

RAS 4955

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Charles Bechhoefer, Chairman
Dr. Richard F. Cole
Ann Marshall Young

DOCKETED
USNRC

October 24, 2002 (11:30AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

SERVED October 24, 2002

In the Matter of

TENNESSEE VALLEY AUTHORITY

(Watts Bar Nuclear Plant, Unit 1;
Sequoyah Nuclear Plant, Units 1 & 2;
Browns Ferry Nuclear Plant, Units 1, 2 & 3)

Docket Nos. 50-390-CivP; 50-327 CivP;
50-328-CivP; 50-259-CivP;
50-260-CivP; 50-296-CivP

ASLBP No. 01-791-01-CivP

EA 99-234

October 24, 2002

MEMORANDUM AND ORDER

(Rejection of Late-filed Exhibit; Closing of Evidentiary Record; Transcript Corrections;
Schedules for Proposed Findings of Fact and Conclusions of Law)

This civil penalty proceeding involves an alleged violation of 10 C.F.R. § 50.7 by the Tennessee Valley Authority (TVA) for claimed retaliation against Gary Fiser (a former TVA employee) for engaging in protected activities. An evidentiary hearing was held at various times during April, May, June, and September, 2002. This Memorandum and Order serves to (1) state the Board's ruling on an additional document proffered by TVA on September 30, 2002, after the conclusion of the last hearing session; (2) accept other redacted or summarized versions of exhibits; (3) close the evidentiary record; and (4) reiterate or provide additional dates for post-hearing filings by the parties.

1. Redacted and substituted documents; proffer of additional document. On Friday, September 13, 2002, the final day of the evidentiary hearing in this proceeding (Tr. 5653-5754), the parties agreed that certain documents entered as exhibits into evidence should be redacted for privacy reasons, to eliminate references to the social security numbers, home addresses and telephone numbers, and dates of birth of named individuals (Tr. 5676-79), and that the

Template = SECY-039

SECY-02

redacted documents should be substituted for the same-numbered documents previously admitted into evidence. With respect to certain voluminous documents, including some that include privacy information, TVA agreed to prepare one-page summaries as a substitute for the documents previously identified on the record (Tr. 5657). The parties also agreed that the record of the proceeding should remain open pending the receipt by the Licensing Board of the redacted or substituted summary documents and approval of the redactions or substituted summaries by the Staff or TVA, as applicable. In this regard, TVA stated that it would provide the redacted and substituted summary documents to the Staff and Licensing Board (Tr. 5735), and the Staff indicated it would respond shortly thereafter (Tr. 5735). Because all of the exhibits have previously been admitted into evidence, subject to redaction and/or summarization, as applicable, the Board indicated that, absent objection by the Staff to the documents provided by TVA, and absent objection by TVA to the redacted documents furnished by the Staff, the record of the proceeding would be deemed closed once both parties had provided the relevant documents or responses (Tr. 5751).

The Staff, for its part, on September 20, 2002, forwarded to the Board and TVA copies of two exhibits that it had agreed to redact. TVA has not objected to entry into evidence of the exhibits redacted by the Staff.

On September 30, 2002, in a document titled "Tennessee Valley Authority's Submission of Exhibits" [TVA Submission], TVA provided copies of redacted or substituted summary documents to the Licensing Board and the NRC Staff. (Two of the documents, TVA Exhibits 93 and 94, were furnished in both summary versions and redacted versions of the full text.) On October 7, 2002, the Staff responded to TVA's September 30, 2002 submission, offering no objection to the redacted and/or summarized exhibits being incorporated into the record.

In addition, however, in that same TVA Submission, TVA tendered into evidence an additional document (TVA Exh. 75), which, although prefiled, had neither been identified nor admitted or rejected, during the hearing. TVA describes the document as "an extract [sic] from

the Institute of Nuclear Power Operation's (INPO) written evaluation of TVA's Sequoyah Nuclear Plant performed during the weeks of September 28 and October 5, 1992." TVA Submission, at 1-2. TVA attributes significance to the document as being illustrative of Mr. Fiser's lack of management skills, to which Mr. Robert J. Beecken, former Sequoyah Plant Manager, had previously testified. The INPO Report is said by TVA to bear upon the testimony of Mr. Beecken and to counter the effect of Staff cross-examination that purportedly implied that INPO had not made any findings regarding the chemistry program at Sequoyah (citing Tr. 4825, line 9, and Tr. 4828, line 20).

In a document titled "NRC Staff Objection to Submission of TVA Exhibit 75," dated October 7, 2002, the Staff objects to TVA's late proffer of TVA Exhibit 75. Staff counsel explains that the cross-examination of Mr. Beecken during the hearing was intended to explore Joint Exhibit 33, a performance appraisal of Gary Fiser, dated September 9, 1992, that stated (on the first page) that "[t]here have been no Chemistry related findings by INPO for SQN [Sequoyah Nuclear Plant]. THIS IS A RECORD FOR SQN." The Staff adds that, during TVA's redirect examination, TVA attempted to counter the information in the performance appraisal but made no reference to TVA Exhibit 75 in doing so. The Staff further claims that, even on September 13, 2002, when the Board permitted parties to proffer into evidence documents that had previously been made available but had not been admitted (or rejected), TVA neglected to proffer TVA Exhibit 75. Indeed, TVA expressly withdrew TVA Exhibit 75 (among other exhibits) from further consideration (Tr. 5731).

