

From: Solorio, Dave
Sent: Thursday, February 6, 2020 4:46 PM
To: Coleman, Nicole
Cc: Gifford, Ian; Thompson, Catherine
Subject: FW: OUO markings on case summaries and EAWs - OUO attachments
Attachments: HENDERSON EAW NRC 1260 2-5-2020_OUO.pdf; OE Summary of Report 2-2018-033_OUO.docx; OE Summary of Report 2-2019-015_OUO.docx; SHEA EAW NRC 1260 2-5-2020_OUO.pdf; TVA Sequoyah EAW NRC 1260 2-05-2020_OUO.pdf; TVA Watts Bar EAW NRC 1260 2-05-2020_OUO.pdf

Importance: High

Nicole

I understand you MAY not work tomorrow. But if you do get on the clock early and if you do have an hour can you take a look at a minimum the Sequoyah and Watts Bar EAWs and let me know if you have comments. If you do have comments and find it will take a lot of time to write things down versus provide verbal feedback.... Consider calling Ian or Kitty to provide feedback. They can relate the info to the other if the comments are not on their EAW. FYI they tried to coordinate between themselves. For example the individual EAWs contain information from both ROIs and where appropriate the licensee EAWs are consistent as well. FYI the ROIs involve 2 different CIs, but 2 key managers were involved in retaliatory activity with the 2 CIs (the CIs worked with or reported to the 2 managers is why). The basis for the retaliatory actions by the licensee managers resulted from an OGC investigation that resulted in a report (they call their OGC same as we do). The report outlined the basis for terminating the 2 CIs (once CI quit right before they were about to terminate him because he had spider sense I think).

Obviously without reviewing the ROIs your review will be limited. So I'm just using your services as a peer review. Again if your NOT going to be on the clock because of your prior leave plans - no worries. We plan to email these to internal folks Friday late morning (and FYI both Ian and Kitty did email their Summary Reports to Sarah and got some level of feedback) and discuss Monday with FO (and you if you can attend). The individual EAWs haven't even been reviewed by myself yet, just finished today (but willful calls and basis for them were discussed with Sarah so I would not expect her to disagree). Unfortunately the nature of all the TVA activities are necessitating putting a rocket pack on our discrimination casework or I would have required more direct participation by you. FYI, even Nick hasn't had time this week to offer his input on attached because he is leading other TVA activities for George.

Thanks
Dave

From: Gifford, Ian
Sent: Thursday, February 06, 2020 3:52 PM
To: Solorio, Dave
Cc: Thompson, Catherine
Subject: RE: OUO markings on case summaries and EAWs - OUO attachments

Attachments are OUO – Predecisional Enforcement Information

Dave,

Kitty and I met this afternoon and have the 4 EAWs and 2 case summaries ready to go for the pre-panel (attached).

Based on what you wrote (highlighted below), I am not sure if you want us to send them to all the pre-panel participants (OE and OGC) now, or do you and/or Nicole want to review them first?

Please let me know how you would like to proceed. I won't send them until I get word from you.

Thanks,
Ian

Attachments are OUO – Predecisional Enforcement Information

From: Solorio, Dave
Sent: Thursday, February 06, 2020 12:20 PM
To: Gifford, Ian <Ian.Gifford@nrc.gov>; Thompson, Catherine <Catherine.Thompson@nrc.gov>
Subject: RE: OUO markings on case summaries and EAWs

Ian can you make one of those skype meeting schedulaqrs for your meeting so IF I want to join in it will be set up to work automoaatically for me to join. I told Kitty I could join this meeting if necessary and IF you think I should let me know. I'm working on FOIA with Bobbi this afternoon is only reason I'm not automatically saying I would join. If I have to stay later to work on Bobbi's and David Jones FOIA to work with you guys I will because what I'm trying to avoid is Nick saying in the panel, in front of George, what we did wrong. And Nicole might be able to review the EAW tomorrow very early as well. She is the big kahuna fyi for a while (filling in for John). She is just on leave this week.

