

**From:** Gifford, Ian  
**Sent:** Wednesday, January 6, 2021 11:14 AM  
**To:** JShealA-Hearing Resource  
**Attachments:** EA-20-007-1.pdf; EA-20-007-2.pdf; EN TVA Discrimination Imposition Order.docx; TVA Watts Bar EAW.pdf

**Hearing Identifier:** JShea\_IA\_NonPublic  
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**Mail Envelope Properties** (MN2PR09MB4795079FFDC5335CC533AC43EAD00)

**Subject:**  
**Sent Date:** 1/6/2021 11:13:36 AM  
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**From:** Gifford, Ian

**Created By:** Ian.Gifford@nrc.gov

**Recipients:**  
"JSheaIA-Hearing Resource" <JSheaIA-Hearing.Resource@nrc.gov>  
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<b>Files</b>	<b>Size</b>	<b>Date &amp; Time</b>
MESSAGE	0	1/6/2021 11:13:46 AM
EA-20-007-1.pdf	98606	
EA-20-007-2.pdf	97515	
EN TVA Discrimination Imposition Order.docx		28695
TVA Watts Bar EAW.pdf	2850772	

**Options**  
**Priority:** Normal  
**Return Notification:** No  
**Reply Requested:** No  
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**ENFORCEMENT ACTION STRATEGY FORM**

<b>SDP/EA No.:</b>	EA-2020-007	<b>Case Status:</b>	Open
<b>Case Type:</b>	Traditional	<b>Initiator:</b>	OE
<b>Regional ES:</b>	Scott Sparks	<b>HQ ES:</b>	Ian Gifford

**Facts:** Former Manager of Emerging Regulatory Issues at TVA was discriminated against for engaging in protected activities (reporting safety concerns, chilled work environment allegation, fear of retaliation). Deliberate misconduct by two individuals.

Docket No.	Docket Name	License No.	Licensee Name
05000260	Browns Ferry 2		Tennessee Valley Authority
05000390	Watts Bar 1		Tennessee Valley Authority
05000259	Browns Ferry 1		Tennessee Valley Authority
05000296	Browns Ferry 3		Tennessee Valley Authority
05000327	Sequoyah 1		Tennessee Valley Authority
05000328	Sequoyah 2		Tennessee Valley Authority
05000391	Watts Bar 2		TENNESSEE VALLEY AUTHORITY

  

Licensee Type	Inspection Date	Related Cases	Related OI Reports
Operating Reactor			2-2019-015

**Participants**

<b>Region:</b>	Scott Sparks, Mark Kowal
<b>Program Office:</b>	Brian Hughes, Anthony Masters, Russ Felts
<b>OE:</b>	Ian Gifford, Catherine Thompson, David Solorio, Paul Peduzzi, George Wilson, David Jones, Pete Snyder, Lisamarie Jarriel, Nick Hilton, Nicole Coleman
<b>OGC:</b>	Sara Kirkwood
<b>Other:</b>	Andy Shuttleworth, Scott Luina, Alex Echavarria

**Remarks:**

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**Approved By:** Ian Gifford  
**Date:** 02/19/2020

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**ENFORCEMENT ACTION STRATEGY FORM**

EA-2020-007 - Panel No. - Strategy Form No. 1

<b>Violation Number</b>	A
<b>Violation</b>	50.7 - Employee Protection
<b>Specific Issue (Violation) Description</b>	Between October 15, 2018, and January 14, 2019, Tennessee Valley Authority (TVA) corporate management discriminated against a former Manager of Emerging Regulatory Issues employed at the TVA Corporate Office for engaging in protected activities. Specifically, the Vice President of Regulatory Affairs placed the employee on paid administrative leave and played a significant role in terminating the employee. As contributing factors for these adverse actions, the Vice President of Regulatory Affairs cited the employee's statements made during a TVA Office of the General Counsel investigation and fear of retaliation communicated by the employee to the Vice President of Regulatory Affairs, which are protected activities.
<b>Date of Violation</b>	10/15/2018
<b>Consequence</b>	Willfulness