The Staff argues that admission of TVA Exhibit 75 "at this late date" would prejudice the Staff because "the Staff did not have the opportunity to cross examine Beecken or question any other witnesses about the exhibit." NRC Staff Objection to Submission of TVA Exhibit 75 at 2. Further, the Staff asserts, "[w]ithout testimony by Beecken that TVA Exhibit 75 is the INPO report under discussion during Beecken's December 9, 1992 conversation with Fiser, there is

no evidence to support the admission of the document. Absent such testimony, the record fails to demonstrate that TVA Exhibit 75 is the document TVA purports it to be.”¹

In a reply tendered on October 18, 2002 (TVA Reply), which we have elected to consider, see 10 C.F.R. § 2.730(c), TVA explains that the substance of the chemistry-related portions of TVA Exhibit 75 has already been received into evidence as a part of TVA Exhibit 48. TVA adds, however, that there are “two matters of note” in TVA Exhibit 75 that are not included in TVA Exhibit 48:

(1) the statement that the evaluation was conducted “during the weeks of September 28 and October 5, 1992,” prior to the tape-recorded Beecken-Fiser conversation on December 9, 1992, and

(2) the fact that one of the “most significant” findings by INPO was the “long-standing chemistry equipment and instrumentation problems.”

TVA Reply at 2. TVA concludes that neither matter is subject to any dispute nor requires an explanation by any witness.

The Board has reviewed TVA Exhibit 75 and finds that it should not be admitted, based on its untimely proffer into evidence without any opportunity for Staff cross-examination concerning its significance. Whether or not the information in the document is itself in dispute, we note that the report’s identification (at page 3) of “[s]everal long-standing chemistry equipment and instrumentation problems” at Sequoyah does not make clear whether these problems arose during, or are attributable to, Mr. Fiser’s tenure as chemistry and environmental superintendent at Sequoyah. Mr. Fiser served as Sequoyah Superintendent and Chemistry and Environmental Superintendant from approximately April or May of 1988 until May 1, 1991, when he was rotated to outage management (see Joint Exh. 27, at 1; Tr. 992,1006-07, 2273, 2640),

¹The Staff also objects to TVA Exhibit 75 on the ground that (as characterized by TVA) it was an extract from the INPO report rather than the entire report. NRC Staff Objection to Submission of TVA Exhibit 75, dated October 7, 2002, at 3. In its October 18, 2002 reply, TVA corrected its previous description by indicating that “TVA Exhibit 75 is a copy of the entire INPO report, not an extract.” TVA Reply at 1. In our review of its admissibility, we are treating the proffered exhibit as a complete report.

and served again as Sequoyah Chemistry and Environmental Superintendent from January, 1992 (Tr. 1015), until late February/early March, 1992, when he was designated acting corporate chemistry manager (Tr. 2273-74).

The fact that the INPO Report (reflecting an evaluation performed during September and October, 1992) does not indicate exactly when the "longstanding" problems originated supports the Staff's argument concerning the need for cross-examination on the report, and the resulting prejudicial effect of late admission of the document. The Licensing Board therefore rejects TVA Exhibit 75.

On the other hand, the Board formally accepts the following documents into the record (identified by exhibit number and as being redacted and/or summarized and substituted, as the case may be):

- Joint Exhibit 20 (redacted)
- Joint Exhibit 21 (redacted)
- Joint Exhibit 22 (redacted)
- Joint Exhibit 23 (redacted)
- TVA Exhibit 24 (redacted)
- TVA Exhibit 39 (redacted)
- TVA Exhibit 55 (redacted)
- TVA Exhibit 56 (redacted)
- TVA Exhibit 93A (redacted)
- TVA Exhibit 94A (redacted)
- TVA Exhibit 149 (redacted)

- TVA Exhibit 83 (summary substitute)
- TVA Exhibit 84 (summary substitute)
- TVA Exhibit 85 (summary substitute)
- TVA Exhibit 86 (summary substitute)
- TVA Exhibit 87 (summary substitute)
- TVA Exhibit 88 (summary substitute)
- TVA Exhibit 89 (summary substitute)
- TVA Exhibit 90 (summary substitute)
- TVA Exhibit 91 (summary substitute)
- TVA Exhibit 92 (summary substitute)
- TVA Exhibit 93B (summary)
- TVA Exhibit 94B (summary)
- TVA Exhibit 95 (summary substitute)
- TVA Exhibit 96 (summary substitute)
- TVA Exhibit 109 (summary substitute)
- TVA Exhibit 110 (summary substitute)

Based on the incorporation into the record of the foregoing redacted and/or summarized documents, the evidentiary record of this proceeding is hereby deemed closed.

