From: Thompson, Catherine
Sent: Thursday, September 24, 2020 11:15 AM
To: Sparks, Scott
Cc: Solorio, Dave
Subject: FW: Reply to Notice of Violation (EA-20-06 and EA-20-07) & Answer to Notice of Violation (EA-20-06 and EA-20-07)
Attachments: TVA ANSWER to Notice of Violation (EA-20-06 and EA-20-07).pdf; TVA REPLY to Notice of Violation (EA-20-06 and EA-20-07).pdf

Importance: High

Hi Scott – TVA response came in last night. I haven't talked to anyone about the path forward for either Shea or TVA yet.

Kitty

From: Wilson, George
Sent: Wednesday, September 23, 2020 5:14 PM
To: Solorio, Dave ; Hilton, Nick ; Kirkwood, Sara ; Shuttleworth, Andy ; Lemoncelli, Mauri ; Gifford, Ian ; Thompson, Catherine
Subject: FW: Reply to Notice of Violation (EA-20-06 and EA-20-07) & Answer to Notice of Violation (EA-20-06 and EA-20-07)
Importance: High

fyi

From: Walsh, Timothy J. <timothy.walsh@pillsburylaw.com>
Sent: Wednesday, September 23, 2020 4:40 PM
To: Wilson, George <George.Wilson@nrc.gov>
Cc: Rausch, Timothy <trausch@tva.gov>; Barstow, James <jbarstow@tva.gov>; Seat, Jamin <Jamin.Seat@nrc.gov>; Hardage, David <David.Hardage@nrc.gov>; Deschaine, Wesley <Wesley.Deschaine@nrc.gov>
Subject: [External_Sender] Reply to Notice of Violation (EA-20-06 and EA-20-07) & Answer to Notice of Violation (EA-20-06 and EA-20-07)
Importance: High

Mr. Wilson,

On behalf of the Tennessee Valley Authority (TVA), I submit to you the attached (1) Reply to Notice of Violation (EA-20-06 and EA-20-07) and (2) Answer to Notice of Violation (EA-20-06 and EA-20-07).

Per the instructions in the Notice of Violation, copies are being mailed to the Region II Administrator and the NRC Document Control Desk. By copy on this email, electronic copies are being sent to the NRC Senior Resident Inspectors for each of TVA's nuclear facilities.

Please confirm your receipt of this email and its attachments.

Sincerely,

Tim Walsh
Counsel for TVA

Timothy J. Walsh | Special Counsel
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t +1.202.663.8455 | m +1.202.306.2691
timothy.walsh@pillsburylaw.com | website bio

Hearing Identifier: JShea_IA_NonPublic
Email Number: 995

Mail Envelope Properties (DM6PR09MB4744E1B0D6BDD42FBEF722D38C390)

Subject: FW: Reply to Notice of Violation (EA-20-06 and EA-20-07) & Answer to Notice of Violation (EA-20-06 and EA-20-07)
Sent Date: 9/24/2020 11:14:53 AM
Received Date: 9/24/2020 11:14:56 AM
From: Thompson, Catherine

Created By: Catherine.Thompson@nrc.gov

Recipients:
"Solorio, Dave" <Dave.Solorio@nrc.gov>
Tracking Status: None
"Sparks, Scott" <Scott.Sparks@nrc.gov>
Tracking Status: None

Post Office: DM6PR09MB4744.namprd09.prod.outlook.com

Files	Size	Date & Time
MESSAGE	3032	9/24/2020 11:14:56 AM
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imaged134a4.PNG	2221	
TVA ANSWER to Notice of Violation (EA-20-06 and EA-20-07).pdf	87295	
TVA REPLY to Notice of Violation (EA-20-06 and EA-20-07).pdf	106234	

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

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Timothy J. V. Walsh
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By Electronic Mail

September 23, 2020

Mr. George A. Wilson
Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
One White Flint North, 11555
Rockville, MD 20852-2738
George.Wilson@nrc.gov

SUBJECT: Answer to Notice of Violation (EA-20-06 and EA-20-07)

References: NRC Letter dated August 24, 2020, "Tennessee Valley Authority - Notice of Violation and Proposed Imposition of Civil Penalty – $606,942, NRC Office of Investigations Report Numbers 2-2018-033 And 2-2019-015"

TVA letter dated September 23, 2020, "Reply to Notice of Violation (EA-20-06 and EA-20-07)"

Dear Mr. Wilson:

On behalf of the Tennessee Valley Authority (TVA), I am submitting the enclosed Answer to Notice of Violation (EA-20-06 and EA-20-07).

By the above-referenced August 24, 2020 letter, the Nuclear Regulatory Commission (NRC) notified the Tennessee Valley Authority (TVA) of three Escalated Enforcement Severity Level II Violations and one Escalated Enforcement Severity Level I Violation, as well as a proposed Civil Penalty of $606,942.

A remote pre-decisional enforcement conference was held on June 30, 2020 in which TVA disputed the associated apparent violations.

Pursuant to 10 C.F.R. § 2.205(b), the enclosure to this letter contains TVA's bases for denying the violations and explains why the penalty should not be imposed.

This letter contains no NRC commitments.

If you have any questions, please contact me at 202-663-8455.

Respectfully,

Timothy J. V. Walsh
Counsel for TVA

Enclosure: Reply to a Notice of Violation (EA-20-06 and EA-20-07)

cc: Tennessee Valley Authority
Mr. T. Rausch, Chief Nuclear Officer
Mr. J. Barstow, Vice President, Nuclear Regulatory Affairs and Support Services

U.S. Nuclear Regulatory Commission

Regional Administrator
U.S., Nuclear Regulatory Commission, Region II,
245 Peachtree Center Ave. N.E., Suite 1200,
Atlanta, GA 30303

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555-0001

NRC Resident Inspectors for TVA's Plants (by email)
BFN - Jamin Seat (jamin.seat@nrc.gov)
SQN – Dave Hardage (david.hardage@nrc.gov)
WBN – Wesley Deschaine (wesley.deschaine@nrc.gov)

Enclosure

Answer to Notice of Violation (EA-20-06 and EA-20-07)

Violation 1

Description of the Violation

NRC Notice of Violation (NOV) EA-20-06 and EA-20-07, dated August 24, 2020, cited a Severity Level II violation of 10 C.F.R. § 50.7(a), "Employee Protection," related to TVA's alleged discrimination against a former Sequoyah Nuclear Plant employee for engaging in protected activity. Specifically, the NOV alleges a former Sequoyah employee engaged in protected activity by raising concerns regarding a chilled work environment, filing complaints with the Employee Concerns Program, and by raising concerns regarding the response to two non-cited violations. The NOV alleges that, after becoming aware of this protected activity, the former Director of Corporate Nuclear Licensing (CNL) filed a formal complaint against the former employee. The NOV alleges that the filing of a formal complaint triggered an investigation by the TVA Office of the General Counsel (OGC) and that the action was based, at least in part, on the former employee engaging in protected activity.

