

From: Thompson, Catherine
Sent: Thursday, October 29, 2020 12:52 PM
To: Barstow, James
Cc: Walsh, Timothy J.; Wilson, George; Solorio, Dave; Peduzzi, Francis; Gifford, Ian; Kirkwood, Sara
Subject: Order Imposing Civil Penalty
Attachments: TVA cover letter for order 10.29.pdf; TVA Imposition Order signed.pdf; TVA Imposition Order Appendix.pdf; NUREG-BR-0254R9 (1).pdf; NUREG-BR-0317 approved by jth 05-02- (K) (2).pdf

Mr. Barstow,

Please find attached: 1) cover letter, 2) Order Imposing Civil Penalty, 3) Appendix to the Order, 4) NUREG-BR-0254R9 Payment Methods, and 5) NUREG-BR-0317 Enforcement Alternative Dispute Resolution Program.

Thank you,
Catherine Thompson
Office of Enforcement
USNRC

Hearing Identifier: JShea_IA_NonPublic
Email Number: 485

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Subject: Order Imposing Civil Penalty
Sent Date: 10/29/2020 12:52:12 PM
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From: Thompson, Catherine

Created By: Catherine.Thompson@nrc.gov

Recipients:

"Walsh, Timothy J." <timothy.walsh@pillsburylaw.com>
Tracking Status: None
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Tracking Status: None
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"Gifford, Ian" <Ian.Gifford@nrc.gov>
Tracking Status: None
"Kirkwood, Sara" <Sara.Kirkwood@nrc.gov>
Tracking Status: None
"Barstow, James" <jbarstow@tva.gov>
Tracking Status: None

Post Office: MN2PR09MB4747.namprd09.prod.outlook.com

Files	Size	Date & Time
MESSAGE	294	10/29/2020 12:52:15 PM
TVA cover letter for order 10.29.pdf		188744
TVA Imposition Order signed.pdf		160631
TVA Imposition Order Appendix.pdf		142525
NUREG-BR-0254R9 (1).pdf	413744	
NUREG-BR-0317 approved by jth 05-02- (K) (2).pdf		1081071

Options

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



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

October 29, 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: ORDER IMPOSING CIVIL PENALTY – \$606,942 - TENNESSEE VALLEY
AUTHORITY

Dear Mr. Barstow:

This refers to your letter dated September 23, 2020, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent as an enclosure to our letter dated August 24, 2020. Our letter and Notice describe four violations of Title 10 of the *Code of Federal Regulations* (10 C.F.R.) § 50.7, "Employee Protection," identified during 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).

To emphasize the importance of 10 C.F.R. § 50.7 and prompt identification and correction of violations, a civil penalty of \$606,942 (2 X \$303,471) was proposed.

In your response, you denied all four violations. You also stated that if the NRC continues to believe that the violations occurred, then at a minimum the NRC should reduce the severity level of the alleged violations and commensurately reduce the civil penalty.

For the reasons given in the Appendix attached to the enclosed Order Imposing Civil Monetary Penalty, we have concluded that four violations of 10 C.F.R. § 50.7 occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed. Accordingly, we hereby serve the enclosed Order on TVA imposing a civil monetary penalty in the amount of \$606,942. Within 30 days of the date of the enclosed Order, you should either (1) pay the civil penalty in accordance with Section IV of the Order or (2) request a hearing in accordance with Section V of the Order.

You may request Alternate 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, 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/aboutnrc/regulatory/enforcement/adr.html>, as well as NRC brochure NUREG/BR-0317, "Enforcement Alternative Dispute Resolution Program," Revision 2 (ADAMS Accession No. ML18122A101). 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 resolution of this issue through ADR, you must contact ICR at (877) 733-9415 within 10 calendar days of the date of this letter. Additionally, 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 within 10 calendar days of the date of this letter if you choose to participate in ADR. A request to pursue resolution through ADR will extend the time period to pay the civil penalty or request a hearing.

