
20 "Sorry. I did not understand your  
21 question."  
22 "Okay."  
23 "But no, sir."  
24 "Okay. Anything else?"  
25 "No."

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           The transcript shows that one or more of  
2 the interviewers -- their names are not included, so  
3 it's impossible to tell who -- continually rephrased  
4 the compound question about concerns before, during,  
5 or after the RHR event, and clarified that they were  
6 not interested in hearing about post-event lessons  
7 learned.

8           Their focus to Mr. (b)(7)(C) was: did any  
9 operators come to you to say I was uncomfortable  
10 during this, was told to do this anyway type of stuff.  
11 Mr. (b)(7)(C) truthfully answered, "No, sir."

12           This was not an effective interview  
13 technique, and it certainly did not produce a useful  
14 transcript. It is well known and well understood by  
15 investigators that compound questions can confuse a  
16 witness, especially when coming simultaneously from  
17 three interrogators speaking over each other.

18           Compound questions are also widely  
19 understood to result in answers that have little, if  
20 any, evidentiary value because it's impossible to know  
21 which question was being answered.

22           Here the question changed so many times in  
23 rapid succession that it is impossible to tell from  
24 the transcript what question Mr. (b)(7)(C) thought he  
25 was answering. After this confusing exchange, the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 three interviewers decided to end the interview, not  
2 seek any clarification or follow-up on Mr. (b)(7)(C)  
3 efforts to address the shifting questions, as they  
4 certainly could have.

5 Given the incoherent questioning and the  
6 incomplete transcript, it is grossly unfair to accuse  
7 Mr. (b)(7)(C) of giving a deliberately misleading  
8 answer to what were compound, confusing, changing, and  
9 imprecise questions.

10 Taken in context, Mr. (b)(7)(C)  
11 statements were reasonable responses to imprecise,  
12 conflicting, and confusing questions that Mr. (b)(7)(C)  
13 did his best to understand.

14 The factual summary to Mr. (b)(7)(C), it  
15 appears the NRC is also alleging that Mr. (b)(7)(C)  
16 gave inaccurate and incomplete statements in his  
17 remarks at the end of the interview. Here is a  
18 passage referenced by the NRC:

19 "Anything else you want to add, sir,  
20 anything you want to clarify?"

21 The first thing Mr. (b)(7)(C) does is talk  
22 about the fact that he responds to the frankly  
23 offensive suggestion that TVA chose Veterans' Day to  
24 do this evolution, you know.

25 Then he goes on to say, "Nobody brought up

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 anything of I feel uncomfortable at any time,  
2 particularly in the discussions of will excess letdown  
3 work the way it's supposed to work. Nobody brought up  
4 anything that I was forced, coerced, or pushed into  
5 any kind of corner whatsoever, or attempted to hide  
6 anything at all. This was simply I got to a place  
7 that I didn't expect, and I took an action to  
8 stabilize the plant. And now we're going to look back  
9 and get lessons learned out of it."

10 As Mr. (b)(7)(C) explained at his PEC, he  
11 meant this statement to address his present  
12 recollection of what he observed and heard on November  
13 11th. As he had already explained to the NRC, he was  
14 not at the plant when the decision was made to  
15 continue to proceed on only excess letdowns and to  
16 take RHR out of service.

17 When he returned to the plant that evening  
18 he spoke briefly to the outgoing shift manager, Mr.  
19 Johnson, at the turnover in the control room. Mr.  
20 Johnson did not express any concerns about what had  
21 happened, he simply stated that RHR letdown had been  
22 used to control pressurizer level. The atmosphere in  
23 the control room seemed calm to Mr. (b)(7)(C).

24 As far as Mr. (b)(7)(C) knew, on the 11th  
25 there had been an unexpected pressurizer excursion

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that was successfully controlled. His closing remarks  
2 to the NRC on December 18th were complete and  
3 accurate.

4 The NRC alleges, however, that Mr.  
5 (b)(7)(C) subsequently learned information based on  
6 emails he allegedly received in a meeting he allegedly  
7 attended that he ought to have disclosed to the NRC on  
8 December 18th.

9 First, Mr. (b)(7)(C) believed on December  
10 18th that he was being asked about what he recalled  
11 from November 10 and 11 about what he actually  
12 observed firsthand that day, not as he was instructed  
13 by the interviewers, "lessons learned." But even if  
14 the questions were meant to include subsequent emails  
15 he might have received, nothing Mr. (b)(7)(C) received  
16 could have told him that any operator had pushed back  
17 or been told to do something he was uncomfortable  
18 with.

19 As far as the emails Mr. (b)(7)(C)  
20 received, NRC has not specified what documents these  
21 allegations rely upon. Even if Mr. (b)(7)(C)  
22 understood that he was being asked about post-November  
23 11th lessons learned, from our review none of Mr.  
24 (b)(7)(C) email traffic before December 18th did or  
25 should have alerted him to the fact he should have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 told the NRC.

2 And Mr. (b)(7)(C) stated persuasively at  
3 his PEC that he did not, in fact, have any  
4 understanding based on his emails that was different  
5 from what he told the NRC.

6 TVA has searched and has identified three  
7 emails that the NRC might conceivably have alluded to.  
8 Though, it is hard to imagine why the NRC would choose  
9 when making an allegation of deliberate misconduct not  
10 to identify specifically the emails it believes Mr.  
11 (b)(7)(C) should have discussed.

12 First, as for a (b)(7)(C) email from  
13 (b)(7)(C), Mr. (b)(7)(C) was actually asked about  
14 it and testified on December 18th that he did not  
15 recall ever receiving or reading it.

16 "Do you recall an email from (b)(7)(C)  
17 in the hours or days after (b)(7)(C)? Do you  
18 recall an email regarding his experiences in this  
19 sequence?"

20 Mr. (b)(7)(C) answer: "I don't know if I  
21 did or not. I don't remember. I can look and find  
22 it."

23 Of course, the interviewers could have  
24 shown Mr. (b)(7)(C) the (b)(7)(C) email and  
25 asked him whether it refreshed his memory. And even

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 if it did not, how he now would read it. But they  
2 chose, for some inexplicable reason, not to.

3 But as Mr. (b)(7)(C) told you at his PEC,  
4 as he reads it now, he would simply have read it as  
5 (b)(7)(C) titled it, "(b)(7)(C)  
6 (b)(7)(C)".

7 Second, on (b)(7)(C), Mr.  
8 (b)(7)(C) received an email from Mr. (b)(7)(C) in which  
9 Mr. (b)(7)(C) says about the events of November 11th  
10 that, in retrospect, knowing now that excess letdown  
11 had not worked as he had hoped, he "should have pushed  
12 back."

13 Mr. (b)(7)(C) correctly and reasonably  
14 assumed that this meant that Mr. (b)(7)(C) had not, in  
15 fact, pushed back on November 11th -- I'm sorry -- Mr.  
16 (b)(7)(C).