TVA Response to the Violation

TVA disagrees that the former CNL Director's act of filing a harassment complaint was deliberate misconduct or otherwise in retaliation for others' ostensibly protected activity. The NOV contains no evidence indicating that the former CNL Director filed her March 9, 2018 complaint (the "Complaint") in retaliation for the former Sequoyah employee purportedly raising concerns regarding a chilled work environment, filing complaints with the Employee Concerns Program, or raising concerns regarding the response to two non-cited violations. To the contrary, the overwhelming, clear, and convincing evidence demonstrates that the former CNL Director filed her Complaint for other, legitimate reasons, not because of the former Sequoyah employee's purported protected activities.

TVA unequivocally supports the right of every TVA employee and everyone in the nuclear industry to raise good-faith concerns if they believe they are being harassed or the victim of inappropriate conduct in the workplace. To find fault in an employee such as the CNL Director here for raising a concern worthy of investigation (and which was ultimately substantiated) is contrary to the principles of a safety conscience work environment emphasized by TVA and the NRC. The Staff's NOV will discourage employees from raising concerns regarding inappropriate workplace behaviors through proper channels and will embolden harassers to engage in such conduct, using allegedly protected activity as a shield. As a result, licensees will now be placed in the impossible situation of having to choose between whether to even investigate a harassment complaint and risk NRC violations and fines if they do, or to alienate its workforce and perpetuate inappropriate behaviors that could impact safety if they do not.

TVA is aware of no evidence—and the NOV includes no evidence—that the action taken against the former Sequoyah employee was motivated in any way by protected activity. Rather than analyze motivation or intent, the Staff based the NOV on a cursory determination that being aware of protected activity means any subsequent action was retaliatory. Indeed, the NOV appears to rely on a mere temporal proximity between the purported protected activity and the harassment complaint without any analysis of the actual facts and evidence presented. This is

entirely inconsistent with 10 C.F.R. § 50.7, which requires a demonstration that the adverse action occurred *because* an employee has engaged in protected activities. It also completely ignores the extensive evidence presented during the pre-decisional enforcement conferences (PECs) in this case showing that the employment decisions were based on non-prohibited considerations pursuant to Section 50.7(d). The NOV ignores that rule.

The Staff's new application of the rule, in contravention of all guidance and the Commission's own rulemakings, leaves the industry without any ability to predict how Section 50.7 will be applied going forward. The assumption now must be that the Staff will ignore Section 50.7(d) and that any harassment complaint that is filed in temporal proximity to alleged protected activity can now be classified as retaliation, irrespective of evidence or facts that no retaliation occurred and that the employment action was taken for appropriate reasons. Licensees would be risking an NRC violation any time that they attempt to investigate or discipline bad actors. In order to avoid violations and civil penalties, licensees and managers inevitably will consider allowing harassment to continue unchecked whenever there is any conceivable basis for finding prior protected activity. Under this standard, enforcement of Section 50.7 is nearly impossible to predict and, as a result, unconstitutionally vague. The Staff's application of the rule in this instance, contrary to established precedent and without any explanation, is also arbitrary and capricious.

For these reasons and the reasons TVA explained in detail in its referenced "Reply to a Notice of Violation (EA-20-06 and EA-20-07)" at Enclosure 1, pages 1 to 3, TVA denies the alleged violation set forth in Violation 1. Accordingly, the NRC should impose no civil penalty associated with alleged Violation 1.

In addition, the classification of this alleged Violation as Severity Level II is wholly inappropriate. Section 1.2.5 of the NRC Enforcement Manual states that Severity Level II violations "[u]sually involve actions with actual or high potential to have serious consequences on public health and safety or the common defense and security." Those circumstances are not present here. There were no actual or potential consequences—much less actual or potential "serious" consequences—to the public health and safety or common defense and security in TVA's handling of the personnel matter associated with Violation 1. Nor does the alleged Violation provide any evidence to the contrary.

As the NRC stated in its press release on this matter, TVA has made progress in addressing work environment issues and corrective actions at its corporate office and its three nuclear power plants. And no specific safety issue has been identified here.

For all of these reasons, even if the NRC continues to believe that a violation occurred, then at a minimum the NRC should reduce the Severity Level of the alleged Violation and commensurately reduce the civil penalty.

Violation 2

Description of the Violation

NRC NOV EA-20-06 and EA-20-07, dated August 24, 2020, cited a Severity Level II violation of 10 C.F.R. § 50.7(a), "Employee Protection," related to TVA's alleged discrimination against a former Sequoyah employee for engaging in a protected activity. Specifically, the NOV alleges a former Sequoyah employee engaged in protected activity by raising concerns about a chilled work environment, filing complaints with the Employee Concerns Program, and raising concerns about the regulatory response to the Kirk Key and Service Life non-cited violations. The NOV alleges that after becoming aware of this protected activity, TVA placed the former employee on paid administrative leave until the former employee resigned in August 2018. This NOV alleges this action was based, at least in part, on the former employee engaging in protected activity.

TVA Response to the Violation

TVA disagrees that placing the former Sequoyah employee on paid administrative leave was based in part on the former employee's engaging in protected activity. The consensus recommendation and decision to place the former Sequoyah employee on paid administrative leave was based on substantiated findings from an independent investigation conducted by the TVA OGC, which found that his conduct violated TVA policies and federal statutes. The NOV contains no evidence indicating that the former Sequoyah employee was placed on paid administrative leave for raising concerns regarding a chilled work environment, filing complaints with the Employee Concerns Program, or raising concerns regarding the response to the Kirk Key and Service Life non-cited violations. To the contrary, the overwhelming, clear, and convincing evidence demonstrates that the former Sequoyah employee was placed on paid administrative leave for other, legitimate reasons, not the former Sequoyah employee's purported protected activities.

TVA unequivocally supports the right of every TVA employee and everyone in the nuclear industry to raise good-faith concerns if they believe they are being harassed or the victim of inappropriate conduct in the workplace. To find fault in a company for investigating and substantiating a concern worthy of investigation is contrary to the principles of a safety conscience work environment emphasized by TVA and the NRC and will undermine rather than promote licensees' abilities to maintain environments where personnel feel free to raise concerns.

TVA is aware of no evidence—and the NOV includes no evidence—that the action taken against the former Sequoyah employee was motivated in any way by his purported protected activity. Rather than analyze motivation or intent, the Staff based the NOV on a flawed, cursory determination in finding retaliation. Indeed, the NOV appears to rely on a mere temporal proximity between the purported protected activity and the harassment complaint, in addition to mere knowledge of protected activity at the time of the subsequent action. TVA respectfully disagrees with the NRC's application of the standard in this case and was unaware that the NRC could find a violation of Section 50.7 without any finding whatsoever of intent or any analysis of

the *extensive* non-prohibited considerations in this case. Moreover, the NRC's temporal analysis is not consistent with 10 C.F.R. § 50.7, which requires a demonstration that the adverse action occurred *because* an employee has engaged in protected activities.

