

December 27, 2001 (4:00PM)

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

## BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF	)	Docket Nos. 50-390-CivP;
	)	50-327-CivP; 50-328-CivP;
TENNESSEE VALLEY AUTHORITY	)	50-259-CivP; 50-260-CivP;
	)	50-296-CivP
	)	
(Watts Bar Nuclear Plant, Unit 1;	)	ASLBP No. 01-791-01-CivP
Sequoyah Nuclear Plant, Units 1 & 2;	)	
Browns Ferry Nuclear Plant, Units 1,	)	EA 99-234
2 & 3)	)	
	)	

TENNESSEE VALLEY AUTHORITY'S SECOND SET OF  
INTERROGATORIES AND REQUEST FOR  
PRODUCTION OF DOCUMENTS

Pursuant to 10 C.F.R. §§ 2.720(h)(2)(ii), 2.740, and 2.740b, the Tennessee Valley Authority (TVA) hereby requests that Nuclear Regulatory Commission (NRC) staff answer the following interrogatories under oath, in writing, separately, in the fullest detail possible, and send the answers to TVA's Office of the General Counsel, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1401.

**Instructions**

1. If privilege is claimed as a ground for not answering the interrogatory or if the interrogatory is otherwise objected to, describe the legal and/or factual basis for the claim of privilege or other objection to the interrogatory or interrogatory part in sufficient detail so as to permit the Atomic Safety and Licensing Board (Board) to adjudicate the validity of the claim or objection, and identify all documents which refer or relate to the information requested.

2. When an interrogatory requires NRC staff to “state the basis” of or “describe” or give the “description” of a particular claim, contention, or allegation, give a complete factual summary, organized chronologically, in which the identity of all persons, facts, dates, and documents are included.

3. If documents are produced in response to any interrogatory, expressly identify the interrogatory to which they pertain and identify the official custodian of the documents.

4. If an interrogatory is not answered in full, please state the reasons for not answering, describe the steps taken to secure complete information, and detail the information which is available to NRC staff regarding the unanswered portions.

5. For each interrogatory, identify all documents that support, refer, or relate to the subject matter of each interrogatory and the answer thereto.

### **Interrogatories**

1. Page 1 of the February 7, 2000, letter to TVA which enclosed the notice of violation (NOV) which is the subject of this proceeding, states that “TVA caused the non-selection of Mr. Fiser.” Please give a detailed factual explanation of how the Staff contends that TVA caused him to be nonselected.

2. Page 1 of the February 7, 2000, letter states that “Fiser filed a discrimination complaint with the Department of Labor (DOL), in which he alleged that TVA discriminated against him, in part, for raising nuclear safety concerns.” Identify with specificity each and every nuclear safety concern which was identified in the 1993 complaint as having been raised by Fiser. With respect to each such concern, state whether Thomas J. McGrath and/or Wilson C. McArthur were aware of such

concern, whether each of them thought that Fiser had raised the concern, and identify the evidence that shows how and when they gained such awareness.

3. The summary of Office of Investigations (OI) Report 2-98-013 (hereafter referred to as "report summary") states that the "evidence indicated that the selection process was contrived to preclude the selection of the employee [referring to Fiser]." Identify in detail (a) the evidence gathered in the OI investigation and (b) the evidence which the Staff contends indicates that the selection of Fiser was "preclude[d]." Give a detailed factual explanation of all of the evidence you contend supports the statement that the process was "contrived."

4. The report summary states that "the evidence revealed that . . . this same individual [referring to Sam Harvey] could have been placed in a vacant site chemistry position." Identify in detail (a) the evidence gathered in the OI investigation and (b) the evidence which the Staff contends reveals that there was an existing vacancy at the appropriate grade at the site and how that individual could have been placed in such a position consistent with TVA Nuclear's selection process.

5. The report summary states that "the evidence revealed that the request for placement of this individual at the site was rejected by the Manager, Operations Support." Identify in detail (a) the evidence gathered in the OI investigation and (b) the evidence which the Staff contends reveals how such placement could have been accomplished consistent with TVA's application of the Office of Personnel Management (OPM) regulations on transfer of functions.

6. Does the Staff contend that the reason Mr. McGrath and Human Resources did not transfer Sam Harvey to the site is not a legitimate nondiscriminatory reason? If you contend that the decision was motivated by discrimination, give a detailed explanation of the evidence which you contend supports your contention.

7. The February 7, 2000, letter states on page 2 that "individuals who were knowledgeable of Mr. Fiser's 1993 DOL complaint and/or the chemistry

related safety concerns at that time included the Nuclear Safety Review Board (NSRB) chairman and an NSRB committee member [referring to Mr. McGrath and Dr. McArthur, respectively].”

(a) Do you contend that Mr. McGrath was aware of Fiser’s 1993 DOL complaint prior to June 1996? If so identify in detail all of the evidence that supports your contention.