**Wrongdoing Information**

<b>Wrongdoing</b>	Yes
<b>Willful Aspects</b>	Panel concludes that actions were deliberate
<b>Willful Violation NCV Criteria Met</b>	Yes

**Proposed Action**

<b>NOV</b>	Yes
<b>SL/Significance</b>	SL I
<b>Considering CP or Enforcement Order?</b>	Yes

**Escalated Action CP Assessment**

<b>ID Credit?</b>	No
<b>CA Credit?</b>	TBD
<b>CP?</b>	2x Base CP

**Enforcement Discretion**

<b>Enforcement Discretion?</b>	No
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**Decisions Reached**

<b>Next Action</b>	Choice Letter w/ ADR Offer
<b>PEC Open/Closed</b>	Closed

**Remarks**  
 On February 19, 2020, Headquarters and Region II paneled two Tennessee Valley Authority (TVA) discrimination cases related to Sequoyah and the Corporate Office. The cases were combined into one panel because there is significant overlap in personnel and background involved in the cases. The panel agreed with the Office of Enforcement's (OE) recommendation to issue four apparent violations to TVA (two apparent violations to Corporate and two violations to Sequoyah). In addition to the apparent violations for TVA, the panel agreed to issue three apparent violations to individuals for deliberate misconduct associated with the cases. During the panel, there was discussion about whether or not to offer Alternative Dispute

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Resolution (ADR) to TVA. Region II raised concerns that previous ADR mediation with TVA were not effective in resolving concerns of a chilled work environment. The panel agreed that the OE Director has the authority to decide whether ADR is offered and that ADR would be offered in this case. The panel agreed that the individuals would not be offered ADR at this time, and would instead receive a conference letter. The panel also discussed whether one individual should receive two violations rather than one violation with two examples. The panel agreed that the single action by the individual against two separate TVA employees was appropriately documented as two examples of the same violation. Additional information about the case background and justification for the apparent violations can be found in the supplemental documents and EAWs.

**Keywords**

Willful, Sect. 210 - Discrimination

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EA-2020-007 - Panel No. - Strategy Form No. 2

<b>Violation Number</b>	B
<b>Violation</b>	50.7 - Employee Protection
<b>Specific Issue (Violation) Description</b>	On March 9, 2018, Tennessee Valley Authority (TVA) corporate management discriminated against a former Manager of Emerging Regulatory Issues employed at the TVA Corporate Office for engaging in a protected activity. Specifically, the former Director of Corporate Nuclear Licensing filed a formal complaint against the employee based, in part, for contacting the NRC with concerns of a chilled work environment, which is a protected activity. The formal complaint initiated an investigation by the TVA Office of the General Counsel that resulted in termination of the employee.
<b>Date of Violation</b>	03/9/2018
<b>Consequence</b>	Willfulness

**Wrongdoing Information**

<b>Wrongdoing</b>	Yes
<b>Willful Aspects</b>	Panel concludes that actions were deliberate
<b>Willful Violation NCV Criteria Met</b>	Yes

**Proposed Action**

<b>SL/Significance</b>	SL II
<b>Considering CP or Enforcement Order?</b>	Yes

**Escalated Action CP Assessment**

<b>ID Credit?</b>	No
<b>CA Credit?</b>	TBD
<b>CP?</b>	2x Base CP

**Enforcement Discretion**

<b>Enforcement Discretion?</b>	No
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**Decisions Reached**