The Staff's new application of the rule, in contravention of all guidance and the Commission's own rulemakings, leaves the industry without any ability to predict how Section 50.7 will be applied going forward. The assumption now must be that the Staff will ignore Section 50.7(d) and that any harassment complaint that is filed in temporal proximity to alleged protected activity can now be classified as retaliation, irrespective of evidence or facts that no retaliation occurred and that employment action was taken for appropriate reasons. Licensees would be risking an NRC violation any time that they attempt to investigate or discipline bad actors. In order to avoid violations and civil penalties, licensees and managers inevitably will consider allowing harassment to continue unchecked whenever there is any conceivable basis for finding prior protected activity. Under this standard, enforcement of Section 50.7 is nearly impossible to predict and, as a result, unconstitutionally vague. The Staff's application of the rule in this instance, contrary to established precedent and without any explanation, is also arbitrary and capricious.

For these reasons and the reasons TVA explained in detail in its referenced "Reply to a Notice of Violation (EA-20-06 and EA-20-07)" at Enclosure 1, pages 5 to 6, TVA denies the alleged violation set forth in Violation 2. Accordingly, the NRC should impose no civil penalty associated with alleged Violation 2.

In addition, the classification of this alleged Violation as Severity Level II is wholly inappropriate. Section 1.2.5 of the NRC Enforcement Manual states that Severity Level II violations "[u]sually involve actions with actual or high potential to have serious consequences on public health and safety or the common defense and security." Those circumstances are not present here. There were no actual or potential consequences—much less actual or potential "serious" consequences—to the public health and safety or common defense and security in TVA's handling of the personnel matter associated with Violation 2. Nor does the alleged Violation provide any evidence to the contrary.

As the NRC stated in its press release on this matter, TVA has made progress in addressing work environment issues and corrective actions at its corporate office and its three nuclear power plants. And no specific safety issue has been identified here.

For all of these reasons, even if the NRC continues to believe that a violation occurred, then at a minimum the NRC should reduce the Severity Level of the alleged Violation and commensurately reduce the civil penalty.

Violation 3

Description of the Violation

NRC Notice of Violation EA-20-06 and EA-20-07, dated August 24, 2020, cited a Severity Level II violation of 10 C.F.R. § 50.7(a), "Employee Protection," related to TVA's alleged discrimination against a former corporate employee for engaging in protected activity. Specifically, the NOV alleges the former corporate employee engaged in protected activity by raising concerns of a chilled work environment. The NOV alleges that, after becoming aware of this protected activity, the former Director of CNL filed a formal complaint against the former employee. The NOV alleges filing of a formal complaint on March 9, 2018 triggered an investigation by the TVA OGC that resulted in the former employee being placed on paid administrative leave followed by termination. The NOV alleges this action was based, at least in part, on the former employee engaging in a protected activity.

TVA Response to the Violation

TVA disagrees that the former CNL Director's act of filing a harassment complaint was deliberate misconduct or otherwise retaliation for others' ostensibly protected activity. The NOV contains no evidence indicating that the former CNL Director filed her Complaint in retaliation for the former corporate employee purportedly raising concerns regarding a chilled work environment. To the contrary, the overwhelming, clear, and convincing evidence demonstrates that the former CNL Director filed her Complaint for other, legitimate reasons, not the former corporate employee's purported protected activities.

TVA unequivocally supports the right of every TVA employee and everyone in the nuclear industry to raise good-faith concerns if they believe they are being harassed or the victim of inappropriate conduct in the workplace. To find fault in an employee for raising a concern worthy of investigation (and which was ultimately substantiated) is contrary to the principles of a safety conscience work environment emphasized by TVA and the NRC and will impede licensees' efforts to maintain environments where personnel feel free to raise concerns.

TVA is aware of no evidence—and the NOV includes no evidence—that the action taken against the former corporate employee was motivated in any way by her purported protected activity. Rather than analyze motivation or intent, the Staff based the NOV on a flawed, cursory determination that being aware of protected activity means any subsequent action was retaliatory. TVA respectfully disagrees with the NRC's application of the standard in this case and was unaware that the NRC could find a violation of Section 50.7 without any finding whatsoever of intent. Indeed, not only is the NOV missing any statement of intent in this case, the NOV also lacks any possible causal link between the Complaint and the adverse action because the adverse action was taken against the corporate employee for wrongdoing that occurred after the Complaint was filed. This cannot possibly meet the analysis required under 10 C.F.R. § 50.7, which requires a demonstration that the adverse action occurred *because* an employee has engaged in protected activities.

The Staff's new application of the rule, in contravention of all guidance and the Commission's own rulemakings, leaves the industry without any ability to predict how Section 50.7 will be applied going forward. The assumption now must be that the Staff will ignore Section 50.7(d) and that any harassment complaint that is filed in temporal proximity to alleged protected activity can now be classified as retaliation, irrespective of evidence or facts that no retaliation occurred and that employment action was taken for appropriate reasons. Licensees would be risking an NRC violation any time that they attempt to investigate or discipline bad actors. In order to avoid violations and civil penalties, licensees and managers inevitably will consider allowing harassment to continue unchecked whenever there is any conceivable basis for finding prior protected activity. Under this standard, enforcement of Section 50.7 is nearly impossible to predict and, as a result, unconstitutionally vague. The Staff's application of the rule in this instance, contrary to established precedent and without any explanation, is also arbitrary and capricious.

For these reasons and the reasons TVA explained in detail in its referenced "Reply to a Notice of Violation (EA-20-06 and EA-20-07)" at Enclosure 1, pages 8 to 9, TVA denies the alleged violation set forth in Violation 3. Accordingly, the NRC should impose no civil penalty associated with alleged Violation 3.

In addition, the classification of this alleged Violation as Severity Level II is wholly inappropriate. Section 1.2.5 of the NRC Enforcement Manual states that Severity Level II violations "[u]sually involve actions with actual or high potential to have serious consequences on public health and safety or the common defense and security." Those circumstances are not present here. There were no actual or potential consequences—much less actual or potential "serious" consequences—to the public health and safety or common defense and security in TVA's handling of the personnel matter associated with Violation 3. Nor does the alleged Violation provide any evidence to the contrary.

As the NRC stated in its press release on this matter, TVA has made progress in addressing work environment issues and corrective actions at its corporate office and its three nuclear power plants. And no specific safety issue has been identified here.

For all of these reasons, even if the NRC continues to believe that a violation occurred, then at a minimum the NRC should reduce the Severity Level of the alleged Violation and commensurately reduce the civil penalty.