(b) Identify the specific “chemistry related safety concerns” of which Mr. McGrath and Dr. McArthur were aware. For each specific concern, state whether you contend it was activity by Fiser protected by 10 C.F.R. § 50.7 or 42 U.S.C. § 5851. If you contend that a specific concern was protected activity by Fiser, identify the evidence which shows how and when he engaged in such activity and how and when Mr. McGrath and Dr. McArthur became aware of his engagement in such activity.

(c) Do you contend that Fiser identified the existence of “chemistry related safety concerns” at the site? With respect to each concern you contend that he identified, identify the evidence which shows how and when he identified such concerns. With respect to each concern that he did not identify, state whether you contend that such concern constituted protected activity on the part of Fiser. If so, explain the detailed factual basis for your contention.

8. Page 2 of the February 7, 2000, letter states that “these two individuals [referring to Mr. McGrath and Dr. McArthur] were critical of the existence and timely resolution of chemistry related issues in Mr. Fiser’s department, and were outspoken in their dissatisfaction with Mr. Fiser’s ability to implement effective corrective action.”

(a) Identify all of the evidence that supports the statement that Mr. McGrath and Dr. McArthur were “critical of . . . Mr. Fiser’s ability.”

(b) Do you contend that the perception that Fiser lacked the “ability to implement effective corrective action” was not a legitimate nondiscriminatory reason for management concern? If you do not agree that such perception was a nondiscriminatory reason for concern, state the detailed factual basis for your contention.

(c) Do you contend that management did not in fact perceive that Fiser lacked the ability to implement effective corrective action? If so, identify all of the evidence supporting your contention.

(d) Do you contend that Fiser’s failure to “implement effective corrective action” was protected activity? If so, state the detailed factual basis for your contention.

(e) Do you contend that the existence of longstanding chemistry related issues in the site chemistry department was not a legitimate nondiscriminatory reason for management concern? If you do not agree that the longstanding existence of such issues was a nondiscriminatory reason for management concern, state the detailed factual basis for your contention.

(f) Do you contend that the timely resolution of chemistry related issues in the site chemistry department was not a legitimate nondiscriminatory reason for management concern? If you do not agree that the timely resolution of such issues was a nondiscriminatory reason for management concern, state the detailed factual basis for your contention.

9. Page 3 of the February 7, 2000, letter states that “given his position in the organization and the number of TVA employees who were involved in the various DOL and TVA Inspector General interviews, the NRC also considers it more likely than not that the former NSRB chairman [referring to Mr. McGrath] was aware that Mr. Fiser filed a 1993 DOL complaint *prior to 1996* [emphasis added].” The Staff’s response to interrogatory No. 4 of TVA’s first set of interrogatories states

in part that “the number of TVA employees who were involved in the various DOL and inspector General interviews . . . ’, and this statement refers to Fiser’s 1996 DOL complaint.

(a) Give a detailed factual explanation of why you contend the statement “refers to Fiser’s 1996 DOL complaint” since the letter states that “the number of TVA employees who were involved in . . . interviews” was the basis for concluding that McGrath was likely aware of Fiser’s 1993 DOL complaint “*prior to 1996.*”

(b) If you no longer contend that the statement “refers to Fiser’s 1996 DOL complaint,” identify all of the persons interviewed by DOL as part of the proceedings instituted as a result of Fiser’s 1993 complaint.

(c) Do you contend that Mr. McGrath was informed of any of the interviews conducted by TVA’s Inspector General in connection with Fiser’s 1993 DOL complaint? If so, identify the evidence showing how, when, and by whom he was informed.

(d) Do you contend that any of the persons interviewed by TVA’s Inspector General in connection with Fiser’s 1993 DOL complaint were supervised by or had a reporting relationship to Mr. McGrath? If so, identify each and every such person and state their organizational relationship to him.

10. Page 3 of the February 7, 2001, letter states that the “temporal proximity between the appointment of these two individuals [referring to Mr. McGrath and Dr. McArthur] as Mr. Fiser’s supervisors and his nonselection in July 1996, and the disparate treatment of Mr. Fiser with respect to the new Chemistry Program Manager position led the NRC to conclude that the reasons for Mr. Fiser’s nonselection, as articulated by TVA at the conference, were pretextual.”

(a) Does the Staff contend that the reasons given by TVA for Fiser’s nonselection were pretextual based on the temporal proximity between

Mr. McGrath's and Dr. McArthur's appointment as Mr. Fiser's supervisors and the reorganization and Fiser's nonselection? If so, give a detailed explanation for your contention.

(b) State the number of months and days from the last date that Fiser engaged in the protected activity which the Staff contends motivated the adverse employment actions to the date of those adverse actions. Specifically, identify the adverse employment actions, the protected activity, and the dates on which each occurred.

11. Page 3 of the February 7, 2000, letter states that "[o]f particular relevance to the NRC is the fact that certain selection review board members discussed the existence of Mr. Fiser's prior protected activity just prior to conducting interviews for the position of Chemistry Program Manager. This conduct casts further doubt on the impartiality of the selection process."

(a) Identify in detail what you contend was said.