In accordance with 10 C.F.R. § 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document 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 (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

George
A. Wilson

Digitally signed by
George A. Wilson
Date: 2020.10.29
12:21:15 -04'00'

George A. Wilson, Director
Office of Enforcement

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

Enclosures: Order Imposing Civil Monetary Penalty
NUREG/BR-0254 Payment Methods
NUREG/BR-0317 Enforcement Alternative
Dispute Resolution Program

SUBJECT: ORDER IMPOSING CIVIL PENALTY – \$606,942 - TENNESSEE VALLEY
AUTHORITY Dated: 10/29/2020

Distribution:

- P. Moulding, OGC
- A. Shuttleworth, OI
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- M. Miller, RII
- S. Sparks, RII
- M. Kowal, RII
- OE ADAMS R/F

Publicly Available

ADAMS Package Accession No.: **ML20297A525**

Cover Letter: **ML20297A534**

Order: **ML20297A544**

Appendix: **ML20297A552**

OFFICE	OE: CRB	OE:CRB	OE: CRB/BC	OGC/NLO	OE: D
NAME	IGifford	CThompson	DSolorio	SKirkwood	GWilson
DATE	10/28/2020	10/28/2020	10/29/2020	10/29/2020	10/29/2020

OFFICIAL RECORD COPY

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
TENNESSEE VALLEY AUTHORITY) Docket Numbers: 05000259, 05000260,
) 05000296, 05000327,
CHATTANOOGA, TENNESSEE) 05000328, 05000390,
) 05000391
) License Numbers: DPR-33, DPR-52,
) DPR-68, DPR-77,
) DPR-79, NPF-90,
) NPF-96
) EA-20-006
) EA-20-007

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Tennessee Valley Authority (TVA) holds Browns Ferry Units 1, 2, and 3 License Nos. DPR-33, DPR-52, and DPR-68 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 C.F.R.), on December 20, 1973, June 28, 1974, and July 2, 1976, respectively. The units are located on the Licensee's site in Athens, Alabama. TVA holds Sequoyah Units 1 and 2 License Nos. DPR-77 and DPR-79 issued by the NRC pursuant to 10 C.F.R. Part 50, on September 17, 1980, and September 15, 1981, respectively. The units are located on the Licensee's site in Soddy-Daisy, Tennessee. TVA holds Watts Bar Units 1 and 2 License Nos. NPF-90 and NPF-96 issued by the NRC pursuant to 10 C.F.R. Part 50, on February 7, 1996, and October 22, 2015, respectively. The units are located on the Licensee's site in Spring City, Tennessee. The licenses authorize the operation of these facilities in accordance with the conditions specified therein.

II

Two investigations were completed on October 3, 2019 (2-2018-033), and January 21, 2020 (2-2019-015), by the NRC Office of Investigations (OI). The results of these investigations indicated that the Licensee had not conducted its activities in compliance with NRC requirements, specifically, 10 C.F.R. § 50.7, "Employee Protection."

A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to the Licensee by letter dated August 24, 2020. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in a letter dated September 23, 2020. In its response, the Licensee denied all four violations and stated that, if the NRC continues to believe that the violations occurred, then at a minimum the NRC should reduce the severity level of the alleged violations and commensurately reduce the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has, as set forth in the Appendix to this Order, determined that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 C.F.R. § 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of \$606,942 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time payment is made, the Licensee shall submit a statement indicating when and by what method payment was made to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

V

In accordance with 10 C.F.R. § 2.202, "Orders," TVA must, and any other person adversely affected by this Order may, submit an answer to this Order within 30 days of the date of the Order. In addition, TVA and any other person adversely affected by this Order may request a hearing on this Order within 30 days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 C.F.R. § 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at

77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at <https://www.nrc.gov/site-help/e-submittals.html>. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due

date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals.html>, by e-mail to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 C.F.R. §2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class

mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.


Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by a licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 30 days from the date of this Order without further order or proceedings. If an extension of time for

requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. If payment has not been made by the time specified above, the matter may be referred to the Attorney General for collection.