<b>Next Action</b>	Choice Letter w/ ADR Offer
<b>PEC Open/Closed</b>	Closed

<b>Remarks</b>	On February 19, 2020, Headquarters and Region II paneled two Tennessee Valley Authority (TVA) discrimination cases related to Sequoyah and the Corporate Office. The cases were combined into one panel because there is significant overlap in personnel and background involved in the cases. The panel agreed with the Office of Enforcement's (OE) recommendation to issue four apparent violations to TVA (two apparent violations to Corporate and two violations to Sequoyah). In addition to the apparent violations for TVA, the panel agreed to issue three apparent violations to individuals for deliberate misconduct associated with the cases. During the panel, there was discussion about whether or not to offer Alternative Dispute Resolution (ADR) to TVA. Region II raised concerns that previous ADR mediation with TVA were not effective in resolving concerns of a chilled work environment. The panel agreed that the OE Director has the authority to decide whether ADR is offered and that ADR would be offered in this case. The panel agreed
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that the individuals would not be offered ADR at this time, and would instead receive a conference letter. The panel also discussed whether one individual should receive two violations rather than one violation with two examples. The panel agreed that the single action by the individual against two separate TVA employees was appropriately documented as two examples of the same violation. Additional information about the case background and justification for the apparent violations can be found in the supplemental documents and EAWs.

**Keywords**

Willful, Sect. 210 - Discrimination

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<b>SDP/EA No.:</b>	EA-2020-007	<b>Case Status:</b>	Open
<b>Case Type:</b>	Traditional	<b>Initiator:</b>	OE
<b>Regional ES:</b>	Scott Sparks	<b>HQ ES:</b>	Ian Gifford

**Facts:** Former Manager of Emerging Regulatory Issues at TVA was discriminated against for engaging in protected activities (reporting safety concerns, chilled work environment allegation, fear of retaliation). Deliberate misconduct by two individuals.

Docket No.	Docket Name	License No.	Licensee Name
05000260	Browns Ferry 2		Tennessee Valley Authority
05000390	Watts Bar 1		Tennessee Valley Authority
05000259	Browns Ferry 1		Tennessee Valley Authority
05000296	Browns Ferry 3		Tennessee Valley Authority
05000327	Sequoyah 1		Tennessee Valley Authority
05000328	Sequoyah 2		Tennessee Valley Authority
05000391	Watts Bar 2		TENNESSEE VALLEY AUTHORITY

  

Licensee Type	Inspection Date	Related Cases	Related OI Reports
Operating Reactor			2-2019-015

<b>Participants</b>	<b>Region:</b>	Mark Miller, Scott Sparks, Mark Kowal, Sarah Price
	<b>Program Office:</b>	Chris Miller
	<b>OE:</b>	Catherine Thompson, Dave Solorio, Ian Gifford, George Wilson, Nick Hilton
	<b>OGC:</b>	Sara Kirkwood, Mauri Lemoncelli
	<b>Other:</b>	Andy Shuttleworth, Alex Echavarria, Scott Luina
<b>Remarks:</b>		

**Approved By:** Ian Gifford  
**Date:** 08/31/2020



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**ENFORCEMENT ACTION STRATEGY FORM**

EA-2020-007 - Panel No. - Strategy Form No. 3

<b>Violation Number</b>	A
<b>Violation</b>	50.7 - Employee Protection
<b>Specific Issue (Violation) Description</b>	On March 9, 2018, the Tennessee Valley Authority discriminated against a former corporate employee for engaging in protected activity. The former corporate employee engaged in protected activity by raising concerns of a chilled work environment. After becoming aware of the protected activity, the former Director of Corporate Nuclear Licensing filed a formal complaint against the former employee. The filing of a formal complaint triggered an investigation by the Tennessee Valley Authority's Office of the General Counsel. This action was based, at least in part, on the former employee engaging in a protected activity.
<b>Date of Violation</b>	03/9/2018
<b>Consequence</b>	Willfulness
<b>Wrongdoing Information</b>	
<b>Wrongdoing</b>	Yes
<b>Willful Aspects</b>	Panel concludes that actions were willful
<b>Proposed Action</b>	
<b>SDP?</b>	No
<b>NOV</b>	Yes
<b>SL/Significance</b>	SL II
<b>Considering CP or Enforcement Order?</b>	Yes
<b>Escalated Action CP Assessment</b>	
<b>ID Credit?</b>	No
<b>CA Credit?</b>	No
<b>CP?</b>	2x Base CP
<b>Enforcement Discretion</b>	
<b>Enforcement Discretion?</b>	No
<b>Decisions Reached</b>	
<b>Next Action</b>	Issue Problem w/ CP
<b>Remarks</b>	A caucus was held on July 20, 2020, to determine the final enforcement action against TVA. The panel agreed to issue an SL II violation to TVA for the actions of the former Director of Corporate Nuclear Licensing (CNL). The panel used SL II, example 3, from the Enforcement Policy with the deliberate escalating factor. The panel agreed that no identification or corrective action credit were warranted. The panel discussed whether the two violations associated with the former corporate employee should be combined into a single problem. After further discussion during a follow-up caucus on July 28, 2020, the panel agreed that combining the two violations into a single problem was consistent with previous cases. The civil penalty calculation is discussed in the Strategy Form for Violation B.
<b>Keywords</b>	Sect. 210 - Discrimination