Dave

From: Gifford, Ian
Sent: Thursday, February 06, 2020 12:15 PM
To: Thompson, Catherine <Catherine.Thompson@nrc.gov>
Cc: Solorio, Dave <Dave.Solorio@nrc.gov>
Subject: OUO markings on case summaries and EAWs

Hi Kitty,

I was emailing with Sara Kirkwood about some info for my case and mentioned we planned to send the EAWs and case summaries to the pre-panel participants (OE and OGC).

She said we can send them without her review but said we need to have everything marked OUO-Predecisional (see her email below).

Thanks,
Ian

From: Kirkwood, Sara
Sent: Thursday, February 06, 2020 12:11 PM
To: Gifford, Ian <lan.Gifford@nrc.gov>
Subject: RE: RE: PIP? - WETZEL case

No- go ahead and send them to everyone. Just mark them predecisional/ ouo etc.
Tks,
Sara

From: Gifford, Ian
Sent: Thursday, February 06, 2020 12:10 PM
To: Kirkwood, Sara <Sara.Kirkwood@nrc.gov>
Subject: RE: RE: PIP? - WETZEL case

Thanks for the info, Sara.

Kitty and I completed draft versions of the EAWs and plan to send them out, along with the case summaries, for the participants in Monday's pre-panel meeting (just OE and OGC).

Do you have any concerns with us sending these out to the group before you have had a chance to review them? If so, we would be happy to share them with you first.

Thanks,
Ian

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1008

Mail Envelope Properties (MN2PR09MB38725EECE348429B8740A6F9861D0)

Subject: FW: OUO markings on case summaries and EAWs - OUO attachments
Sent Date: 2/6/2020 4:46:06 PM
Received Date: 2/6/2020 4:46:06 PM
From: Solorio, Dave

Created By: Dave.Solorio@nrc.gov

Recipients:

"Gifford, Ian" <Ian.Gifford@nrc.gov>
Tracking Status: None
"Thompson, Catherine" <Catherine.Thompson@nrc.gov>
Tracking Status: None
"Coleman, Nicole" <Nicole.Coleman@nrc.gov>
Tracking Status: None

Post Office: MN2PR09MB3872.namprd09.prod.outlook.com

| Files | Size | Date & Time |
|--|-------------|------------------------|
| MESSAGE | 5270 | 2/6/2020 4:46:06 PM |
| HENDERSON EAW NRC 1260 2-5-2020_OUO.pdf | | 1068442 |
| OE Summary of Report 2-2018-033_OUO.docx | | 42240 |
| OE Summary of Report 2-2019-015_OUO.docx | | 45229 |
| SHEA EAW NRC 1260 2-5-2020_OUO.pdf | | 1068356 |
| TVA Sequoyah EAW NRC 1260 2-05-2020_OUO.pdf | | 1048733 |
| TVA Watts Bar EAW NRC 1260 2-05-2020_OUO.pdf | | 1080193 |

Options

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



ENFORCEMENT ACTION WORKSHEET

| | |
|--|--|
| EA#: | IA 2020-009 |
| Date of Panel: | February 12, 2020 |
| Licensee: | former TVA Director of Corporate Nuclear Licensing |
| Facility/Location: | Sequoyah (SQN); Watts Bar I (WBN) |
| Licensee Type: | Operating Reactor |
| Docket No(s): | |
| Inspection Report No(s): | |
| Date of Exit Meeting: | |
| Date of IR or Choice Letter Issuance: | |
| ML Number of case documents (if known): | |
| OI Report No: | 2-2018-033 (SQN); 2-2019-015 (WBN) |
| OI Report Date: | October 3, 2019 (SQN); January 21, 2020 (WBN) |
| Inspector: | |

1. Summary of Issues Considered for Escalated Enforcement:

These investigations were initiated to determine whether a former TVA Site Licensing Manager at Sequoyah (2-2018-033) and a former Manager of Emerging Regulatory Issues at TVA Corporate Office (2-2019-015) were discriminated against for engaging in protected activity by the former TVA Director of Corporate Nuclear Licensing, in violation of 10 CFR 50.5, the deliberate misconduct rule, which caused the licensee to be in violation of 10 CFR 50.7, the employee protection rule. Summaries attached.

