

From: Alan Kabat <kabat@bernabeipllc.com>
Sent: Friday, January 4, 2019 9:58 AM
To: Fehlman, Lauren - OSHA
Subject: RE: TVA/Wetzel
Attachments: 2018 12 18 Exhibits.pdf; 2018 12 18 OSHA complaint (Wetzel)_Redacted.pdf

Dear Ms. Fehlman,

Thank you for the update, and attached is a searchable version of the OSHA complaint.

I will check with Ms. Wetzel as to her availability for a meeting.

Sincerely,

Alan

Alan R. Kabat
Bernabei & Kabat, PLLC
1400 - 16th Street, N.W., Suite 500
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From: Fehlman, Lauren - OSHA <LFehlman@DOL.GOV>
Sent: Friday, January 4, 2019 9:32 AM
To: Alan Kabat <kabat@bernabeipllc.com>
Subject: TVA/Wetzel

Mr. Kabat:

I have been assigned to investigate the complaint you filed on behalf of your client, Beth Wetzel. I will be preparing the necessary letters docketing this matter as soon as practicable, but if you require an immediate discussion, please let me know.

I would also like to request, if available, an electronic copy of the copy/attachments. Finally, I would like to meet with Ms. Wetzel to discuss the allegations, if you could please assess both of your availabilities in the coming weeks, it would be appreciated.

Sincerely,

Lauren Fehlman, Regional Investigator

U.S. Department of Labor-OSHA
2296 Henderson Mill Road, NE, Suite 200
Atlanta, GA 30345
404-772-8046
Fehlman.lauren@dol.gov

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Received Date: 1/4/2019 9:59:55 AM
From: Alan Kabat

Created By: kabat@bernabeipllc.com

Recipients:
"Fehlman, Lauren - OSHA" <>
Tracking Status: None

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Priority: Normal
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Sensitivity: Normal
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Exhibits

1. NRC letter to J. Grimes, TVA (Mar. 23, 2016).
2. NRC letter to J. Shea (TVA) (Oct. 26, 2016).
3. C. Earls to E. Henderson (Aug. 1, 2018).
4. B. Wetzel to J. Shea & A. Poland (Oct. 31, 2018).

Exhibit 1

NRC letter to J. Grimes, TVA (Mar. 23, 2016).



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION II
245 PEACHTREE CENTER AVENUE NE, SUITE 1200
ATLANTA, GEORGIA 30303-1257

March 23, 2016

EA-16-061

Mr. Joseph P. Grimes
Chief Nuclear Officer and
Executive Vice President
1101 Market Street
3R Lookout Place
Chattanooga, TN 37402-2801

**SUBJECT: CHILLED WORK ENVIRONMENT FOR RAISING AND ADDRESSING SAFETY
CONCERNS AT THE WATTS BAR NUCLEAR PLANT**

Dear Mr. Grimes:

As discussed during the public meeting held on March 22, 2016 in the RII office (ML16083A403), we initiated a review in late 2015 at the Watts Bar Nuclear Plant into the environment for raising and addressing safety issues. We began this review in light of information received through our inspection and allegations process associated with the Safety Conscious Work Environment (SCWE) within the Operations Department and its influence on the safe operation of the plant. Our review includes information received through allegations, inspections, and interviews of your staff over the past few months. The Nuclear Regulatory Commission has concluded that a Chilled Work Environment exists in the Operations Department because of a perception that operators are not free to raise safety concerns using all available avenues without fear of retaliation. We have not identified any serious safety violations or instances involving significant plant safety issues, but the information gathered has led to concerns about the impact the work environment is having on plant operations and raises questions about your commitment to emphasize safety over competing goals to ensure protection of people and the environment. We want to ensure that TVA has a clear understanding of the scope of our concerns and to communicate specific requests and expectations for your response.

The Safety Culture Policy Statement (76 FR 34773; June 14, 2011) sets forth the Commission's expectation that licensees establish and maintain a positive safety culture commensurate with the safety and security significance of their activities and the nature and complexity of their organizations and functions. The NRC defines nuclear safety culture as the core values and behaviors resulting from a collective commitment by leaders and individuals to emphasize safety over competing goals to ensure protection of people and the environment. A safety conscious work environment is defined by the NRC as an environment in which "employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation" and is one trait of a strong safety culture. NRC Regulatory Issue Summary 05-018, "Guidance for Establishing and Maintaining a Safety Conscious Work Environment," dated August 25, 2005, further describes the NRC's expectations in this area.

We have gathered information in a number of areas which, to varying degrees, calls into question whether management is open to safety concerns raised by operators, whether there is a proper "safety-first" focus during plant operations, and whether your corrective action program and Employee Concerns Program (ECP) have been effective at identifying and resolving these issues. The NRC has determined there is sufficient evidence to support the existence of an environment within the Operations Department where your employees do not feel free to raise safety concerns to your management because they fear retaliation and do not feel that their concerns are being addressed. Our concern is heightened by information that indicates undue influence and direction of licensed operators from sources external to the control room affected operational performance. We are concerned an environment exists where control room operations may be influenced by management in a manner that undermines licensed senior operator responsibility for directing licensed activities.

More broadly, we are concerned that a fear of retaliation exists to the extent that it is impeding open communication within the Operations Department. We have concerns that the current environment is impacting the normal processes designed to identify such issues and effect changes in affected aspects of the site safety culture. Our reviews found that information from the corrective action program, the ECP, and other sources, have provided opportunities for management to identify changes in certain aspects of the safety culture and SCWE, but the information has not been fully acknowledged and acted upon.

The NRC considers it vital for TVA to assess the climate at the Watts Bar station, address the root causes that allowed the chilled work environment to exist, and take steps to ensure the staff at Watts Bar are willing to openly participate in the process. We note that a Confirmatory Order (EA-09-009, EA-09-203) remains in effect to confirm commitments made by TVA for all three nuclear stations to address past SCWE issues. In summary, we request that you conduct your own in-depth assessment, and we acknowledge that surveys and evaluations recently conducted or directed by TVA might form part of such an assessment. We ask that you provide your plan of action for addressing this matter to the NRC within 30 days of the date of this letter. Included in your plan we request you: 1) describe any immediate/short term actions which provide reassurance of acceptable performance during completion of your in-depth assessment; 2) describe how the in-depth assessment will be/was conducted by persons independent of the organization affected; 3) evaluate effectiveness of the implementation of Confirmatory Order (EA-09-009, EA-09-203) requirements relative to the current conditions; 4) detail how you will address the potential extent of condition in organizations outside of Operations; 5) describe any associated corrective actions and how you will measure the effectiveness of any corrective actions; and 6) describe how you will address past effectiveness of your corrective action program and ECP. Additionally, we request you promptly notify the members of the workforce of the issuance of this letter.

Approximately two weeks after we receive your action plan, we would like to meet with you again to discuss this matter in more detail, so that we may plan for appropriate NRC monitoring and follow-up.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and your response 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. If personal privacy information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the personal privacy-related information and a redacted copy of your response that deletes the personal privacy-related information. Identify the particular portions of the response in question which, if disclosed, would create an unwarranted invasion of personal privacy, identify the individual whose privacy would be invaded in each instance, describe the nature of the privacy invasion, and indicate why, considering the public interest in the matter, the invasion of privacy is unwarranted. If you request withholding on any other grounds, 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., provide the information required by 10 CFR 2.790(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.

Sincerely,

/RA/

Catherine Haney
Regional Administrator

Docket Nos.: 50-390, 391
License Nos.: NPF-90, 96

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and your response 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. If personal privacy information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the personal privacy-related information and a redacted copy of your response that deletes the personal privacy-related information. Identify the particular portions of the response in question which, if disclosed, would create an unwarranted invasion of personal privacy, identify the individual whose privacy would be invaded in each instance, describe the nature of the privacy invasion, and indicate why, considering the public interest in the matter, the invasion of privacy is unwarranted. If you request withholding on any other grounds, 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., provide the information required by 10 CFR 2.790(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.

Sincerely,

/RA/

Catherine Haney
Regional Administrator

Docket Nos.: 50-390, 391
License Nos.: NPF-90, 96

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ADAMS: Yes ACCESSION NUMBER: ML16083A479 SUNSI REVIEW COMPLETE FORM 665 ATTACHED

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NAME	C. Kontz	M. Checkle	D. Gamberoni	S. Price	A. Blamey	M. Franke	L. Wert
DATE	3/23/2016	3/23/2016	3/23/2016	3/23/2016	3/23/2016	3/23/2016	3/23/2016
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO
OFFICE	OE	OE	RII:ORA				
SIGNATURE	LLJ via email	PKH via email	LXW1 /RA for/				
NAME	L. Jarriel	P. Holahan	C. Haney				
DATE	3/23/2016	3/23/2016	3/23/2016				
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO

OFFICIAL RECORD COPY DOCUMENT NAME: G:\DRPI\RPB6\WATTS BAR\CHILLING EFFECT 2016\WATTS BAR CEL FINAL.DOCX

Exhibit 2

NRC letter to J. Shea (TVA) (Oct. 26, 2016).



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION II
245 PEACHTREE CENTER AVENUE NE, SUITE 1200
ATLANTA, GEORGIA 30303-1257

October 26, 2016

EA-16-061

Mr. Joseph W. Shea
Vice President, Nuclear Licensing
Tennessee Valley Authority
1101 Market Street, LP 3D-C
Chattanooga, TN 37402-2801

SUBJECT: WATTS BAR NUCLEAR PLANT - NRC PROBLEM IDENTIFICATION AND RESOLUTION INSPECTION (PART 1); AND SAFETY CONSCIOUS WORK ENVIRONMENT ISSUE OF CONCERN FOLLOW-UP; NRC INSPECTION REPORT 05000390/2016007 AND 05000391/2016007

Dear Mr. Shea:

On September 15, 2016, the U.S. Nuclear Regulatory Commission (NRC) completed the first part of a Problem Identification and Resolution biennial inspection, which included a Safety Conscious Work Environment Issue of Concern Follow-Up inspection at your Watts Bar Nuclear Plant, Units 1 and 2. The enclosed inspection report documents the inspection results, which were discussed on September 15, 2016, with Mr. Paul Simmons and other members of your staff.