17 Third, at Mr. (b)(7)(C) interview of Mr.  
18 (b)(7)(C) the next day on December 16th, Mr. (b)(7)(C)  
19 also explained at his PEC that he was not  
20 participating in the interview, not participating and  
21 was busy with other work. And Mr. (b)(7)(C) and (b)(7)(C)  
22 were just using Mr. (b)(7)(C) office as a  
23 convenience.

24 However, even if he had overheard Mr.  
25 (b)(7)(C) statement or read the summary of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 interview later, nothing that Mr. (b)(7)(C) said was  
2 inconsistent with Mr. (b)(7)(C) statement on December  
3 the 18th. Mr. (b)(7)(C) evidently did say that some  
4 operators were uneasy about heating up on excess  
5 letdown, but he certainly did not say or even imply  
6 that any operators expressed concerns to the OCC that  
7 any "unease" was never addressed and resolved.

8 Especially read in context of Mr.  
9 (b)(7)(C) email the prior day that he had not pushed  
10 back, Mr. (b)(7)(C) comments about any unease was  
11 completely unremarkable to Mr. (b)(7)(C) Even had he  
12 heard or knew about Mr. (b)(7)(C) statement, Mr.  
13 (b)(7)(C) would have understood Mr. (b)(7)(C)  
14 statement to imply that the operators resolved any  
15 uneasiness before proceeding.

16 Overall, Mr. (b)(7)(C) NRC interviews and  
17 transcript is jumbled, confusing, and at times  
18 incoherent, as the interviewer made it clear -- as the  
19 interviewers made it, appears to be a completely fair  
20 account of what Mr. (b)(7)(C) knew at the time. This  
21 is how Mr. (b)(7)(C) described it in his own PEC.

22 "If the NRC is going to accuse someone of  
23 deliberate misconduct by deliberately making false  
24 statements, the NRC needs to makes sure that the  
25 questions asked are precise, the answers are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 unambiguously false, that the transcripts cited fairly  
2 and accurately reflect the interview. None of these  
3 criteria have been satisfied here."

4 The NRC offers no evidence that Mr.  
5 (b)(7)(C) knowingly and intentionally made inaccurate  
6 or incomplete statements to the NRC. The NRC seems to  
7 be relying on the presumption that the statements were  
8 incomplete or inaccurate, which as I have discussed,  
9 is a false premise. And simply inferred that Mr.  
10 (b)(7)(C) must have realized his statements were  
11 incomplete or inaccurate.

12 That is grossly unfair to Mr. (b)(7)(C),  
13 sitting through the NRC interview in an effort to be  
14 transparent and helpful. As Mr. (b)(7)(C) explained at  
15 his PEC, he did his very best to answer the NRC's  
16 often confusing and compound questions. Even if he  
17 misspoke at any point, it was caused either by the way  
18 that the interview was conducted or by a simple  
19 mistake. There was certainly no effort to do anything  
20 but answer questions truthfully, honestly, and  
21 completely.

22 Let me turn to Mr. Johnson. In his  
23 written statement, Mr. Johnson did not defend his  
24 statements to the NRC as entirely complete and  
25 accurate. TVA has no tolerance for employees that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 make incomplete or inaccurate statements to the NRC  
2 because TVA takes transparency and honesty toward the  
3 NRC with the utmost seriousness.

4 TVA cannot ignore that Mr. Johnson has  
5 expressed that he perceived his job to be at risk.  
6 While Mr. Johnson should have told the NRC  
7 investigators immediately about his job concerns and  
8 how they affected his mindset on November 11th, he has  
9 told us that he could tell the NRC shortly after  
10 December 18th about his complete recollection of the  
11 RHR event.

12 Does not excuse Mr. Johnson from his  
13 statements on December 18th, but it would tend to show  
14 that he was not really trying to hide anything from  
15 the NRC.

16 Mr. Barstow will now speak to the  
17 corrective actions the TVA has taken and is taking in  
18 connection with Apparent Violation 7.

19 MR. BARSTOW: Thank you, Mr. Hill. As Mr.  
20 Hill has explained, TVA wholly denies Apparent  
21 Violation 7 and believes that there is no basis for  
22 asserting that TVA employees provided inaccurate or  
23 incomplete information to the NRC during the December  
24 14th, 2015 meeting with the senior resident  
25 inspector.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 TVA has not been able to substantiate, and  
2 in fact believes to the contrary that the document  
3 with allegedly inaccurate and incomplete information  
4 was provided to the NRC. Further, even if that  
5 document had been provided to the NRC, TVA does not  
6 believe that it contained inaccurate or incomplete  
7 information.

8 Mr. (b)(7)(C) used -- Mr. (b)(7)(C) used  
9 language that he thought reflected the resident  
10 inspector's questions, and that he understood and  
11 answered the resident inspectors questions accurately.  
12 Moreover, the document was intended for the NRC -- was  
13 not intended for the NRC and was specifically drafted  
14 to convey a meaning that would be understood by the  
15 intended audience.

16 As for Apparent Violation 9, TVA denies  
17 that Mr. (b)(7)(C) provided inaccurate and incomplete  
18 information to the NRC, although TVA acknowledges that  
19 Mr. Johnson's statement constitutes a violation of 10  
20 CFR 50.9(a).

21 TVA acknowledges that Mr. Johnson made  
22 inconsistent statements about his expectations that  
23 proceeding with the heat-up on only excess letdown  
24 would be successful, and that he evaded and answered  
25 incompletely questions about operator concerns and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 influence from outside the main control room.

2 TVA also acknowledges that Mr. Johnson  
3 omitted from his statement to the NRC that his  
4 decision-making had been influenced by the fear of  
5 losing his job.

6 TVA acknowledges that Mr. Johnson's lack  
7 of candor appears to have been caused to some extent  
8 by his fear of losing his job. Mr. Johnson's concern  
9 seems to have stemmed from the reported June 20, '14  
10 discussion with a plant manager about an  
11 organizational realignment planned for after the Unit  
12 2 initial startup.

13 More broadly, TVA recognizes that there  
14 were problems with the work environment at Watts Bar  
15 in 2015. TVA acknowledges much in the response to the  
16 NRC's Chilling Effect letter issued in March of 2016.  
17 However, TVA has taken extensive action to address the  
18 issues identified in that Chilling Effect letter.  
19 Indeed, these actions have been the subject of  
20 numerous inspections, NRC inspections, over the past  
21 four years which TVA has partially outlined in its  
22 written responses to the apparent violations.

23 Importantly, the NRC documented its  
24 findings that TVA has made progress in improving the  
25 Safety-Conscious Work Environment at Watts Bar.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           TVA emphatically agrees that complete and  
2 accurate communication with the NRC is essential at  
3 all times, and that no one should ever be afraid to  
4 provide information to the NRC.

