



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION II  
SAM NUNN ATLANTA FEDERAL CENTER  
61 FORSYTH STREET SW SUITE 23T85  
ATLANTA, GEORGIA 30303-8931**

October 15, 2001

EA-98-327

Tennessee Valley Authority  
ATTN: Mr. J. A. Scalice  
Chief Nuclear Officer and  
Executive Vice President  
6A Lookout Place  
1101 Market Street  
Chattanooga, TN 37402-2801

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -  
\$88,000 (U.S. DEPARTMENT OF LABOR CASE NO. 1997-ERA-0053)

Dear Mr. Scalice:

This refers to a Department of Labor (DOL) complaint filed by Mr. Curtis C. Overall, formerly a power maintenance specialist in the Watts Bar Nuclear Plant (WBN) Technical Support organization, against the Tennessee Valley Authority (TVA) under Section 211 of the Energy Reorganization Act (ERA). The presiding DOL Administrative Law Judge (ALJ) issued a Recommended Decision and Order (RD&O) on April 1, 1998, finding that TVA discriminated against Mr. Overall in violation of Section 211 of the ERA. This finding was subsequently reviewed by the DOL's Administrative Review Board (ARB) (ARB Case No. 98-111 and 98-128). On April 30, 2001, the ARB issued a Final Decision and Order, adopting the ALJ's decision. The NRC's review of the ALJ and ARB decisions identified two apparent violations of the Commission's requirements in 10 CFR 50.7, Employee Protection, which were transmitted to TVA by letter dated June 18, 2001. This letter also provided TVA the opportunity to either respond to the apparent violations in writing or request a predecisional enforcement conference. TVA representatives informed NRC that they did not wish to attend a predecisional enforcement conference; and by letter dated July 17, 2001, TVA provided its response to the apparent violations and addressed the corrective actions to prevent recurrence. In addition, by letter dated August 18, 1997, TVA provided the NRC with immediate corrective actions related to the chilling effect which may have been created when the DOL Wage and Hour Division issued a decision regarding Mr. Overall's complaint. The NRC has reviewed both the August 18, 1997 and July 17, 2001, responses and concludes that sufficient information is available to determine the appropriate NRC enforcement action in this matter.

This matter was fully litigated during the DOL proceedings, and the NRC adopts the ARB's Final Decision and Order. The NRC has determined that the two apparent violations described in the June 18, 2001, letter are best characterized as a single violation of NRC requirements. The violation is cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice), and involves two actions taken by TVA against Mr. Overall which were in violation of 10 CFR 50.7. Specifically, the NRC has determined that TVA discriminated against Mr. Overall, as described in the DOL decisions, while he was engaged in protected activities by: (1) arranging for his transfer to TVA Services; and (2) failing to re-employ Mr. Overall once he

had been transferred to TVA Services, which resulted in his eventual lay-off from that organization. DOL, and the NRC, concluded that TVA took these actions, in part, because Mr. Overall engaged in protected activities involving the identification of a safety concern related to the WBN ice condenser system in April 1995. This violation has been categorized at Severity Level II in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, as amended on December 18, 2000.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$88,000 is considered for a Severity Level II violation. In accordance with the civil penalty assessment process, Section VI.C.2 of the Enforcement Policy, both the *Identification* and *Corrective Action* factors are considered for Severity Level II violations. No credit was determined to be warranted for *Identification*, because this violation was identified through the filing of a DOL complaint and not by the actions of TVA. Corrective actions documented in TVA's response of July 17, 2001, included re-employment of Mr. Overall as well as other employment and financial arrangements ordered by the DOL, and actions to maintain a safety conscious work environment such as workplace training for supervisors and employees, issuance of site-wide bulletins and memoranda, and the use of indicators to monitor the work environment at TVA Nuclear. In addition, by letter dated July 2, 1997, the NRC requested that TVA describe actions it has taken or planned to take to assure that this matter was not having a chilling effect on the willingness of other employees to raise safety and compliance concerns within TVA. The NRC's letter was prompted by the DOL Wage and Hour decision in Mr. Overall's case, dated June 13, 1997. TVA's response of August 18, 1997 to the NRC, although documenting TVA's disagreement with the DOL Wage and Hour decision, enumerated several corrective actions, including (1) establishment of measures such as surveys of the comments solicited from exiting employees to monitor the WBN work environment to ensure that employees felt free to discuss problems and concerns with TVA management, (2) the conduct of meetings with employees prior to and after commercial operation of the WBN facility to ensure that an environment exists in which employees feel free to voice safety concerns, (3) the conduct of executive training for senior level managers including training on Section 211 of the Energy Reorganization Act, and (4) a memorandum from the Site Vice President to all WBN employees that emphasizes the right of employees to express concerns without fear of intimidation, harassment, discrimination, or retaliation. Based on the above, the NRC has concluded that credit is warranted for the factor of *Corrective Action*.