Violation 4

Description of the Violation

NRC NOV EA-20-06 and EA-20-07, dated August 24, 2020, cited a violation of 10 C.F.R. § 50.7(a), "Employee Protection," related to TVA's alleged discrimination against a former corporate employee for engaging in protected activity. Specifically, the NOV alleges the former corporate employee engaged in protected activity by raising concerns of a chilled work environment to the former Vice President of Regulatory Affairs and a TVA attorney during a TVA OGC investigation. The NOV alleges that, after becoming aware of this protected activity, the former Vice President of Regulatory Affairs played a significant role in the decision making process to place the former employee on paid administrative leave and terminate the former employee on January 14, 2019. The NOV alleges these actions were based, at least in part, on the former employee engaging in a protected activity.

TVA Response to the Violation

TVA disagrees that the decisions by the former Vice President of Regulatory Affairs to place the former corporate employee on paid administrative and to terminate her employment were deliberate misconduct or otherwise retaliation for the former corporate employee's ostensibly protected activity. The decision to separate the former corporate employee from TVA was based on substantiated findings from an independent investigation conducted by TVA OGC that her conduct violated TVA policies and federal statutes. The overwhelming, clear, and convincing evidence demonstrates that the former Vice President of Regulatory Affairs separated the former corporate employee from the company for legitimate reasons, not the former corporate employee's purported protected activities. TVA's OGC and Human Resources (HR) Department agreed that non-prohibited reasons justified the personnel action consistent with 10 C.F.R. § 50.7(d). The TVA Executive Review Board (ERB) found that the personnel action was not based on protected activities.

TVA unequivocally supports the right of every TVA employee and everyone in the nuclear industry to raise good-faith concerns if they believe they are being harassed or the victim of inappropriate conduct in the workplace. To find fault in an employee for raising a concern worthy of investigation (and which was ultimately substantiated) is contrary to the principles of a safety conscience work environment emphasized by TVA and the NRC and will impede licensees' efforts to maintain environments where personnel feel free to raise concerns.

TVA is aware of no evidence—and the NOV includes no evidence—that the action taken against the former corporate employee was motivated in any way by protected activity. Rather than analyze motivation or intent, the Staff based the NOV on a cursory determination that being aware of protected activity means any subsequent action was retaliatory. But that is not consistent with 10 C.F.R. § 50.7, which requires a demonstration that the adverse action occurred *because* an employee has engaged in protected activities. Indeed, if the NRC had evaluated intent it would have found that the former Vice President of Regulatory Affairs acted in every way possible to ensure that there would not be a violation of Section 50.7, including by seeking

outside guidance from HR and OGC and by going through the ERB process (including with an independent auditor).

All of the relevant, experienced TVA personnel involved in this case agreed that the action against the former corporate employee did not constitute a violation of Section 50.7. Yet, the Staff has somehow found otherwise. The Staff's new application of the rule, in contravention of all guidance and the Commission's own rulemakings, leaves the industry without any ability to predict how Section 50.7 will be applied going forward. The assumption now must be that the Staff will ignore Section 50.7(d). Any harassment complaint that is filed in temporal proximity to alleged protected activity can now be classified as retaliation, irrespective of overwhelming evidence or facts that no retaliation occurred and that employment action was taken for appropriate reasons. Licensees would be risking an NRC violation any time that they attempt to investigate or discipline bad actors. In order to avoid violations and civil penalties, licensees and managers inevitable will consider allowing harassment to continue unchecked whenever there is any conceivable basis for finding prior protected activity. Under this standard, enforcement of Section 50.7 is nearly impossible to predict and, as a result, unconstitutionally vague. The Staff's application of the rule in this instance, contrary to established precedent and without any explanation, is also arbitrary and capricious.

For these reasons and the reasons TVA explained in detail in its referenced "Reply to a Notice of Violation (EA-20-06 and EA-20-07)" at Enclosure 1, pages 11 to 13, TVA denies the alleged violation set forth in Violation 4. Accordingly, the NRC should impose no civil penalty associated with alleged Violation 4.

In addition, the classification of this alleged Violation as Severity Level I is wholly inappropriate. Section 1.2.5 of the NRC Enforcement Manual states that Severity Level I violations "[u]sually involve actions with actual or high potential to have serious consequences on public health and safety or the common defense and security." Those circumstances are not present here. There were no actual or potential consequences—much less actual or potential "serious" consequences—to the public health and safety or common defense and security in TVA's handling of the personnel matter associated with Violation 4. Nor does the alleged Violation provide any evidence to the contrary.

As the NRC stated in its press release on this matter, TVA has made progress in addressing work environment issues and corrective actions at its corporate office and its three nuclear power plants. And no specific safety issue has been identified here.

For all of these reasons, even if the NRC continues to believe that a violation occurred, then at a minimum the NRC should reduce the Severity Level of the alleged Violation and commensurately reduce the civil penalty.

Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street, NW | Washington, DC 20036 | tel 202.663.8000 | fax 202.663.8007

Timothy J. V. Walsh
tel: +1.202.663.8455
timothy.walsh@pillsburylaw.com

By Electronic Mail

September 23, 2020

Mr. George A. Wilson
Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
One White Flint North, 11555
Rockville, MD 20852-2738
George.Wilson@nrc.gov

SUBJECT: Reply to Notice of Violation (EA-20-06 and EA-20-07)

Reference: NRC Letter dated August 24, 2020, "Tennessee Valley Authority - Notice of Violation and Proposed Imposition of Civil Penalty – $606,942, NRC Office of Investigations Report Numbers 2-2018-033 And 2-2019-015"

Dear Mr. Wilson:

On behalf of the Tennessee Valley Authority (TVA), I am submitting the enclosed Reply to Notice of Violation (EA-20-06 and EA-20-07).

By the above referenced letter, the Nuclear Regulatory Commission (NRC) notified TVA of three Escalated Enforcement Severity Level II Violations and one Escalated Enforcement Severity Level I Violation, as well as a proposed Civil Penalty of $606,942.

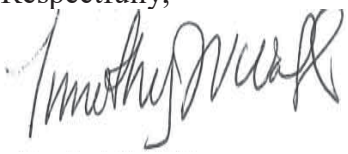
A remote pre-decisional enforcement conference was held on June 30, 2020, in which TVA disputed the associated apparent violations.

Pursuant to 10 C.F.R. § 2.201, the enclosure to this letter contains TVA's reply to the violations, which includes: (1) TVA's basis for disputing the violations and severity levels; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken to avoid further violations; and (4) the date when full compliance will be achieved.

This letter contains no NRC commitments.

If you have any questions, please contact me at 202-663-8455.