(b) Identify the persons the Staff contends were participants to the discussion and what each participant heard.

(c) Do you contend that any of the members of the selection review board became aware of Fiser's DOL complaint as a result of the discussion? If so, identify the board member.

(d) Do you contend that the discussion reflected any animosity regarding Fiser's protected activity?

(e) Do you contend that the discussion was a cause of Fiser's nonselection?

(f) Do you contend that the discussion affected Fiser's scores on any of the questions by the selection review board? If so identify which scores were affected and by which board member?

(g) Given the sworn testimony by the various board members about the discussion, give a detailed explanation of how that discussion “casts doubt on the impartiality of the selection process.”

(h) Does the Staff have any evidence that the discussion happened in any way other than as described in the sworn testimony of the various board members? If so, give a detailed description of such evidence.

12. Do you contend that TVA’s decision to post the Chemistry Program Manager position was incorrect? If so, give a detailed factual basis for your contention.

13. Page 3 of the February 7, 2000, letter states that “[I]n both cases, the individuals had previously performed the functions of the new positions they were seeking . . . .”

(a) Do you contend that TVA employees have the right to roll back to positions they previously performed regardless of whether they have been officially selected for intervening positions? If so, state the detailed basis for your contention.

(b) Do you contend that Dr. McArthur was not entitled to be placed in the position of Corporate RadChem Manager in accordance with TVA’s application of its process and its application of OPM regulations? If so, state why you contend he was placed in that position. Also, please state why you contend he was not entitled to the position.

14. Page 1 of the NOV states that “the Tennessee Valley Authority (TVA) discriminated against Mr. Gary L. Fiser, a former corporate employee, for engaging in protected activities. Specifically, in July 1996, TVA eliminated Mr. Fiser’s position of chemistry and Environmental Protection Program Manager, Operations Support, as part of a reorganization, and took subsequent actions to ensure that he was not selected for one of two new positions within Operations Support.”



(a) Do you contend that the reorganization was undertaken “in retaliation” for Fiser’s protected activities?

(b) Do you contend that the elimination of Fiser’s position was undertaken “in retaliation” for Fiser’s protected activities?

(c) If your answers to each of the above subparts is not an unqualified no, give a detailed factual explanation for your contention.

(d) Identify each of the “subsequent actions” which you contend were taken to “ensure” that Fiser was “not selected.”

15. Page 2 of the May 4, 2001, letter to TVA states that “[c]ertain TVA managers were aware of his protected activity when the selection process, designed by these same managers, failed to select him for one of the two new positions.”

Do you contend that the participation by managers who had an awareness of Fiser’s protected activity was (a) inappropriate, (b) discrimination, (c) a violation of NRC regulations, or (d) inconsistent with TVA processes? If so, give a detailed factual explanation of each such contention?

16. Page 2 of the May 4, 2001, letter to TVA states that “[t]he selection process for the newly created Chemistry Program Manager positions in Operations Support was not in accordance with TVA’s normal process.” Give a detailed factual explanation how you contend that the process was not in accordance with TVA’s normal process.”

17. The report summary states that “the individual appointed to the position of Radcon Chemistry Manager (a position created in mid-1966) was transferred to this position without competition in contravention of TVA policy . . . .”

(a) Give a detailed factual explanation of how you contend this action was “in contravention of TVA policy.”

(b) Identify all witnesses and facts which you believe support this contention.

18. Identify each individual with knowledge or information on which the NRC staff will rely in this case, particularly noting those individuals the NRC staff intends to call as witnesses at the hearing before the Board.

19. Identify the legal standard which you believe applies to actions under 10 C.F.R. § 50.7 (2001). Specifically, state the legal standard the NRC applies to result in a finding of discrimination. Identify all documents in the custody of the NRC, including the Office of the General Counsel, or elsewhere which discuss or analyze the legal standard being applied, or which may have been applied in the past, in making a determination under 10 C.F.R. § 50.7.

20. Please provide complete answers to interrogatory Nos. 5 and 6 of TVA's first set of interrogatories, since, as Judge Young pointed out during the November 14, 2001, teleconference, statements by one member of the Panel is not a ruling by the Panel.

21. Please provide complete answers to interrogatory Nos. 9, 18, and 21 of TVA's first set of interrogatories, since discovery is now complete and the purported basis for the Staff's delay is obviated.

**Request for Production of Documents**

Please produce all documents pertinent to your responses or identified thereof.

Respectfully submitted,

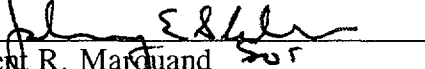
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing interrogatories have been served on the NRC Staff by electronic mail and by overnight messenger to the following:

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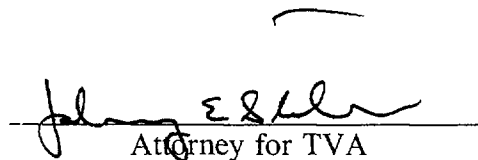
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This 21st day of December, 2001.

  
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Attorney for TVA