In a letter dated March 23, 2016, the NRC issued a Chilling Effect Letter (CEL) entitled, "Chilled Work Environment for Raising and Addressing Safety Concerns at the Watts Bar Nuclear Plant," (ML16083A479). The NRC determined there was sufficient evidence to support the existence of an environment within the Operations department where your employees did not feel free to raise safety concerns to management because they feared retaliation and did not feel that their concerns were being addressed. As a follow-up to the issuance of the CEL, this inspection included a focused assessment of the safety conscious work environment (SCWE). The staff evaluated the attributes of a SCWE as described in inspection procedure (IP) 93100, "Safety Conscious Work Environment Issue of Concern Follow-up." IP 93100 identifies a SCWE as an environment in which employees are encouraged to raise safety concerns, are free to raise concerns both to their own management and to the NRC without fear of retaliation, where concerns are promptly reviewed, given the proper priority, appropriately resolved, and timely feedback is provided to those raising concerns.

The inspection team conducted 17 focus groups and 22 interviews with members of the Watts Bar staff and key management. A total of 136 employees participated in the focus groups and interviews. The information from the focus groups, interviews, and document reviews were organized into the themes that are discussed in the attached report. The team made the following key observations associated with the current work environment, which are explained in more detail in the report. Interviews and focus groups with Operations department staff indicated an improvement in the primary work environment conditions that prompted the

issuance of the CEL, but focus groups within and outside of the Operations department indicated the existence of broader, previously unrecognized challenges to the maintenance of a positive safety culture, which continued to challenge the SCWE. The team identified substantial weaknesses in various attributes of a SCWE, which were found to be pervasive across various work units. Most prominent was that although most employees in the assessment indicated that they were personally willing to raise nuclear safety concerns, nearly half believed retaliation was a potential outcome for raising concerns. In addition, most employees did not believe that concerns were promptly reviewed or appropriately resolved, either by their management or via the Corrective Action Program.

The NRC has determined that, given the current state of the site's safety culture, you are not meeting the Commission's expectation that licensees establish and maintain a positive safety culture and safety conscious work environment as described in the Safety Culture and SCWE Policy Statements (76 FR 34773, June 14, 2011; 61 FR 24336, May 14, 1996). The inspectors did not identify any findings or violations of regulatory requirements of more than minor significance. The NRC will continue to inspect and monitor the site's safety culture and the progress of the actions identified in your response to the CEL to address the work environment issues. The observations made during this inspection will be reviewed in conjunction with the results of the second part of the inspection and included in the overall assessment and conclusions regarding the effectiveness of the PI&R program.

In accordance with Title 10 of the *Code of Federal Regulations* 2.390, "Public Inspections, Exemptions, Requests for Withholding," of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response (if any) will be available electronically for public inspection in the NRC's Public Document Room or from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

Alan Blamey, Branch Chief
Reactor Projects Branch 6
Division of Reactor Projects

Docket Nos.: 50-390, 391
License Nos.: NPF-90, NPF-96

Enclosure: Inspection Report 05000390/2016007 and 05000391/2016007
w/Attachment: Supplemental Information

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issuance of the CEL, but focus groups within and outside of the Operations department indicated the existence of broader, previously unrecognized challenges to the maintenance of a positive safety culture, which continued to challenge the SCWE. The team identified substantial weaknesses in various attributes of a SCWE, which were found to be pervasive across various work units. Most prominent was that although most employees in the assessment indicated that they were personally willing to raise nuclear safety concerns, nearly half believed retaliation was a potential outcome for raising concerns. In addition, most employees did not believe that concerns were promptly reviewed or appropriately resolved, either by their management or via the Corrective Action Program.

The NRC has determined that, given the current state of the site's safety culture, you are not meeting the Commission's expectation that licensees establish and maintain a positive safety culture and safety conscious work environment as described in the Safety Culture and SCWE Policy Statements (76 FR 34773, June 14, 2011; 61 FR 24336, May 14, 1996). The inspectors did not identify any findings or violations of regulatory requirements of more than minor significance. The NRC will continue to inspect and monitor the site's safety culture and the progress of the actions identified in your response to the CEL to address the work environment issues. The observations made during this inspection will be reviewed in conjunction with the results of the second part of the inspection and included in the overall assessment and conclusions regarding the effectiveness of the PI&R program.

In accordance with Title 10 of the *Code of Federal Regulations* 2.390, "Public Inspections, Exemptions, Requests for Withholding," of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response (if any) will be available electronically for public inspection in the NRC's Public Document Room or from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,
/RA/

Alan Blamey, Branch Chief
Reactor Projects Branch 6
Division of Reactor Projects

Docket Nos.: 50-390, 391
License Nos.: NPF-90, NPF-96

Enclosure: Inspection Report 05000390/2016007 and 05000391/2016007
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NAME	D.Willis	N. Coover	G.Smith	M.Checkle	SMorrow	LJarriel	CKontz	ABlamey
DATE	10/13/2016	10/12/2016	10/18/2016	10/21/2016	10/13/2016	10/20/2016	10/21/2016	10/26/2016
E-MAIL COPY?	YES NO	YES NO	YES NO					

U.S. NUCLEAR REGULATORY COMMISSION

REGION II

Docket No.: 50-390, 50-391

License No.: NPF-90, NPF-96

Report No.: 05000390/2016007, 05000391/2016007

Licensee: Tennessee Valley Authority (TVA)

Facility: Watts Bar, Units 1 and 2

Location: Spring City, TN 37381

Dates: September 12 - 15

Inspectors: C. Kontz, Senior Project Engineer (Team Lead)
S. Morrow, Human Factors Engineer (Lead Safety Culture Assessor)
D. Willis, Allegations Team Leader
M. Checkle, Senior Allegation Coordinator
N. Covert, Senior Construction Inspector
G. Smith, Senior Resident Inspector Sequoyah

Approved by: Alan Blamey, Branch Chief,
Reactor Projects Branch 6
Division of Reactor Projects

Enclosure

SUMMARY OF FINDINGS

IR 05000390/2016007; 05000391/2016007; September 12 – 15, 2016; Watts Bar, Units 1 and 2; Biennial Inspection of the Problem Identification and Resolution Program.

This inspection constituted the first part of the biennial inspection of the Problem Identification and Resolution Program and was conducted by a senior project engineer, senior resident inspector, human factors engineer, an allegations team leader, senior allegations coordinator, and a senior construction inspector. The NRC's program for overseeing the safe operation of commercial nuclear power reactors is described in NUREG-1649, "Reactor Oversight Process."

REPORT DETAILS

4. OTHER ACTIVITIES

4OA2 Problem Identification and Resolution

.1 Safety-Conscious Work Environment

a. Background

In a letter dated March 23, 2016, the NRC issued a Chilling Effect Letter (CEL) to the Watts Bar Nuclear Plant entitled, "Chilled Work Environment for Raising and Addressing Safety Concerns at the Watts Bar Nuclear Plant," (ML16083A479). The NRC concluded that a chilled work environment existed in the Operations department because of a perception that operators were not free to raise safety concerns using all available avenues without fear of retaliation. Additionally, Region II identified and documented a safety conscious work environment (SCWE) cross-cutting theme during the 2016 mid-cycle assessment, due to the issuance of the CEL and a violation with a cross-cutting aspect in the SCWE cross-cutting area (Inspection Report 05000390/2016001; ML 16098A323).

As part of the follow-up to the work environment issues, the NRC elected to include an assessment of the SCWE attribute of a licensee's safety culture using inspection procedure (IP) 93100, "Safety Conscious Work Environment Issue of Concern Follow-up."

As described in IP 93100, "A safety conscious work environment (SCWE) is defined as an environment in which employees are encouraged to raise safety concerns, are free to raise concerns both to their own management and to the NRC without fear of retaliation, where concerns are promptly reviewed, given the proper priority, and appropriately resolved, and timely feedback is provided to those raising concerns. In contrast, a "chilled work environment" is one in which employees perceive that raising safety concerns to their employer or to the NRC is being suppressed or is discouraged and can occur because of an event, interaction, decision, or policy change."

b. Inspection Scope

The inspection was performed in accordance with IP 93100, "Safety Conscious Work Environment Issue of Concern Follow-up," and other IPs as referenced by IP 93100. The objectives of the inspection were to determine whether interim actions have improved the work environment in the Operations department since the CEL; if indications of a chilled work environment exist in other departments; if employees are reluctant to raise nuclear safety or regulatory issues; and if employees are being discouraged from raising nuclear safety or regulatory issues.

Specifically, the inspection team performed semi-structured interviews and focus groups using questions designed to address four primary elements of a SCWE:

- 1) employees' willingness to raise concerns and whether management's behaviors encourage them to do so;
- 2) employees' perception of the effectiveness of the corrective action program as the primary avenue to raise concerns;
- 3) employees' perception of the effectiveness of an alternative program if one exists, such as an employee concerns program (ECP); and
- 4) employees' perception of the effectiveness of management actions to detect and prevent retaliation and chilling effects.

The inspection team conducted 17 focus groups and 22 interviews with the licensee's staff and key management. For the focus groups, the inspection team randomly selected 10 to 20 percent of employees from the following departments: Operations, Engineering, Maintenance, Work Management, Security, Chemistry, Radiation Protection, and Training. Each focus group consisted of employees at the same organizational level and from the same department. A total of 136 employees participated in the focus groups and interviews. The information from the focus groups, interviews, and document reviews were organized into the themes that are discussed in this report.

c. Observations

1) General

Based on the results of the interviews and focus groups, the inspection team identified deficiencies in the safety conscious work environment across multiple departments. Although nearly all employees indicated that they were personally willing to raise nuclear safety concerns, many stated they did not feel free to raise concerns without fear of retaliation. In addition, most employees did not believe that concerns were promptly reviewed or appropriately resolved, either by their management or via the Corrective Action Program.

