



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 24, 2020

EA-20-006

EA-20-007

Mr. Jim Barstow
Vice President Nuclear Regulatory Affairs
& Support Services
Tennessee Valley Authority
1101 Market Street, LP 4A-C
Chattanooga, TN 37402-2801

SUBJECT: TENNESSEE VALLEY AUTHORITY - NOTICE OF VIOLATION AND
PROPOSED IMPOSITION OF CIVIL PENALTY – \$606,942, NRC OFFICE OF
INVESTIGATIONS REPORT NUMBERS 2-2018-033 AND 2-2019-015

Dear Mr. Barstow:

This letter refers to two investigations completed on October 3, 2019, and January 21, 2020, by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) relating to activities at the Tennessee Valley Authority (TVA). The purpose of these investigations was to determine whether two former employees were the subject of employment discrimination in violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, "Employee Protection."

On June 30, 2020, a remote predecisional enforcement conference (PEC) was conducted with you and members of your staff to discuss the apparent violations, their significance, their root causes, and your corrective actions.¹ The conference was closed to public observation pursuant to NRC practice regarding cases involving potential discrimination or other wrongdoing.

Based on the NRC OI investigations, statements at PECs, exhibits, and supplemental information, the NRC has determined that four violations of 10 CFR 50.7 occurred. These violations are cited in the enclosed Notice of Violation (Notice).

¹ Due to the ongoing COVID-19 pandemic, the PEC was held remotely via video teleconference.

NRC OI investigation 2-2018-033 (October 3, 2019)

The NRC determined that a former employee was first subjected to an investigation (after the former Director of Corporate Nuclear Licensing (CNL) filed a formal complaint) and then placed on administrative leave on May 25, 2018, in part, for engaging in protected activity (see Attachment 1).

- Violation 1: Based on the deliberate action and the level of manager involved in the adverse action (the former Director of CNL), this violation has been categorized in accordance with the “NRC Enforcement Policy,” at Severity Level (SL) II.
- Violation 2: Based on the level of the manager involved in the adverse action (an executive-level corporate manager), this violation has been categorized in accordance with the “NRC Enforcement Policy,” at SL II.

NRC OI investigation 2-2019-015 (January 21, 2020)

The NRC determined that a second former employee was first subjected to an investigation (after the former Director of CNL filed a formal complaint). The former employee was subsequently placed on paid administrative leave on October 15, 2018, and terminated on January 14, 2019, in part, for engaging in the protected activity (see Attachment 2).

- Violation 3: Based on the deliberate action and the level of manager involved in the adverse action (the former Director of CNL), this violation has been categorized in accordance with the “NRC Enforcement Policy,” at SL II.
- Violation 4: Based on the deliberate action and the level of the manager involved in the adverse action (the former Vice President of Regulatory Affairs), this violation has been categorized in accordance with the “NRC Enforcement Policy,” at SL I.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$240,000 is considered for each SL II violation and a base civil penalty in the amount of \$300,000 is considered for the SL I violation of 10 CFR 50.7, “Employee Protection.” Because this was not the first non-willful SL III violation within 2 years (these are SL I and SL II), the NRC considered whether credit was warranted for identification and corrective action. Credit is not warranted for identification, as the violations were identified by the NRC. Credit for corrective action is not warranted in this case. The licensee’s actions are neither comprehensive to address the broader environment for raising concerns, nor do they identify and address the root cause of the retaliation and discrimination. Additionally, TVA did not present sufficient information that an extent of cause and extent of condition had been evaluated and addressed to preclude recurrence of the violations.

Because violations 1 and 2 are related to one individual, the NRC considers this a single SL II problem with a civil penalty of twice the base amount of \$240,000 because neither identification

nor corrective action credit was warranted. Similarly, because violations 3 and 4 are related to one individual, the NRC considers this a single SL I problem with a civil penalty of twice the base amount of \$300,000 because neither identification nor corrective action credit was warranted. Therefore, the total civil penalty of these two problems is \$1,080,000. However, the base civil penalty of \$240,000 for SL II is doubled but capped at the statutory maximum of \$303,471 for a single day violation. The base civil penalty of \$300,000 for SL I is doubled but capped at the statutory maximum of \$303,471 for a single day violation. Therefore, to emphasize the importance of prompt identification and correction of violations, I have been authorized, as provided for in Section 2.3.4 of the Enforcement Policy, and after consultation with the Commission, to issue the enclosed Notice of Violation (Notice) and Proposed Imposition of Civil Penalty of \$606,942 (2 X \$303,471).

If you disagree with this enforcement sanction, you may deny the violations, as described in the Notice, or you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral party (the "mediator") works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's ADR program can be found at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>.

The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. If you are interested in pursuing this issue through the ADR program, please contact: (1) the ICR at 877-733-9415; and (2) Catherine Thompson at 301-287-9515 or email catherine.thompson@nrc.gov, or Ian Gifford at 301-287-9216 or email ian.gifford@nrc.gov within 10 days of the date of this letter. If you decide to participate in ADR, your submitted signed agreement to mediate using the NRC ADR program will stay the 30-day time period for payment of the civil penalty until the ADR process is completed.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be made available electronically for public inspection in the NRC Public Document Room and from ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary information so that it can be made available to the

public without redaction. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

If you have any questions concerning this matter, please contact Catherine Thompson at 301-287-9515 or email catherine.thompson@nrc.gov, or Ian Gifford at 301-287-9216 or email ian.gifford@nrc.gov.

