

From: Solorio, Dave
Sent: Monday, August 24, 2020 4:40 PM
To: Henderson, Erin Kathleen
Cc: jbarstow@tva.gov; timothy.walsh@pillsburylaw.com; Thompson, Catherine; Gifford, Ian; Kirkwood, Sara
Subject: Final Letter
Attachments: EH - cover letter and NOV 8.24.pdf; TVA NOV 8.24.20.pdf

Ms. Henderson

Please find attached letter and NOV as referenced in this morning's call.

Please reply so we will know you received this.

Thank you
David Solorio
Branch Chief
Concerns Resolution Branch
Office of Enforcement

Hearing Identifier: JShea_IA_NonPublic
Email Number: 423

Mail Envelope Properties (DM8PR09MB608863946AF08C2048213A4D86560)

Subject: Final Letter
Sent Date: 8/24/2020 4:39:45 PM
Received Date: 8/24/2020 4:39:46 PM
From: Solorio, Dave

Created By: Dave.Solorio@nrc.gov

Recipients:

"jbarstow@tva.gov" <jbarstow@tva.gov>
Tracking Status: None
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"Thompson, Catherine" <Catherine.Thompson@nrc.gov>
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"Kirkwood, Sara" <Sara.Kirkwood@nrc.gov>
Tracking Status: None
"Henderson, Erin Kathleen" <ekwest@tva.gov>
Tracking Status: None

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Files	Size	Date & Time
MESSAGE	245	8/24/2020 4:39:46 PM
EH - cover letter and NOV 8.24.pdf		360728
TVA NOV 8.24.20.pdf	98068	

Options

Priority: Normal
Return Notification: No
Reply Requested: No
Sensitivity: Normal
Expiration Date:



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

August 24, 2020

IA-20-009

Ms. Erin Henderson
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390]

SUBJECT: NOTICE OF VIOLATION, NUCLEAR REGULATORY COMMISSION OFFICE OF INVESTIGATIONS REPORT NOS. 2-2018-033 AND 2-2019-015

Dear Ms. Henderson:

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) concerning your activities at the Tennessee Valley Authority (TVA). The purpose of these NRC OI 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 23, 2020, a remote predecisional enforcement conference (PEC) was conducted with you to discuss the apparent violation, the significance, the root causes, and your corrective actions.¹

Based on the information developed during the investigations, statements at the PEC, exhibits, and supplemental information, the NRC has determined that a deliberate violation of NRC requirements occurred. This violation is cited in the enclosed Notice of Violation (Notice) (Enclosure 1).

NRC OI investigation 2-2018-033: The NRC determined that a former Sequoyah employee was subjected to an investigation, in part, for engaging in protected activity. 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) and when filing Employee Concerns Program (ECP) complaints alleging that you created a chilled work environment. You were aware of the protected activities because: 1) the former employee expressed concerns regarding the NCVs directly to you and 2) you received direct communication from the ECP regarding those complaints.

The former employee suffered an adverse action when you filed a complaint, dated March 9, 2018, triggering an investigation as to whether the former employee harassed you. There is a nexus between the former employee raising concerns and your filing a complaint, which

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

triggered the investigation. Specifically, the former employee raised concerns via emails and text messages about delays regarding the Kirk Key NCV, as well as a chilled work environment in Corporate Nuclear Licensing (CNL). On March 9, 2018, you filed a complaint against the former employee, triggering an investigation. As examples of alleged harassment, you cited the ECP concerns the former employee had filed as well as the emails and text messages wherein the former employee stated his concerns about a chilled work environment and his concerns about the resolution of the Kirk Key NCV.

NRC OI investigation 2-2019-015: The NRC determined that the former employee was subjected to an investigation, in part, for engaging in protected activity. The NRC determined that the former employee engaged in protected activity when expressing concerns regarding the chilled work environment that you were creating. The NRC determined that you were aware of the former employee's protected activity because you identified this activity in your formal complaint as an example of the former employee's harassing behavior.

The former employee suffered an adverse action when you filed a complaint, dated March 9, 2018, triggering an investigation into whether the former employee harassed you. There is a nexus between the former employee's protected activity of raising concerns about a chilled work environment and your filing a complaint, which triggered the investigation. In your complaint, you identify the former employee as the source of the allegation of a chilled work environment and cite this allegation against you as an example of an "act of harassment." Thus, the document that triggered the former employee's investigation, your complaint, demonstrates the nexus between the protected activity and the adverse action.