5           Recently, a communication to all TVA  
6 nuclear employees reiterated TVA's policy and the  
7 chief nuclear officer's personal expectations in this  
8 regard. While the actions of Mr. Johnson do not  
9 reflect TVA's past or present expectations, it is  
10 worth noting that Mr. Johnson has explained that he  
11 corrected his omissions in the December 18th, 2015,  
12 interview just a few days later during a subsequent  
13 interview by an NRC representative in the Resident  
14 Inspector's Office.

15           While TVA does not have access to the  
16 information regarding his follow-up interview, Mr.  
17 Johnson correcting his statement appears consistent  
18 with the guidance in Section 2.3.11 of the NRC  
19 Enforcement Policy.

20           The Enforcement Policy states, and I  
21 quote, "In determining whether to take an enforcement  
22 action for an oral statement, the Commission may  
23 consider factors such as the reasonableness of the  
24 explanation for not providing complete and accurate  
25 information."

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           The Enforcement Policy further indicates  
2           that, and I quote, "No enforcement will be taken for  
3           the initial inaccurate or incomplete information if  
4           the matter is promptly identified and corrected by the  
5           licensee before the NRC relies on that information, or  
6           before the NRC raises a question about that  
7           information."

8           TVA believes that the NRC's deliberations  
9           on the enforcement sanction for Mr. Johnson and TVA  
10          should take into account the degraded work environment  
11          that existed in 2015, and his effort to amend his  
12          interview statement in a relatively short period of  
13          time when afforded a private venue for consultation  
14          with NRC's representative.

15          This concludes our presentations on  
16          apparent violations on Apparent Violations 7 and 9.

17          MR. O'BRIEN: Thank you, Mr. Barstow. We  
18          appreciate clearly your dialogue and information.

19          Given the time and the schedule, I  
20          propose, if it's acceptable to you, that we break for  
21          a caucus and lunch, and return at 12:30. Is that  
22          reasonable from your perspective?

23          MR. BARSTOW: Yes, it is, Mr. O'Brien.

24          MR. O'BRIEN: Thank you much. At this  
25          point in time, before we break I want to make sure the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 court reporter doesn't have any needs? Court  
2 reporter, do you have everything you need?

3 So once we go off record, I'll let you get  
4 some from all of us here. So we will go off the  
5 record, and we'll reconvene at 12:30 your time. Thank  
6 you, everybody.

7 (Whereupon, the above-entitled matter went  
8 off the record at 10:22 a.m. and resumed at 12:30  
9 p.m.)

10 MR. O'BRIEN: Mr. Hill and Mr. Barstow, we  
11 had our caucus, and we have a few questions for you  
12 relative to AV 7 and AV 9, and I'm going to let Marcia  
13 begin, if that's okay with you.

14 MR. BARSTOW: Yes, Mr. O'Brien, that's  
15 correct. We're ready to take questions.

16 MR. O'BRIEN: Thank you very much. I  
17 appreciate that.

18 Marcia?

19 MS. SIMON: Thank you, Ken.

20 My first question is this: based on Mr.  
21 Hill's presentation, there were several references to  
22 the resident inspector not asking certain questions.  
23 So, is it TVA's position that TVA only has to provide  
24 information to the NRC that is directly responsive to  
25 specific questions asked by a resident inspector?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. ROELOFS: This is Ms. Roelofs. Mr.  
2 Barstow will take that question.

3 MR. BARSTOW: Ms. Simon, I guess I would  
4 ask you maybe to rephrase that question. And the  
5 reason I'm saying that is because we provide  
6 information to the NRC based on what they are  
7 interested in knowing. So, if you could help me, try  
8 to rephrase your question, so I can better answer it,  
9 I guess?

10 MS. SIMON: Okay. I'll try that.

11 MR. O'BRIEN: Mr. Barstow, would you put  
12 on your camera, please?

13 MR. BARSTOW: Oh.

14 MR. O'BRIEN: Sorry about that, Marcia.  
15 My apologies.

16 MS. SIMON: Okay. Now I have to think  
17 about my rephrasing again. My train of thought was  
18 interrupted.

19 MR. O'BRIEN: I apologize.

20 MS. SIMON: Okay. So, when you have an  
21 unusual event occur at the plant and you're  
22 investigating it, and the resident asks questions  
23 about it, is it your position that you only have to  
24 provide information that responds to the questions?  
25 I mean, don't you think that the NRC and the resident

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 would want to know the entire, all the underlying  
2 facts related to that event?

3 MR. BARSTOW: Well, thank you for  
4 rephrasing. What I would say to that is that our  
5 intent would always be to be forthright, transparent,  
6 truthful, and provide information about the event.

7 MS. SIMON: Okay. Because I'm trying  
8 to --

9 MR. BARSTOW: So, I'm not sure how else we  
10 should approach it.

11 MS. SIMON: Yes, I mean, clearly, the  
12 resident had some specific questions. And I think one  
13 of the issues with this Apparent Violation is, even if  
14 those questions focused on a certain aspect of this  
15 event, there were other aspects of the event that the  
16 NRC might have been interested in. And so, I guess  
17 the question is, why would TVA not provide information  
18 about certain aspects of the event just because he  
19 didn't ask about them? I don't know if I asked that  
20 very well, but -- so, I guess what you're saying is  
21 TVA would make an effort to be as complete and  
22 accurate as possible. Is that your response?

23 MR. BARSTOW: I guess, first of all, I'll  
24 say my intent personally, and I think as TVA in  
25 general that I've found -- I haven't been in the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 position that long -- but, certainly, our intent would  
2 always be to provide information that we feel the NRC  
3 would be interested in and be able to understand the  
4 situation.

5 But, getting back to this specific AV, I  
6 think that, to talk specifics, Mr. (b)(7)(C) and Mr.  
7 (b)(7)(C) both intended to provide as much information  
8 as they could to the resident inspector.  
9 Specifically, they were focused on the operability  
10 question that the inspector asked. I think they were  
11 aware of what the inspector knew already about the  
12 event. So, in my opinion, and from what I've seen  
13 from the inspection and investigation activities that  
14 our counsel did and what I've read, their intent was  
15 to be open and transparent and provide information  
16 about the event.

17 So, I don't know how to -- I mean, I guess  
18 I struggle with a little bit your -- it feels a little  
19 bit like you're asking us to be a little bit of a mind  
20 reader. And this is my personal opinion, but the way  
21 you phrased the question, you said -- I can't remember  
22 how you said it now, but it made me think of us trying  
23 to guess what the inspector may be wanting to ask.