FOR THE NUCLEAR REGULATORY COMMISSION

**George A.
Wilson**

 Digitally signed by George A.
Wilson
Date: 2020.10.29 08:31:56
-04'00'

George A. Wilson, Director
Office of Enforcement

Dated this 29th day of October 2020

APPENDIX

EVALUATION AND CONCLUSION

On August 24, 2020, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for four violations identified during two NRC investigations: Report of Investigation (ROI) No. 2-2018-033, completed on October 3, 2019, and ROI No. 2-2019-015, completed on January 21, 2020. Tennessee Valley Authority (TVA) (Licensee) responded to the Notice on September 23, 2020. The Licensee denied all four violations and stated that if the NRC continues to believe that the violations occurred, then at a minimum the NRC should reduce the severity levels of the alleged violations and commensurately reduce the civil penalty. The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

Restatement of Disputed Violation 1

Title 10 of the *Code of Federal Regulations* (10 C.F.R.) § 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."

Contrary to the above, on March 9, 2018, 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 (ECP), 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 (TVA OGC). This action was based, at least in part, on the former employee engaging in protected activity.

Summary of Licensee's Response to Violation 1

TVA disagrees that the former Director of CNL's act of filing a formal complaint was in retaliation for the former Sequoyah employee's protected activity. Rather, TVA states that the former Director of CNL filed the formal complaint for other, legitimate reasons, not because of the former Sequoyah employee's purported protected activities. Specifically, TVA states that the former Director of CNL filed the formal complaint to address the "sustained pattern of disrespectful, unprofessional, and otherwise inappropriate conduct directed towards her by the former Sequoyah employee and others over the prior two years." TVA goes on to state that "the Complaint was filed after a culmination of many events and not driven by any one event in particular."

TVA states that the formal complaint was appropriately referred to the TVA OGC for an independent investigation and the former Director of CNL "had no involvement in that investigation or in the personnel decision that followed."

TVA also disagrees that filing a formal complaint constitutes an adverse action under 10 C.F.R. § 50.7.

NRC Evaluation of Licensee's Response to Violation 1

TVA attributes the former Director of CNL's decision to include the former Sequoyah employee in the formal complaint to nonprotected activities, specifically a "sustained pattern of disrespectful, unprofessional, and otherwise inappropriate conduct." However, based on an evaluation of the ROI, the formal complaint filed by the former Director of CNL, and exhibits and statements during the predecisional enforcement conference (PEC), the NRC staff determined that the former Sequoyah employee's raising of concerns related to responses to non-cited violations and contacting the ECP are protected activities and were contributing factors to filing the formal complaint. NRC staff determined that TVA's reasons do not present clear and convincing evidence to show that filing the formal complaint against the former Sequoyah employee was for nonprohibited considerations, in accordance with 10 C.F.R. § 50.7(d).

The NRC staff determined that filing the formal complaint that triggered an investigation is considered an adverse action in this case. When an investigation is so closely related to a personnel action that it could be a pretext for gathering evidence to retaliate, it is an adverse action.

Restatement of Disputed Violation 2

10 C.F.R. § 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."

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 ECP, 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.

Summary of Licensee's Response to Violation 2

TVA disagrees that placing the former Sequoyah employee on paid administrative leave was based in part on the former Sequoyah employee engaging in protected activity. Rather, TVA states that the former Sequoyah employee was placed on paid leave due to nonprohibited considerations that violated TVA policies and federal statutes.

NRC Evaluation of Licensee's Response to Violation 2

TVA attributes the decision to place the former Sequoyah employee on paid administrative leave to nonprotected activities. However, based on an evaluation of the ROI, the formal complaint filed by the former Director of CNL, exhibits and statements during the PEC, and the TVA OGC Report, the NRC staff determined that the former Sequoyah employee's raising of concerns related to responses to non-cited violations, filing complaints with the ECP, and raising concerns of a chilled work environment to TVA management and a TVA attorney during a TVA OGC investigation are protected activities and were contributing factors to placing the former

Sequoyah employee on paid administrative leave. NRC staff determined that TVA's reasons do not present clear and convincing evidence to show that placing the former Sequoyah employee on paid administrative leave was for nonprohibited considerations, in accordance with 10 C.F.R. § 50.7(d).