Your deliberate actions placed TVA in violation of 10 CFR 50.7, "Employee Protection," and you in violation of 10 CFR 50.5, "Deliberate Misconduct." Enclosure 2 includes a copy of the letter and Notice of Violation issued to TVA. Given the significance of the underlying issue and the deliberate nature of your actions, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level II.

In determining the appropriate sanction to be issued in this case, the NRC considered issuing an Order prohibiting your involvement in NRC-licensed activities as a result of your actions. However, because you were not the decisionmaker that placed the former employees on paid administrative leave or terminated the former corporate employee, I have decided to issue the enclosed Notice of Violation.

You should be aware that if you are involved in NRC-licensed activities in the future, additional deliberate violations could result in more significant enforcement action or criminal penalties.

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 enclosure(s), and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (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, proprietary, or safeguards 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/>). In addition, this letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. This system, which is not publicly-accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

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

Digitally signed by George A.
Wilson
Date: 2020.08.24 11:58:22
-04'00'

George A. Wilson, Director
Office of Enforcement

Enclosures:

1. Notice of Violation
2. Notice of Violation to TVA

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

SUBJECT: NOTICE OF VIOLATION, NUCLEAR REGULATORY COMMISSION OFFICE OF
 INVESTIGATIONS REPORT NOS. 2-2018-033 AND 2-2019-015
 DATED: 8/24/2020

DISTRIBUTION:

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 A. Shuttleworth, OI
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NOV to TVA: ML20232B803

OFFICE	OE:CRB	OE:CRB	OE: CRB/BC	OGC/NLO	OE:D
NAME	IGifford	CThompson	DSolorio	SKirkwood	GWilson
DATE	8/20/2020	8/20/2020	8/20/2020	8/19/2020	8/24/2020

OFFICIAL RECORD COPY

NOTICE OF VIOLATION

Ms. Erin Henderson
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390]

IA-20-009

During U.S. Nuclear Regulatory Commission (NRC) investigations completed on October 3, 2019 (NRC OI 2-2018-033), and January 21, 2020 (2-2019-015), a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 50.5 (a) states, in relevant part, that any employee of a licensee may not:
(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission.

10 CFR 50.7 (a) states, in relevant part, that discrimination by a Commission licensee against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment.

Contrary to the above, on March 9, 2018, you engaged in deliberate misconduct that caused the Tennessee Valley Authority (TVA), an NRC licensee, to engage in discrimination against a former Sequoyah employee and a former corporate employee for engaging in protected activities. Specifically:

- a.) a former Sequoyah employee engaged in protected activity by raising concerns regarding a chilled work environment, filing complaints with the Employee Concerns Program, and by raising concerns regarding the response to two non-cited violations. After becoming aware of this protected activity, you, as the Director of Corporate Nuclear Licensing, filed a formal complaint against the former employee. The formal complaint triggered an investigation by the TVA Office of the General Counsel that ultimately resulted in the former employee being placed on administrative leave. Your action was based, at least in part, on the former employee engaging in protected activity.
- b.) a former corporate employee engaged in protected activity by raising concerns of a chilled work environment. After becoming aware of this protected activity, you, as the Director of Corporate Nuclear Licensing, filed a formal complaint against the former employee. The formal complaint triggered an investigation by the TVA Office of the General Counsel that ultimately resulted in the former employee being placed on administrative leave and then terminated. Your action was based, at least in part, on the former employee engaging in protected activities.

This is a Severity Level II violation.