24 MS. SIMON: That wasn't really what I was  
25 getting at. I just got the impression -- and again,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 I wish I had an encyclopedic memory and could remember  
2 exactly what Tom said during his presentation -- but  
3 I got the impression at several points that there was  
4 an emphasis on the inspector didn't, the resident  
5 didn't ask this, and therefore, we didn't tell him.  
6 And if I'm misinterpreting that, then I'm sorry, but  
7 I got that impression.

8 And so, I'm asking you, is it TVA's view  
9 that -- that's why I asked the original question --  
10 that you only have to provide information to the NRC  
11 that is directly responsive to specific questions  
12 asked by the resident surrounding an event? Or would  
13 you be proactive, I guess, in volunteering more  
14 information, if you had it, even if the resident had  
15 not asked about it, if it was relevant and you thought  
16 it was of interest to the NRC?

17 MR. BARSTOW: Well, because you're  
18 specifically asking about Tom Hill's presentation, and  
19 obviously, he's investigated this thoroughly, maybe I  
20 could ask Tom to weigh in here.

21 MR. HILL: Thanks, Jim. I appreciate  
22 that.

23 Ms. Simon, if you got that impression, I'm  
24 not quite sure --

25 MR. O'BRIEN: Mr. Hill?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MR. HILL: Yes?

2 MR. O'BRIEN: Could I ask you to bring the  
3 microphone closer to you or to turn up the volume?

4 MR. HILL: Is that any better? Usually,  
5 I'm not --

6 MR. O'BRIEN: Yes, that is a little  
7 better. Thank you.

8 MR. HILL: Most people never suggest that  
9 they can't hear me. So, you let me know. Okay?

10 MR. O'BRIEN: I'm in that same boat with  
11 you.

12 MR. HILL: Ms. Simon, or Marcia, if you  
13 don't mind, your characterization of what I had to say  
14 I don't think is at all accurate. I was not trying to  
15 suggest in any way that the only circumstances under  
16 which a licensee should be providing information to  
17 the NRC is if they're asked a very specific, narrow  
18 question. So, let's start with that premise. Okay?

19 That having been said, I think the  
20 questions that are posed are relevant in assessing  
21 after the fact the reasonableness and the accuracy and  
22 the completeness of the response that's being given by  
23 the licensee. You can't ignore the questions that  
24 were asked as you evaluate the answers that were  
25 given.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   Now, in the context here, I think all of  
2                   that is sort of an academic exercise because I think  
3                   the record is abundantly clear that, in fact, the  
4                   issue of the pressurizer rise and the abatement of the  
5                   pressurizer rise by opening the valve was clearly  
6                   discussed with Mr. Nadel over that weekend. Both Mr.  
7                   (b)(7)(C) and Mr. (b)(7)(C) have testified on several  
8                   occasions, and certainly in their PECs, that they  
9                   recall having had specific discussions with Mr. Nadel  
10                  about that very subject, irrespective of whether Mr.  
11                  Nadel asked the questions on December 12 and December  
12                  14.

13                  Secondly, Mr. (b)(7)(C), although he did  
14                  not bring the attachment that's in question, or the  
15                  email -- I'll call it the email attachment, for  
16                  simplicity's sake -- he does not have any  
17                  recollection, nor does Mr. (b)(7)(C), of even bringing  
18                  that to the meeting on December 14th. And it  
19                  certainly would have been contrary to their own  
20                  practices and policies to bring an internal email  
21                  attachment with them. He does have a recollection of  
22                  bringing the graph that he created with him, and that  
23                  was brought primarily for the purpose of discussing  
24                  what they understood to be Mr. Nadel's principal  
25                  question which had to do with operability.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   However, the same graph that deals with  
2 operability also, unmistakably, shows the correlation  
3 between pressurizer rise and pressurizer abatement  
4 when the valves were open. So, that's more evidence  
5 that the subject was clearly discussed.

6                   Finally, or I think finally, I would say  
7 that the following day, on December 15th, there is  
8 absolute documentary evidence in the form of the email  
9 correspondence between Mr. (b)(7)(C) and Mr. Nadel  
10 that the subject of the relationship between  
11 pressurizer rise and the opening of the valves was  
12 discussed. So, I guess in response to your question,  
13 no, do I think that you absolutely -- does the license  
14 absolutely need to limit itself to answering questions  
15 that are specifically addressed? No. But, in this  
16 particular instance, whether the question was asked or  
17 not, the issue was discussed.

18                   MS. SIMON: Okay. Thank you. That was a  
19 very thorough response.

20                   Tom, I will call you Tom if you call me  
21 Marcia.

22                   MR. HILL: Okay.

23                   MS. SIMON: And this question is, of  
24 course, addressed to anyone from TVA who wants to  
25 answer it, but I have a feeling it might end up being

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 you.

2 I believe that you said in your  
3 presentation at one point that the only plausible  
4 reason for opening the valve, the RHR letdown, was to  
5 reduce pressurizer level. And the first question is,  
6 but could there have been a number of possible reasons  
7 why pressurizer level increased in the first place or  
8 increased enough to have them have to open that valve?

9 MR. HILL: I'm sorry, Marcia, I was  
10 distracted here for a second and I didn't catch the  
11 last part of your question. Could you --

12 MS. SIMON: Okay. I'll just repeat the  
13 whole thing. At one point in your presentation, you  
14 said that the only plausible reason for opening the  
15 RHR letdown valve was to reduce pressurizer level. My  
16 question is, but could there have been a number of  
17 possible reasons why pressurizer level increased in  
18 the first place or increased enough to have to open  
19 the RHR valve?

20 MR. O'BRIEN: I'd offer you, Mr. Hill --  
21 and I'm going to throw you a lifeline here -- I'd  
22 offer the licensee may choose to answer it, as opposed  
23 to you.

24 MR. HILL: Well, now that's what I was  
25 about to say. I think that's probably much more of a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 technical question that the licensee is going to be  
2 better equipped to deal with than I am.

3           However, that having been said, let me say  
4 as a predicate that, my understanding, that in Mode 4  
5 where they were at the time, at that particular point  
6 in the evolution, the only plausible reason for  
7 opening up the RHR valve would have been to put the  
8 letdown back in.

9           But I'll now welcome my colleagues on the  
10 more technical side to correct me or --

11           MS. ROELOFS: Yes, from TVA -- and this is  
12 Ms. Roelofs -- Mr. Rice can address that question.

13           MR. RICE: Ms. Simon, can you be explicit  
14 with what pressurizer level rise, which part of it?  
15 Because is it stage or condition? Because there are  
16 multiple events or plant maneuvers that could result  
17 in pressurizer level rising.

18           MS. SIMON: Well, I'm referring  
19 specifically to this event. My understanding is that,  
20 when you heat up the reactor, the pressurizer level  
21 rises. And Mr. Hill said the only plausible, in the  
22 context of this event, the only plausible reason for  
23 opening the RHR letdown valve was to reduce  
24 pressurizer level. And so, not discussing whether or  
25 not that's the case, but could there have been a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 number of possible reasons why the pressurizer level  
2 increased in the first place? Or maybe the better way  
3 to ask it is, increased enough to have to open the  
4 pressurizer -- sorry -- to open the RHR valve?