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EA-2020-007 - Panel No. - Strategy Form No. 4

<b>Violation Number</b>	B
<b>Violation</b>	50.7 - Employee Protection
<b>Specific Issue (Violation) Description</b>	On January 14, 2019, TVA discriminated against a former corporate employee for engaging in protected activity. The former corporate employee engaged in protected activity by raising concerns of a chilled work environment. 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 protected activity.
<b>Date of Violation</b>	01/14/2019

**Wrongdoing Information**

<b>Wrongdoing</b>	Yes
<b>Willful Aspects</b>	Panel concludes that actions were willful

**Proposed Action**

<b>SDP?</b>	No
<b>NOV</b>	Yes
<b>SL/Significance</b>	SL I
<b>Considering CP or Enforcement Order?</b>	Yes

**Escalated Action CP Assessment**

<b>ID Credit?</b>	No
<b>CA Credit?</b>	No
<b>CP?</b>	2x Base CP

**Enforcement Discretion**

<b>Enforcement Discretion?</b>	No
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**Decisions Reached**

<b>Next Action</b>	Issue Problem w/ CP
<b>Next Action Review</b>	Commission Review
<b>PEC Open/Closed</b>	Closed

<b>Remarks</b>	A caucus was held on July 20, 2020, to determine the final enforcement action against TVA. The panel agreed to issue an SL I violation to TVA for the actions of the former Vice President of Regulatory Affairs. The panel used SL I, example 2, from the Enforcement Policy with the willful escalating factor. The panel agreed that no identification or corrective action credit were warranted. The panel discussed whether the two violations associated with the former corporate employee should be combined into a single problem. After further discussion during a follow-up caucus on July 28, 2020, the panel agreed that combining the two violations into a single problem was consistent with previous cases. The SL I and SL II violations were combined into a single SL I problem. The civil penalty was calculated to be \$600,000 (300,000 x 2); however, it is capped at the statutory maximum of \$303,471 for a single-day violation. The panel agreed to offer ADR. Given this is an SL I violation. OE will engage in advance consultation with the Commission before issuing
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**Keywords**

the violation.
Sect. 210 - Discrimination

**PREDECISIONAL INFORMATION- NOT FOR PUBLIC DISCLOSURE**

October 28, 2020  
EN 20-021

OFFICE OF ENFORCEMENT  
NOTIFICATION OF SIGNIFICANT ENFORCEMENT ACTION

Licensee: Tennessee Valley Authority EA-20-006  
Chattanooga, TN EA-20-007  
Docket No.: 05000259/260/296, 05000327/328, 05000390/391  
License No.: DPR-33/52/68, DPR-77/79, NPF-90/96

Subject: ISSUANCE OF ORDER IMPOSING CIVIL PENALTY - \$606,942

By EN 20-014 dated August 10, 2020, the Commission was notified of the staff's intent to issue a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$606,942 to the Tennessee Valley Authority (TVA). This action is based on a Severity Level I problem and Severity Level II problem involving violations of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, "Employee Protection." The licensee responded to the Notice in a letter dated September 23, 2020, and denied all violations. TVA 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. After careful consideration of the licensee's response, the staff has concluded that the violations did occur as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty and TVA did not provide an adequate basis for reduction of the severity level or mitigation of the civil penalty.

Accordingly, an Order Imposing Civil Monetary Penalty in the amount of \$606,942 will be issued on or about October 29, 2020. Under the terms of the Order, the licensee may, within 10 days of the date of the Order, request Alternate Dispute Resolution or, within 30 days of the date of the Order, pay the civil penalty or request a hearing.