Pursuant to the provisions of 10 CFR 2.201, Ms. Henderson is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, and marked "Open by Addressee Only," within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be

clearly marked as a "Reply to a Notice of Violation; IA-20-009" and should include: (1) the reason for the violation, or, if contested, the basis for disputing the violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an Order or a Demand for Information may be issued requiring information as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Your response will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's Agencywide Document Access and Management System (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, proprietary, or safeguards information so that it can be made available to the public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21. This letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. This system, which is not publicly-accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Dated 24th day of August 2020

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Sequoyah
Watts Bar
Browns Ferry

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

License Nos.: DPR-33, DPR-52,
DPR-68, DPR-77,
DPR-79, NPF-90,
NPF-96

EA-20-006

EA-20-007

U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) Report No. 2-2018-033, completed on October 3, 2019, and OI Report No. 2-2019-015, completed on January 21, 2020, identified four violations of an NRC regulation, Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7. In accordance with the NRC Enforcement Policy, the NRC 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 violations and associated civil penalties are set forth below:

- A. 10 CFR 50.7(a), states, in part, that “Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment.”
1. Contrary to the above, on March 9, 2018, the Tennessee Valley Authority (TVA) discriminated against a former Sequoyah employee for engaging in protected activity. Specifically, the former Sequoyah employee engaged in protected activity by raising concerns regarding a chilled work environment, filing complaints with the Employee Concerns Program, and by raising concerns regarding the response to two non-cited violations. After becoming aware of this protected activity, the former Director of Corporate Nuclear Licensing (CNL) filed a formal complaint against the former employee. The filing of a formal complaint triggered an investigation by the TVA Office of the General Counsel. This action was based, at least in part, on the former employee engaging in protected activity.

2. Contrary to the above, on May 25, 2018, TVA discriminated against a former Sequoyah employee for engaging in a protected activity. Specifically, the former Sequoyah employee engaged in protected activity by raising concerns about a chilled work environment, filing complaints with the Employee Concerns Program, and raising concerns about the regulatory response the Kirk Key and Service Life non-cited violations. After becoming aware of this protected activity, TVA placed the former employee on paid administrative leave until the former employee resigned in August 2018. This action was based, at least in part, on the former employee engaging in protected activity.

This is Severity Level II problem (Enforcement Policy Sections 2.2.1.d, 6.10).
Civil Penalty - \$303,471

- B. 10 CFR 50.7(a), states, in part, that “Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment.”

1. Contrary to the above, on March 9, 2018, TVA discriminated against a former corporate employee for engaging in protected activity. Specifically, the former corporate employee engaged in protected activity by raising concerns of a chilled work environment. After becoming aware of this protected activity, the former Director of CNL filed a formal complaint against the former employee. The filing of a formal complaint triggered an investigation by the TVA Office of the General Counsel that resulted in the former employee being placed on paid administrative leave followed by termination. This action was based, at least in part, on the former employee engaging in a protected activity.
2. Contrary to the above, on January 14, 2019, TVA discriminated against a former corporate employee for engaging in protected activity. Specifically, the former corporate employee engaged in protected activity by raising concerns of a chilled work environment to the former Vice President of Regulatory Affairs and a TVA attorney during a TVA Office of the General Counsel investigation. After becoming aware of this protected activity, the former Vice President of Regulatory Affairs played a significant role in the decisionmaking process to place the former employee on paid administrative leave and terminate the former employee. These actions were based, at least in part, on the former employee engaging in a protected activity.

This is Severity Level I problem (Enforcement Policy Sections 2.2.1.d, 6.10).
Civil Penalty - \$303,471

Combined total Civil Penalty: \$606,942.

Pursuant to the provisions of 10 CFR 2.201, the Tennessee Valley Authority is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a copy to the Document Control Desk, Washington, DC 20555-0001, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty. This reply should be clearly marked as a "Reply to a Notice of Violation (EA-20-06 and EA-20-07)" and should include for the violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken to avoid further violations; (4) your plan and schedule for completing short and long term corrective actions and (5) the date when full compliance will be achieved.

Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, the NRC may issue an order or a Demand for Information requiring you to explain why your license should not be modified, suspended, or revoked or why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown.

TVA may pay the civil penalty in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer within 30 days of the date of this Notice addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation (EA-20-06 and EA-20-07)" and may: (1) deny the violation 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 response should address the factors addressed in Section 2.3.4 of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205 should be set forth separately from the statement or explanation provided 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 which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, 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 responses noted above (i.e., Reply to Notice of Violation, Statement as to payment of civil penalty(ies), and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S., Nuclear Regulatory Commission, Region II, 245 Peachtree Center Ave. N.E., Suite 1200, Atlanta, GA 30303, and the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice."

Your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System (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. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 24th day of August 2020.