Restatement of Disputed Violation 3

10 C.F.R. § 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."

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 OGC 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.

Summary of Licensee's Response to Violation 3

TVA disagrees that the former Director of CNL's act of filing a formal complaint was in retaliation for the former corporate employee's protected activity and states that they are unaware of any evidence indicating that the former Director of CNL included the former corporate employee in the formal complaint because of protected activities or technical concerns. TVA states that the former corporate employee was terminated for "disrespectful and unprofessional conduct" that occurred after the formal complaint was filed and, therefore, the formal complaint cannot be linked to the adverse action. TVA also states that the formal complaint ultimately uncovered additional wrongdoing by the former corporate employee.

TVA also disagrees that filing a formal complaint constitutes an adverse action under 10 C.F.R. 50.7.

NRC Evaluation of Licensee's Response to Violation 3

While TVA states that they are unaware of any evidence indicating that the former Director of CNL included the former corporate employee in the formal complaint because of protected activities, the NRC staff reviewed the former Director of CNL's formal complaint that identifies the former corporate employee as the potential source of an allegation to the NRC that triggered a chilled work environment inspection. Contacting the NRC with concerns of a chilled work environment is a protected activity and was a contributing factor in the decision to include the former corporate employee in the formal complaint. NRC staff determined that TVA's reasons do not present clear and convincing evidence to show that the former corporate employee's inclusion in the formal complaint was for nonprohibited considerations, in accordance with 10 C.F.R. § 50.7(d).

The NRC staff determined that filing the formal complaint that triggered an investigation is considered an adverse action in this case. When an investigation is so closely related to a

personnel action that it could be a pretext for gathering evidence to retaliate, it is an adverse action.

Restatement of Disputed Violation 4

10 C.F.R. § 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.”

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 OGC 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.

Summary of Licensee's Response to Violation 4

TVA disagrees that placing the former corporate employee on paid administrative and terminating her employment were based in part on protected activity. Rather, TVA states that the decision to terminate the former corporate employee was based on “numerous disrespectful, unprofessional, and deliberately false statements about her supervisor, the former Director of CNL.” TVA states that the termination was reviewed by the Executive Review Board to ensure that the proposed adverse action was consistent with TVA practices and not based on retaliation for protected activities.

NRC Evaluation of Licensee's Response to Violation 4

TVA attributes the decision to terminate the former corporate employee to nonprotected activities. However, based on an evaluation of the ROI, the formal complaint filed by the former Director of CNL, exhibits and statements during the PEC, and the TVA OGC Report, the NRC staff determined that the former corporate employee’s alleged contact with the NRC regarding concerns of a chilled work environment, statements to the former Vice President of Regulatory Affairs regarding concerns of retaliation by the former Director of CNL, and statements made to a TVA attorney during an investigation about the work environment within CNL are protected activities and were contributing factors in the decision to terminate the former corporate employee. NRC staff determined that TVA’s reasons for terminating the former corporate employee do not present clear and convincing evidence to show that the termination was for nonprohibited considerations, in accordance with 10 C.F.R. § 50.7(d).

Summary of Licensee's Request for Mitigation of Civil Penalty Amount

TVA denies all alleged violations and states that the NRC should impose no civil penalty. TVA states that, if the NRC continues to believe that violations occurred, then at a minimum the NRC should reduce the severity level of the alleged violations and commensurately reduce the civil penalty.

As TVA believes that no violations of NRC requirements occurred, TVA has taken no corrective steps. However, TVA has identified some areas that need managerial improvement notwithstanding that TVA does not believe any NRC requirements were violated. TVA has taken the following steps: (1) future revision to the adverse action procedure to ensure that temporary suspension with pay will constitute a non-Executive Review Board action, (2) implementation of a pilot Nuclear Investigation Protocol, and (3) communication from the TVA Chief Nuclear Officer to TVA's nuclear workforce providing TVA's position on the violations and reinforcing commitment to a healthy and sustainable nuclear safety culture and safety-conscious work environment.