Attached to this Memorandum and Order (as Appendix A) is a draft list of documents or exhibits offered into evidence, and admitted or rejected, in this proceeding. Parties should advise us by Friday, November 15, 2002, of any errors as to the accuracy and completeness of this list. (Other exhibits previously provided to the Board but not formally offered are being treated as withdrawn and have been discarded or, if they include sensitive information, destroyed.)

2. Submission of Proposed Findings of Fact and Conclusions of Law.

Reflecting the requests of both parties to this proceeding, the Licensing Board provided (Tr. 5682, 5684) that proposed findings of fact and conclusions of law be filed by both parties simultaneously, on the following schedule:

Initial Filings: Friday, December 20, 2002

Responsive Filings: Friday, February 28, 2003

Initial filings should be in the form of a proposed Initial Decision. See 10 C.F.R. § 2.754(a)(1). As provided by the Rules of Practice, 10 C.F.R. § 2.754(c), and as stressed by the Licensing Board at the hearing (Tr.5670-71),

(c) Proposed findings of fact must be clearly and concisely set forth in numbered paragraphs and must be confined to the material issues of fact presented on the record, with exact citations to the transcript of record and exhibits in support of each proposed finding.

Proposed conclusions of law should be filed with the initial filings but may be in any reasonable format, such as numbered paragraphs (see 10 C.F.R. § 2.754(c)) and/or post-trial briefs. Such conclusions or briefs should address, inter alia, various legal issues delineated by the Licensing Board throughout the course of the hearings.

In preparing their initial filings, parties are directed to anticipate countervailing averments by the other party (as manifest throughout the course of the proceeding) and explain why the findings and conclusions proposed by each party are preferable to those likely to be

proposed by the other party. In addition, as also stressed by the Licensing Board (Tr. 5670-71, 5673-74), the parties' responsive filings should indicate whether the party agrees or disagrees with each of the particular findings and/or conclusions advanced by the other party, and the specific reasons for any disagreement.

3. Proposed Transcript Corrections. Parties are invited to submit proposed transcript corrections of the evidentiary hearing (Tr. 262-4739, 4759-5754) by Friday, November 15, 2002. Responses, if any, of the other party should be submitted by Friday, November 29, 2002.

4. TVA's Motion to Compel. During the hearing on September 9, 2002, the Licensing Board considered TVA's August 22, 2002 Motion to Compel the Staff to pay the fair value of an airline ticket for Dr. Wilson McArthur from Salt Lake City, Utah (Dr. McArthur's residence) to Chattanooga, Tennessee. Dr. McArthur, who was responding to a Staff subpoena to testify at the hearing, purchased his airline ticket through personal frequent flier miles but was reimbursed by the Staff only \$5.00, the amount Dr. McArthur actually expended to redeem the miles. The Staff took the position that it was not authorized to pay more than the amount actually spent by Dr. McArthur to attend the hearing. See NRC Staff Response to [TVA's] Motion to Compel, dated September 6, 2002; Tr. 4768, 4773.

The Licensing Board asked the Staff to explore whether, in responding to a subpoena, a witness need be bound by the same travel limitations as would govern Government employees engaged in official travel, which the Staff appeared to be following with respect to Dr. McArthur. On October 7, 2002, the Staff responded by reiterating its previous position to the effect that it was authorized to reimburse Dr. McArthur only for out-of-pocket costs actually expended. The Staff further advised that it could not reimburse Dr. McArthur for mileage inasmuch as he did not drive but actually used a common carrier.

Because that response fails to address several questions raised by the Board, including whether there is any outstanding Federal case law concerning computation of payments authorized under a subpoena, or differentiating between payments authorized for government

employees and amounts authorized for non-government employees (such as Dr. McArthur), or indicating any exceptions to the strict application of the Government travel regulations based on equitable considerations, the parties should file briefs on these issues no later than Friday, November 15, 2002. These briefs shall also include any further information bearing upon TVA's August 22, 2002 Motion to Compel, particularly concerning the matters raised by the Board concerning the Staff's authority to reimburse Dr. McArthur for the approximate cash value of the airline ticket acquired by Dr. McArthur by using personal frequent flier points. Moreover, the parties are encouraged to attempt to settle this issue, particularly since Dr. McArthur appeared as a witness for both of the parties (albeit subpoenaed only by the Staff).

* * *

It is so ORDERED.

For the Atomic Safety and Licensing Board


Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 24, 2002

[Copies of this Memorandum and Order have been provided this date by e-mail to counsel for each party.]