The inspection team observed that, in some work units, employees expressed a clear distinction between their willingness to raise nuclear safety concerns versus non-nuclear safety concerns. While nearly all employees stated that they were willing to raise nuclear safety concerns, many indicated that they would be unwilling to raise concerns that they believed to be unrelated to nuclear safety. Further, most employees did not believe that management would respond to or take action to resolve non-nuclear safety concerns. When questioned about what a non-nuclear safety concern was, employees gave examples of concerns that had potential ties to nuclear safety, such as deficient procedures, work orders that were inappropriately closed before all work was completed, personal safety concerns about working on live systems (e.g., safety systems that remain electrified or pressurized), and long-standing equipment issues. As a result, the inspection team determined that employees used a very narrow definition of "nuclear safety" when identifying the types of concerns that they were encouraged to raise. The potential negative consequences of making a distinction between nuclear and non-nuclear safety concerns is that employees may self-censor and decide not to raise a

concern because they fear retaliation and do not believe it is tied to nuclear safety. The inspection team observed that employees' perceptions about how management would respond to a concern, and whether the concern would be resolved in a timely manner, strongly influenced their overall willingness to raise any concerns.

2) Response to Chilling Effect Letter

When asked about the chilling effect letter, all employees indicated that they had received communications from management explaining the letter. Many employees expressed disappointment in the initial communications from management, which seemed to downplay the issue by focusing on the "perception" of a SCWE problem. However, employees noticed a shift in the tone of more recent communications, which suggested management ownership for the chilled work environment in Operations and commitment to address work environment issues across the entire site. Most employees also indicated that they are cautiously optimistic about the recent management changes. However, employees were not generally aware of specific actions to address the root causes of the chilled work environment beyond recent management changes and increased communications.

Multiple focus groups expressed skepticism about the sustainability of positive changes in the work environment, particularly given their experiences with frequent management changes. While staff had noted increased communications, the information provided was not always seen as open and honest. For instance, communications were seen as incomplete, often over-emphasizing positives, and down-playing challenges. Employees noted that the incomplete communications gave the impression that management was controlling the story, which contributed to a lack of trust in management. Some groups felt they had no basis to judge whether positive changes would last, and noted that the next planned outage in Spring 2017 would be an effective indicator of whether there have been true changes in the work environment. Multiple groups observed that the safety conscious work environment is particularly challenged during outages because of the added schedule pressure.

3) Environment for Raising Concerns

Most licensed operators in both interviews and focus groups reported slight improvements in the work environment since the CEL, and expressed that they felt free to execute their duties without undue external pressure. However, many employees, including licensed operators, believed that retaliation for raising safety concerns has occurred in the past, and therefore remained cautious when deciding when and how they would raise concerns. Many based this belief on management actions they considered to be retaliatory in nature. Employees provided examples of dismissive, disrespectful, or blaming behaviors that did not encourage the raising of concerns. In spite of this, most employees stated they would raise nuclear safety concerns.

The inspection team observed a lack of trust between employees and management regarding their environment for raising concerns, particularly beyond the level of first line supervision. While most employees felt free to raise issues to their first line supervisor, they would be hesitant to raise concerns to middle or upper management. In addition,

employees did not feel that first line supervision was supported by upper management. For example, some employees believed that first line supervisors who regularly raised concerns up their management chain were subject to ridicule from higher levels of management and received more negative performance appraisals.

Many employees noted that the continuous turnover and rotation of managers had created instability in their departments. Employees from different departments provided examples of having from six to sixteen different managers in the past six years. Most employees expressed frustration with the frequent management changes because they felt it led to changing priorities and a lack of long-term accountability. For example, employees indicated that because managers would not remain in a position for a long period of time they could make decisions that prioritized short-term gains over long-term improvements. Other examples included beliefs that managers were more concerned with meeting metrics and production goals than fully addressing issues with degraded equipment, ensuring procedures were updated, or improving work processes. The lack of management visibility or development of relationships with employees had also contributed to a lack of trust between management and staff.

4) Other Safety Culture Observations

In addition to questions regarding the environment for raising concerns, the inspection team asked questions related to other traits of a positive safety culture, such as decision making, questioning attitude, problem identification and resolution, and work processes. The team sought to determine the extent to which weaknesses in other safety culture traits may be driving the identified deficiencies in the safety conscious work environment.

Most employees indicated that they have the authority to stop work and expressed a willingness to stop when they believed the work to be unsafe or work instructions were unclear. However, most employees also noted that there was a strong sense of production over safety throughout the organization. Many employees expressed the opinion that if they raised issues that would disrupt “critical path” activities then they would be viewed negatively by management. Focus group participants provided examples of disrespectful behavior, intimidation and shopping around work to other employees or contractors who would be less likely to raise issues.

When asked about the Corrective Action Program (CAP), all focus groups stated that they could enter issues into the CAP; however, most believed the CAP was ineffective at resolving issues. The CAP was characterized as a problem identification, but not a problem resolution tool. Employees expressed frustration with the lack of feedback, and issues that were closed to trend or repeatedly deferred.

5) Employee Concerns Program

Most employees stated that they were aware of the Employee Concerns Program. However, many employees were not aware or did not perceive ECP as independent from management. Some employees did not believe that management would take action to resolve issues identified through ECP.

Most employees stated that they can be open and honest when participating in ECP surveys and other safety culture assessments. However, the inspection team noted that many employees were not able to differentiate between the different safety culture assessments that they take. For example, ECP pulsing surveys were often confused with other surveys that ask similar questions about safety culture and SCWE, but also required employees to report identifying information such as their work unit, tenure, age range, and gender. As a result, the ECP pulsing surveys were not viewed as anonymous, which also affected employees' overall perception of the ECP. In addition, most employees did not recall communications regarding the results of the assessments, or saw changes made to the work environment prior to the next assessment. This created a continuous cycle of employees providing feedback but not seeing any action as a result of that feedback. Such action can discourage continued employee engagement and is interpreted by employees to mean management is not supportive of employees raising any concerns, including nuclear safety concerns.

6) Nuclear Safety Culture Monitoring Panel

The team interviewed multiple members of the Nuclear Safety Culture Monitoring Panel (NSCMP), and all members reported improvements in recent meetings of the NSCMP. For example, after the CEL the panel met monthly rather than quarterly to provide more timely reviews of safety culture trends. Panel members also reported more engagement during meetings, and the addition of craft level employees rather than just management at the meetings to provide additional insights regarding the work environment in different departments.

However, from the inspection team's review of the NSCMP procedures and meeting minutes from 2014 through August 2016, the NSCMP did not appear to be self-critical of key safety culture traits that were precursors for the issues that led to the chilled work environment in Operations. Specifically, the team noted that the safety culture trait, "leadership safety values and actions," was only identified as an improvement opportunity on two occasions since 2014. On both occasions, the trait was rated as an improvement opportunity due to issues identified by external organizations (e.g., Quality Assurance and Institute of Nuclear Power Operations). Further, the "leadership safety values and actions" trait has remained acceptable since fourth quarter of 2015, yet leadership deficiencies were identified as a root cause of the chilled work environment in Operations in early 2016. This suggested that the NSCMP may have difficulty self-identifying safety culture issues, particularly when the source relates to leadership behaviors.

The inspection team also observed considerable fluctuations in the NSCMP ratings of safety culture from meeting to meeting, primarily based on recent examples of positive or negative performance. For example, the NSCMP rated the safety culture trait, "environment for raising concerns" as a strength in November 2015, during the same time period that the chilled work environment developed in the Operations department. Since that time period, the "environment for raising concerns" trait has been rated as acceptable during multiple meetings, including the NSCMP meeting immediately before the chilling effect letter was issued (March 2016) and the meeting two months after the chilling effect letter (May 2016). This gives the impression that the NSCMP believed the

site had resolved the issues associated with the environment for raising concerns in May 2016. The rating of acceptable was based in part on pulsing survey results, which showed that high percentages of employees were willing to raise concerns. However, the data did not indicate whether employees feel encouraged to raise concerns, whether they believe they may be retaliated against for raising concerns, or whether employees believed concerns will be appropriately addressed and resolved.

The inspection team observed that NSCMP members have not received specialized training regarding how to draw conclusions about safety culture. Given the fluctuations in the safety culture ratings, it was not clear that the NSCMP members shared a common understanding of the nuclear safety culture standards they were trying to achieve when assessing whether a safety culture trait was a strength, acceptable, or an improvement opportunity. As a result, the inspection team did not have confidence that the NSCMP provided an accurate snapshot of the safety culture at the site, or that the NSCMP would be able to detect and correct a gradually declining safety culture prior to the development of a chilled work environment.

7) Summary

Based on the inspection team's limited assessment, the licensee's safety culture and safety conscious work environment were not consistent with the Commission's expectations as described in the Safety Culture and SCWE Policy Statements (76 FR 34773, June 14, 2011; 61 FR 24336, May 14, 1996). There were strong indications that similar stressors and precursors that allowed the chilled work environment to develop in the Operations department also existed in other departments. These underlying issues included perceptions that decision making favored production over safety, lack of effective problem resolution, lack of trust between management and staff, and beliefs that employees who raised concerns, including nuclear safety concerns, were at risk of being retaliated against for doing so. At the time of the inspection, most employees noted slight improvements in the work environment since the issuance of the CEL, and licensed operators reported that they felt free to execute their duties. However, the interviews and focus groups indicated deficiencies in the SCWE, specifically ensuring management behaviors encouraged the raising of concerns, the effectiveness of the CAP and ECP for resolving concerns, and the effectiveness of management actions to detect and prevent retaliation and chilling effects.

4OA6 Meetings, Including Exit

On September 15, 2016, the inspectors presented the inspection results to Mr. Simmons and other members of the site staff.