5 MR. RICE: Yes, there are other plant  
6 failures or other maneuvers that could have resulted  
7 in pressurizer level rising. However, given the  
8 condition that was there, the action would be the  
9 same, which would be to place RHR back in service  
10 through RHR letdown to reduce pressurizer level.

11 MS. SIMON: Okay. So, then, wouldn't the  
12 underlying reason why pressurizer level increase in  
13 the first place be part of a complete description of  
14 what happened during that event?

15 MR. RICE: I was not in the position at  
16 the time or in the office at the time. So, I'm not  
17 able to understand what conversations that previously  
18 transpired between Mr. Nadel and operations staff at  
19 the time.

20 MS. SIMON: But I'm really just asking, if  
21 there are several possible reasons why the pressurizer  
22 level increased, wouldn't a complete description of  
23 what happened that day want to specify the actual  
24 reason why it happened in that event, as opposed to  
25 any one of the possible failures you just alluded to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that could have happened?

2 MR. RICE: Yes, I can't speculate to that  
3 conversation at that time.

4 MR. O'BRIEN: Mr. Rice, let me help, if I  
5 might, in this questioning. There's been a lot of  
6 dialog here relative to putting the letdown back in  
7 service. Do you have a specific procedure for putting  
8 the letdown in service that does only just that?

9 MR. RICE: Are you referring normal  
10 letdown or RHR letdown?

11 MR. O'BRIEN: RHR. My apologies. Thank  
12 you for the question. RHR letdown. Do you have a  
13 specific standalone procedure that puts RHR letdown in  
14 service without any other actions being taken by, say,  
15 for example, the procedure writers to change it or the  
16 shift manager to eliminate steps?

17 MR. RICE: There is a standalone section  
18 for establishing RHR letdown.

19 MR. O'BRIEN: So, would the operator be  
20 allowed to go to that section without deleting things  
21 prior to it?

22 MR. RICE: Without deleting things?

23 MR. O'BRIEN: I mean any steps prior to  
24 those actions, such as starting the RHR pump.

25 MR. RICE: Yes, I can say that starting

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 the RHR pump is a separate section of the same system  
2 operating instruction.

3 MR. O'BRIEN: So, you don't have a  
4 procedure that they could go to without having to take  
5 some specific actions that would allow them to only  
6 open up the RHR valves?

7 MR. RICE: I'm sorry, which RHR valves?  
8 Which RHR valves are you referring to?

9 MR. O'BRIEN: Suction and letdown.

10 MR. RICE: Okay. To establish RHR, to put  
11 RHR in service, there is one section that is required.  
12 That does open up the suction valves.

13 MR. O'BRIEN: And it does also start the  
14 pump, correct?

15 MR. RICE: Yes, sir.

16 MR. O'BRIEN: So, you have no standalone  
17 procedure without actions that would be needed to be  
18 taken to put RHR in service without taking other  
19 actions besides the ones that were taken?

20 MR. RICE: May I confer for just a second  
21 before answering that question?

22 MR. O'BRIEN: Sure, sure.

23 (Pause.)

24 MS. ROELOFS: Mr. O'Brien, this is Ms.  
25 Roelofs. Mr. Rice, we have conferred, and Mr. Rice

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 will answer the question on the table.

2 MR. O'BRIEN: Thank you very much.

3 MR. RICE: Mr. O'Brien, this is Chris Rice  
4 again.

5 So, as I was stating, there are two  
6 procedural sections inside the same system operating  
7 instructions. They are required to be performed to  
8 establish the flow path to allow RHR letdown to reduce  
9 pressurizer inventory. As I stated yesterday in AV 6,  
10 those procedure sections should have been performed in  
11 a better manner, but it does require those two  
12 sections, as stated before.

13 MR. O'BRIEN: So, part of what I was  
14 trying to get to -- and it's in response to Ms.  
15 Simon's question -- is that, when you articulate as  
16 the answer that the complete answer, the accurate  
17 answer, is to put letdown in service, it omits the  
18 underlying reason for putting letdown in service,  
19 because in that mode and at that time that would not  
20 be a normal activity in the sense that, yes, the other  
21 reason you had to do it was you had letdown of  
22 service, but that's really not the reason at all that  
23 you had to put it in service. You had to put it in  
24 service because it appears -- I don't want to conclude  
25 anything at this point in time -- it appears you had

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 undertaken an evolution that removed the source of  
2 being able to control it; that is, doing the evolution  
3 with RHR isolated. And that's what caused you to end  
4 up having to be there, that in combination with normal  
5 letdown.

6 So, I'm trying to get back to Ms. Simon's  
7 question, which is the answer that was given that --  
8 and it's an obvious answer, I think is what Mr. Hill  
9 said -- that it was to control pressurizer level.  
10 That's really not a complete answer in that there are  
11 many, as you are articulated, many potential  
12 underlying causes that could cause you to be there.  
13 And in this particular case, there were a number of  
14 underlying causes that were not articulated.

15 You don't have to answer that that I'm  
16 articulating unless you guys disagree with me on that  
17 particular statement.

18 MR. HILL: Mr. O'Brien --

19 MS. ROELOFS: I'm sorry, this is Ms.  
20 Roelofs. We will turn that over to our counsel to  
21 answer that question, please.

22 MR. O'BRIEN: Thank you very much

23 MR. HILL: Well, it's more of a comment.  
24 Maybe it is responsive to your question, Mr. O'Brien.  
25 But it seems to me -- and I probably should have said

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 this in response to Marcia earlier -- in evaluating,  
2 and this really goes to the question of the obligation  
3 of the licensee to give accurate and full information,  
4 which obviously we agree that is the obligation --

5 MR. O'BRIEN: Mr. Hill, I can barely hear  
6 you.

7 MR. HILL: Sorry. Obviously, we agree  
8 that the licensee is obligated to give complete and  
9 truthful information. But I probably should have  
10 supplemented my response to Ms. Simon earlier. That  
11 being said -- and we all agree on that -- in the  
12 context of then after the fact evaluating whether or  
13 not somebody engaged, or the license engaged, in  
14 deliberate misconduct, okay, the question is, in fact,  
15 by providing incomplete information, okay, the  
16 question that is posed, and how it is posed, and in  
17 the context of which it's posed, becomes very  
18 relevant.

19 So, those two ideas have to be, are not  
20 incompatible with each other, notwithstanding whatever  
21 the obligation may be on the licensee when you  
22 evaluate -- I guess I'm just repeating myself, and I  
23 apologize for that. But when you're evaluating the  
24 high standard of deliberate misconduct, and you're  
25 evaluating it because you're claiming that there was

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 a failure to give further information, you really need  
2 to look at it in the context of the question.