**DRAFT
APPENDIX A**

Tennessee Valley Authority
(Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant Units 1 & 2;
Browns Ferry Nuclear Plant, Units 1, 2, & 3)
Docket Nos. 50-390-CivP; 50-327-CivP; 50-328-CivP;
50-259-CivP; 50-260-CivP; 50-296-CivP
ASLBP No. 01-792-01-CivP (EA 99-234)

LIST OF EXHIBITS

EXH. NO.	DESCRIPTION	IDENTIFIED	ADMITTED/ (REJECTED)
JOINT EXHIBITS			
1	Sequoyah NSRB Minutes, May 22-23, 1991	613	634
2	Sequoyah NSRB Minutes, August 21-22, 1991	617	634
3	Sequoyah NSRB Minutes, November 20-21, 1991	618	634
4	Sequoyah NSRB Minutes, February 19-20, 1992	640	644
5	Sequoyah NSRB Minutes, May 21-22, 1992	655	655
7	June 10, 1991 memo with May 1991 NSRB Minutes attached	634	639
9	Sequoyah NSRB Minutes, February 19-20, 1992	5707	5708
20	Rick Rogers SRB notebook (redacted)	1289	1322
21	John Corey SRB notebook (redacted)	1289	1322
22	Ben Easley/Milissa Westbrook SRB notebook (redacted)	1289	1322
23	Charles Kent SRB notebook (redacted)	1289	1322
24	January 10, 1994 McArthur TVA OIG Record of Interview	1527	1532
25	January 11, 1994 Kent TVA OIG Record of Interview	3178	3182
26	February 3, 1994 Beecken TVA OIG Record of Interview	4837	4842
27	Fiser Sequence of Events	1051	1076
28	Fiser, August 30, 1996 Assignment to TVA Services (redacted)	2368	2369
29	Fiser, September 5, 1996 Resignation (redacted)	2369	2381

EXH. NO.	DESCRIPTION	IDENTIFIED	ADMITTED/ (REJECTED)
30	January 5, 1989 Fiser Performance Review	993	999
31	September 18, 1989 Fiser Performance Review	1000	1001
32	September 30, 1991 Fiser Performance Review	1009	1014
33	September 8, 1992 Fiser Performance Review (redacted)	1037	1041
34	Memorandum of Agreement, April 5, 1994	343	355
36	Voeller Day Planner Notes	3321	3325
39	July 12, 1996 Harvey TVA-OIG Record of Interview (redacted)	4998	4999
41	October 29, 1996 Easley TVA OIG Record of Interview	1249	1259
42	July 24, 1995 Fiser Position Description for Chem/Env Manager	747	748
43	March 16, 1992 temporary transfer agreement	1028	1032
44	September 20, 1999 Notice of Apparent Violation	312	321
45	September 20, 1999 Notice of Apparent Violation to McArthur	1539	1541
46	McGrath, September 20, 1999 confirmation of arrangements for closed OI Enforcement Conference (OI Report 2-98-013)	5294	5296
47	February 7, 2000, Notice of Violation and Civil Penalty	294	295
48	February 7, 2000 Notice of Violation to McArthur	1540	1541
49	February 7, 2000 Notice of Violation to McGrath (OI Report 2-98-013)	5294	5296
51	January 22, 2001 McArthur Reply to Notice of Violation	1540	1541
53	May 4, 2001 Order Imposing Civil Penalty	308	309
55	September 25, 1996 Landers TVA OIG Record of Interview	2083	2089

EXH. NO.	DESCRIPTION	IDENTIFIED	ADMITTED/ (REJECTED)
58	February 26, 1993 Sequoyah Implementation of Interim Radiological Control and Chemistry Organization	3007	3007
59	April 2, 1993 Fiser Notice of Transfer to ETP	1097	1098
60	August 13, 1993 Fiser Notice of RIF	1119	1120
63	September 30, 1993 BP-102 Selection Policy	841	842
65	May 6, 1987 Personnel Manual Instruction Section 7 - Reduction in Force	1220	1227
66	April 17, 2002, Joint STP Between TVA and Staff	650	651
67	April 23, 2002, Joint Stipulation between TVA and Staff	651	651
TVA EXHIBITS			
4	September 27, 1996, Job Offer to Fiser (CC 35-37)	4298	4302
5	October 31, 1996, declaration of Sam L. Harvey before DOL	4973	4994
9	January 15, 1998, declaration of Fredrick M. Anderson submitted in connection with Fiser's 1996 complaint (CC 286-87)	4087	4096
11	October 31, 1994, memo from Hickman to O.J Zeringue (EE-28-53)	4221	4229
12	January 11, 1994, Investigation Insert (OIG File No. 20-135) (EE 75, 79-82)	3274	3285
13	November 25, 1996, OIG Report of Administrative Inquiry (EE 221-39)	4229	4231
14	June 17, 1996, Sam Harvey Franklin planner note	4995	4997
18	September 6, 1994, memo from R.R. Baron to Zeringue (EE 619-27)	4374	4375
24	Selection Package for VPA No. 6621 (HH 1-198)	1265	1274
26	November 19, 1999, declaration of Sam L. Harvey before NRC OI	4981	4994
27	November 27, 1997, Memorandum, Sam Harvey to W.C. McArthur, "Discrimination and Harrassment"	2129 5032	5034