ATTACHMENT: SUPPLEMENTAL INFORMATION

KEY POINTS OF CONTACT

Licensee personnel:

Gordon Arent, Licensing Manager

NRC personnel:

Jared Nadal, Senior Resident Inspector

LIST OF REPORT ITEMS

None

LIST OF DOCUMENTS REVIEWED

Condition Reports Reviewed (CRs)

1125714
1127691
1151960
1155393
1182538
1209515
1210654

Corrective Action Documents (Completed)

1162755-013
1162755-028
1162755-033

Procedures

NPG-SPP-01.7, "Nuclear Safety Culture," Rev. 3
NPG-SPP-01.7.2, "Nuclear Safety Culture Monitoring," Rev. 6
NPG-SPP-01.7.3, "Conduct of Nuclear Safety Culture Assessments and Organizational Effectiveness Surveys," Rev. 2

Miscellaneous Documents

CR 1127691, "Inadequate Management of an Outage Emergent Issue Results in Challenge to Plant Operation Root Cause Analysis (RCA) CR Report," Rev. 1
 CR 1155393, "Watts Bar Nuclear Plant Chilled Work Environment RCA CR Report," Rev. 0
 EA-16-061, Letter from U.S. NRC to Mr. Joseph Grimes, "Chilled Work Environment for Raising and Addressing Safety Concerns at the Watts Bar Nuclear Plant," 03/23/2016
 Gelfond Employee Engagement Survey, dated Summer 2015
 Gelfond Nuclear Supplement to Employee Engagement Survey, dated Summer 2015
 Letter from Watts Bar Nuclear Plants Units 1 and 2 to U.S. NRC, "Response to NRC Letter Concerning a Chilled Work Environment for Raising and Addressing Safety Concerns at the Watts Bar Nuclear Plant," 04/22/2016
 Nuclear Safety Culture Monitoring Panel Agenda and Report, 06/05/2014
 Nuclear Safety Culture Monitoring Panel Agenda and Report, 008/14/2014
 Nuclear Safety Culture Monitoring Panel Minutes, 11/06/2014 and 11/20/2014
 Nuclear Safety Culture Monitoring Panel Minutes, 02/05/2015
 Nuclear Safety Culture Monitoring Panel Minutes, 05/07/2015
 Nuclear Safety Culture Monitoring Panel Minutes, 08/13/2015
 Nuclear Safety Culture Monitoring Panel Minutes, 11/05/2015
 Nuclear Safety Culture Monitoring Panel Agenda and Report, 01/14/2016
 Nuclear Safety Culture Monitoring Panel Minutes, 03/03/2016
 Nuclear Safety Culture Monitoring Panel Minutes, 04/14/2016
 Nuclear Safety Culture Monitoring Panel Minutes, 05/19/2016
 Nuclear Safety Culture Monitoring Panel Minutes, 06/23/2016
 Nuclear Safety Culture Monitoring Panel Minutes, 07/14/2016
 Nuclear Safety Culture Monitoring Panel Minutes, 08/11/2016
 OE.01.WBN.01, "Improve WBN Work Environment," Business Planning Initiatives and Actions," FY17-21 BP Rev 0
 Organizational Survey Analysis Report by Midwest Organizational Services, 11/26/2014
 Watts Bar Nuclear Plant CWEL Oversight Meeting Minutes, 08/23/2016
 Watts Bar Nuclear Plant Nuclear Chilled Work Environment Assessment of Progress, presentation, 09/12/2016

Condition Reports generated as a result of the inspection

CR 1212504, "Consider Revising NSCMP Procedure NPG-SPP-01.7.2 to Add Craft," 09/12/2016
 CR 1212515, "Consider Adding the NSCMP Index Developed at Watts Bar to NSCMP Procedure," 09/12/2016

Exhibit 3

C. Earls to E. Henderson (Aug. 1, 2018).

EARLS, Chris

From: EARLS, Chris
Sent: Wednesday, August 1, 2018 10:12 AM
To: Henderson, Erin Kathleen
Cc: EARLS, Chris (cee@nei.org)
Subject: RE: Performance Feedback

Hi Erin,

Here is my feedback on Beth since she has arrived at NEI. Please let me know if you need additional info or have any questions.

Chris

Accountability & Driving for Results

Since arriving at NEI, Beth has taken a very proactive approach to driving accountability within the Regulatory Issues Task Force. She developed a RITF Issues table that captures all the key issues and assigns responsibility for each of them. This table will be adopted by other areas with the NEI Regulatory Affairs group.

Continuous Improvement

Beth has been on a mission since she has arrived to strengthen the RITF. As a long-term member of the group, she knows where the group does well and not so well. She has focused on improving those areas where they need improvement.

Leveraging Diversity

Beth is very good at seeking out diverse opinions and thoughts. She goes out of her way to make sure all stakeholders are considered.

Adaptability

Beth has had to quickly adapt from a utility work environment to NEI's environment which can be significantly different. She has been very eager to learn and fit in with the way NEI conducts work. It has not taken her long to figure how things get down here and how to make it work for herself.

Effective Communications

Beth communicates very well with her peers industry and regulatory peers. She has taken advantage of her contacts within the NRC to help facilitate communications on key topics. She also communicates well with NEI management. On a number of occasions, she has sought out the CNO to communicate info or provide feedback. This is not always common with a loanee.

Leadership Courage

Beth can be counted upon to speak up on issues even if her thoughts are counted to the current position. She is careful to not offend people, but at the same time gets her point across. This is very helpful especially when dealing with the regulator.

Business Acumen

Beth is able to bring a utility perspective to internal NEI discussions which is invaluable. She is able to explain how different issues will affect the people or operation of the power plants. She is also able to identify issues of concern before they are obvious to others.

Building Organizational Talent

With Beth's broad regulatory affairs experience, she has been able to help NEI staffer learn about utility regulatory affairs practices and focus. I plan to use her as a mentor for a new NEI loanee that starts in October. This loanee has limited experience in regulatory affairs and it is their utilities desire that NEI help develop her in this area so that she may return to a reg affairs leadership role. Beth will be ideal for this assignment.

Inspiring Trust

Beth has very good relationships with both her peers and regulatory counterparts. She has a pleasant personality which enables her to put others at ease and enable a good working relationship. Also, her extensive regulatory background inspire confidence in what she is doing and saying.

Vision, Innovation, and Strategic Execution

As discussed previously, Beth has a real vision for what the RITF must become to be more effective in addressing the key industry issues. She has already begun driving the organization and industry toward that vision.

In general, Beth has been the ideal loanee for NEI. Her experience and approach to work has enabled her to jump right into the role and be successful. She has been very easy to supervise. I do not have to worry about what she is doing and can count of her to do the right thing. The one thing I would say that she needs to guard against is stretching herself too thin and trying to take on too many issues. Her passion for the issues is a key to her early success at NEI but it can also potentially cause her to take too much work on and as result affect her performance on those issues. This is not a problem right now. It's just something to be aware of and guard against. As her supervisor, I will continue to monitor her work load and try to make sure she doesn't get overwhelmed.

From: Henderson, Erin Kathleen [<mailto:ekwest@tva.gov>]

Sent: Wednesday, July 25, 2018 2:45 PM

To: EARLS, Chris

Subject: Performance Feedback

Importance: High

Chris,

We're in the early part of the process for doing performance reviews for the end of the fiscal year. Just checking to see if you had any feedback to share regarding Beth from her first 3 months that I should factor in?

We rate managers against both goals and 10 leadership competencies. I've attached a document so you know what our leadership competencies are and can share any perspective you may have against those. If you can send me any feedback you have by Friday, that'd be great.

Give me a call if you have any questions!

Thanks,
Erin

Erin Henderson
Director, Nuclear Regulatory Affairs
Tennessee Valley Authority
Office: 423.751.7620
Cell: 302.507.1192

Exhibit 4

B. Wetzel to J. Shea & A. Poland (Oct. 31, 2018).

MEMORANDUM

To: Joe Shea
cc: Amanda Poland
From: Beth Wetzel
Re: Employment
Date: October 31, 2018

Thank you for meeting with me on October 25. I was disappointed to learn that TVA does not want to continue my professional services, and I am seriously concerned that this decision was taken in retaliation because I reported safety issues, including the ongoing chilled work environment that TVA has not addressed. I am particularly concerned that my badge access was pulled only one day before the NRC was arriving for a scheduled site visit to interview personnel in Corporate Regulatory Affairs, and only one week before I was to be a leading participant in three high-profile meetings at NEI and NRC.

I cannot agree to all of the terms that TVA has proposed, but I have discussed your proposal with my lawyer, and I have come up with a counterproposal. In summary, I would agree to most of the terms set forth in the October 25 letter, with the following modifications:

1. I would be allowed to return to my rotation at NEI through the scheduled end of the rotation (October 31, 2019), with the same pay and benefits as before, and TVA would explain to NEI that my temporary removal from duty was not the result of any performance issues;
2. TVA would provide me with performance evaluations for both Fiscal Year 2018 and for Fiscal Year 2019 that would reflect my evaluation from NEI, along with a bonus (annual incentive award) commensurate with those evaluations; and
3. I would resign at the end of that rotation; TVA would agree to provide me with a favorable letter of reference and an agreement that all oral references would be consistent with the written letter of reference.

This modest counterproposal should be amenable to TVA. I have enjoyed working with my colleagues at TVA, and I hope to continue to have a good professional working relationship with them in the future. Thank you, and I look forward to discussing these issues with you in person.

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PETER M. WHELAN

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DEVIN WRIGLEY

KAIYA LYONS*

*ADMITTED IN MN ONLY

By Telecopier and First Class Mail

December 18, 2018

Kurt Petermeyer, Director, Region IV
Occupational Safety and Health Administration
United States Department of Labor
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Room 6T50
Atlanta, Georgia 30303-8801

Re: Beth Wetzel / Tennessee Valley Authority.

Dear Mr. Petermeyer:

On behalf of my client, Beth Wetzel, I am filing a complaint with the Department of Labor, Occupational Safety and Health Administration, under Section 211 of the Energy Reorganization Act ("ERA"), 42 U.S.C. § 5851 *et seq.*, and NRC Regulation 10 C.F.R. § 50.7, against the Tennessee Valley Authority ("TVA") for its retaliation against Ms. Wetzel, because she engaged in activities protected under the ERA.