Sincerely,

George A. Wilson, Director
Office of Enforcement

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods
3. NUREG/BR-0317 Rev. 2, Enforcement Alternative Dispute Resolution Program

Docket Nos.: 05000259, 05000260
05000296, 05000327
05000328, 05000390
05000391

License No.: DPR-33, DPR-52,
DPR-68, DPR-77,
DPR-79, NPF-90,
NPF-96

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DATED: 8/24/ 2020

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X- Public X- Non-Sensitive
ADAMS Package: ML20218A483
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OFFICE	OE:CRB	OE:CRB	OE: CRB/BC	OGC/NLO	OE:D
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NRC OI investigation 2-2018-033 (October 3, 2019)

Based on the NRC OI investigation, statements at PECs, exhibits, and supplemental information, the NRC determined that a former employee (Individual A) was first subjected to an investigation and then placed on administrative leave on May 25, 2018, in part, for engaging in protected activities. The NRC determined that the former employee engaged in protected activity when raising concerns regarding the regulatory response to the Kirk Key and Service Life Non-Cited Violations (NCVs), filing Employee Concerns Program (ECP) complaints regarding the former Director of CNL's alleged creation of a chilled work environment, and raising concerns to both the TVA Corporate Functional Area Manager and a TVA Office of General Counsel (OGC) attorney regarding the chilled work environment in CNL. The individuals involved in adverse actions against the former employee were aware of the protected activities because: 1) the former employee expressed concerns regarding the NCVs directly to the former Vice President of Regulatory Affairs and the former Director of CNL; 2) the former Vice President of Regulatory Affairs, former Director of CNL, and an executive-level corporate manager received direct communication from the ECP regarding those complaints; and 3) the former Vice President of Regulatory Affairs and an executive-level corporate manager received a copy of the TVA OGC report that discussed the former employee's concerns.

The former employee suffered an adverse action when the former Director of CNL filed a complaint, which triggered an investigation, against the former employee, and a second adverse action when the former employee was placed on administrative leave.

There is a nexus between the former employee raising concerns and the former Director of CNL filing a formal complaint. Specifically, the former employee raised numerous concerns via emails and text messages about delays regarding the Kirk Key NCV as well as a chilled work environment in CNL. On March 9, 2018, the former Director of CNL filed a formal complaint against the former employee and others, triggering an investigation. The former Director of CNL cited the ECP concerns filed by the former employee, as well as the various emails and text messages as examples of harassing behavior. Similarly, there is a nexus between the former employee filing ECP complaints and raising chilled work environment concerns, and the former employee being put on administrative leave. The executive-level corporate manager, who played a significant role in the decisionmaking process to put the former employee on administrative leave, was aware that the former employee's ECP complaint had been partially substantiated because the executive-level corporate manager received a letter requiring action from ECP regarding this complaint. Upon receipt of the TVA OGC report, which based its finding that the former employee had harassed the former Director of CNL through allegedly unfounded ECP complaints, the executive-level corporate manager drove to the site and communicated the joint recommendation of himself, TVA OGC, TVA HR, and Corporate Nuclear Operations that the Sequoyah Plant Support Director put the former employee on administrative leave.

NRC OI investigation 2-2019-015 (January 21, 2020):

Based on an investigation by the NRC OI, statements at PECs, exhibits, and supplemental information provided by the licensee and the individuals involved, the NRC determined that a former corporate employee (Individual B) was subjected to an investigation, then placed on paid administrative leave on October 15, 2018, and terminated on January 14, 2019, in part, for engaging in protected activity. The NRC determined that the former employee engaged in protected activity when expressing concerns regarding a chilled work environment, including, but not limited to, expressing concerns to a TVA OGC attorney during an investigation and to the former Vice President of Regulatory Affairs regarding the chilled work environment created by the former Director of CNL. The former Director of CNL was aware of the former employee's protected activity because the former Director of CNL identified the activity in a formal complaint as an example of harassing behavior. The former Vice President of Regulatory Affairs was aware of the former corporate employee's protected activity of raising concerns regarding the chilled work environment because the former corporate employee raised these concerns directly to the former Vice President of Regulatory Affairs. The former Vice President of Regulatory Affairs also received a copy of the TVA OGC draft investigation report prepared by the TVA OGC attorney that identified the concerns of the former corporate employee.

The former corporate employee suffered an adverse action when the former Director of CNL filed a complaint, which triggered an investigation, and when the former Vice President of Regulatory Affairs played a significant role in the decisionmaking process to place the former corporate employee on paid administrative leave and terminate the former corporate employee.

There is a nexus between the former corporate employee's protected activity of raising concerns about a chilled work environment and the former Director of CNL filing a complaint, which triggered an investigation of the former employee. The former Director of CNL identified in the complaint a belief that the former corporate employee was the source of the allegation of a chilled work environment and identifies this as an "act of harassment." Thus, the document that triggered an investigation of the former corporate employee, which was the former Director of CNL's complaint, demonstrates the nexus between the protected activity and the adverse action. There is also a nexus between the former corporate employee's protected activity of raising concerns about a chilled work environment and the former Vice President of Regulatory Affairs' significant role in the decisionmaking process to terminate the former corporate employee. The former Vice President of Regulatory Affairs stated that the former corporate employee was terminated for being "disrespectful" to the former Director of CNL. However, the examples used in the TVA OGC investigation report as evidence that the former corporate employee was disrespectful to the former Director of CNL were: 1) the former corporate employee raised concerns about a chilled work environment during a TVA OGC investigation; and 2) the former corporate employee raised concerns about reprisal directly to the former Vice President of Regulatory Affairs. The former Vice President of Regulatory Affairs admits never counseling the former corporate employee about the asserted disrespectful behavior.