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

3. Regional Recommendation:

Summarize the Region's recommendation, e.g. number and significance of apparent violations.

OE recommends the escalated enforcement process for the former Director of Corporate Nuclear Licensing at TVA.

- Number of Apparent Violations (AV): 1

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

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

The CI at TVA Sequoyah and the CI at TVA Corporate were discriminated against for engaging in protecting activity, in violation of 10 CFR 50.5 and 10 CFR 50.7.

Background information:

SQN 2-2018-033:

Between 2015 and 2018, the Concerned Individual (CI), the former TVA Site Licensing Manager, was involved with ongoing communications with Corporate Nuclear Licensing (CNL), which included the former Director of CNL and the Vice President of Regulatory Affairs, about how to respond to two non-cited violations (NCVs) issued by the NRC during an inspection. In addition, the CI was involved with several complaints and investigations involving the Employee Concerns Program (ECP), Human Resources (HR), or the TVA Office of General Counsel (OGC). On May 25, 2018, the CI was placed on paid administrative leave and on August 16, 2018, the CI resigned from TVA.

Between 2015 and 2018 the CI was involved in numerous discussions, disagreements and meetings with CNL regarding the Service Life NCV and the Kirk Key NCV. These violations were identified by the NRC during an inspection and required a response, either submit a denial letter or implement corrective actions, within 30 days. However, CNL told the CI to provide only informational letters, which was out of process for both TVA and the NRC. The CI told CNL on numerous occasions, via phone discussions, meetings, emails, texts, and a CAP, that they were in non-compliance and needed to deny the NCV or implement corrective actions. Sequoyah did not provide an appropriate response until 2017 and 2018, leaving them in non-compliance for over two years. The CI's numerous inquiries and attempts to respond appropriately to these NCVs and to raise concerns about regulatory non-compliance is considered protected activity.

The CI was involved in several ECP complaints. In 2017, the CI filed two ECP complaints against the former Director of CNL. In March 2018, with full support of the VP of Regulatory Affairs, the former Director of CNL submitted a formal complaint to HR and the VP of Regulatory Affairs of harassment against the CI. This complaint was investigated by TVA OGC. In 2018, the draft TVA OGC report stated that the CI misused the ECP and said that this was a form of retaliation against the former Director of CNL. The draft TVA OGC report was used as a basis for placing the CI on administrative leave. Using the ECP is considered protected activity.

On May 25, 2018, the CI was put on paid administrative leave due to an investigation of harassment and undermining the CNL's staff's ability to perform their duties. For the next three months the CI attempted to return to work by submitting a recovery plan and maintaining contact with his management. The CI was given inconsistent information on the status of his employment during this time and remained on paid administrative leave until he resigned in August 2018, believing that he was ultimately going to be terminated from employment.

WBN 2-2019-015:

Between 2016 and 2017, the CI raised numerous safety concerns, including: violations of the Part 26 Fatigue Rule requirements at Watts Bar 2; failure to adhere to the Fukushima requirements at Sequoyah; concerns regarding a Watts Bar 2 surveillance extension request; and failure to meet NRC commitments in Information Notice 2017-3 to identify Anchor Darling double disc gate valve susceptibility to failure at Brown Ferry. On July 24, 2017, the CI submitted an allegation to the NRC (RII-2017-A-0114) raising concerns that the former Director of CNL was creating a

ENFORCEMENT ACTION WORKSHEET (continued)

chilled work environment, among other issues. The CI also wrote condition reports and discussed safety issues during meetings. The CI believed that the former Director of CNL was retaliating against other TVA employees that had raised safety concerns and was concerned about retaliatory actions from the former Director of CNL. The CI reported concerns of retaliation and a hostile work environment to the VP of Regulatory Affairs.

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

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

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

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

ENFORCEMENT ACTION WORKSHEET (continued)

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

In certain cases, the severity level of a violation may be escalated based on unique escalating factors such as whether the adverse action was taken because the employee had contacted the NRC or whether the applicable NRC employee protection regulation (e.g., 10 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated.