EXH. NO.	DESCRIPTION	IDENTIFIED	ADMITTED/ (REJECTED)
31	August 5, 1996, memo from Zeringue to Grover (Loan Assignment to INPO) (AF 33-36)	765	765
39	February 26, 1999, declaration of Alice L. Greene submitted to OI in connection with Fiser's 1996 DOL complaint (AF 588-740); pp. AF000627-AF000740	4470	4481
48	January 20, 1994, Investigative Insert (OIG File No. 2D-135 (AJ 297-335)	609	613
51	May 22, 1995, OI Report of Investigation (Case No. 2-93-068) (BE 1-12, 17-33, 87-92, 136-37, 224-25)	685	718
55	PDs and VPAs for positions created in NP's 1996 reorganization (BF 1264-1362)	4010	4014
56	June 27, 1995, PD, Gary S. Boles	4013	4014
57	Employee Concerns Programs (ECP) File Closure Summary, July 13, 1993	1583	5709
61	1996, Vacancy Posting System Intent	4023	(4031) (Rejected)
62	Operations Support's organizational overview (BI 1-229)	752	822
65	TVA's Principles and Practices--Commitment to Nuclear Safety (CA 250-51)	587	591
66	Communications Practice 5 Expressing Concerns and Differing Views (CA 253-56)	590	591
70	November 20-21, 1991, Sequoyah NSRB Minutes	633	5710
73	Significant Corrective Action Report (SCAR) No. SQSCA920004 (CG 1-82)	653	655
75	October 1992 INPO Evaluation of Sequoyah Nuclear Plant	TVA Motion dtd 10/7/02	(M&O dtd. 10/24/02) (Rejected)
80	Selected pages from selection package for VPA No. 10249 for Shift Supervisor, PG-5, position (DB 1-3, 70-71, 94, and 120-22)	3237	3244
81	OIG Report re: Ronald L. Grover (OIG File 140-71)	4239	(4243) (Rejected)

EXH. NO.	DESCRIPTION	IDENTIFIED	ADMITTED/ (REJECTED)
82	October 6, 2000, memo from Jack A. Bailey to Grover (GB 1063)	2239	2242
83	1996 Retention Registers and RIF Notices, Watts Bar Nuclear Plant (redacted and substituted)	5473, 5475, 5528	(5530) (Rejected) 5732 admitted
84	1996 Retention Registers and Assignments, Watts Bar Nuclear Plant (redacted and substituted)	5473, 5531	5732
85	March 10, 1997 Retention Registers, Watts Bar Nuclear Plant (redacted and substituted)	5473, 5531	5732
86	Watts Bar Nuclear Plant, FY 1997 workforce planning documents and employees' 1997 Retention Registers (redacted and substituted)	5473, 5531	5732
87	Watts Bar employees 1997 RIF Notices (redacted and substituted)	5473, 5532	5732
88	Browns Ferry 1996 employees' Retention Registers (redacted and substituted)	5473, 5533	5732
89	Browns Ferry 1997 employees' Retention Registers (redacted and substituted)	5473, 5533	5732
90	Browns Ferry 1996 employees' RIF Notices (redacted and substituted)	5473, 5534	5732
91	Browns Ferry 1997 employees' 1997 Surplus Notices (redacted and substituted)	5473, 5534	5732
92	Browns Ferry 1996 employees' 1997 Surplus Notices (redacted and substituted)	5473, 5535	5732
93A	Corporate Nuclear employees' Retention Registers (redacted)	5473, 5541	5543; M&O dtd. 10/ /02
93B	Corporate Nuclear employees' Retention Registers (redacted and summarized)	5473, 5541	5543; M&O dtd. 10/ /02
94A	Corporate Nuclear employees' 1996 Surplus Notices (redacted)	5473, 5535	5539; M&O dtd. 10/ /02
94B	Corporate Nuclear employees' 1996 Surplus Notices (redacted and summarized)	5473, 5535	5539; M&O dtd. 10/ /02
95	Corporate Nuclear employees' 1996 Retention Registers (redacted and substituted)	5473, 5537	5736

EXH. NO.	DESCRIPTION	IDENTIFIED	ADMITTED/ (REJECTED)
96	Sequoyah employees' 1996 Surplus Notices (redacted and substituted)	5473, 5539	5736
98	Grover's termination letter (GB 1540-42)	2259	2260
99	Grover's DOL complaint (GB 1543-59)	2242	2243
100	Grover's EO complaint (GB 1560-65)	2245	2249
101	Resume of Carey L. Peters (FB 1-7)	4513	4514
102	Peters' Summary & Analyses (FB 8-16)	4540	4580
105	July 25, 1996, memo from David F. Goetcheus to Zeringue	5083	5092
106	TVA's Personal History Record User's Manual (FD 1-75)	4456	4470
107	January 4, 1990, memo from Jim M. Raines to Those Listed re personnel microrecords (FD 76-78)	4455	4470
108	Pages from Tresha Landers' Day Planner (FE 1-22)	2072	2079
109	Sequoyah Nuclear Plant Surplus Notices (1997) (redacted and substituted)	5475, 5540	5736
110	Sequoyah Nuclear Plant Retention Registers (1997) (redacted and substituted)	5475, 5541	5736
111	December 15, 1999, ltr to Anne T. Boland from Mark J. Burzynski and encl. 1 (FG 1-7)	3799	3803
112	TVA's memorandum on the Admissibility of Depositions	972	5719 (non-evidentiary)
113	September 4, 2001, NRC Staff Response to TVA's First Set of Interrogatories	976	1163
114	Ronald D. Grover, March 5, 2001, Notice of Proposed Termination (redacted)		
116	March 29, 1996, Journal Record of Events	2163	2331
117	June 16, 1994, Journal Record of Events	2169	2301
118	June 30, 1994, Fiser Daily Planner	2175, 5719	5720
119	March 25, 1996, Journal Record of Events	2320	2324
120	May 7, 1996, Journal Record of Events	2334	2338