The licensee has not been specifically informed of the enforcement action. The schedule of issuance and notification is:

Mailing of Order Imposing Civil Monetary Penalty	October 29, 2020
Telephone Notification of Licensee	October 29, 2020

The States of Alabama and Tennessee will be notified.

CONTACTS: Catherine Thompson, OE    Ian Gifford, OE    Dave Solorio, OE  
(301) 287-9515                            (301) 287-9216                            (301) 287-9282

**PREDECISIONAL INFORMATION- NOT FOR PUBLIC DISCLOSURE**

ELECTRONIC DISTRIBUTION: EN-20-021, October 28, 2020

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**ADAMS Accession Number: ML20301A790**

<b>OFFICE</b>	OE/CRB	OE/CRB	OE/CRB	OE
<b>NAME</b>	IGifford	CThompson	DSolorio	GWilson
<b>DATE</b>	10/27/2020	10/27/2020	10/27/2020	10/28/2020

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**ENFORCEMENT ACTION WORKSHEET**

<b>EA#:</b>	EA-2020-007
<b>Date of Panel:</b>	February 19, 2020
<b>Licensee:</b>	Tennessee Valley Authority (TVA)
<b>Facility/Location:</b>	Corporate/Chattanooga, TN
<b>Licensee Type:</b>	Operating Reactor
<b>Docket No(s):</b>	05000259/260/296, 05000327/328, 05000390/391
<b>Inspection Report No(s):</b>	
<b>Date of Exit Meeting:</b>	
<b>Date of IR or Choice Letter Issuance:</b>	
<b>ML Number of case documents (if known):</b>	
<b>OI Report No:</b>	2-2019-015
<b>OI Report Date:</b>	January 21, 2020
<b>Inspector:</b>	

1. Summary of Issues Considered for Escalated Enforcement:

This investigation was initiated to determine whether a former Manager of Emerging Regulatory Issues (CI) employed by the Tennessee Valley Authority (TVA) at the TVA Corporate Office in Chattanooga, TN, was discriminated against for participating in a protected activity by the former Director of Corporate Nuclear Licensing (CNL) and the Vice President (VP) of Regulatory Affairs, in violation of 10 CFR 50.5, the deliberate misconduct regulation, which caused the licensee to be in violation of 10 CFR 50.7, the employee protection regulation. Summary attached.

2. Is willfulness involved?      Yes
- OI's determination:      Deliberate
  - OGC's determination:      Deliberate
  - Regional determination:      N/A

3. Regional Recommendation:

OE recommends continuing the escalated enforcement process regarding:

1. TVA
2. Former Director of Corporate Nuclear Licensing
3. Vice President of Regulatory Affairs

● Number of Apparent Violations (AV):    2

**ENFORCEMENT ACTION WORKSHEET (continued)****Apparent Violation #: 1**

Brief statement of violation (e.g. inadequate survey, 10 CFR 20.1501):

The CI at TVA was discriminated against for engaging in protected activity, in violation of 10 CFR 50.5 and 10 CFR 50.7.

Background information:

Between 2016 and 2017, the CI raised numerous safety concerns, including: violations of the Part 26 Fatigue Rule requirements at Watts Bar 2; failure to adhere to the Fukushima requirements at Sequoyah; concerns regarding a Watts Bar 2 surveillance extension request; and failure to meet NRC commitments in Information Notice 2017-3 to identify Anchor Darling double disc gate valve susceptibility to failure at Brown Ferry. On July 24, 2017, the CI submitted an allegation to the NRC (RII-2017-A-0114) raising concerns that the former Director of CNL was creating a chilled work environment, among other issues. The CI also wrote condition reports and discussed safety issues during meetings. The CI believed that the former Director of CNL was retaliating against other TVA employees that had raised safety concerns and was concerned about retaliatory actions from the former Director of CNL. The CI reported concerns of retaliation and a hostile work environment to the VP of Regulatory Affairs (i.e., the former Director of CNL's supervisor).