Enforcement Policy Example 6.10.c.1, Severity Level III violation of 10 CFR 50.7: A mid- or senior-level plant manager (or equivalent) or a corporate-level line manager (or equivalent) is the decisionmaker or plays a significant role in the adverse action decisionmaking process; the employment action is relatively less adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., verbal counseling); and no escalating factor is present.

SQN 2-2018-033: The former Director of CNL (corporate level line-manager), played a significant role in the adverse action process. She initiated the complaint, after years ongoing communications with the CI and multiple ECP/HR investigations, that led to the TVA OGC investigation and the CI's suspension. The CI reported the adverse action to the NRC on August 13, 2018. A unique factor is present: the former Director of CNL, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7.

WBN 2-2019-015: The former Director of CNL (corporate-level line manager), played a significant role initiating an investigation against the CI, with the expectation of an adverse action, by filing a formal complaint with TVA accusing the CI of retaliatory behavior for contacting the NRC with concerns of a chilled work environment. Two unique factors are present: the former Director of CNL, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7 and the adverse action was taken, in part, because the CI had contacted the NRC with concerns about a chilled work environment.

Given the manager's position and the significance of the actions, a 1 year ban is proposed.

● Actual Consequences: No

● Potential Consequences: Yes

● Impacting the Regulatory Process: No

● If "Yes" was answered to any of the three preceding questions, Explain:
Potential Chilling effect on other employees

● Willful: Yes

● Civil Penalty Warranted (explain):
No

● Identification Credit: No - NRC Identified

● Corrective Action Credit: No

● Describe/List Corrective Actions:

● Previous Escalated Enforcement (Last 2 yrs or 2 Inspections): Choose an item:

● Discretion to mitigate/escalate the CP: Choose an item:

ENFORCEMENT ACTION WORKSHEET (continued)

• Explain Bases for discretion:

• Proposed next action:

Choice letter (Written/PEC/ADR)

ENFORCEMENT ACTION WORKSHEET (continued)

4. Individual Actions: Yes

Number of IAs:

Add IA

Delete IA

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

See attached Sequoyah and Watts Bar case summaries and Prima Facie Analyses, and other TVA cases.

6. Any Additional Information?

See other TVA cases (tiger team) and report/actions

7. Draft NOV(s):

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

10 CFR 50.5 (a) states that any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not: (1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission.

The former Director of CNL is a corporate level manager, and therefore, should be aware of, and understand, the employee protection rule (10 CFR 50.7), and that raising concerns of regulatory non-compliance and a chilled work environment, and using the ECP are protected activities.

SQN 2-2018-033: The former Director of CNL submitted a formal complaint against the CI to stop the CI's communications and actions, which were protected activities. This ultimately led to the TVA OGC investigation and the CI being placed on administrative leave.

WBN 2-2019-015: The former Director of CNL filed a formal complaint against the CI based, in part, for contacting the NRC with concerns of a chilled work environment, which is a protected activity.

The actions by the former Director of CNL constitute deliberate misconduct, in violation of 10 CFR 50.5, which caused the licensee to be in violation of 10 CFR 50.7.

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

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

EA: Issued by Enforcement Staff (Headquarters or Regional)

Date of Panel:

Licensee:

Facility/Location:

Licensee Type:

Docket No(s):

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

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

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Summary of Office of Investigations (OI) Report No. 2-2018-033 Tennessee Valley Authority, Sequoyah

This investigation was initiated to determine whether a former TVA Site Licensing Manager employed at Sequoyah was discriminated against for raising safety concerns by the former TVA Director of Corporate Nuclear Licensing (CNL) and the TVA Vice President of Regulatory Affairs, in violation of 10 CFR 50.5, the deliberate misconduct rule, which caused the licensee to be in violation of 10 CFR 50.7, the employee protection rule.