Ms. Wetzel was a dedicated manager at TVA, with over 32 years' experience in the nuclear power industry. As set forth below, she repeatedly reported, and attempted to solve, TVA's refusal to address violations that affected nuclear safety at TVA's nuclear power plants. TVA took little to no action to address her concerns, and instead reprimanded her for retaliatory reasons, culminating with removing her from a prestigious detail, placing her on paid leave, and threatening to terminate her employment.

I. Ms. Wetzel's Professional Background and Employment at TVA.

Ms. Wetzel earned her Bachelor of Science degree in Nuclear Engineering at Pennsylvania State University in 1986. She then spent the next 20 years, from July 1986 to October 2006, at the Nuclear Regulatory Commission (NRC), where she was promoted into increasingly responsible positions. She started out as a Reactor Inspector in Region III (headquartered in Illinois), and then transferred to the NRC's headquarters in Rockville, Maryland in November 1988. During the rest of her tenure at the NRC, she worked on all aspects of the NRC's regulatory oversight and management of nuclear power plants. She routinely dealt with the regulators within NRC, the NRC inspectors, and the licensees. She also earned certificates as a Reactor Inspector (1987) and as an Operating Licensing Examiner in 1991. She consistently received excellent performance reviews, and earned both the William A. Jump Award for Noteworthy Service by Mid-level Government Employees in 1997, and the Government Meritorious Service Award in 2005.

TVA hired Ms. Wetzel in 2006, and she started at the corporate headquarters in Chattanooga (Tennessee) in October 2006 as a Manager in the Nuclear Licensing and Industry Affairs division. In that role, she supervised eight employees, including the three Licensing Senior Program Managers who provided governance and oversight for the Nuclear Power Group Licensing and Industry Affairs program across TVA's nuclear fleet. TVA had hired Ms. Wetzel because of the depth and breadth of her experience at the NRC, and she was able to apply her professional skills to addressing significant licensing and regulatory issues at TVA. TVA then promoted her in January 2009 to serve as Manager of the Sequoyah Licensing and Industry Affairs office, where she supervised eight employees. In that role, her group was responsible for implementing Sequoyah's Licensing program, which included handling inspections by NRC and several industry groups, and regularly interacting with the NRC. She also served as the Acting Director of the Sequoyah Safety and Licensing office from July 2009 through May 2010, with four other organizations reporting directly to her. In February 2011, TVA transferred Ms. Wetzel to the Corporate office to serve as a Program Manager, Performance Assessment, in the Chattanooga headquarters, where she managed and oversaw assessments across TVA's fleet, including the INPO mid-cycle assessment, the pre-NRC inspection assessments, and the pre-INPO training accreditation visits.

In November 2012, TVA promoted her again, to serve as the Manager, Emerging Regulatory Issues, where she supervised six employees in Corporate Nuclear Licensing. She handled all aspects of emerging regulatory issues, including identifying the issues, influencing the regulatory approach, and overseeing the Nuclear Power Group's implementation of those issues.

From April to October 2018, TVA detailed Ms. Wetzel to the Nuclear Energy Institute (NEI), a prestigious nuclear industry trade association that is designed to coordinate efforts among the numerous nuclear power plant licensees, and to serve as a single voice for the nuclear power industry with the NRC. In that role, Ms. Wetzel managed a number of industry-wide regulatory initiatives. She was the primary author of NEI-18-07, “Licensee Performance Assessments.” She also led the Regulatory Issues Task Force (RITF), an important role that interacted regularly with the NRC and the individual licensees, in order to coordinate both the NRC and the industry in order to reach a consensus on important regulatory issues.

Thus, as of 2018, Ms. Wetzel had over three decades’ experience in increasingly complex positions in the nuclear regulatory and licensing field, with both the NRC and the licensees.

In these positions at TVA, she was responsible for ensuring TVA’s compliance with the NRC regulations, including those relating to investigation and resolution of the Condition Reports. In that capacity, she initiated Condition Reports, which are designed to report a condition that needs to be addressed, and to identify its probable cause, so that the originator or others can then take prompt action to remedy the condition. These Condition Reports also serve to identify trends, such as recurring problems that require organizational reform to prevent their recurrence. She also initiated, drafted, and followed-up on the adequacy of corrective actions taken to address the Condition Reports.

The NRC specifically requires nuclear plant personnel, including Ms. Wetzel, to file Condition Reports to document NRC regulatory and non-regulatory compliance concerns, and to set forth a detailed plan for their resolution. *See* 10 C.F.R. Part 50, Appendix B, Criterion I (“The persons and organizations performing quality assurance functions shall have sufficient authority and organizational freedom to identify quality problems; to initiate, recommend, or provide solutions; and to verify implementation of solutions.”), and 10 C.F.R. Part 50, Appendix B, Criterion XVI, Corrective Actions (“Measures shall be established to assure that conditions adverse to quality, such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and nonconformances are promptly identified and corrected.”). These regulations thus require TVA not only to document issues through Condition Reports, but also to address them through an investigation and resolution.

However, as set forth in the next section, after Ms. Wetzel started raising concerns at TVA, senior TVA managers – in particular, Joseph Shea, Vice President of Regulatory Affairs and Erin Henderson, Director of Regulatory Affairs – started retaliating against her without conducting any meaningful investigation. TVA retaliated against Ms. Wetzel because Ms.

Henderson viewed Ms. Wetzel's reports and complaints as a criticism of her failure or refusal to address these issues. As set forth below, Mr. Shea, Ms. Henderson, and their colleagues retaliated against Ms. Wetzel through a series of adverse employment actions, including rescinding her detail at the NEI, placing her on paid administrative leave, attempting to force her to resign, and making clear that if she did not resign, she would be fired.

II. Ms. Wetzel's Protected Disclosures at TVA.

From 2015 through the present, Ms. Wetzel made a series of protected disclosures, to which Ms. Henderson in particular took offense. During that time period, Ms. Henderson was the Senior Manager, Fleet Regulatory Operations, who reported to Joseph Shea (Vice President, Nuclear Licensing), who, in turn, reports to David Czufin (Senior Vice President, Engineering & Operations Support).

A. TVA Promoted Erin Henderson to Senior Manager.

In early 2015, Mr. Shea asked the Corporate Licensing Managers (including Ms. Wetzel) for their candid opinions as to whether the Site Licensing Managers (which then included Ms. Henderson) were qualified to be promoted to a Corporate Licensing Manager position. Ms. Wetzel truthfully responded that Ms. Henderson lacked the licensing and regulatory experience to be a Senior Manager, which ordinarily requires at least eight years' experience. When Ms. Henderson was first hired at TVA, she had only about two years' experience in the Chemistry department at Salem/Hope Creek (New Jersey), and less than six years' experience at TVA. TVA had recently demoted someone else for lacking the required years of experience. While at TVA, Ms. Henderson had a remarkable fast promotion trajectory (upon information and belief, her father is a good friend of Chip Pardee, who was then TVA's Chief Operating Officer), even though she struggled to pass the SRO Certification Class.

Ms. Wetzel told Mr. Shea that TVA should not hire an unqualified person to supervise the Site Licensing Managers and others in Mr. Shea's group. Nonetheless, Mr. Shea hired Ms. Henderson to take over as Ms. Wetzel's supervisor. Ms. Wetzel soon learned that Ms. Henderson wanted to place Ms. Wetzel on a Performance Improvement Plan (PIP), which Mr. Shea overruled, as Mr. Shea instead gave Ms. Wetzel a favorable performance evaluation.

Ms. Henderson, after being thwarted from giving Ms. Wetzel a PIP, then hastily reorganized her section, reducing Ms. Wetzel's direct reports from six to four. Even then, after Ms. Wetzel's best direct report (Fred Mashburn) retired, Ms. Henderson refused to allow Ms. Wetzel to fill that position, in an attempt to set up Ms. Wetzel to fail. Mr. Mashburn was willing

to continue working as a contract employee during his retirement, but Ms. Henderson refused to do so (and instead hired much more expensive outside contractors), because Ms. Henderson was upset that Mr. Mashburn had provided truthful, negative criticisms about the impact of her conduct on the work environment at TVA.

Ms. Henderson has a well-documented history of retaliating against TVA employees who have complained about her. Upon information and belief, these include (1) terminating a female employee at Watts Bar; (2) placing another female employee (with over 25 years' experience in TVA Engineering) on a PIP in order to move her out of Sequoyah Licensing; (3) placing Zachary Kitts (also at Sequoyah) on a PIP in an attempt to drive him out; (4) placing a senior employee in Corporate Nuclear Licensing on a PIP and moving her out of that office in a very public manner; and (5) initiating false investigations of a Site Licensing Manager.

Indeed, during a lunch meeting, Ms. Henderson told the attendees that "People may not realize it, but we can lower managers' Winning for Performance [evaluations] this year," making clear that she could and would lower evaluations of those she disliked. Ms. Henderson made good on this threat by giving Ms. Wetzel an "off-track" evaluation in the 2016 mid-year performance review, only several months after she received a favorable evaluation. This came after Mr. Shea had skip-level meetings (where he met with Ms. Henderson's subordinates), and Ms. Wetzel told him that Ms. Henderson was engaged in abusive behavior with Ms. Wetzel and her other subordinates. After that meeting, Ms. Henderson became even more abusive towards Ms. Wetzel, making clear that Mr. Shea had told Ms. Henderson of Ms. Wetzel's criticisms. Ms. Henderson increased Ms. Wetzel's workload while reducing her resources and staff support, in an attempt to set up Ms. Wetzel for failure.