On March 9, 2018, the former Director of CNL filed a complaint with TVA accusing several employees, including the CI, of creating a hostile workplace and engaging in insubordinate conduct. In the complaint, the former Director of CNL specifically cites assertions made to the NRC about a chilled work environment as an example of retaliatory behavior imposed by the CI. In April 2018, the CI was interviewed by the Senior Attorney and asked questions about office relationships and whether there was a chilled work environment. The CI believed that the interview was focused on the hostile work environment caused by the former Director of CNL and answered honestly when asked about the former Director of CNL, stating that the former Director of CNL was vindictive and created a toxic work environment.

The former Director of CNL and the VP of Regulatory Affairs were aware that the CI had raised safety concerns. The former Director of CNL also believed that the CI was responsible for filing an allegation of a chilled work environment to the NRC and cited that as an example of retaliatory behavior by the CI in the former Director of CNL's formal complaint filed with TVA. The CI raised concerns of retaliation directly to the VP of Regulatory Affairs, which the VP of Regulatory Affairs responded to via email and phone conversations. The VP of Regulatory Affairs was also aware of concerns of retaliation made by the CI to the Senior Attorney during the investigation. The VP of Regulatory Affairs testified to the OI agent that the CI had raised these concerns on several occasions, verbally and in writing.

On September 19, 2018, the VP of Regulatory Affairs provided the recommendation and justification to ERB members to offer the CI a no-fault separation agreement or be terminated. The CI was placed on paid administrative leave by the VP of Regulatory Affairs on October 15, 2018, and terminated on January 14, 2019. The Notice of Termination stated that the CI was being terminated, in part, for derogatory statements made about the former Director of CNL during an investigative interview with the Senior Attorney.

- Proposed Severity Level (SL): Escalate to SL I for Willful



**ENFORCEMENT ACTION WORKSHEET (continued)**

● Basis for SL (Enf. Policy Violation Example):

In certain cases, 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 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated.

Enforcement Policy Example 6.10.b.1, Severity Level II violation of 10 CFR 50.7: An 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.

The Vice President of Regulatory Affairs (executive-level corporate manager), is the decisionmaker who caused the CI to be put on paid administrative leave and played a significant role in the decision to terminate the CI. A unique factor is present: the Vice President of Regulatory Affairs, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7.

● Actual Consequences: No

● Potential Consequences: Yes

● Impacting the Regulatory Process: No

● If "Yes" was answered to any of the three preceding questions, Explain:

Potential chilling effect on other employees

● Willful: Yes

● Civil Penalty Warranted (explain):

Yes: Base civil penalty of \$300,000 for SLI. 2X Base due to no identification or corrective action credits. However, civil penalty capped at statutory maximum of \$303,471 due to single day violation.

● Identification Credit: No - NRC Identified

● Corrective Action Credit: No

● Describe/List Corrective Actions:

● Previous Escalated Enforcement (Last 2 yrs or 2 Inspections): Yes

● Discretion to mitigate/escalate the CP: No

● Explain Bases for discretion:

● Proposed next action: Choice letter (Written/PEC/ADR)

**ENFORCEMENT ACTION WORKSHEET (continued)****Apparent Violation #: 2**

Brief statement of violation (e.g. inadequate survey, 10 CFR 20.1501):

The CI at TVA was discriminated against for engaging in protected activity, in violation of 10 CFR 50.5 and 10 CFR 50.7.

Background information:

Between 2016 and 2017, the CI raised numerous safety concerns, including: violations of the Part 26 Fatigue Rule requirements at Watts Bar 2; failure to adhere to the Fukushima requirements at Sequoyah; concerns regarding a Watts Bar 2 surveillance extension request; and failure to meet NRC commitments in Information Notice 2017-3 to identify Anchor Darling double disc gate valve susceptibility to failure at Brown Ferry. On July 24, 2017, the CI submitted an allegation to the NRC (RII-2017-A-0114) raising concerns that the former Director of CNL was creating a chilled work environment, among other issues. The CI also wrote condition reports and discussed safety issues during meetings. The CI believed that the former Director of CNL was retaliating against other TVA employees that had raised safety concerns and was concerned about retaliatory actions from the former Director of CNL. The CI reported concerns of retaliation and a hostile work environment to the VP of Regulatory Affairs (i.e., the former Director of CNL's supervisor).