EXH. NO.	DESCRIPTION	IDENTIFIED	ADMITTED/ (REJECTED)
121	June 29, 1994, Page from Fiser's Franklin planner	2232, 5719	5720
122	November 14, 1995, Fax from G. Fiser to J. Vorse regarding Additional Supporting Information	2417	2424
123	May 10, 1993, Journal Record of Events	2524	2526
124	May 8, 1996, Fiser's Franklin planner	2774	2775
125	October 1, 1990, TVA Supervisor's Handbook	5377	5379
126	September 18, 1989, Sequoyah Nuclear plant, Corrective Action Report	4911	4917
128	Memo, Sequoyah Nuclear plant, Nuclear Experience Review (NER)	4917	4879
129	November 24, 1992, Incident Investigation Report, Inadequate Setpoint Calculations for Radiation Monitors	4688	4701
130	August 8, 1991, Incident Investigation Report, Unit 1 Lower Containment Radiation Monitor in service with Inlet Valve Closed	2675	2698
131	OIG Interview with Charles E. Kent	3186	3200
132	Chart entitled "Decision 'To Post' or 'Not to Post'"	4062	4062
133	Organizational Chart, August 1996, Chemistry Program Mgr. (PWR), Chemistry Program Mgr (BWR)	4070	4070
134	Organizational Chart, August 1996, Steam Generator Technology Mgr., Maintenance Support Mgr.	4070	4070
135	June 20, 1994, Page from Fiser's Franklin planner	4292	4293
136	May 10, 1996, Page from Fiser's Franklin planner	4303	4309
138	Resume of Robert J. Beechen	4795	4796
139	Resume of Mark J. Burzynski	4863	4865
140	Resume of David F. Goetcheus	5074	5075
141	Resume of Sam L. Harvey	4970	4974
142	Resume of H. Keith Fogelman	5356	5357

EXH. NO.	DESCRIPTION	IDENTIFIED	ADMITTED/ (REJECTED)
144	Resume of Heyward R. Rogers	5164	5164
145	August 14, 1989 Memo transmitting NER Item for Action or Information	4867	4869
146	August 14, 1989, Corrective Action Report re: diesel fuel oil sampling	4876	4882
147	Sequoyah Final Event Report re: diesel fuel oil sampling	4884	4894
148	CD containing December 9, 1992 conversation between Gary D. Fiser and Robert S. Beecken	4812	4814
149	Vacancy Announcement 66-21	5568	5577
150	Form document	4790	4793
151	Fax cover sheet	4790	4793
152	Sam Harvey's notes in response to HR disposition of harassment allegations	5008	5021
STAFF EXHIBITS			
2	TVA OIG Record of Interview of James E. Boyles, July 10, 1996	3976	3984
4	Dept. of Labor (DOL) Personal Interview Statement of James E. Boyles, May 22, 1997	3976	3984
5	DOL Declaration of James E. Boyles, filed January 20, 1998	3976	3984
6	NRC Office of Investigations (OI) Interview of James E. Boyles, October 22, 1998	3976	3984
7	Deposition of James E. Boyles, November 9, 2001	3976	3984
12	Memorandum from Joseph Bynum re RadCon/Chemistry Environmental Organization at Sequoyah and Browns Ferry, with organizational chart	1704	1706
21	TVA OIG Record of Interview of Ben Easley, October 25, 1993	1248	1259
22	TVA OIG Record of Interview of Ben Easley, July 10, 1996	1246	1259

