



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
101 MARIETTA STREET, N.W., SUITE 2900
ATLANTA, GEORGIA 30323-0199

February 20, 1996

EA 95-252

Tennessee Valley Authority
ATTN: Mr. Oliver D. Kingsley, Jr.
President, TVA Nuclear and
Chief Nuclear Officer
6A Lookout Place
1101 Market Street
Chattanooga, TN 37402-2801

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$80,000
(Department of Labor Case Nos. 92-ERA-19 and 92-ERA-34)

Dear Mr. Kingsley:

As a result of events in 1991, the Secretary of Labor issued a Decision and Order of Remand (Decision) on October 23, 1995, in Department of Labor (DOL) Case Nos. 92-ERA-19 and 92-ERA-34, Frady v. Tennessee Valley Authority. The Secretary of Labor concluded that the Tennessee Valley Authority (TVA) discriminated against Mr. Randolph Frady, a former TVA Nuclear Inspector, when he was not hired for the positions of machinist and steamfitter trainee at the Watts Bar and Sequoyah Nuclear Plants and for the position of Nuclear Inspector at the Sequoyah Plant. In his decision, the Secretary of Labor concluded that TVA failed to hire Mr. Frady because of his engaging in protected activities. The protected activities involved a history of expressing nuclear safety concerns to the licensee and the NRC which were also the subject of a June 1991 settlement agreement with TVA. This Decision reversed the DOL Administrative Law Judge's Recommended Decision and Order issued on January 22, 1993, which found that Mr. Frady failed to establish that the failure of TVA to hire him for the positions at issue was due to his past protected activity. Our letter dated December 8, 1995, transmitted the apparent violation and a copy of the Secretary of Labor's Decision to you and provided you an opportunity to either respond to the apparent violation in writing or request a predecisional enforcement conference. In your January 12, 1996, response, you declined the predecisional enforcement conference, denied the violation, and provided a description of your planned corrective actions and actions taken to ensure that there was no chilling effect resulting from the circumstances surrounding this matter that would discourage employees from raising safety issues.

Based on the information developed by the DOL and a review of the information provided in your January 12, 1996 letter, the NRC adopts the Secretary of Labor's Decision in this case and finds that the adverse actions taken against Mr. Frady were in retaliation for his engaging in protected activities. Therefore, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This violation involves three

instances where TVA failed to comply with the requirements of 10 CFR 50.7, Employee Protection, which prohibits discrimination against an employee for engaging in protected activities.

While discrimination against any person for engaging in protected activities is cause for concern to the NRC, this was a very significant regulatory concern because it involved discrimination against an employee by plant managers substantially above first-line supervision. The NRC places a high value on the freedom provided to nuclear industry employees to raise potential safety concerns to their management and to the NRC. Therefore, this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level II.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$80,000 is considered for a Severity Level II violation. In this case, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. The NRC determined that credit for *Identification* was not appropriate because the violation was identified by a complaint filed with the DOL and not by the licensee. Your actions in response to this matter included: (1) two investigations by the TVA Office of the Inspector General (TVA/OIG) regarding Mr. Frady's concerns, which identified no problems; (2) conduct of ongoing assessments of the effectiveness of the employee concerns resolution program by the TVA/OIG which have concluded that employees at Sequoyah and Watts Bar feel free to report nuclear safety concerns; and (3) initiation of efforts to comply with the Secretary of Labor's Decision in arranging for a mutually agreeable job assignment for Mr. Frady within TVA and ongoing efforts to compute appropriate backpay and compensation for Mr. Frady's legal expenses. NRC further recognizes that the discriminatory acts against Mr. Frady occurred in 1991 and that during the period of DOL review and decision, TVA has taken positive steps to improve the working environment which previously existed at the Watts Bar and Sequoyah plants. In consideration of these facts, NRC determined that credit was warranted for the factor of *Corrective Action*.

Therefore, to emphasize the importance of ensuring that employees who raise real or perceived safety concerns are not subject to discrimination for raising those concerns and that every effort is made to provide an environment in which all employees may freely identify safety issues without fear of retaliation or discrimination, I have been authorized, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in the base amount of \$80,000 for the Severity Level II violation.

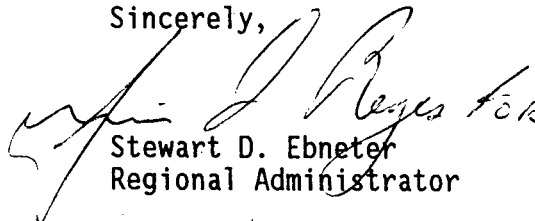
Finally, we note that this is the second civil penalty case involving discrimination violations issued within a week to TVA. Both of these cases involved violations that occurred several years ago at different sites. Nevertheless, these enforcement actions emphasize the importance of TVA corrective actions being comprehensive and effective across all of its sites.

