Tennessee Valley Authority, Post Office Box 2000, Soddy-Daisy, Tennessee 37379-2000

R.J. Adney
Site Vice President
Sequoyah Nuclear Plant

October 18, 1996

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C.

Gentlemen:

In the Matter of	)	Docket Nos. 50-327
Tennessee Valley Authority	)	50-328

SEQUOYAH NUCLEAR PLANT (SQN) - UPCOMING PREDECISIONAL ENFORCEMENT CONFERENCE -EA 96-269

The purpose of this letter is to address the application of a portion of the NRC's "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, prior to the subject predecisional enforcement conference scheduled to take place on October 24, 1996. Specifically, this letter addresses recent changes to the enforcement policy which were designed to focus on recent licensee performance, as reflected, in part, by escalated enforcement history during the approximately two-year period prior to the event of current interest. If, as a result of this conference, it should become necessary to consider how the Enforcement Policy should be applied, we request that you consider how circumstances can best be taken into account to realize that policy's intent. We believe that the implementation of the Enforcement Policy in this case can best be realized if, for the reasons discussed below, SQN is considered not to have had an escalated enforcement action in the prior two years.

Section VI.B.2 of the enforcement policy implements the Commission's desire to focus on a licensee's recent performance. Specifically, the civil penalty assessment process considers, among other things, "whether the licensee has had any previous escalated enforcement action during the past two years . . ." Section VI.B.2.b also provides that the identification factor "should normally be considered" if during the last two years at least one other escalated action has been issued. In most cases these provisions are applicable because the NRC generally takes escalated enforcement action well within a period of two years from the time of a violation or event.

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However, some cases which involve claims of harassment and intimidation under 10 CFR § 50.7 do not fall within the Commission's expectations as described in Section VI.B.2 of the Enforcement Policy. For such cases in which the Department of Labor (DOL) conducts adjudicatory proceedings and appeals, the length of time between the discovery of the precipitating event and the issuance of any enforcement action is unusually long. As a result, escalated enforcement actions could be issued by the NRC more than two years after the occurrence of the precipitating behavior.

In cases where the NRC has issued an escalated enforcement action substantially more than two years after alleged actions have been found to have occurred, the Commission's policy of focusing on licensee performance over the past two years would not be implemented if that escalated enforcement action was considered for the purposes of applying the Enforcement Policy. Such a delay between the precipitating event and a final NRC enforcement action due to the intervention of a lengthy DOL proceeding was not the normal process considered by the Commission when it sought to focus on recent licensee performance. Therefore, in accordance with the Enforcement Policy's explicit discretion to consider the abnormal, where an intervening DOL proceeding has delayed the time between the precipitating event and the escalated enforcement action to a period significantly longer than two years, it would be inconsistent with the Commission's focus on recent licensee performance to consider that escalated enforcement action for the purposes of applying the Enforcement Policy.

These principles apply to the current enforcement proceeding concerning the recent performance of the SQN fire protection program. With the exception of the DOL-related actions described below, SQN has had no escalated enforcement action taken against it in areas related to fire protection performance or any other activity area for the last three and one-half years.

On February 20, 1996, the NRC notified TVA that based on the Secretary of Labor's decision in the DOL case involving Randolph Frady (92-ERA-19 and -34), the NRC found that a Severity Level II violation of NRC regulations occurred. However, Mr. Frady filed his complaints with the DOL in August and September of 1991 and January of 1992, alleging that his non-selection for various jobs at Sequoyah and Watts Bar was discriminatory. Thus, the events which gave rise to escalated enforcement action in the Frady case occurred over four and one half years ago, and some over five years ago.[1] On August 16, 1996, and September 10, 1996, the NRC requested that TVA provide information related to an apparent violation of NRC's regulations based on the result of an NRC Office of Investigations report and a DOL Administrative Law Judge's

[1] In its letter of April 4, 1996, the NRC notified TVA of its decision to defer the issuance of orders imposing any civil penalty in this matter pending the outcome of TVA's appeal of the Secretary's decision to the U. S. Court of Appeals for the Sixth Circuit.

Recommended Decision and Order (94-ERA-24) in the case of William F. Jocher. While no determination of any violation of NRC regulations has been made to date, the matter could be decided and there is the potential for escalated enforcement action to be taken prior to the disposition of the subject enforcement action. However, in Mr. Jocher's complaint as well, the events in question occurred three and one-half years ago, well beyond the two-year window described in the Enforcement Policy. Consideration of this matter for the purposes of applying the enforcement policy would, therefore, also be inconsistent with the Commission's focus on licensee performance during the prior two years.

Such an unusual chain of events was unlikely to have been considered by the Commission when it adopted the most recent changes to its enforcement policy. However, in recognition that such unusual, abnormal circumstances might arise, the Commission did explicitly provide for discretion by stating in Section VII.B.6 that the NRC may reduce or refrain from issuing a civil penalty based on special circumstances and where application of the normal guidance in the policy is unwarranted. Clearly, a lock-step application of the two-year rule here would yield an unwarranted result inconsistent with the purpose and intent of the Enforcement Policy.

It must also be pointed out that should the U. S. Court of Appeals for the Sixth Circuit find in favor of TVA in the Frady case, and the Administrative Review Board find in favor of TVA in the Jocher case, any enforcement action in the subject case would certainly have to be reconsidered to the extent that such action took into account escalated enforcement actions for the alleged 10 CFR § 50.7 violations.

Finally, it is important that the NRC has recently recognized that DOL-related actions present unique circumstances which, if rigidly applied, would not serve the purpose of the Enforcement Policy. As you recall, on August 1, 1996, NRC issued TVA a Level III violation for events surrounding the response of TVA's Browns Ferry Unit 2 Reactor Core Isolation Cooling System following a reactor scram. In deciding not to impose a civil penalty, NRC discounted an escalated enforcement action which occurred just six months prior to the escalated enforcement at hand. In doing so, the NRC acknowledged that the prior escalated enforcement involved events which occurred in 1993, and considered such fact as part of its determination to exercise enforcement discretion under the above-mentioned Section VII.B.6.

To further consistency within the regulatory process, and for the other reasons expressed above, TVA respectfully requests that any escalated enforcement action applicable to the current matter focus on recent licensee behavior.

If there are any questions, please call me at (423) 843-7001.

Sincerely,

R. J. Adney
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Sequoyah Nuclear Plant

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