EXH. NO.	DESCRIPTION	IDENTIFIED	ADMITTED/ (REJECTED)
24	Interview transcript of TVA OIG Record of Interview of Ben Easley, October 29, 1996	1246 (?)	1259
25	DOL Personal Interview Statement of Ben Easley, December 10, 1996	1248	1259
26	NRC OI Interview of Ben Easley, October 29, 1998	1248	1259
27	Deposition of Ben Easley, November 29, 2001	1250	1259
29	Ltr to Senator James Sasser from Gary Fiser, William, Jocher, and D.R. Matthews, August 16, 1993	415	418
30	Ltr to Senator Sasser from William Hinshaw, II, Inspector General, September 9, 1993	4195	4208
31	Memo from E.B. Ditto to Wilson McArthur re a response to Senator Sasser's ltr, September 22, 1993	1446	1447
32	Ltr to Senator Sasser from William Hinshaw, II, Inspector General, October 22, 1993	4195	4208
33	Ltr to Senator Sasser from George Prosser, Inspector General, April 22, 1994	4195	4208
34	Gary Fiser DOL complaint, ltr to Carol Merchant, September 23, 1993	1126	1144
37	Gary Fiser DOL complaint, letter to Carol Merchant, June 25, 1996 (redacted)	663	669
43	Position Description for Gary Fiser, Chemistry and Environmental Protection Sr. Program Manager, October 17, 1994	744	746
44	TVA Employee Appraisal for Manager and Specialist Employees for Gary Fiser, November 7, 1990	1001	1005
45	TVA Employee Appraisal for Manager and Specialist Employees for Gary Fiser, January 29, 1991	1006	1008
46	Performance Review and Development Plan for Gary Fiser, October 1, 1993 to September 30, 1994	2306	2308
47	Performance Review and Development Plan for Gary Fiser, October 1, 1994 to September 30, 1995	2308	2310

EXH. NO.	DESCRIPTION	IDENTIFIED	ADMITTED/ (REJECTED)
49	TVA OIG Record of Interview of Ronald Grover, July 11, 1996	3648	3650
50A	Tape of TVA OIG Record of Interview of Ronald Grover, July 11, 1996	3653	3654
50B	Interview transcript of TVA OIG Record of Interview of Ronald Grover, July 11, 1996	3650, 3653	3654
51	DOL Personal Interview Statement of Ronald Grover, September 27, 1996	3655	3658
52	DOL Deposition of Ronald Grover, January 29, 1998	3659	3663
53	NRC OI Interview of Ronald Grover, December 18, 1998	3659	3663
54	Deposition of Ronald Grover, December 14, 2001	3659	3663
55	Employee Action Reasons for Ron Grover	4079	5723
56	Position Description for Ronald Grover, Chemistry and Environmental Protection Manager, July 24, 1995	4007	4008
60	DOL Personal Interview Statement of Sam Harvey, March 27, 1997	5030	5031
63	Deposition of Sam L. Harvey, III, December 7, 2001	5068	5069
64	Position Description for Sam Harvey, Chemistry Program Manager (PWR), August 5, 1996	745	746
65	Performance Review and Development Plan for Sam Harvey, October 1, 1994 to September 30, 1995	3644	3645
67	Memo from R. Grover to James Boyles re employee harassment and intimidation by Sam Harvey, June 24, 1996	1843	1844
70	TVA OIG Record of Interview of Charles Kent, August 15, 1996	3182 (?)	3182
71	Interview transcript of TVA OIG Record of Interview of Charles Kent, August 15, 1996	3182 (?)	3182
72	DOL Personal Interview Statement of Charles Kent, April 18, 1997	3182 (?)	3182

EXH. NO.	DESCRIPTION	IDENTIFIED	ADMITTED/ (REJECTED)
73	NRC OI Interview of Charles Kent, October 22, 1998	3182 (?)	3182
74	Deposition of Charles Kent, November 28-29, 2001	3182 (?)	3182
84	TVA OIG Record of Interview of Wilson McArthur, July 26, 1993	1527	1532
85	TVA OIG Record of Interview of Wilson McArthur, August 31, 1993	1527	1532
86	TVA OIG Record of Interview of Wilson McArthur, October 1, 1993	1527	1532
87	TVA OIG Record of Interview of Wilson McArthur, February 24, 1994	1527	1532
88	TVA OIG Record of Interview of Wilson McArthur, July 24, 1996	1527	1532
90	Notice of Sam Harvey's reassignment as Acting Corporate Chemistry Manager and Gary Fiser's reassignment to Program Manager in Corporate Chemistry, from Wilson McArthur, November 18, 1992	1096	1096
91	Ltr to Wilson McArthur from O.J. Zeringue, September 6, 1996	1467	1472
93	TVA OIG Record of Interview of Wilson McArthur, October 29, 1996	1527	1532
95	DOL Personal Interview Statement of Wilson McArthur, April 24, 1997	1397	1532
96	DOL Declaration of Wilson McArthur, January 15, 1998	1528	1532
97	NRC OI Interview of Wilson McArthur, April 20, 1999	1527	1532
98	Deposition of Wilson McArthur, December 13, 2001	1527	1532
99	Employee Action Reasons for Wilson McArthur	508	739
100	Position Description for Wilson McArthur, Manager, Technical Programs, April 2, 1990	495	739
101	Position Description for Wilson McArthur, Corporate Radiological and Chemistry Control Manager, June 17, 1996	495	739