NRC Evaluation of Licensee's Request for Mitigation of Civil Penalty Amount

The NRC staff determined that TVA did not provide an adequate basis for either a reduction of the severity levels or mitigation of the civil penalty. The NRC staff's categorization of the severity levels and civil penalties is in accordance with the NRC Enforcement Policy and, therefore, remain as stated in a letter dated August 24, 2020.

Section 6.10 of the NRC Enforcement Policy states that "the severity level of a violation may be escalated based on unique escalating factors such as whether the adverse action was taken because the employee had contacted the NRC or whether the applicable NRC employee protection regulation (e.g., 10 C.F.R. § 50.7 or similar NRC employee protection regulations) were deliberately violated."

In making its determination for violations 1 and 3, the NRC staff used example b.3 from Section 6.10 of the NRC Enforcement Policy, which provides that a Severity Level II violation involves, for example "[a] mid- or senior-level plant manager (or equivalent) or a corporate-level line manager (or equivalent) is the decisionmaker or plays a significant role in the adverse action decisionmaking process; the employment action is relatively less adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., verbal counseling); and either a.1(a) or a.1(b) above is cited, or other unique escalating factors are present." Deliberate misconduct was cited as the escalating factor.

In making its determination for violation 2, the NRC staff used example b.1 from Section 6.10 of the NRC Enforcement Policy, which provides that a Severity Level II violation involves, for example "[a]n executive-level corporate manager (or equivalent) (which for this definition includes a site vice president) is the decisionmaker or plays a significant role in the adverse action decisionmaking process regardless of the severity of the adverse action but without an escalating factor present."

In making its determination for violation 4, the NRC staff used example b.1 from Section 6.10 of the NRC Enforcement Policy, which provides that a Severity Level II violation involves, for example "[a]n executive-level corporate manager (or equivalent) (which for this definition includes a site vice president) is the decisionmaker or plays a significant role in the adverse action decisionmaking process regardless of the severity of the adverse action but without an escalating factor present." This Severity Level II violation example was then escalated to a Severity Level I violation because of the deliberate misconduct escalating factor.

The NRC considers violations of 10 C.F.R. § 50.7 significant because of the potential that they may make others hesitant to raise safety issues for fear of retaliation.

Civil Penalty

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$240,000 is considered for each Severity Level II violation and a base civil penalty in the amount of \$300,000 is considered for the Severity Level I violation of 10 C.F.R. § 50.7. The NRC staff 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 also not warranted in this case. The Licensee's actions are neither comprehensive to address the broader environment for raising concerns, nor do they address the root cause of the retaliation and discrimination. The communications issued by the TVA Chief Nuclear Officer are transparent in alerting TVA staff to the concerns raised by the NRC but fail to communicate corrective actions and state that TVA disagrees with the findings. No training is provided to increase awareness of a safety-conscious work environment and the failure to implement recommendations by the ECP is not addressed. The corrective actions outlined by TVA regarding updates to the non-Executive Review Board adverse action procedure and the pilot nuclear investigation protocol may be effective; however, their long-term impact and broad applicability throughout the nuclear fleet are not sufficient to credit as corrective actions when determining the civil penalty. 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 identification and corrective action credit are not warranted, the civil penalty of \$606,942 remains as proposed.

NRC Conclusion

Based on its evaluation, the NRC staff concluded that the violations occurred as stated and that an adequate basis does not exist for either a reduction of the severity levels or the mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of \$606,942 should be imposed.

QUESTIONS?

If you have questions, please visit <https://www.nrc.gov> and search for "License Fees."

Questions may also be directed to the NRC Accounts Receivable Help Desk by e-mail at nrc@fiscal.treasury.gov, by phone at (301) 415-7554, or by writing to the address below:

U.S. NUCLEAR REGULATORY COMMISSION
OCFO/DOC/ARB
Mail Stop T9-E10
Washington, DC 20555-0001



Payment Methods

U.S. NUCLEAR REGULATORY COMMISSION
OCFO/DOC/ARB
Mail Stop T-9-E10
Washington, DC 20555-0001
PH (301) 415-7554



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June 2019



Estimated burden per response to comply with this voluntary collection request: 10 minutes. This brochure provides information about available payment methods. Forward comments about to burden estimate to the Records Management Branch (T6-F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the Paperwork Reduction Project (3150-0190), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

NRC accepts the methods described below.