B. Ms. Wetzel Addressed the Failure of Watts Bar to Comply with the NRC's Fatigue Rule Requirements.

In 2016, Ms. Wetzel had to address the problem related to the failure of the Watts Bar nuclear plant to comply with the NRC's fatigue rule requirements, 10 C.F.R. Part 26. Watts Bar staffers attempted to evade these rules through arguing for a reinterpretation that would relax the limitations on working overtime. Mr. Shea improperly told Ms. Wetzel that she was to direct her subordinate (Jason Castro) to write an interpretation of the fatigue rule that would "push it as far as he could." While Ms. Wetzel relayed this directive to Mr. Castro, she also told him draft the interpretation that was legitimate. Mr. Castro did so, since it was not possible to draft a more flexible interpretation as Mr. Shea was demanding, particularly as Watts Bar was already violating the fatigue rule requirements.

Shortly thereafter, Ms. Wetzel gave one of her regular “Emerging Issues” briefing to the other managers. Ms. Henderson solicited feedback from those managers, and falsely told Ms. Wetzel that Marie Gillman (General Manager of Projects) said that Ms. Wetzel did “not do well” on this presentation. Ms. Wetzel was surprised at this feedback, so she followed up with Ms. Gillman for suggestions, and Ms. Gillman was surprised, since she had told Ms. Henderson that Ms. Wetzel did a great job on this presentation.

Also around this time, Ms. Wetzel was nominated to serve as the RUG II Chair, a high-profile leadership role in the nuclear industry. In that capacity, she attended the senior-level Regulatory Issues Working Group (RIWG) meetings at NEI. Ms. Henderson was not invited to those meetings, so she tried to get Ms. Wetzel removed from the invite list. In response, NEI specifically disinvited Ms. Henderson, on the grounds that Ms. Wetzel was the RUG II Chair. Ms. Henderson then tried to discourage Ms. Wetzel from continuing as RUG II Chair, including through trying to create false scheduling conflicts with the RIWG meetings in an attempt to force Ms. Wetzel to resign as RUG II Chair. Ms. Henderson also spoke with the National RUG (NRUG) Chair, encouraging him to remove Ms. Wetzel from the RUG II Chair position.

C. Ms. Wetzel Protested the Failure to Comply with the “Fukushima” Requirements at the Sequoyah Nuclear Power Plant.

Ms. Wetzel also protested to Ms. Henderson that the Sequoyah Nuclear Power Plant was not in compliance with the “Fukushima” requirements that govern storage tanks. Russell Thompson, one of Ms. Wetzel’s direct reports, is the Fukushima Licensing Lead at TVA, and told Ms. Wetzel that while Sequoyah had previously claimed to be in compliance with the Fukushima requirements, the reality is that Sequoyah was not in compliance, based on an unprotected condensate storage tank. When Mr. Thompson attempted to raise this with Engineering at Sequoyah, he was rebuffed. Therefore, Ms. Wetzel elevated the issue to Ms. Henderson, who chose to ignore it. Ms. Henderson’s husband (Michael Henderson) worked at Sequoyah and was the supervisor of the Fukushima Engineer at Sequoyah.

It was not until a month or so later, when TVA executives learned that Sequoyah had a compliance issue with the Fukushima requirements did Ms. Henderson finally address it by responding to her senior management.

Shortly thereafter, Ms. Henderson attempted another retaliatory reorganization of her group, with the same goal of taking highly qualified staff away from Ms. Wetzel so that Ms. Henderson could then demote Ms. Wetzel to the level of an individual contributor.

D. Ms. Wetzel Protested TVA's Inadequate Response to the NRC's March 23, 2016 Chilled Work Environment Letter.

Meanwhile, in late 2015, the NRC had initiated a review to investigate the environment at Watts Bar for raising and addressing safety issues. The NRC convened a meeting on March 22, 2016 with TVA and public representatives, and issued a letter to TVA on March 23, 2016, specifically identifying a “chilled work environment for raising and addressing safety concerns” at Watts Bar. *See* NRC letter to J. Grimes, TVA (Mar. 23, 2016) (attached hereto as Exhibit 1). The NRC “determined there is sufficient evidence to support the existence of an environment within the Operations Department where your employees do not feel free to raise safety concerns to your management because they fear retaliation and do not feel that their concerns are being addressed.” *Id.* The NRC also wrote that “we are concerned an environment exists where control room operations may be influenced by management in a manner that undermines licensed senior operator responsibility for directing licensed activities.” *Id.* The NRC concluded that, “we are concerned that a fear of retaliation exists to the extent that it is impeding open communication within the Operations Department.” *Id.*

The NRC requested that TVA notify its workforce of the issuance of this letter, and submit its response, so that the NRC could continue its investigation. Subsequently, on October 26, 2016, the NRC issued its follow-up report on its investigation of the “chilling effect” on TVA employees. The NRC notified TVA that its investigation had found that numerous employees did not believe that they could report problems without retaliation:

Most prominent was that ... **nearly half [of the employees] believed retaliation was a potential outcome for raising concerns.** In addition, most employees did not believe that concerns were promptly reviewed or appropriately resolved, either by their management or via the Corrective Action Program.

The NRC has determined that, given the current state of the site's safety culture, you [TVA] are not meeting the Commission's expectation that licensees establish and maintain a positive safety culture and safety conscious work environment as described in the Safety Culture and SCWE Policy Statements...

See NRC letter to J. Shea (TVA), at 2 (Oct. 26, 2016) (attached hereto as Exhibit 2) (emphasis added). This issue, which remained open into 2018 and is still open, confirmed that TVA was not creating an atmosphere that was conducive for reporting and addressing safety issues at the nuclear plants. Both the chilling effect letter and the follow-up letter are still open.

In July 2016, Ms. Wetzel protested to Ms. Henderson that TVA's April 22, 2016 response to the NRC's March 23, 2016 chilled work environment letter did not identify all of the NRC commitments that TVA was or would be addressing. Ms. Henderson refused to take any action, so Ms. Wetzel then initiated a Condition Report (CR). Indeed, several months after Ms. Wetzel initiated the CR, the NRC identified a Section 50.9 violation in TVA's April 22, 2016 submission, thereby confirming the legitimacy of Ms. Wetzel's protected activity.

E. Ms. Wetzel Protested the Failure to Perform TS Surveillances.

In 2016 and 2017, the Watts Bar nuclear power plant had several extended outages, including a forced outage that started on March 20, 2017 and lasted more than 4 months. TVA had previously told the NRC that if Watts Bar had extended outages, TVA would perform TS (Technical Specification) surveillances that had approved NRC extensions. However, Watts Bar did not do the TS surveillances. Ms. Wetzel questioned this at team meetings. Both Ms. Henderson and Mr. Shea avoided responding to her questions. In fact, the only surveillances that Watts Bar performed were those necessary to move out of the Mode 4 status to restart the plant at the end of an outage, so that Ms. Wetzel's disclosures were never addressed.

F. Ms. Wetzel Protested Failures at Browns Ferry Nuclear Power Plant.

In December 2017, Ms. Wetzel also protested the failure of TVA's Browns Ferry nuclear plant (1) to identify, repair or replace, in accordance with the BWR Owners Group guidance, all the Anchor Darling double disc gate valves (DDGV) to address the wedge-pin and stem separation failures (NRC IN 2017-03), which had resulted in an NRC red finding several years ago; and (2) the failure of Browns Ferry to provide information required for an NRC submission due December 31, 2017 regarding addressing the valve failures (an issue that originally arose at the LaSalle plant and had to be addressed by TVA's plants). These disclosures were made to senior TVA management, including Ms. Henderson who reacted angrily when Ms. Wetzel reported that TVA engineers were not addressing the DDGV issues.

G. Ms. Henderson Interfered with Ms. Wetzel's Detail to NEI.

In March and April of 2018, Ms. Wetzel realized that Ms. Henderson's retaliation and harassment was continuing unabated and that every time she (Ms. Wetzel) raised an issue, Ms. Henderson would turn around and retaliate against her through reducing her resources, increasing her workload, proposing reorganizations, and taking other actions intended to deter Ms. Wetzel from continuing to report nuclear safety issues at TVA. Therefore, Ms. Wetzel

approached Mr. Shea about obtaining a detail at NEI, since NEI wanted Ms. Wetzel's expertise to handle its projects. Mr. Shea agreed, and directed Ms. Henderson to start working on the contract with NEI, which required approval from the Chief Nuclear Officers at both TVA and NEI, both of whom were supportive. However, once Ms. Henderson found out that Ms. Wetzel was pursuing this invaluable career opportunity, Ms. Henderson immediately tried to block it. Ms. Henderson refused to let Ms. Wetzel see the contract that governed the detail, and refused to agree to provide Ms. Wetzel with the proper travel allowances as permitted under the regulations. Ms. Henderson also was able to shorten the detail from two years to 18 months. Only after Mr. Shea directed Ms. Henderson to provide Ms. Wetzel with the contract was she able to review it, and she realized that it was unworkable due to Ms. Henderson's revisions that NEI would never approve. Ms. Wetzel encountered TVA's Chief Nuclear Officer in the hallway, and he asked how the detail was proceeding, to which Ms. Wetzel explained that the revisions to the contract resulted in a document that NEI would never agree to. The CNO was furious, and explained that the way the detail was supposed to work is that TVA would pay the salary, and any travel that was TVA-related, while NEI would pay for NEI-related travel.

After resolving these roadblocks, Ms. Wetzel started the detail on April 27, 2018. At around this time, Ms. Wetzel was interviewed by a representative from TVA's Office of General Counsel, who was doing an investigation that Mr. Shea had initiated in response to complaints that another manager had made about Ms. Henderson. Ms. Wetzel, perhaps naively, thought that this was an independent investigation, and she truthfully told TVA's investigator that she was moving to NEI in order to get away from Ms. Henderson. The investigator asked if Ms. Wetzel thought Ms. Henderson was now qualified for her job, and Ms. Wetzel responded in the negative. Ms. Wetzel explained that Ms. Henderson was vindictive and used reorganizations as a way to take actions against disfavored employees.