Respectfully,



Timothy J. V. Walsh
Counsel for TVA

Enclosure: Reply to a Notice of Violation (EA-20-06 and EA-20-07)

cc: Tennessee Valley Authority
Mr. T. Rausch, Chief Nuclear Officer
Mr. J. Barstow, Vice President Nuclear Regulatory Affairs, and Support Services

U.S. Nuclear Regulatory Commission

Regional Administrator
U.S., Nuclear Regulatory Commission, Region II,
245 Peachtree Center Ave. N.E., Suite 1200,
Atlanta, GA 30303

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555-0001

NRC Resident Inspectors for TVA's Plants (by email)
BFN - Jamin Seat (jamin.seat@nrc.gov)
SQN – Dave Hardage (david.hardage@nrc.gov)
WBN – Wesley Deschaine (wesley.deschaine@nrc.gov)

Enclosure

Reply to Notice of Violation (EA-20-06 and EA-20-07)

Violation 1

Description of the Violation

NRC Notice of Violation (NOV) EA-20-06 and EA-20-07, dated August 24, 2020, cited a Severity Level II violation of 10 C.F.R. § 50.7(a), "Employee Protection," related to TVA's alleged discrimination against a former Sequoyah Nuclear Plant employee for engaging in protected activity. Specifically, the NOV alleges a former Sequoyah employee engaged in protected activity by raising concerns regarding a chilled work environment, filing complaints with the Employee Concerns Program, and by raising concerns regarding the response to two non-cited violations. The NOV alleges that, after becoming aware of this protected activity, the former Director of Corporate Nuclear Licensing (CNL) filed a formal complaint against the former employee. The NOV alleges that the filing of a formal complaint triggered an investigation by the TVA Office of the General Counsel (OGC) and that the action was based, at least in part, on the former employee engaging in protected activity.

TVA's Response to the Violation

TVA denies the Violation.

TVA's Bases for Disputing the Violation and Severity Level

No violation of NRC requirements occurred when the former Director of Corporate Nuclear Licensing (CNL) filed her March 9, 2018 complaint (the "Complaint"). TVA has extensively investigated these events and reached different conclusions than the NRC.

TVA disagrees that the former CNL Director's act of filing a harassment complaint was deliberate misconduct or otherwise retaliation for others' ostensibly protected activity. The former CNL Director did not engage in deliberate misconduct (or even reckless conduct), with the intent to violate any NRC rule, regulation, or policy. TVA is aware of no evidence indicating that the former CNL Director was motivated by retaliatory intent when she filed her Complaint. Nor is TVA aware of any basis for concluding that it was improper for TVA to proceed with an investigation upon receiving that Complaint.

TVA is aware of no evidence—and the NOV includes no evidence—that the action taken against the former Sequoyah employee was motivated in any way by protected activity. Rather than analyze motivation or intent, the Staff based the NOV on a cursory determination that being aware of protected activity means any subsequent action was retaliatory. Indeed, the NOV appears to rely on a mere temporal proximity between the purported protected activity and the harassment complaint without any analysis of the actual facts and evidence presented. This is entirely inconsistent with 10 C.F.R. § 50.7, which requires a demonstration that the adverse action occurred *because* an employee has engaged in protected activities. It also completely ignores the extensive evidence presented during the pre-decisional enforcement conferences (PECs) in this case showing that the employment decisions were based on non-prohibited considerations pursuant to Section 50.7(d). The NOV ignores that rule.

As explained during the PECs for both TVA and the former CNL Director, the CNL Director filed her Complaint to address her reasonable belief that she had been subjected to a sustained pattern of disrespectful, unprofessional, and otherwise inappropriate conduct directed towards her by the former Sequoyah employee and others over the prior two years. The former CNL Director attempted to resign her position but was told by the then TVA Chief Nuclear Officer that, if she felt that she was being harassed, she could file a formal complaint. That is what she did.

As described at the PECs, the former CNL Director was advised to include all information in her complaint that she believed was relevant to her allegations. Her Complaint explained her reasonable belief that the former Sequoyah employee's behaviors and conduct over the prior two years were in retaliation or reprisal for her raising an ethics concern in April 2016 that involved the former Sequoyah employee. When reading the Complaint in total, as well as the overwhelming contemporaneous documentary evidence that she provided during her PEC, it is clear that the former CNL Director reasonably believed that the behaviors she suffered for the two years preceding her Complaint were in retaliation for her own protected activity. Moreover, the Complaint was filed after a culmination of many events and not driven by any one event in particular.

In addition, as the former CNL Director explained at her PEC, she did not file her Complaint to impede the former Sequoyah employee from pursuing any concerns related to the non-cited violations. As she explained (and as further detailed in TVA's response to Violation 2), at the time she filed her Complaint, there was nothing left for her or for TVA to do on these issues.

The Complaint also was appropriately referred to the TVA OGC for an independent investigation. The TVA OGC investigation independently substantiated many of the Complaint's allegations. The former CNL Director had no involvement in that investigation or in the personnel decision that followed, other than to be interviewed.

The investigation found that the former Sequoyah employee's behaviors violated two Federal statutes and three TVA policies. Based on the results of this independent investigation, the former Sequoyah employee was placed on paid administrative leave pending a decision regarding next steps. TVA's experienced Human Resources professionals, Office of General Counsel, and various TVA executives all agreed with this decision.

Notably, as explained during the PECs, the former Sequoyah employee *admitted* to his misbehaviors when being placed on paid administrative leave. Although the former Sequoyah employee resigned his position before any disciplinary determination could be made, experienced TVA Human Resources professionals reviewed the former Sequoyah employee's conduct and found that it warranted termination.

Violation 1 asserts violations of Section 50.7; however, TVA disagrees that the former CNL Director's Complaint constitutes an adverse action under 10 C.F.R. § 50.7. Moreover, even under a Section 50.7 analysis, which TVA maintains is inapplicable to the Complaint, the evidence presented during the former CNL Director's and TVA's PECs demonstrates that both the Complaint and TVA's employment actions were based on non-prohibited reasons as

permitted in Section 50.7(d). The Complaint was also consistent with TVA policies and procedures that encourage all employees to raise concerns.

TVA unequivocally supports the right of every TVA employee and everyone in the nuclear industry to raise good-faith concerns if they believe they are being harassed or the victim of inappropriate conduct in the workplace. To find fault in an employee such as the CNL Director here for raising a concern worthy of investigation (and which was ultimately substantiated) is contrary to the principles of a safety conscience work environment emphasized by TVA and the NRC. The Staff's NOV will discourage employees from raising concerns regarding inappropriate workplace behaviors through proper channels and will embolden harassers to engage in such conduct, using allegedly protected activity as a shield. As a result, licensees will now be placed in the impossible situation of having to choose between whether to even investigate a harassment complaint and risk NRC violations and fines if they do, or to alienate its workforce and perpetuate inappropriate behaviors that could impact safety if they do not.