On March 9, 2018, the former Director of CNL filed a complaint with TVA accusing several employees, including the CI, of creating a hostile workplace and engaging in insubordinate conduct. All employees listed in the complaint had previously filed complaints with the former Director of CNL, the VP of Regulatory Affairs, the NRC, and/or the TVA ECP. In the complaint, the former Director of CNL specifically cites assertions made to the NRC about a chilled work environment as an example of retaliatory behavior imposed by the CI. In April 2018, the CI was interviewed by the Senior Attorney and asked questions about office relationships and whether there was a chilled work environment. The CI believed that the interview was focused on the hostile work environment caused by the former Director of CNL and answered honestly when asked about the former Director of CNL, stating that the former Director of CNL was vindictive and created a toxic work environment.

The former Director of CNL and the VP of Regulatory Affairs were aware that the CI had raised safety concerns. The former Director of CNL also believed that the CI was responsible for filing an allegation of a chilled work environment to the NRC and cited that as an example of retaliatory behavior by the CI in the former Director of CNL's formal complaint filed with TVA. The CI raised concerns of retaliation directly to the VP of Regulatory Affairs, which the VP of Regulatory Affairs responded to via email and phone conversations. The VP of Regulatory Affairs was also aware of concerns of retaliation made by the CI to the Senior Attorney during the investigation. The VP of Regulatory Affairs testified to the OI agent that the CI had raised these concerns on several occasions, verbally and in writing.

On September 19, 2018, the VP of Regulatory Affairs provided the recommendation and justification to ERB members to offer the CI a no-fault separation agreement or be terminated. The CI was placed on paid administrative leave by the VP of Regulatory Affairs on October 15, 2018, and terminated on January 14, 2019. The Notice of Termination stated that the CI was being terminated, in part, for derogatory statements made about the former Director of CNL during an investigative interview with the Senior Attorney.

- Proposed Severity Level (SL): Escalate to SL II for Willful

**ENFORCEMENT ACTION WORKSHEET (continued)**

● **Basis for SL (Enf. Policy Violation Example):**

In certain cases, 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 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated.

Enforcement Policy Example 6.10.c.1, Severity Level III violation of 10 CFR 50.7: 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 no escalating factor is present.

The former Director of CNL (corporate-level line manager), played a significant role initiating an investigation against the CI, with the expectation of an adverse action, by filing a formal complaint with TVA accusing the CI of retaliatory behavior for contacting the NRC with concerns of a chilled work environment. Two unique factors are present: the former Director of CNL, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7 and the adverse action was taken, in part, because the CI had contacted the NRC with concerns about a chilled work environment.

● Actual Consequences: No

● Potential Consequences: Yes

● Impacting the Regulatory Process: No

● **If "Yes" was answered to any of the three preceding questions, Explain:**

Potential chilling effect on other employees

● Willful: Yes

● **Civil Penalty Warranted (explain):**

Yes: Base civil penalty of \$300,000 for SLII. 2X Base due to no identification or corrective action credits. However, civil penalty capped at statutory maximum of \$303,471 due to single day violation.

● Identification Credit: No - NRC Identified

● Corrective Action Credit: No

● Describe/List Corrective Actions:

● Previous Escalated Enforcement (Last 2 yrs or 2 Inspections): Yes

● Discretion to mitigate/escalate the CP: No

● Explain Bases for discretion:

● Proposed next action: Choice letter (Written/PEC/ADR)

**ENFORCEMENT ACTION WORKSHEET (continued)**

4. Individual Actions: Yes

Number of IAs: 2

Add IA

Delete IA

Individual Action #: 1

• Traditional Enforcement (SL):	SLI
• Level of Individual within the organization:	Corporate Executive
• Benefit to wrongdoer:	No benefit
• Attitude of wrongdoer:	Does not accept responsibility
• Employer's response:	None
• Proposed next action:	Choice Letter (Written/PEC/ADR)
• Proposed final action:	Order 5 yr Ban