3 And I would finally add that, as crafted  
4 currently, Apparent Violation No. 7 is really limited  
5 to the written documents that the NRC claims that it  
6 somehow received from Mr. (b)(7)(C) and Mr. (b)(7)(C) on  
7 December 14th. In other words, the allegation, the  
8 Apparent Violation is not a generic allegation that  
9 the licensee failed to provide information with  
10 respect to the complete details of the evolution.

11 MR. O'BRIEN: Thank you, Mr. Hill. I  
12 appreciate that clarification. That was helpful for  
13 me. Thank you.

14 Marcia?

15 MS. SIMON: That's actually all the  
16 questions I have on that, Ken.

17 MR. O'BRIEN: So, I have another question  
18 -- thank you, Marcia -- relative to AV 7. And, Mr.  
19 Hill, it goes to some of the comments that you made,  
20 and during the conversation you often pointed to -- my  
21 phrasing, please -- information you believed Mr. Nadel  
22 already had or already was aware of. And I wanted to  
23 ask if you have specific evidence to demonstrate that  
24 Mr. Nadel knew the points that you have asserted that  
25 he knew at the time.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MR. HILL: It's our understanding from the  
2 investigation that that information came to us from,  
3 of what Mr. Nadel knew, came to us in the first  
4 instance from Mr. (b)(7)(C) with respect to Mr. (b)(7)(C)  
5 interaction with Mr. Nadel on December 11th, and then,  
6 as Mr. (b)(7)(C) then reported, that interaction through  
7 Mr. (b)(7)(C) and Mr. (b)(7)(C) that evening and the next  
8 day.

9 MR. O'BRIEN: So, let me be clear. I want  
10 to make sure I understood. So, you have no direct  
11 evidence? You have inference from a discussion from  
12 somebody else of what they believe Mr. Nadel knew?  
13 You have no direct evidence of Mr. Nadel's statements  
14 and/or writings that clearly articulate the points  
15 that you made that you believe he knew?

16 MR. HILL: I think it's correct to say  
17 that I don't have any specific writing of Mr. Nadel's.  
18 I would be delighted to see it, but I don't have it.  
19 As I have, whether you would call it firsthand or  
20 secondhand, I guess I have Mr. (b)(7)(C) recollections  
21 of what it was that occurred during his meeting with  
22 Mr. Nadel.

23 MR. O'BRIEN: One of those things -- and  
24 I'll be a little more specific of what I believe --  
25 you articulated that Mr. Nadel already knew of or was

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 aware of the pressurizer level increase. I'm not  
2 clear that there was any dialog or any information  
3 that he articulated in his questions to Mr. (b)(7)(C), or  
4 otherwise, to assert that fact.

5 MR. HILL: It's my understanding that  
6 certainly the fact that normal letdown was out of  
7 service as a result of the repair was known to Mr.  
8 Nadel on the 11th. And I know that the issue of the  
9 pressurizer rise was discussed between Mr. (b)(7)(C),  
10 Mr. (b)(7)(C), and Mr. Nadel beginning on the 12th.

11 MR. O'BRIEN: You have evidence that they  
12 talked about the operability of the RHR discussion  
13 from his discussion? I want to make sure it's clear  
14 that you're saying you have testimony from Mr.  
15 (b)(7)(C) or Mr. (b)(7)(C) that they informed him that the  
16 pressurizer rise had occurred?

17 MR. HILL: Yes, both on December 12th and  
18 14th, they both say, they both say that that was part  
19 of the discussion on the morning of the 12th, and then  
20 again, in the meeting on the 14th.

21 MR. O'BRIEN: Thank you very much.

22 That's all the questions I believe we have  
23 on any of these seven. Let me make sure my team  
24 agrees with that and there isn't a question that arose  
25 as a part of the discussion.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 With that, we'll go to AV 9. Marcia?

2 MS. SIMON: Thanks, Ken. I have a few  
3 questions that relate to Mr. Johnson, and specifically  
4 to his statements regarding his, I guess his fears of  
5 losing his job.

6 In Mr. (b)(7)(C) PEC, Mr. (b)(7)(C) discussed  
7 the decision that was made in June 2014 about the  
8 decision that Mr. Johnson would not be retained after  
9 Unit 2 came online. And Mr. (b)(7)(C) said that this  
10 was, the primary reasons for that were Mr. Johnson's  
11 performance and potential and that this was something  
12 that was recommended by Mr. (b)(7)(C); and  
13 Mr. (b)(7)(C) concurred, and that Mr. (b)(7)(C) and the HR  
14 representative met with Mr. Johnson in June 2014 to  
15 inform him of the decision. And Mr. Johnson also  
16 discussed this in one of his TVA OIG interviews.

17 So, I have a couple of questions related  
18 to that June 2014 context, and I'm hoping you might be  
19 able to answer them. The first one is, can someone  
20 provide any context to the decision? In other words,  
21 was it part of a larger-scale downsizing effort by TVA  
22 at Watts Bar or was this a more isolated decision  
23 about Mr. Johnson based on his performance?

24 MS. ROELOFS: Ms. Simon, this is Ms.  
25 Roelofs. We will turn that question over to our

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 attorneys.

2 MR. HILL: Our understanding, Marcia, is  
3 that it was part of a broader -- and I'm blanking  
4 right now on the actual term of art that was used, but  
5 it was a -- it was not maybe -- well, I was going to  
6 say "reduction in force," but I thought there was  
7 another term, actually, a reorganization or something.  
8 But it was a broad -- it was not, by any means,  
9 isolated to Mr. Johnson.

10 MS. SIMON: Okay. And are you aware of  
11 whether any other SROs or reactor operators were  
12 affected by that?

13 MR. HILL: I believe the answer is yes,  
14 but I'd want to confirm that. But I believe the  
15 answer is yes.

16 MS. SIMON: Are you --

17 MS. ROELOFS: I'm sorry, Ms. Simon, this  
18 is Ms. Roelofs. We're happy to supplement the record  
19 with an answer to that question. We would want to  
20 review our HR records to ensure that we gave you an  
21 accurate answer. And so, we will take note of your  
22 question and supplement the record shortly following  
23 this conference today.

24 MS. SIMON: Okay. That sounds great.  
25 Thanks.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. ROELOFS: Okay. Thank you.

2 MS. SIMON: And my next question is, Mr.  
3 Johnson said he was told at that meeting that there  
4 would be no place for him within a year; i.e., as of  
5 June 2015, but, obviously, he was still employed as an  
6 SRO after June 2015. So, my question is, are you  
7 aware of any follow-up with Mr. Johnson regarding his  
8 job status after June 2015?