For these reasons, TVA denies Violation 1.

The Corrective Steps That Have Been Taken and The Results Achieved

Because TVA believes no violation of NRC requirements occurred, TVA has taken no corrective steps to address the purported violation since receiving it. TVA will continue to evaluate appropriate corrective steps, if any, as this matter proceeds.

However, as a result of TVA's review of this matter, TVA has identified some areas that need managerial improvement notwithstanding that the factual record makes clear that neither TVA nor any TVA employee retaliated against the former Sequoyah employee for engaging in protected activity.

As explained at TVA's PEC, TVA has taken the following steps to address identified areas for improvement:

First, TVA has entered into its corrective action program a condition report (CR 1219216) documenting that clarity is needed in the Adverse Action procedure as to the scope of adverse actions constituting Non-Executive Review Board (ERB) Adverse Actions. The procedure will be revised to ensure that an employee placed on temporary suspension with pay will constitute a non-ERB adverse action.

Second, TVA is implementing a pilot Nuclear Investigation Protocol. This protocol brings together the multiple organizations within TVA that conduct investigations for a joint intake process, with specific procedures for identifying claims of whistleblower retaliation and ensuring such disclosures are protected. From there, concerns will be passed to a newly-constituted Investigations Committee, comprised of stakeholders throughout the company, including management, Human Resources, the Office of General Counsel, ethics, and other components as appropriate. This committee will refer matters to the appropriate investigating body, who will be required to follow specified standards related to the timing for completion of the investigation and reporting. This protocol is intended to adhere to best practices and bring consistency to the

investigation process, including initial intake, review of claims, assignment of an investigative body, timeframes for completion, content and quality of work product, reporting of outcomes and required actions, and completion of necessary follow-up.

In addition, TVA is a responsible licensee and a responsible steward of safety culture and safety conscious work environment. TVA understands that issuance of the Violations themselves could result in perceptions that could negatively affect the work environment. Accordingly, after the Violations were received, the TVA Chief Nuclear Officer issued a communication to TVA's nuclear workforce providing TVA's position on the Violations and reinforcing TVA's commitment to a healthy and sustainable Nuclear Safety Culture and Safety Conscious Work Environment.

The Corrective Steps That Will Be Taken to Avoid Further Violations

Because no violation of NRC requirements occurred, no corrective steps will be taken to address the Violation. TVA will continue to evaluate appropriate corrective steps, if any, as this matter proceeds.

The Date When Full Compliance Will Be Achieved

Not applicable. TVA at all times complied with NRC requirements.

Violation 2

Description of the Violation

NRC NOV EA-20-06 and EA-20-07, dated August 24, 2020, cited a Severity Level II violation of 10 C.F.R. § 50.7(a), "Employee Protection," related to TVA's alleged discrimination against a former Sequoyah employee for engaging in a protected activity. Specifically, the NOV alleges a former Sequoyah employee engaged in protected activity by raising concerns about a chilled work environment, filing complaints with the Employee Concerns Program, and raising concerns about the regulatory response to the Kirk Key and Service Life non-cited violations. The NOV alleges that, after becoming aware of this protected activity, TVA placed the former employee on paid administrative leave until the former employee resigned in August 2018. This NOV alleges this action was based, at least in part, on the former employee engaging in protected activity.

TVA's Response to the Violation

TVA denies the Violation.

TVA's Bases for Disputing the Violation and Severity Level

No violation of NRC requirements occurred when the former Sequoyah employee was placed on paid administrative leave on May 25, 2018. TVA has extensively investigated these events and reached different conclusions than the NRC.

TVA disagrees that placing the former Sequoyah employee on paid administrative leave was based in part on the former employee's engaging in protected activity. The former Sequoyah employee was placed on paid administrative leave based on substantiated findings from an independent investigation conducted by TVA OGC that his conduct violated TVA policies and federal statutes.

TVA is aware of no evidence—and the NOV includes no evidence—that the action taken against the former Sequoyah employee was motivated in any way by his purported protected activity. Rather than analyze motivation or intent, the Staff based the NOV on a flawed, cursory determination in finding retaliation. Indeed, the NOV appears to rely on a mere temporal proximity between the purported protected activity and the harassment complaint, in addition to mere knowledge of protected activity at the time of the subsequent action. TVA respectfully disagrees with the NRC's application of the standard in this case and was unaware that the NRC could find a violation of Section 50.7 without any finding whatsoever of intent or any analysis of the *extensive* non-prohibited considerations in this case. Moreover, the NRC's temporal analysis is not what is required under 10 C.F.R. § 50.7, which requires a demonstration that the adverse action occurred *because* an employee has engaged in protected activities.

As explained at TVA's PEC, the recommendation to place the former Sequoyah employee on temporary, paid administrative leave was a joint one, involving several people, including the Sequoyah Site Vice President, the Senior Vice President for Nuclear Operations, the Senior Vice President for Engineering, the Office of General Counsel, and Human Resources. All of the TVA managers and HR and OGC personnel who considered the investigation's findings agreed

that the former Sequoyah employee should be removed from his then-current role so that he would be separated from the former CNL Director to ensure that his behavior toward her did not continue, pending a further determination as to next steps. This was consistent with TVA policy and practice.

The joint recommendation was communicated to the former Sequoyah employee's supervisor, who agreed with the consensus recommendation after reading the investigation report. The supervisor then placed the former Sequoyah employee on paid administrative leave. While doing so, the former Sequoyah employee admitted to his misbehaviors, further confirming the well-founded decision to separate him from the situation pending next steps.

In addition, the former Sequoyah employee's ostensibly protected activities had nothing to do with the decision to place him on paid leave. TVA aware of no evidence indicating that the TVA personnel involved in the consensus recommendation and decision to place the former Sequoyah employee on paid administrative leave were motivated by any of his prior protected activity or otherwise by retaliatory intent. At the time the former employee was placed on paid administrative leave, there was nothing left for TVA to do on the Kirk Key and Service Life issues. Indeed, the Service Life backfit and denial had already been under review with the NRC for months, and the Kirk Key license amendment request had already been the subject of an NRC pre-submittal meeting and had been submitted to the NRC.

As described in TVA's response to Violation 1, TVA's investigation found that the former Sequoyah employee engaged in wrongdoing. And the available evidence indicates the TVA personnel involved in the consensus recommendation and decision to place the former Sequoyah employee on paid administrative leave were motivated only by the wrongdoing substantiated in the investigation, not any protected activity (whether regarding a chilled work environment, the former Sequoyah employee's ECP complaints, the Kirk Key and Service Life non-cited violations, or any other activities). Contrary to the Staff's finding that TVA violated Section 50.7, the evidence clearly shows that TVA was justified in placing the former Sequoyah employee on paid leave due to non-prohibited considerations consistent with Section 50.7(d).