The NRC has concluded that based on your January 12, 1996 submittal, no additional response is required regarding the reasons for the violation, your corrective actions, or the date when full compliance will be achieved, unless the information you have provided does not accurately reflect your corrective actions or your position. However, you are required to respond to the proposed imposition of civil penalty and should do so in accordance with the instructions 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 submitted, will be placed in the NRC Public Document Room (PDR). If you choose to respond, to the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Your staff has stated that TVA plans to appeal the Secretary of Labor's Decision in this case to the United States Court of Appeals for the Sixth Circuit. In the event the case is successfully appealed at a later date and the Secretary of Labor's Decision is reversed, the NRC will reconsider this enforcement action.

Sincerely,



Stewart D. Ebnetter
Regional Administrator

Docket Nos. 50-327, 50-328, 50-390, and 50-391
License Nos. DPR-77, DPR-79, NPF-90, and CPPR-92

Enclosure: Notice of Violation and Proposed
Imposition of Civil Penalty

cc w/encl:
O. J. Zeringue, Senior Vice President
Nuclear Operations
Tennessee Valley Authority
3B Lookout Place
1101 Market Street
Chattanooga, TN 37402-2801

Mark O. Medford, Vice President
Engineering and Technical Services
3B Lookout Place
1101 Market Street
Chattanooga, TN 37402-2801

(cc w/encl cont'd on Page 4)

TVA

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cc w/encl (cont'd):

D. E. Nunn, Vice President
New Plant Completion
Tennessee Valley Authority
3B Lookout Place
1101 Market Street
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R. J. Adney
Site Vice President
Sequoyah Nuclear Plant
Tennessee Valley Authority
P. O. Box 2000
Soddy-Daisy, TN 37379

J. A. Scalice
Site Vice President
Watts Bar Nuclear Plant
Tennessee Valley Authority
Route 2, P. O. Box 2000
Spring City, TN 37381

General Counsel
Tennessee Valley Authority
ET 11H
400 West Summit Hill Drive
Knoxville, TN 37902

P. P. Carrier, Manager
Corporate Licensing
Tennessee Valley Authority
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Ralph H. Shell
Site Licensing Manager
Sequoyah Nuclear Plant
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Soddy-Daisy, TN 37379

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Ann Harris
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Michael H. Mobley, Director
Division of Radiological Health
3rd Floor, L and C Annex
401 Church Street
Nashville, TN 37243-1532

County Judge
Hamilton County Courthouse
Chattanooga, TN 37402

B. S. Schofield
Site Licensing Manager
Watts Bar Nuclear Plant
Tennessee Valley Authority
P. O. Box 2000
Spring City, TN 37381

Honorable Robert Aikman
County Executive
Rhea County Courthouse
Dayton, TN 37321

Honorable Garland Lanksford
County Executive
Meigs County Courthouse
Decatur, TN 37322

Michelle Neal
Energy Project
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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Tennessee Valley Authority
Sequoyah Nuclear Plant
Watts Bar Nuclear Plant

Docket Nos. 50-327, -328, -390, and -391
License Nos. DPR-77 and 79, NPF-90, CPPR-92
EA 95-252

As a result of review of a Secretary of Labor Decision and Order of Remand dated October 23, 1995, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, 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 are 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 include, but are not limited to, reporting of safety concerns by an employee to his employer or the NRC.

Contrary to the above, during the period of July through September 1991, the Tennessee Valley Authority (TVA) discriminated against Mr. Randolph Frady for engaging in protected activities. Specifically, as determined by the Secretary of Labor, TVA failed to hire Mr. Frady for the positions of steamfitter and machinist trainee at the Sequoyah and Watts Bar plants and the position of Nuclear Inspector at the Sequoyah plant for which he had applied because of his history of raising nuclear safety concerns to TVA and the NRC and because Mr. Frady pursued resolution of his prior complaint filed with DOL. (01012)

This is a Severity Level II violation (Supplement VII).
Civil Penalty - \$80,000.

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 will be achieved has already been adequately addressed. However, Tennessee Valley Authority (Licensee) is required to submit a written statement or explanation pursuant to 10 CFR 2.201 within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty if the statements made in its January 12, 1996 response concerning these matters do not accurately reflect your corrective actions or its position. Within the same time as provided for the response noted above, the licensee may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or the cumulative amount of the civil penalties if more than one civil penalty is proposed, 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. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.206 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(s) 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.B.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. 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 response noted above (letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: James Lieberman, 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.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Under the authority of Section 182 of the Act, 42 U.S.C. 2232, a response to this Notice shall be submitted under oath or affirmation.

Dated at Atlanta, Georgia
this 20th day of February 1996