EXH. NO.	DESCRIPTION	IDENTIFIED	ADMITTED/ (REJECTED)
102	Performance Review and Development Plan for Wilson McArthur, October 1, 1994 to September 30, 1995	518	739
107	Deposition of Thomas McGrath, November 30, 2001	943	955
108	Dayton Herald News Article, "SQN chemistry problems were well known," June 12, 1994	847, 2294	2297
110	DOL Declaration of Phillip Reynolds, January 20, 1998	3561	3587
111	NRC OI Interview of Phillip Reynolds, December 18, 1998	3587 (?)	3587
112	Deposition of Phillip Reynolds, November 8, 2001	3587 (?)	3587
115	Deposition of Heyward R. Rogers, November 30, 2001	5211	5238
122	Deposition of Milissa Westbrook, November 8, 2001	4834	5125
124	Vacant Position Announcement for Manager, Radiological Control, closing date August 31, 1994	3815	3821
126	Organizational Chart for Nuclear Power, Technical Support, Operations Support, Technical Programs, 1993	3813	3814
128	TVA Nuclear Corporate 1996 Reorganization Impact on Headcount	445, 5723	5723
130	Organizational Chart for Nuclear Operations, Operations Support, Radiology and Chemistry Control, February 13, 1995	452	742
131	Organizational Chart, Nuclear Operations, Operations Support, Radiology and Chemistry Control, September 17, 1996	455	743
133	Predecisional Enforcement Conference for Thomas McGrath, November 22, 1999	3976	3984
134	Predecisional Enforcement Conference for Wilson McArthur, November 22, 1999	1524	1532
135	Predecisional Enforcement Conference for TVA, December 10, 1999	3093, 3976, 4943	3182, 3984, 4943

EXH. NO.	DESCRIPTION	IDENTIFIED	ADMITTED/ (REJECTED)
147	DOL Brief in Support of Respondents Motion for Summary Decision	2384 5330	(2390) (Rejected) 5335 admitted
148	DOL Order Denying Motion for Summary Decision in <u>Gary Fiser v. TVA</u> , April 21, 1998	5330	5335
152	Announcement of Vacancies in the Manager and Specialist Pay Schedule-Revised Selection/Waiver Policy, March 23, 1993	3483	3486
154	Revision to Selection/Waiver Policy-Selecting Career Skills Center Employees to Fill Management and Specialist Positions, July 7, 1994	3484-85	3486
160	Record of OIG interview of D. Goetcheus, July 23, 1996	5102	5107
162	Declaration of G. Donald Hickman, April 4, 2002	4193	4208
166	Record of OIG interview of K. Welch, July 29, 1996	329	5724
168	CD (Tape A, Side A/Sec II)	1090	1090
169	CD (Tape I, Side A/Sec II, III, IV)	1113	1119
170	NUREG-1600, Revision of Enforcement Policy, FR dtd November 9, 1999	282	283
173	Ltr from Hickman, Assistant IG, to Fiser, August 10, 1994	2284	2288
174	pp. 628, 630, 631, IG Report re Sorrell, September 25, 1997	4217	4221
174	pp. 721-733, IG Report re Sorrell, September 25, 1997	4233	4234
177	IG Report against chemist, May 22, 1995	985	987
178	Tape	4422	4425
179	Tape	4426	4427
180	OIG letter re: Grover, July 9, 1998	4790	4793

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
TENNESSEE VALLEY AUTHORITY)	Docket Nos 50-390-CIVP,
)	50-327/328-CIVP and
(Watts Bar Nuclear Plant, Unit 1;)	50-259/260/296-CIVP
Sequoyah Nuclear Plant, Units 1 & 2; and)	
Browns Ferry Nuclear Plant, Units 1, 2 & 3))	
(Order Imposing Civil Monetary Penalty))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (REJECTION OF LATE-FILED EXHIBIT: CLOSING OF EVIDENTIARY RECORD; TRANSCRIPT CORRECTIONS; SCHEDULES FOR PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Charles Bechhoefer, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

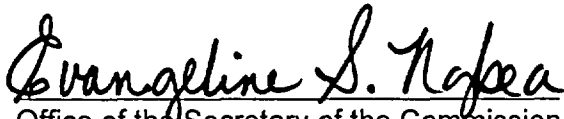
Administrative Judge
Ann Marshall Young
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dennis C. Dambly, Esq
Jennifer M. Euchner, Esq
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Mark J. Burzynski, Manager
Nuclear Licensing
Tennessee Valley Authority
1101 Market Street
Chattanooga, TN 37402-2801

Docket Nos. 50-390-CIVP
50-327/328-CIVP and
50-259/260/296-CIVP
LB MEMORANDUM AND ORDER (REJECTION OF
LATE-FILED EXHIBIT: CLOSING OF EVIDENTIARY
RECORD, TRANSCRIPT CORRECTIONS;
SCHEDULES FOR PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW)

Thomas F. Fine, Esq.
Assistant General Counsel
Office of the General Counsel, ET 10A-K
Tennessee Valley Authority
400 W. Summit Hill Drive
Knoxville, TN 37902


Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 24th day of October 2002