PAYMENT BY AUTOMATED CLEARINGHOUSE

To pay by Automated Clearinghouse/Electronic Data Interchange (ACH/EDI), provide a copy of NRC Form 628 to your financial institution. You may obtain a copy of NRC Form 628 from the NRC Web site at <http://www.nrc.gov> by searching for "NRC Form 628." You can also obtain a form by calling the NRC Accounts Receivable Help Desk at (301) 415-7554.

PAYMENT BY CREDIT CARD

The NRC is currently accepts credit card payments of up to \$24,999.99. For payment by credit card, go to Pay.gov, search for "U.S. Nuclear Regulatory Commission Fees" and enter the required information.

You may also mail or fax NRC Form 629 following the directions on the form. To obtain a copy of NRC Form 629 go to <http://www.nrc.gov> and search for "NRC Form 629" or call the NRC Accounts Receivable Help Desk at (301) 415-7554.



PAYMENT BY FEDWIRE DEPOSIT SYSTEM

The NRC can receive funds through the U.S. Department of the Treasury (Treasury) Fedwire Deposit System. The basic wire message format below complies with the Federal Reserve Board's standard structured third-party format for all electronic funds transfer (EFT) messages.

See the sample EFT message to Treasury below. Each numbered field is described below.

The diagram shows an EFT message format with the following fields and their corresponding numbers:

- 1: TO (021030004)
- 2: FROM (021030004)
- 3: ORDERING BANK AND RELATED DATA
- 4: REF (TREAS NYC/CTR)
- 5: AMOUNT
- 6: ORDERING BANK AND RELATED DATA (BNF-/AC-31000001 OBI=)
- 7: ORDERING BANK AND RELATED DATA
- 8: ORDERING BANK AND RELATED DATA
- 9: ORDERING BANK AND RELATED DATA
- 10: ORDERING BANK AND RELATED DATA

1 RECEIVER-DFI# – Treasury's ABA number for deposit messages is 021030004.

2 TYPE-SUBTYPE-CD – The sending bank will provide the type and subtype code.

3 SENDER-DFI# – The sending bank will provide this number.

4 SENDER-REF# – The sending bank will insert this 16-character reference number at its discretion.

5 AMOUNT – The transfer amount must be punctuated with commas and decimal point; use of the "\$" is optional. The depositor will provide this item.

6 SENDER-DFI-NAME – The Federal Reserve Bank will automatically insert this information.

7 RECEIVER-DFI-NAME – Treasury's name for deposit messages is "TREAS NYC". The sending bank will enter this name.

8 PRODUCT CODE – A product code of "CTR" for customer transfer should be the first item in the receiver text field. Other values may be entered, if appropriate, using the ABA's options. A slash must be entered after the product code.

9 AGENCY LOCATION CODE (ALC) – THIS ITEM IS OF CRITICAL IMPORTANCE. IT MUST APPEAR ON THE FUNDS TRANSFER DEPOSIT MESSAGE IN THE PRECISE MANNER AS STATED TO ALLOW FOR THE AUTOMATED PROCESSING AND CLASSIFICATION OF THE FUNDS TRANSFER MESSAGE TO THE AGENCY LOCATION CODE OF THE APPROPRIATE AGENCY. The ALC identification sequence can, if necessary, begin on one line and end on the next line; however, the field tag "BNF=" must be on one line and cannot contain any spaces. The NRC's 8-digit ALC is: BNF=/AC-31000001

10 THIRD-PARTY INFORMATION – The Originator to Beneficiary Information (OBI) field tag "OBI=" signifies the beginning of the free-form third-party text. All other identifying information intended to enable the NRC to identify the deposit—for example, NRC annual fee invoice number, description of fee, 10 CFR 171 annual fee, and licensee name—should be placed in this field.