TVA unequivocally supports the right of every TVA employee and everyone in the nuclear industry to raise good-faith concerns if they believe they are being harassed or the victim of inappropriate conduct in the workplace. To find fault in a company for investigating and substantiating a concern worthy of investigation is contrary to the principles of a safety conscience work environment emphasized by TVA and the NRC and will undermine rather than promote licensees' abilities to maintain environments where personnel feel free to raise concerns.

For these reasons, TVA denies Violation 2.

The Corrective Steps That Have Been Taken and The Results Achieved

Because TVA believes no violation of NRC requirements occurred, TVA has taken no corrective steps to address the purported violation since receiving it. TVA will continue to evaluate appropriate corrective steps, if any, as this matter proceeds.

However, as described in response to Violation 1, as a result of TVA's review of this matter, TVA has identified some areas that need managerial improvement notwithstanding that the factual record makes clear that neither TVA nor any TVA employee retaliated against the former Sequoyah employee for engaging in protected activity.

TVA incorporates by reference the discussion of these improvements and the communication made to the TVA workforce upon receipt of the Violations provided in response to Violation 1.

The Corrective Steps That Will Be Taken to Avoid Further Violations

Because no violation of NRC requirements occurred, no corrective steps will be taken. TVA will continue to evaluate appropriate corrective steps, if any, as this matter proceeds.

The Date When Full Compliance Will Be Achieved

Not applicable. TVA at all times complied with NRC requirements.

Violation 3

Description of the Violation

NRC Notice of Violation EA-20-06 and EA-20-07, dated August 24, 2020, cited a Severity Level II violation of 10 C.F.R. § 50.7(a), "Employee Protection," related to TVA's alleged discrimination against a former corporate employee for engaging in protected activity. Specifically, the NOV alleges the former corporate employee engaged in protected activity by raising concerns of a chilled work environment. The NOV alleges that, after becoming aware of this protected activity, the former Director of CNL filed a formal complaint against the former employee. The NOV alleges filing of a formal complaint on March 9, 2018, triggered an investigation by the TVA Office of the General Counsel that resulted in the former employee being placed on paid administrative leave followed by termination. The NOV alleges this action was based, at least in part, on the former employee engaging in a protected activity.

TVA's Response to the Violation

TVA denies the Violation.

TVA's Bases for Disputing the Violation and Severity Level

No violation of NRC requirements occurred when the former Director of Corporate Nuclear Licensing (CNL) filed her March 9, 2018 complaint (the "Complaint"). TVA has extensively investigated these events and reached different conclusions than the NRC.

TVA respectfully disagrees that the former CNL Director's act of filing a harassment complaint was deliberate misconduct or otherwise retaliation for others' ostensibly protected activity. TVA is aware of no evidence indicating that the former CNL Director was motivated by retaliatory intent when she filed her complaint. To the contrary, the overwhelming, clear, and convincing evidence demonstrates that the former CNL Director's Complaint was more than justified, regardless of the former corporate employee's purported protected activities.

TVA is aware of no evidence—and the NOV includes no evidence—that the action taken against the former corporate employee was motivated in any way by her purported protected activity. Rather than analyze motivation or intent, the Staff based the NOV on a flawed, cursory determination that being aware of protected activity means any subsequent action was retaliatory. TVA respectfully disagrees with the NRC's application of the standard in this case and was unaware that the NRC could find a violation of Section 50.7 without any finding whatsoever of intent. Indeed, not only is the NOV missing any statement of intent in this case, the NOV also lacks any possible causal link between the Complaint and the adverse action because the adverse action was taken against the corporate employee for wrongdoing that occurred after the Complaint was filed. This cannot possibly meet the analysis required under 10 C.F.R. § 50.7, which requires a demonstration that the adverse action occurred *because* an employee has engaged in protected activities.

As explained during the PECs for both TVA and the former CNL Director, the former CNL Director was encouraged to include everything in her Complaint that had occurred, so that her

concerns could be investigated. TVA is aware of no evidence indicating that the former CNL Director included the former corporate employee in the Complaint because of protected activities or technical concerns. The NOV contains no such evidence; nor does it establish any unlawful motivation on the part of the former CNL Director. Moreover, TVA is unaware of any basis for concluding that it was improper for TVA to proceed with an investigation upon receiving the former CNL Director's complaint.

In addition, as the record unequivocally establishes, TVA terminated the former corporate employee for disrespectful and unprofessional conduct towards the former CNL Director that occurred *after* the former the CNL Director filed her Complaint, and which did not involve chilled work environment claims. It is simply not possible to find that the former CNL Director's Complaint caused the former corporate employee to be placed on paid administrative leave or her termination when the Complaint merely raised issues that TVA appropriately investigated and substantiated, while ultimately uncovering additional wrongdoing by the former corporate employee. TVA is aware of no evidence indicating that the employment decisions regarding the former corporate employee were motivated by any protected activity. Nor does the NOV contain any such evidence. It altogether is devoid of analysis related to motivation. The investigation found wrongdoing by the former corporate employee with no connection to any protected activity, and, based on those findings, TVA placed her on paid administrative leave and then terminated her employment after she declined to enter into a no fault separation agreement with the company.

Although Violation 3 claims that there were violations of Section 50.7, TVA disagrees that the former CNL Director's Complaint constitutes an adverse action under 10 C.F.R. § 50.7. Moreover, even if the Staff were (incorrectly) to apply Section 50.7 to the Complaint, the evidence presented during the former CNL Director's and TVA's PECs demonstrates that both the Complaint and TVA's employment actions were based on non-prohibited reasons as permitted in Section 50.7(d). The Complaint was also consistent with TVA policies and procedures that encourage all employees to raise concerns.

TVA unequivocally supports the right of every TVA employee and everyone in the nuclear industry to raise good-faith concerns if they believe they are being harassed or the victim of inappropriate conduct in the workplace. To find fault in an employee for raising a concern worthy of investigation (and ultimately substantiated) is contrary to the principles of a safety conscience work environment emphasized by TVA and the NRC and will impede licensees' efforts to maintain environments where personnel feel free to raise concerns.

For these reasons, TVA denies Violation 3.

The Corrective Steps That Have Been Taken and The Results Achieved

Because TVA believes no violation of NRC requirements occurred, TVA has taken no corrective steps to address the purported violation since receiving it. TVA will continue to evaluate appropriate corrective steps, if any, as this matter proceeds.

However, as described in response to Violation 1, as a result of TVA's review of this matter, TVA has identified some areas that need managerial improvement notwithstanding that the factual record makes clear that neither TVA nor any TVA employee retaliated against the former corporate employee for engaging in protected activity.

TVA incorporates by reference the discussion of these improvements and the communication made to the TVA workforce upon receipt of the Violations provided in response to Violation 1.