9 MR. HILL: I'm only hesitating because I  
10 wanted to make sure that my colleagues --

11 MS. ROELOFS: No. No, Ms. Simon, this is  
12 Ms. Roelofs again. I think that's another one of  
13 those where we would want to review the HR records  
14 just to be certain we're answering your question. We  
15 did look into this issue, but just because of the  
16 length of time that has passed, we weren't always able  
17 to find the precise records that we were looking for.  
18 But, if we have your precise questions, we can look  
19 into the issue further.

20 And I don't know if Mr. Hill can  
21 supplement based on the investigation, but we're also  
22 happy to supplement or respond back to the PEC.

23 MS. SIMON: Okay.

24 MS. ROELOFS: So, I don't know if Mr. Hill  
25 has anything to add.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MR. HILL: Well, I think it's probably  
2 best if we supplement to make sure we're completely  
3 accurate. We will supplement, but I believe the  
4 answer is I don't believe there was any further formal  
5 discussion with him after June of '15, if that was the  
6 question that you were asking.

7 MS. SIMON: Yes, and --

8 MR. HILL: After '15. I think you were  
9 asking after the year it expired, weren't you?

10 MS. SIMON: Yes.

11 MR. HILL: I think that's what you were  
12 asking. Yes.

13 MS. SIMON: And I guess the first thought  
14 that came to my mind was -- and this is purely guess  
15 on my part -- was that perhaps June 2015 was an  
16 original target date for when they thought Unit 2  
17 might come online, and therefore, maybe he was given  
18 that date with that in mind. So, if that's  
19 something --

20 MR. HILL: Yes, I think you're probably  
21 right, Marcia.

22 MS. SIMON: Okay.

23 MR. HILL: That's my recollection as well.

24 MS. SIMON: That might be part of the --  
25 if you can determine that, and if that's what you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 determine, you can let us know that.

2 MR. HILL: I do know that Mr. Johnson, in  
3 his words, after June of '15, felt he was living on  
4 borrowed time.

5 MS. SIMON: Okay.

6 MS. ROELOFS: Ms. Simon, this is Ms.  
7 Roelofs. We've taken notes to make sure that we got  
8 your questions down correctly, and we will ensure that  
9 we supplement the record with the information that you  
10 are seeking.

11 MS. SIMON: Okay. Thanks.

12 MS. ROELOFS: You're welcome.

13 MS. SIMON: So, Mr. (b)(7)(C) also in his  
14 PEC discussed Mr. Johnson's performance evaluation and  
15 a statement that Mr. Johnson made saying that Mr.  
16 (b)(7)(C) had had Mr. Johnson's performance evaluation

17 (b)(7)(C)

18

19

20

21 And so, I have two questions. The first  
22 question is, I think Mr. Johnson said he was given  
23 this evaluation around November 5th, 2015. And I was  
24 wondering if there's any way for TVA to confirm that.

25 MS. ROELOFS: Ms. Simon, this is Mr.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Roelofs. We will add that to our list of items to  
2 supplement. We can certainly look into that.

3 MS. SIMON: Okay. And then, this question  
4 is more general. Prior to this effort to redistribute  
5 the ratings, were there any communications made to  
6 operators that this process was going to be  
7 undertaken?

8 MS. ROELOFS: Ms. Simon, I apologize. Can  
9 you repeat your question?

10 MS. SIMON: Yes. So, prior to this effort  
11 to redistribute the ratings according to a Gaussian  
12 curve that Mr. (b)(7)(C) mentioned, were there any  
13 communications made to operators that this process was  
14 going to be undertaken? In other words, that  
15 performance ratings were going to be redistributed to  
16 a bell curve, basically?

17 MS. ROELOFS: Ms. Simon, I think this is  
18 another area where we would have to look back in time  
19 and look at those communications and supplement the  
20 record.

21 MS. SIMON: Yes, I'm just trying to get a  
22 sense of whether the operators were put on notice  
23 that, basically, this was going to be a change in how  
24 performance was assessed.

25 MS. ROELOFS: Yes, and I believe that was

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 the case, but I'm just saying that, in general, with  
2 the TVA employees, I want to make sure that I have an  
3 accurate answer to your question. And so, we will  
4 definitely look back and supplement our answer in that  
5 regard.

6 MS. SIMON: Okay. Yes, so I'm looking at  
7 when they would have been told and what they were  
8 told.

9 MS. ROELOFS: Yes, we got it. Thank you,  
10 Ms. Simon.

11 MS. SIMON: Okay. And those are all my  
12 questions. So, thank you.

13 MR. O'BRIEN: Thank you.

14 I want to make sure, before we go on any  
15 further, make sure that other team members, Nick and  
16 Scott, no other questions develop?

17 MR. HILTON: Nothing for me.

18 MR. SPARKS: Yes, I'm good, Ken.

19 MR. O'BRIEN: Thank you.

20 Mr. Barstow and Ms. Roelofs, at this point  
21 in time, we are completed with our questions. Would  
22 you like to take a short break or would you like to  
23 move directly to any closing comments you might have?

24 MS. ROELOFS: This is Ms. Roelofs. We  
25 would like to take a short break. If we may return

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 at, let's say, 20 after the hour?

2 MR. O'BRIEN: Ms. Roelofs, you're doing a  
3 great job estimating the things I would ask. Thank  
4 you.

5 Twenty minutes after the hour we'll come  
6 back on the record.

7 (Whereupon, the above-entitled matter went  
8 off the record at 1:08 p.m. and resumed at 1:20 p.m.)

9 MR. O'BRIEN: Ms. Roelofs, I'm slow to  
10 learn, but I'm trying to get there. Since you're  
11 recording things on your side, I'll ask you if you are  
12 ready, and whoever would like to give brief closing  
13 comments who would like to speak?

14 MS. ROELOFS: Yes, Mr. O'Brien. Thank  
15 you. Mr. Rausch would like to give a few brief  
16 closing comments, please.

17 MR. O'BRIEN: Thank you very much. I  
18 appreciate that.

19 Mr. Rausch?

20 CLOSING COMMENTS ON BEHALF OF TVA

21 MR. RAUSCH: Yes, I would just like to  
22 check volume first. Can you hear me okay, Mr.  
23 O'Brien?

24 MR. O'BRIEN: Very well. Thank you very  
25 much.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MR. RAUSCH: Okay. So, I'd like to  
2 address just one thing before I really close. And it  
3 was a question that Ms. Simon asked that we answered  
4 regarding how we communicate with the NRC resident or  
5 senior resident, and how forthcoming, and what we do  
6 offer, and does it require a question in order for us  
7 to provide an answer. So, I don't want to undo any of  
8 the dialog that has been had, but I just would like to  
9 tell you specifically how we function.

10 So, on any given day, if there is an  
11 abnormality in the power plant of any kind, one of us  
12 on the collective call or in a meeting is sure to ask  
13 who is going to inform the resident. And typically,  
14 the Ops Director will take that action or one of the  
15 other Directors will say, "I've got communications  
16 with the resident."