The optimum format for fields 7, 8, 9, and 10 using an 8-digit ALC is as follows:

TREAS NYC/CTR/BNF=/AC-31000001 OBI=

The optimum format, shown above, will allow 219 character positions of information following the "OBI=" indicator.

If the licensee's bank is not a member of the Federal Reserve System, the nonmember bank must transfer the necessary information and funds to a member bank, which then must transfer the information and funds to the local Federal Reserve Bank.

For a transfer of funds from local Federal Reserve Banks to be recorded on the same day, the transfer must be received at the New York Federal Reserve Bank by 4 p.m., EST. Otherwise, the deposit will be recorded on the next workday.

PAYMENT BY CHECK

Checks should be made payable to the U.S. Nuclear Regulatory Commission with the invoice number, Enforcement Action number, or other information that identifies the payment, written on the check. Mail the check to the following address:

U.S. Nuclear Regulatory Commission
U.S. Bank
P.O. Box 979051
St. Louis, MO 63197-9000

FedEx or overnight mailings must be delivered to the following address:

U.S. Nuclear Regulatory Commission
U.S. Bank Government Lockbox
SL-MO-C2GL
1005 Convention Plaza
St. Louis, MO 63101

TAXPAYER IDENTIFICATION NUMBER

You must file your Taxpayer Identification Number (TIN) with the NRC. Use NRC Form 531 to provide your TIN. You may obtain NRC Form 531 from the NRC Web site at <http://www.nrc.gov> by searching for "NRC Form 531" or by calling the NRC Accounts Receivable Help Desk at (301) 415-7554.

Mediation Location and Duration

The parties usually hold the mediation at or near one of the NRC's offices. However, the parties may agree on any alternate location. Mediation sessions are usually no longer than 1 day. In some cases, the mediation may take longer with the mutual consent of the parties.

The NRC Mediation Team

The responsible NRC senior manager (i.e., Office Director, Regional Administrator, or his or her designee) will serve as the principal negotiator for the NRC in cases that involve wrongdoing and technical issues. When a case involves discrimination, the Director of the Office of Enforcement will serve as the principal negotiator. The other members of the NRC mediation team typically include an enforcement specialist, an attorney, and a staff representative who is familiar with any technical issues under discussion.

The Confirmatory Order

A CO is a legally binding document that includes the terms of the AIP. The NRC will issue a CO only with the prior written consent of the other party and with a waiver of the right to a hearing. After the entity or the individual has completed the terms of the CO, the NRC will verify that the terms of the CO have been satisfied in a timely manner. Because the CO is legally binding, failing to comply with its terms exposes the entity or individual to additional enforcement action.

Although the substance of the mediation session remains confidential, the details of the settlement will normally be made public via a press release and the publication of the CO in the *Federal Register*.

Timeliness Goals

The timely resolution of issues is one of the goals of the enforcement ADR program. Accordingly, the NRC expects timely progress of a case at each stage of the mediation process. In cases where the parties achieve settlement, the NRC expects to issue a CO within 90 calendar days of the date of the agency's letter offering the ADR option to the other party.

Additional Sources of Information

More information about the NRC's ADR program is available from the following:

- Cornell University's Scheinman Institute on Conflict Resolution
Toll-Free Number: (877) 733-9415
- The NRC's ADR Program Manager in the Office of Enforcement
Toll-Free Number: (800) 368-5642 or (301) 287-9527
- The NRC enforcement ADR program on the agency's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/adr.html



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The Program

The U.S. Nuclear Regulatory Commission's (NRC's) enforcement alternative dispute resolution (ADR) program, formerly referred to as "post-investigation ADR," provides an amicable process for resolving enforcement matters. It is intended to produce more timely and effective outcomes for the NRC and an entity (e.g., an NRC licensee, certificate holder, or contractor of an NRC licensee or certificate holder) or an individual who is subject to an enforcement action, through mediation.