In May 2018, Ms. Wetzel had to write to Mr. Shea and Ms. Henderson to clarify how the travel expenses would be handled, since NEI is in Washington D.C., so that Ms. Wetzel would have to travel between there and Tennessee as part of her detail. Although Mr. Shea responded by claiming that Ms. Wetzel was in "continuous travel status and all of the benefits outlined in the travel policies are available to you" (May 6, 2018), Ms. Wetzel had to respond that Ms. Henderson's latest actions and proposal did not include all the issues that they had agreed to, so she was concerned that Ms. Henderson would use travel voucher issues as a basis to retaliate against her. Mr. Shea blandly responded (May 14, 2018) that he believed the federal travel regulations would cover Ms. Wetzel's concerns, and then stated an investigation would be conducted of Ms. Wetzel's allegations against Ms. Henderson.

H. TVA Canceled Ms. Wetzel’s NEI Detail, Placed Her on Paid Administrative Leave, and Threatened to Terminate Her Employment.

Ms. Wetzel’s detail at the NEI was remarkably productive and she was able to accomplish much in the first six months that she was at NEI. When Ms. Henderson requested that NEI provide TVA with feedback on her performance at NEI, Chris Earls, who is the Senior Director for Regulatory Affairs at NEI, wrote a glowing evaluation. *See* C. Earls to E. Henderson (Aug. 1, 2018) (attached hereto as Exhibit 3). Mr. Earls praised Ms. Wetzel for having taken “a very proactive approach to driving accountability within the Regulatory Issues Task Force;” focusing “on improving those areas where the need improvement;” going “out of her way to make sure all stakeholders are considered;” was very adaptive and “very eager to learn and fit in with the way NEI conducts work.” *Id.* Mr. Earls also praised Ms. Wetzel for her highly effective communications with the licensees, others at NEI, and the NRC, bringing a “utility perspective to internal NEI discussions which is invaluable;” “identifying issues of concern before they are obvious to others;” and having “very good relationships with both her peers and regulatory counterparts.” *Id.* Mr. Earls concluded that Ms. Wetzel “has been the ideal loanee for NEI,” since her “experience and approach to work has enabled her to jump right into the role and be successful.” *Id.*

Despite this glowing performance feedback, Mr. Shea summoned Ms. Wetzel to a meeting in Mr. Shea’s office on October 15, 2018, for her performance review. Mr. Shea’s assistant claimed that this was the only date the meeting could be held. When Ms. Wetzel arrived in TVA’s corporate headquarters that morning, a co-worker asked if Ms. Wetzel was in town for the NRC’s chilled work environment interviews that were scheduled for the next day, but Ms. Wetzel had not even been informed of those interviews.

At this meeting, Mr. Shea and Amanda Poland (TVA Human Resources) told Ms. Wetzel that the purpose of the meeting was to discuss her performance and the “results” of an investigation. They claimed that her overall performance was “inconsistent,” which was itself inconsistent with NEI’s glowing performance evaluation (*see* Exhibit 3, *supra*). Mr. Shea then turned to the “investigation,” which he claimed concluded that Ms. Wetzel had somehow created a “hostile work environment” for the Director of Regulatory Affairs, referring to Ms. Henderson. Ms. Wetzel realized that her honest comments to TVA’s investigator who asked her about Ms. Henderson – in which Ms. Wetzel explained how Ms. Henderson used Human Resources practices (such as reorganizations, pulling badges, and firing employees) as a way to intimidate others in the workplace – were now being used *against* Ms. Wetzel. Mr. Shea falsely claimed that Ms. Wetzel was undermining Ms. Henderson for having engaged in a protected activity – where Ms. Henderson’s protected activity was falsely accusing one of her subordinates and a

Site Licensing Manager of having an affair, when the reality was that the Site Licensing Manager (a recent hire with no family in Tennessee) had become a close friend of his co-worker's *entire extended* family.

Mr. Shea claimed that Ms. Wetzel's conduct in truthfully criticizing Ms. Henderson was punishable "up to and including termination," and that "termination was warranted in this case." Mr. Shea offered a "no fault" separation, to which Ms. Wetzel responded that she had 32.5 years of federal service, and needed only six more months to reach her (lowest possible) retirement age. Ms. Poland and Mr. Shea said that they were not yet terminating her, but were giving her time to think about this. They told her that she was on leave with pay, and would no longer be on the detail to NEI. Ms. Wetzel explained that she had three very important NEI meetings involving NRC and the industry over the next month. Mr. Shea would not allow Ms. Wetzel to return to NEI to manage the industry meetings. Mr. Shea's assistant then escorted Ms. Wetzel out of the building and confiscated her badge, removing access to all TVA facilities.

Ms. Wetzel then contacted the NRC and spoke with several investigators, who advised her of her right to file with OSHA, and requested more information.

On October 25, 2018, Ms. Wetzel had a follow-up meeting with Mr. Shea and Ms. Poland. At that meeting, they gave her a "no fault" separation agreement that required her to resign effective March 23, 2019, and TVA would pay her through December 31, 2018; she would then be on unpaid leave status through March 23, 2019. TVA would pay her \$41,500 on March 23, 2019, which they incorrectly calculated as equivalent to three months' salary (which actually would be \$47,000). They also discussed the logistics concerning the lease on Ms. Wetzel's apartment in D.C. (which she used while working at NEI), and the travel documentation issues. They told her that she could not obtain other employment prior to March 23, 2019, because she would still be on leave status.

Ms. Wetzel specifically told Mr. Shea that this was a "wrongful termination," and that "I'm sorry you're doing this, Joe." Mr. Shea did not look at her in the eye. At the end of the meeting, Ms. Wetzel reiterated, "You know there's no reason to terminate me and this is a wrongful termination," and again, Mr. Shea was silent and did not look at her.

On October 31, 2018, Ms. Wetzel sent Mr. Shea and Ms. Poland a short memorandum expressing her concern that the decision to terminate her "was taken in retaliation because I reported safety issues, including the ongoing chilled work environment that TVA has not addressed." See B. Wetzel to J. Shea & A. Poland (Oct. 31, 2018) (attached hereto as Exhibit 4). Ms. Wetzel also complained that "I am particularly concerned that my badge access was pulled

only one day before the NRC was arriving for a scheduled site visit to interview personnel in Corporate Regulatory Affairs, and only one week before I was to be a leading participant in three high-profile meetings at NEI and NRC.” *Id.* Ms. Wetzel submitted a counter-proposal under which she would return to NEI through the scheduled end of the rotation (Oct. 31, 2019), and other terms, including her resignation from TVA at the end of the rotation. *Id.* However, Mr. Shea rejected those terms.

Instead, on November 15, 2018, Mr. Shea provided Ms. Wetzel with a written No-Fault Separation Agreement, with the only change being that Ms. Wetzel would be paid through March 23, 2019 (*i.e.*, would not be on unpaid status), and the severance payment was increased slightly to \$45,000. Ms. Wetzel rejected that offer, and believes that TVA is now working to terminate her employment without severance benefits.

III. TVA’s Retaliation Violated the Energy Reorganization Act.

Section 211 of the Energy Reorganization Act (“ERA”) prohibits an “employer [from] discharg[ing] any employee or otherwise discriminat[ing] against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee notified his employer of an alleged violation of this chapter.” 42 U.S.C. § 5851; *see also In re Five Star Prod., Inc.*, 38 N.R.C. 169, 179 (NRC Oct. 21, 1993) (“Any attempt to ‘chill’ this access to the NRC by harassing, intimidating, or firing employees who could report conditions that could adversely affect the public health and safety violates Section 211 [of the ERA]”).

This federal statute seeks to “promote a working environment in which employees are ... free from the debilitating threat of employment reprisals for publicly asserting company violations of statutes protecting the environment.” *Trimmer v. U.S. Dep’t of Labor*, 174 F.3d 1098, 1104 (10th Cir. 1999).

A. TVA Unlawfully Took Adverse Employment Actions Against Ms. Wetzel in Retaliation for Reporting Significant Safety Problems.

To establish a claim under the ERA whistleblower provision, an employee must demonstrate that (1) she engaged in protected activity; (2) the employer subjected her to an adverse employment action; and (3) a nexus existed between the protected activity and the adverse employment action. *TVA v. U.S. Dep’t of Labor*, 59 Fed. Appx. 732, 738 (6th Cir. 2003). As set forth below, Ms. Wetzel can easily prove all three elements of her claim.

1. Ms. Wetzel engaged in protected conduct when she repeatedly reported and protested problems with compliance issues at TVA.

Ms. Wetzel's internal complaints constitute protected activity under the whistleblower provision of the ERA. *See* 42 U.S.C. § 5851 (prohibiting retaliation when an "employee notified his employer of an alleged violation."); *see also Jones v. TVA*, 948 F.2d 258, 264 (6th Cir. 1991) ("An employee who is retaliated against for filing internal reports concerning situations of nuclear regulatory laws has recourse under the ERA.").

Here, Ms. Wetzel made numerous separate reports and protests that constitute protected activity. *See* Part II, *supra*. These included (1) the failure of Watts Bar to comply with the NRC's fatigue rule requirements, 10 C.F.R. Part 26; (2) the failure of Sequoyah to comply with the NRC's "Fukushima" requirements; (3) TVA's inadequate response to the NRC's March 23, 2016 Chilled Work Environment Letter; (4) the failure to perform TS Surveillances during extended outages at Watts Bar; and (5) the failure of Browns Ferry to address the valve failures.

In response, Ms. Henderson and Mr. Shea rejected Ms. Wetzel's efforts to address these issues, and instead created a chilled work environment through removing resources and staff from Ms. Wetzel, proposing a reorganization that would have demoted Ms. Wetzel, threatening Ms. Wetzel with termination, interfering with Ms. Wetzel's efforts to obtain an NEI detail, rescinding her NEI detail, placing her on paid leave, conducting a bogus investigation of Ms. Wetzel that implausibly concluded that Ms. Henderson (the lead in retaliating against Ms. Wetzel and several other co-workers who also raised safety issues) was herself the victim of retaliation, and setting Ms. Wetzel up for termination.