17 Well, they would either call or go in  
18 person and inform the resident of what the issue is,  
19 what we know about it at that point, what our next  
20 steps are to learn more about it, and then, we'll talk  
21 about when we'll get back to them following a prompt  
22 investigation or following six hours of investigation,  
23 or interviewing the operator or the mechanic, or  
24 whatever it is.

25 So, our goal there is to ensure that we

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 have effectively and efficiently and in a timely  
2 manner communicated with the resident to give them  
3 everything we know upfront. From there, the residents  
4 typically will look through tools that they have at  
5 their disposal, our Corrective Action Program, our  
6 plant computer, other sources of information. And  
7 they may go out actually and start asking questions of  
8 folks themselves, and typically do.

9 And then, from that point, when we do the  
10 follow-up, we'll traditionally get a question or a set  
11 of questions from them where they would like  
12 additional information or a specific chart or a  
13 drawing or a procedure that was marked up and actually  
14 used, and so forth. And we'll go a lot of times and  
15 document the questions, like Mr. (b)(7)(C) did in one  
16 of the exhibits. And we'll work through our  
17 regulatory affairs group to document those questions  
18 that we have lookups on, and then, we'll go get that  
19 additional information and take it back.

20 And from there, it typically goes into a  
21 back-and-forth communication where the resident would  
22 ask us for the additional information; we would go  
23 gather that additional information and provide it.  
24 And then, if the evolution has moved to the next phase  
25 of understanding, we would proactively volunteer that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 information to the resident to help keep them informed  
2 as much as possible.

3 So, the way we function is to ensure we're  
4 providing what we believe they would be interested in  
5 upfront, forthright, and initially without any  
6 prompting. It's our goal to get to them before they  
7 have to reach out and ask from us.

8 We follow up when there is new information  
9 that we told them that we would follow up with, and  
10 then, in between, take their questions, respond to  
11 their questions, and then, go back to them either via  
12 telephone or, again, face to face, or an email.

13 So, I just wanted to make sure that piece  
14 of our answer was not lost. We do not only wait for  
15 a question, and we do not screen our responses to make  
16 sure we're only addressing the question. And our goal  
17 is to effectively and efficiently communicate, so that  
18 they understand the issue as well as we do, as the  
19 investigation unfolds, as we learn more, and as we  
20 reach a resolution all the way up to we consider the  
21 issue resolved or we're going to move forward, or  
22 we're going to continue with a startup, whatever it  
23 may be.

24 So, that's how we function. It's  
25 important for us to have trust and respect with our

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 residents, be forthright and timely, and be efficient  
2 in our communications with them. So, I just wanted to  
3 make sure that was clear before we close the day.

4 Relative to today's Apparent Violations 4,  
5 7, and 9, regarding Apparent Violations 4 and 7, we  
6 see these differently than the NRC does, in that we do  
7 not see a Violation 4, Apparent Violation 4 or 7, and  
8 we do not have any evidence of deliberate misconduct.

9 Relative to Apparent Violation 9,  
10 specifically regarding Billy Johnson, we do agree with  
11 the Apparent Violation and we do agree with the  
12 deliberate misconduct associated with Billy Johnson.  
13 We do not agree with the Apparent Violation No. 9 for  
14 Mr. (b)(7)(C), nor do we see any evidence of deliberate  
15 misconduct by Mr. (b)(7)(C) on Apparent Violation No.  
16 9.

17 So, with that, Mr. O'Brien, that concludes  
18 our remarks for the day.

19 MR. LEWIS: This is Mr. Lewis.

20 Before you drop off, could I provide one  
21 correction of something I said earlier?

22 MR. O'BRIEN: Sure. And then, I have a  
23 few comments at the end, yes.

24 MR. LEWIS: Thank you.

25 I understand I misspoke during my

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 presentation on AV 4. I said that Mr. (b)(7)(C) -- this  
2 is what I was told -- I said that Mr. (b)(7)(C) had  
3 deliberated about --

4 MS. ROELOFS: I think Mr. Lewis is trying  
5 to speak -- this is Ms. Roelofs -- but he is on mute.

6 MR. O'BRIEN: I'm sorry, Ms. Roelofs, I  
7 missed what you were saying.

8 MR. LEWIS: I am speaking. Can you hear  
9 me?

10 MR. O'BRIEN: Yes, I can.

11 MR. LEWIS: Okay. I was saying, during  
12 the presentation on AV 4, I said that Mr. (b)(7)(C)  
13 deliberated about the violation, and I meant to say he  
14 deliberated about the evolution. So, I apologize for  
15 misspeaking.

16 Thank you.

17 MR. O'BRIEN: Thank you very much.

18 Are we okay to move forward, Ms. Roelofs?

19 MS. ROELOFS: Yes, Mr. O'Brien. We had a  
20 little issue with the audio at our end. Were you able  
21 to hear the entirety of Mr. Rausch's closing comments?

22 MR. O'BRIEN: Absolutely correct, yes, I  
23 could.

24 MS. ROELOFS: Okay. Thank you for  
25 clarifying.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MR. O'BRIEN: No problem.

2 Before we finish today, I just want to go  
3 over the same thing I went over at the end of the day  
4 yesterday, and I'll do it again tomorrow before we  
5 finish.

6 And it's just to remind everybody that, in  
7 listening to and having these PECs, there are two  
8 important points for everybody to walk away with.  
9 First, the Apparent Violations that are being  
10 discussed are subject to further review and may be  
11 changed prior to any resultant enforcement action.  
12 That's fundamentally the purpose of the PEC.

13 And secondly, the statements and views  
14 expressed -- an expression of opinions -- excuse me --  
15 by the NRC employees at this conference, or the lack  
16 thereof, are not intended to be the final Agency's  
17 determinations of relief. So, I want to make sure  
18 everybody's aware of that.

19 And then, before I close, I want to make  
20 sure there are no other questions or needs, either  
21 from the reporter or anybody else before I close the  
22 meeting.

23 COURT REPORTER: I'm good to go.

24 MR. O'BRIEN: Hearing none, I'll say we're  
25 off the record.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Excuse me. Go ahead.

2 COURT REPORTER: I was just saying I'm  
3 good.

4 MR. O'BRIEN: Is that the court reporter?

5 COURT REPORTER: Correct, sir.

6 MR. O'BRIEN: Thank you very much. My  
7 apologies. I talked over you.

8 With that, I'll close the meeting and  
9 we're off until tomorrow. And my understanding is  
10 tomorrow we'll talk about AV 8, 10, 11, and 12.

11 Thank you, everybody.

12 (Whereupon, the above-entitled matter went  
13 off the record at 1:28 p.m.)

14

15

16

17

18

19

20

21

22

23

24

25

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701