The NRC established the post-investigation ADR program in 2004. In 2015, the NRC expanded its scope to include certain types of enforcement cases that do not involve an investigation. Accordingly, the name of this program was changed from "post-investigation ADR" to "enforcement ADR."

Enforcement ADR includes two distinct case types: (1) discrimination cases or other wrongdoing and, (2) nonwillful (traditional) enforcement cases with the potential for civil penalties (not including violations associated with findings assessed through the Reactor Oversight Process). For discrimination cases or other wrongdoing, mediation is used after the completion of an investigation by the NRC Office of Investigations.

As long as the enforcement matter is within the scope of the program, the NRC normally offers enforcement ADR at each of the following stages of the enforcement process: (1) before an initial enforcement action, (2) after the initial enforcement action is taken, typically upon issuance of a notice of violation, and (3) when a civil penalty is imposed but before a hearing request.

Mediation is an informal process in which a trained and experienced mediator works with the parties to help them reach a resolution. The parties are the NRC and the entity or individual in the mediation. The mediator focuses the attention of the parties on their needs and interests rather than on their stated positions. Mediation gives the parties an opportunity to discuss issues, clear up misunderstandings, identify creative ways to address issues, find areas of agreement, and resolve their dispute.

Participation in the program is entirely voluntary. The NRC and the entity or the individual may withdraw from the mediation process at any time.

The Program Administrator

The NRC has a contract with the Cornell University Scheinman Institute on Conflict Resolution (Cornell) to serve as the program administrator for the enforcement ADR program. Cornell manages the logistics associated with enforcement ADR, including working with the parties to select a mediator from Cornell's roster of mediators. Cornell uses a network of independent and experienced mediators who help the parties find areas of agreement and settle their dispute.

The Mediator

The mediator is an experienced neutral individual who is mutually selected by the parties. He or she has no stake in the outcome of the mediation or any power to make decisions that may bind either party. The role of the mediator is to facilitate communication between the parties and to provide an environment where the parties can address their differences. The mediator uses consensus-building skills and knowledge of negotiation to help the parties find ways to overcome any misunderstandings and find areas of agreement. The mediator does not act as legal counsel or provide legal advice. Each party should consult an attorney for legal advice as appropriate.

The Mediation Process

Historically, most enforcement ADR mediations have occurred at the first stage of the enforcement process (i.e., before an initial enforcement action). In those cases, the NRC presents the entity or the individual with the opportunity to engage in mediation with the agency before it makes an enforcement decision. If the entity or the individual elects ADR, Cornell will help the NRC and the entity or the individual, jointly select a mediator. After selecting a mediator, the parties, in coordination with the mediator, set a date and place for the mediation. Typically,

the mediator holds a premediation teleconference with the parties to discuss logistics or any special needs.

During the mediation, the mediator will give the parties an opportunity to discuss their views on the issue. Often, the mediator will meet privately with each party to develop a clear understanding of the party's perspective and explore and assess options. Although the mediator does not have any power to make decisions that may bind either party, he or she may ask questions intended to help the parties assess the merits of their positions, help them converse in a respectful atmosphere, and identify potential settlement options.

If the parties reach a settlement agreement during the mediation session, they will typically document the terms of their agreement in writing by developing an agreement in principle (AIP) document. The AIP is not enforceable by either party against the other, but it is the basis on which the NRC drafts a confirmatory order (CO). The CO is a legally binding document used to confirm the commitments made in the AIP. However, if the parties do not reach a settlement agreement, the traditional enforcement process resumes—that is, the enforcement process continues as it would have if the parties had not engaged in ADR.

Confidentiality

Although the terms of an ADR settlement become publicly available through the issuance of the CO, with certain exceptions, the substance of the discussions during the mediation session is confidential. The mediator is prohibited from discussing the mediation proceedings, testifying on anyone's behalf concerning the mediation, or submitting a report on the substance of the discussions.

Cost

The NRC and the entity or individual, equally share the fees and travel expenses of the mediator and any meeting room fees. However, each party is responsible for its own expenses, such as travel, lodging, and legal representation.