The Corrective Steps That Will Be Taken to Avoid Further Violations

Because no violation of NRC requirements occurred, no corrective steps will be taken. TVA will continue to evaluate appropriate corrective steps, if any, as this matter proceeds.

The Date When Full Compliance Will Be Achieved

Not applicable. TVA at all times complied with NRC requirements.

Violation 4

Description of the Violation

NRC NOV EA-20-06 and EA-20-07, dated August 24, 2020, cited a violation of 10 C.F.R. § 50.7(a), "Employee Protection," related to TVA's alleged discrimination against a former corporate employee for engaging in protected activity. Specifically, the NOV alleges the former corporate employee engaged in protected activity by raising concerns of a chilled work environment to the former Vice President of Regulatory Affairs and a TVA attorney during a TVA OGC investigation. The NOV alleges that, after becoming aware of this protected activity, the former Vice President of Regulatory Affairs played a significant role in the decisionmaking process to place the former employee on paid administrative leave and terminate the former employee on January 14, 2019. The NOV alleges these actions were based, at least in part, on the former employee engaging in a protected activity.

TVA's Response to the Violation

TVA denies the Violation.

TVA's Bases for Disputing the Violation and Severity Level

No violation of NRC requirements occurred when the former Vice President of Regulatory Affairs played a significant role in the decision-making process to place the former corporate employee on paid administrative leave and then terminated her employment on January 14, 2019. TVA has extensively investigated these events and reached different conclusions than the NRC.

TVA disagrees that the former corporate employee was separated from the company in retaliation for engaging in protected activity. As explained in TVA's PEC and the PEC for the former Vice President of Regulatory Affairs, TVA terminated the former corporate employee for making numerous disrespectful, unprofessional, and deliberately false statements about her supervisor, the former CNL Director.

TVA is aware of no evidence—and the NOV includes no evidence—that the action taken against the former corporate employee was motivated in any way by protected activity. Rather than analyze motivation or intent, the Staff based the NOV on a cursory determination that being aware of protected activity means any subsequent action was retaliatory. But that is not what is required under 10 C.F.R. § 50.7, which requires a demonstration that the adverse action occurred *because* an employee has engaged in protected activities. Indeed, if the NRC had evaluated intent it would have found that the former Vice President of Regulatory Affairs acted in every way possible to ensure that there would not be a violation of Section 50.7, including by seeking outside guidance from HR and OGC and by going through the Employee Review Board (ERB) process (including with an independent auditor).

The former Vice President of Regulatory Affairs determined that the former corporate employee's statements were inappropriate and unacceptable. Consistent with the former Vice President's own determination, the TVA OGC found that the former corporate employee's

pattern of behavior violated multiple TVA polices and federal law. Based on these findings, the former Vice President of Regulatory Affairs decided to separate the former corporate employee from the company, first by a no-fault separation agreement that the former corporate employee declined, and then by termination.

As required by TVA procedures, the former corporate employee's potential termination was reviewed by TVA's ERB. The purpose of the ERB is to ensure that the proposed adverse employment action is consistent with company practices, and not based on retaliation for protected activities.

More specifically, the ERB adds a degree of independence and deliberative input to proposed personnel actions, and is specifically focused on ensuring that activity protected under Section 50.7 does not form the basis for adverse action, and that the action is consistent with action taken for similarly situated employees. The ERB process also considers negative impacts to a Safety Conscious Work Environment and develops mitigation plans, as necessary.

Over half a dozen TVA personnel participated in the ERB, including the Senior Vice President for Operations (who served as ERB Chair); a representative from the Office of General Counsel; a representative from Human Resources; the TVA Nuclear Safety Culture Monitoring Panel Chairperson; the Senior Manager of the Employee Concerns Program; and the Employee Concerns Program Manager for the Corporate office. These individuals were completely independent of all the underlying events.

In addition, an outside auditor attended the ERB. The outside auditor's report for the period that included the ERB for the former corporate employee's adverse action made the following findings with respect to all ERBs reviewed:

- "The [ERBs] discussion included both the consideration of potential for harassment, intimidation, retaliation and discrimination (HIRD) and the potential impact on the SCWE";

- "SCWE mitigation plans were reviewed by the ERB and approved as appropriate";

- "Documentation packages were prepared prior to the meeting and meeting discussions were focused on the potential safety culture issues";

- "Personnel in attendance demonstrated a good understanding of the purpose of the meeting and the relationship between required discipline and potential safety culture and SCWE impacts"; and

- "The overall quality and consistency of ERB meetings continues to improve throughout the fleet. This is now a mature, well understood process."

No ERB member objected to proceeding with separating the former corporate employee from TVA. The ERB members concluded that the proposed action was based on legitimate non-retaliatory reasons, and consistent with TVA policies, procedures, and past practices. TVA convened an ERB update before proceeding with terminating the former corporate employee to

consider legal documentation submitted by her attorney to ensure that there was no new information impacting the previous ERB conclusions. The ERB update reached the same conclusions again unanimously – the action was based on legitimate non-retaliatory reasons, and consistent with TVA policies, procedures, and past practices.

These facts show that the former Vice President of Regulatory Affairs took action for only non-prohibited considerations as permitted by 10 C.F.R. § 50.7(d). His action was supported by a recommendation from the Office of General Counsel that independently evaluated the former corporate employee's conduct and concluded termination was legally supportable. And the former Vice President of Regulatory Affairs closely followed the independent ERB process to ensure that no action was taken for inappropriate reasons.

TVA unequivocally supports the right of every TVA employee and everyone in the nuclear industry to raise good-faith concerns if they believe they are being harassed or the victim of inappropriate conduct in the workplace. To find fault in an employee for raising a concern worthy of investigation (and ultimately substantiated) is contrary to the principles of a safety conscience work environment emphasized by TVA and the NRC and will impede licensees' efforts to maintain environments where personnel feel free to raise concerns.

For these reasons, TVA denies Violation 4.

The Corrective Steps That Have Been Taken and The Results Achieved

Because TVA believes no violation of NRC requirements occurred, TVA has taken no corrective steps to address the purported violation since receiving it. TVA will continue to evaluate appropriate corrective steps, if any, as this matter proceeds.

However, as described in response to Violation 1, as a result of TVA's review of this matter, TVA has identified some areas that need managerial improvement notwithstanding that the factual record makes clear that neither TVA nor any TVA employee retaliated against the former corporate employee for engaging in protected activity.

TVA incorporates by reference the discussion of these improvements and the communication made to the TVA workforce upon receipt of the Violations provided in response to Violation 1.

The Corrective Steps That Will Be Taken to Avoid Further Violations

Because no violation of NRC requirements occurred, no corrective steps will be taken. TVA will continue to evaluate appropriate corrective steps, if any, as this matter proceeds.

The Date When Full Compliance Will Be Achieved

Not applicable. TVA at all times complied with NRC requirements.