It is settled law that a nuclear power plant's attempts to "chill" reporting of workforce issues, as TVA has done to Ms. Wetzel, is improper retaliation:

Here ... management placed an inordinate amount of pressure on its employees to avoid delays at all costs. . . . **Simply put, management wanted to invoke a chilling of employee complaints** The fastest way to achieve restart at Cook would be for the employees to work continuously until done irrespective of the limitations. . . . Consequently, I find that here ... Employer's stated reasons are false.

Tipton v. Indiana Michigan Power Co., No. 2002-ERA-00030, at 95 (ALJ June 29, 2004) (emphasis added).

**2. TVA subjected Ms. Wetzel to adverse employment actions
by escalating the retaliation, culminating in forcing her resignation.**

TVA escalated its retaliation against Ms. Wetzel, by subjecting her to increasingly harsh adverse employment actions – starting with removing her resources while increasing her workload, cancelling her NEI detail, placing her on paid leave, while making clear to her that she would likely be terminated.

It is settled law that placing an employee on paid administrative leave is an adverse employment action, even if the employee does not face an immediate change in compensation, because being on paid leave precludes the employee from achieving her performance objectives, networking with colleagues, seeking promotional opportunities, or otherwise advancing her career. *See, e.g., Vannoy v. Celanese Corp.*, ARB Case No. 09-118, at 14, ALJ No. 2008-SOX-064 (ARB Sept. 28, 2011) (“Although the ALJ did not address Vannoy’s claim that his placement on administrative leave constituted adverse action ... we note that even paid administrative leave may be considered an adverse action under certain circumstances.”) (citing *Van Der Meer v. Western Ky. Univ.*, ARB No. 97-078, ALJ No. 1995-ERA-038, slip op. at 4-5 (ARB Apr. 20, 1998); *Smith v. Western Sales & Testing*, ARB No. 02-080, at 7, ALJ No. 01-CAA-17 (ARB Mar. 31, 2004) (“The ALJ also found that WST subjected Smith to adverse action by placing him in a ‘cooling off’ period because his ‘terms, conditions or privileges of employment’ were altered by his exclusion from the job site.”); *id.* at 13 (“We agree with the ALJ’s holding that WST violated the CAA by sending him home for what WST contends was a ‘cooling off’ period immediately following the May 2, 2001 inspection.”). Here, TVA took an adverse personnel action when it placed Ms. Wetzel on paid leave, thereby precluding her from working at the NEI or using the detail to seek comparable employment at NEI.

Also, forcing an employee to resign in lieu of termination – a constructive discharge – is an adverse employment action under the whistleblower statutes. *See Kahn v. Commonwealth Edison Co.*, 92-ERA-58, at 3 (Sec’y Oct. 3, 1994) (“Edison took adverse action against Kahn when it gave him the option of resigning or being fired, which constituted a constructive discharge.”); *Johnson v. Old Dominion Security*, 86-CAA-3, at 13 (Sec’y May 21, 1991) (finding constructive discharge where “Complainants made repeated attempts to elicit responsible action by Old Dominion; [but] Old Dominion instituted a program of inadequate response to complainants’ concerns”).

3. TVA subjected Ms. Wetzel to adverse employment actions, culminating in threatening her termination, because of her protected activities.

To establish a causal link between an employee's protected activity and an employer's adverse employment action, the employee need only demonstrate that his protected activity was a "contributing factor." *TVA*, 59 Fed. Appx. at 738; *see also* 42 U.S.C. § 5851(b)(3)(C). As the Department of Labor held in *Kahn*, another constructive discharge case, the employer "was aware of Kahn's protected activities when it constructively discharged him, since his safety complaints were made to his Edison supervisors." *Kahn*, 92-ERA-58, at 3 (Sec'y Oct. 3, 1994). Here, too, Ms. Wetzel's complaints were made directly to senior management at TVA, at Corporate Regulatory Affairs.

Temporal proximity is powerful evidence of retaliatory motivation. The Administrative Review Board recently explained, in upholding the ALJ's determination that a nuclear licensee had violated Section 211 by terminating an employee who had engaged in protected activity, that temporal proximity can be powerful evidence of retaliatory motivation:

USEC has not demonstrated on this record that it would have placed Pierce on DML and terminated his employment when it did even if he had not engaged in protected activity. **The strongest evidence of a retaliatory motive on USEC's part is the swiftness of its moving from [a performance plan] to administrative leave . . . and ultimately to termination and the temporal proximity of the protected activity and the adverse action.** And, the record contains **no evidence that USEC acted similarly toward other employees**, or that its progressive disciplinary procedures dictated termination of a 26-year employee without any intervening disciplinary steps. We conclude, like the ALJ, that USEC failed to demonstrate that it would have taken adverse action against Pierce, absent his protected activity.

Pierce v. U.S. Enrichment Corp., ARB Case No. 06-055, 2004 ERA 001, at 17 (ARB Aug. 29, 2008) (emphasis added); *see also Cones v. Shalala*, 199 F.3d 512, 521 (D.C. Cir. 2000) (close temporal proximity of adverse action to protected activity supported *prima facie* retaliation case).

Here, as in *Pierce* and *Cones*, the close temporal proximity of Ms. Wetzel's protected conduct to TVA's adverse employment actions is sufficient to show causation. Moreover, the retaliation escalated when Ms. Wetzel was not intimidated by the earlier retaliatory events, and she persisted in reporting these chronic problems at TVA. Each of these alone is evidence of the close temporal proximity between his protected conduct and the adverse employment actions.

B. The Proffered Reason is a Pretext for Retaliation.

Once the aggrieved employee satisfies his initial burden, the employer must demonstrate by clear and convincing evidence that it would have taken the same adverse action in the absence of the protected activity. *TVA*, 59 Fed. Appx. at 738; *see also* 42 U.S.C. § 5851(b)(3)(D).

TVA cannot satisfy this heightened burden. Any claim that TVA took these actions against Ms. Wetzel because she allegedly harassed Ms. Henderson is merely a pretext for retaliating against her for repeatedly insisting that TVA comply with its regulatory obligations under the NRC regulations, and by the fact that her concerns about Ms. Henderson were specifically that she was creating a chilled work environment.

The *only* difference between other employees who were not disciplined and Ms. Wetzel is that those other employees did not report or protest compliance issues at TVA's nuclear power plants, in contrast to Ms. Wetzel. Thus, TVA's assertion that Ms. Wetzel was placed on paid leave and considered for termination because of her alleged conduct is pretextual, given that TVA favorably treated other managers who engaged in actual misconduct. For example, TVA promoted Ms. Henderson from a Senior Manager to a Director in the Fall of 2017. Additionally, in 2014, TVA's Employee Concerns Program determined that Mr. Shea created a Chilled Work Environment within the TVA Corporate Licensing organization by the inappropriate manner in which he treated a contract worker. Since that time, Mr. Shea's scope of authority has been expanded to include the TVA Nuclear Security Department and the TVA Emergency Preparedness Department. The Department of Labor, in *Tipton*, held that the "uneven application of company policy," so that only whistleblowers were suspended, was probative evidence of discriminatory animus:

The facts here involve the uneven application of company policy as well. Kelly testified that the MARC policy dictated the suspension of all employees involved in an incident of suspected misconduct. She also testified that the handling of the Tech Databook change prompted the investigation. If true, then all "key personnel" as identified by Molden, should have received suspensions. **The fact that only Tipton and Turcotte, both of whom complained about the work hour policy violations, were suspended presents evidence of an impermissible motive** on the part of I&M.

Tipton, 2002-ERA-00030, at 102 (emphasis added).

More recently, in *Armstrong*, the ARB held that it was reversible error to rule in the respondent's favor, where, as here, the complainant had put forward evidence of pretext, which further bolstered a finding of retaliation:

Armstrong's evidence of pretext provides additional support for an inference of retaliatory intent or motive. **A complainant is not required to prove either pretext or retaliatory motive to prevail under the ERA. But a proffer of such evidence is sufficient to preclude summary judgment in a respondent's favor, since evidence of pretext creates a genuine issue of disputed fact regarding the legitimacy of respondent's reasons for discipline.** Even in the context of Title VII—where a plaintiff's burden is higher and a defendant's burden is lower than under ERA—most circuits have held that evidence of pretext compels the denial of a defendant's motion for summary judgment.

Armstrong v. Flowserve US, Inc., ARB Case No. 14-023, ALJ Case No. 2012-ERA-017, at 15-16 (Sept. 14, 2016) (emphasis added). Here, too, TVA's proffered explanations for its adverse employment actions against Ms. Wetzel are pretextual.

REQUESTED RELIEF

TVA's unlawful and retaliatory actions have caused Ms. Wetzel significant economic damages, emotional distress, and damage to her professional reputation and career opportunities.

Ms. Wetzel requests the following relief:

- (1) Front pay for up to three years (or whenever she is able to obtain comparable employment elsewhere), to compensate her for her future economic losses due to the damage TVA has caused to her professional reputation, or, in the alternative, allowing her to continue her NEI detail for a three-year period (or whenever she is able to obtain comparable employment, either directly at NEI or elsewhere);
- (2) Removal of any documentation relating to the "investigations" and "complaints" that Ms. Henderson initiated from Ms. Wetzel's personnel file, and from all other human resources files;
- (3) An order requiring TVA to ensure that there is a safe and harassment free work environment for all nuclear power plant personnel at TVA; and

Kurt Petermeyer, Director, Region IV
Occupational Safety and Health Administration
December 18, 2018
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(4) An award of the reasonable attorneys' fees and costs Ms. Wetzel has incurred in bringing this action.

Please serve all official documents on Ms. Wetzel and on the law firm of Bernabei & Kabat, PLLC, who is representing her in this matter. Ms. Wetzel's mailing address is:

Ms. Beth Wetzel



My email address is: Kabat@Bernabeipllc.com.

The address of the respondent is:

Sherry A. Quirk, Esquire
Executive Vice President and General Counsel
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, TN 37902-1401

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Alan R. Kabat".

Alan R. Kabat
Attorney for Beth Wetzel

Enc.

cc: Ms. Beth Wetzel
Ms. Loren Sweatt (Acting Assistant Secretary of Labor, OSHA)