Therefore, I have been authorized, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Reactor Programs, to issue the enclosed Notice in the base amount of \$88,000.

The NRC is aware that TVA has filed an appeal of the DOL ARB's Final Decision and Order to the U.S. Court of Appeals. In view of the judicial appeal, the NRC has determined that it is appropriate to defer payment of the civil penalty in this case pending the outcome of the appeal process. Should TVA not be successful upon appeal, TVA should either remit payment of the civil penalty or provide a basis for mitigation in whole or in part within 30 days after the completion of the appeal process. Should TVA be successful upon appeal, the NRC will reconsider the enforcement taken in this matter.

The NRC has concluded that information regarding the reason for the violation and the corrective actions taken to prevent recurrence has already been provided in TVA's letters of

July 17, 2001, and August 18, 1997, and as discussed above. Therefore, you are not required to respond regarding these matters unless the description in those letters and as summarized above does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response (if you choose to provide one) will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Sincerely,

/RA/

Bruce S. Mallett,  
Acting Regional Administrator

Docket Nos. 50-390,  
License No. NPF-90, CPPR-92

Enclosure: Notice of Violation and Proposed  
Imposition of Civil Penalty

cc w/encls: see page 4

TVA

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cc w/encls:

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Larry S. Bryant, Plant Manager  
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County Executive  
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County Executive  
Meigs County Courthouse  
Decatur, TN 37322

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NOTICE OF VIOLATION  
AND  
PROPOSED IMPOSITION OF CIVIL PENALTY

Tennessee Valley Authority  
Watts Bar Nuclear Plant, Unit 1

Docket Nos. 50-390  
License No. NPF-90  
EA-98-327

As a result of a Department of Labor (DOL) Administrative Review Board (ARB) Final Decision and Order issued on April 30, 2001, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, as amended on December 18, 2000, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty is set forth below:

10 CFR 50.7 prohibits discrimination by a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge or other actions relating to the compensation, terms, conditions, and privileges of employment. The activities which are protected are established in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act. Protected activities include, but are not limited to, reporting of safety concerns by an employee to his employer or the NRC.

Contrary to the above, the Tennessee Valley Authority (TVA) discriminated against Mr. Curtis C. Overall, a power maintenance specialist in the Watts Bar Nuclear Plant (WBN) Technical Support organization, for engaging in protected activities. Specifically, as determined by the Department of Labor, TVA discriminated against Mr. Overall in 1995 and 1996 by arranging for his transfer to TVA Services, and failing to re-employ Mr. Overall once he had been transferred to TVA Services, resulting in his eventual lay-off from that organization. TVA took these actions because Mr. Overall engaged in protected activities involving the identification of a safety concern in the WBN ice condenser system in April 1995.

This is a Severity Level II violation (Supplement VII), Civil Penalty - \$88,000

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance was achieved has already been provided in TVA's letters of July 17, 2001, and August 18, 1997. Therefore, you are not required to respond to this Notice. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region II, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

Enclosure

TVA may pay the civil penalty proposed above in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. However, the NRC has determined that it is appropriate to allow TVA to defer payment of the proposed civil penalty until 30 days after completion of TVA's appeal of the DOL ARB's Final Decision and Order to the U.S. Court of Appeals. Should TVA fail to answer within 30 days of the date of completion of the appeal before the U.S. Court of Appeals, an order imposing the civil penalty will be issued. Should TVA elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.C.2 of the Enforcement Policy should be addressed. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The statement as to payment of civil penalty noted above should be addressed to: Frank J. Congel, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region II and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room). Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Enclosure

NOV

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In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 15<sup>th</sup> day of October 2001

Enclosure