Individual Action #: 2

• Traditional Enforcement (SL):	SL II
• Level of Individual within the organization:	Manager
• Benefit to wrongdoer:	Other (describe): Avoid investigations
• Attitude of wrongdoer:	Does not accept responsibility
• Employer's response:	None
• Proposed next action:	Choice Letter (Written/PEC/ADR)
• Proposed final action:	Order 1 yr Ban

5. Is there a root cause, generic issues/communications, lessons learned, relevant similar cases, or other information that should be considered?

See attached Watts Bar case summary and prima facie analysis, also Sequoyah case.

6. Any Additional Information?

See other TVA cases (tiger team)

**ENFORCEMENT ACTION WORKSHEET (continued)**

## 7. Draft NOV(s):

## Violation 1

Title 10 of the Code of Federal Regulations (10 CFR) 50.7(a) states 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, between October 15, 2018, and January 14, 2019, Tennessee Valley Authority (TVA) corporate management discriminated against a former Manager of Emerging Regulatory Issues employed at the TVA Corporate Office for engaging in protected activities. Specifically, the Vice President of Regulatory Affairs placed the employee on paid administrative leave and played a significant role in terminating the employee. As contributing factors for these adverse actions, the Vice President of Regulatory Affairs cited the employee's statements made during a TVA Office of the General Counsel investigation and fear of retaliation communicated by the employee to the Vice President of Regulatory Affairs, which are protected activities.

## Violation 2

Title 10 of the Code of Federal Regulations (10 CFR) 50.7(a) states 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, Tennessee Valley Authority (TVA) corporate management discriminated against a former Manager of Emerging Regulatory Issues employed at the TVA Corporate Office for engaging in a protected activity. Specifically, the former Director of Corporate Nuclear Licensing filed a formal complaint against the employee based, in part, for contacting the NRC with concerns of a chilled work environment, which is a protected activity. The formal complaint initiated an investigation by the TVA Office of the General Counsel that resulted in termination of the employee.

**ENFORCEMENT ACTION WORKSHEET (continued)****Guidance for completing the Enforcement Action Worksheet**

- \* **NOTE:** All sections of the EAW are not required to be filled in. Only pertinent information is required to fully explain the issues.

**EA: Issued by Enforcement Staff (Headquarters or Regional)**

Date of Panel:

Licensee:

Facility/Location:

Licensee Type:

Docket No(s):

Program Code: **If known**Inspection report No(s): **If known**Date of Exit Meeting: **If known**Date of IR or Choice Letter issuance: **If known**ML Number of case documents: **If known**OI Report No: **If known**OI Report Date: **If known**

1. Provide a brief/concise description of the issue. Any information which is pertinent to the issue should be included. A summary of a draft inspection report or executive summary may also be included or attached. Attach a copy of the "Draft" NOV as Attachment 1 to the completed EAW.
2. If known, choose the appropriate response in the drop-down menu. OI's determination should be located in the OI synopsis; OGC's may or may not be known when the inspector is completing the EAW, Regional enforcement personal may be able to provide this information and choose the Regional determination of the issues.
3. Choose the appropriate number of Apparent Violations. For each AV beyond the first one, click the "Add Apparent Violation" button and a page will be added for the new AV. Choose the appropriate responses for each question.
4. Choose the appropriate response for Individual Actions (Yes, No) and specify the number of individual actions. If individual actions are warranted, complete the questions listed for the individual action. If more than one individual action is needed, click the "Add Individual Action" button and a section will be added for the next individual. Choose the appropriate responses for each question.
5. Explain as necessary (e.g. describe results of root cause, brief/concise listing of generic issues/communications, lessons learned, relevant similar cases, or other information that should be considered.
6. Provide any additional information needed to support the case that wasn't mentioned in any of the other sections in the EAW.
7. To print the EAW, click the "Print EAW" button. This will allow the form to be printed without the buttons and directions (this page) appearing in the final document.