Case Summary

Between 2015 and 2018, the Concerned Individual (CI), the former TVA Site Licensing Manager, was involved with ongoing communications with CNL about how to respond to two non-cited violations (NCVs) issued by the NRC during an inspection. In addition, the CI was involved with several complaints and investigations involving the Employee Concerns Program (ECP), Human Resources (HR), or the TVA Office of General Counsel (OGC). On May 25, 2018, the CI was placed on paid administrative leave and on August 16, 2018, the CI resigned from TVA:

- **NCVs:** During a 2015 NRC inspection, Sequoyah received two NCVs from the NRC: 1) Molded Case Circuit Breaker Service Life (Service Life NCV), and 2) Removal of Kirk Key Interlocks (Kirk Key NCV). The licensee had 30 days to respond to NCVs with either a denial letter or corrective actions. Site Licensing performed a Regulatory Analysis and determined that the NCVs should be denied and drafted a denial letter. However, CNL, which included the VP of Regulatory Affairs and the former Director of CNL, directed the CI to write informational letters instead. The CI challenged this direction because neither TVA nor NRC processes address informational letters and said that the NCVs either had to be denied or corrective actions had to be implemented. In 2017, the CI wrote a CAP and several CRs on these issues. Periodically, from 2015 to 2018, the CI attempted to address the NCVs but was unable to get them resolved with CNL in a timely manner, leaving Sequoyah in non-compliance for years (Exhibit 3). Raising concerns about regulatory non-compliance is a protected activity.
 - Service Life NCV: The CI tried numerous times to resolve this issue. During 2016, the NRC began developing a Regulatory Issue Summary (RIS) on the Service Life Issue. The CI told CNL that this did not alleviate the compliance requirement and that TVA still had a legal obligation to deny or correct the NCV. In 2017 CNL signed a combined backfit/denial letter for the Service Life NCV after the NRC indicated their intentions to issue Sequoyah a cited violation because they failed to implement corrective actions for two years.
 - Kirk Key NCV: In January 2016, TVA CNL submitted an informational letter to the NRC on the Kirk Key NCV, but the NCV was upheld by the NRC in March 2017. The NRC told TVA that they were out of process. The CI told the NRC that

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Sequoyah would submit a License Amendment Request (LAR) by September 2017. CNL finally approved and submitted the LAR in March 2018, after repeatedly questioning the appropriateness of the action and delaying the submittal.

- **ECP/HR/OGC Investigations:** In April 2016 the CI was accused of an inappropriate relationship with another TVA employee by the former Director of CNL, with the support of the VP of Regulatory Affairs. An investigation by TVA HR was completed and the accusation was not substantiated (Exhibit 12). In July 2016, the TVA employee that was accused of inappropriate relationship with the CI filed an ECP complaint of harassment against the former Director of CNL. While it was not substantiated, the investigation did determine that a precursor to potential future harassment and intimidations claims was present (Exhibit 13). In April 2017, the CI filed a complaint with ECP against the former Director of CNL of harassment and creating an environment that could negatively impact SCWE. The CI's concern was not substantiated. (Exhibit 14). In July 2017, the CI filed a complaint with ECP against the former Director of CNL for mentioning his first ECP complaint in a staff meeting. It was "partially substantiated" (Exhibit 15).

In March 2018, with full support of the VP of Regulatory Affairs, the former Director of CNL submitted a formal complaint to HR and the VP of Regulatory Affairs of harassment against the CI (Exhibit 16). On May 25, 2018, a draft TVA OGC report was provided to TVA managers (Exhibit 17). According to the Director of Plant Support at Sequoyah, the conclusion of the draft TVA OGC report was that the CI had not used the ECP in good faith, but rather to harass a manager. The Senior VP of Engineering and Operations Support, TVA, said that the draft TVA OGC report mentioned part of the retaliation used by the CI was writing ECP complaints. Both individuals recognized that using ECP was a protected activity and should not be viewed as a form of retaliation against the former Director of CNL. The Senior VP of Engineering and Operations Support, TVA, directed TVA OGC to rewrite the report without using the ECP as evidence of harassment and a basis for disciplinary action. On August 10, 2018, in the final report, TVA OGC substantiated the former Director of CNL's allegation of harassment and found that the CI's conduct and behavior violated TVA policy and federal statutes (Exhibit 18).

- **Paid Leave and Resignation:** On May 25, 2018, the same day the draft TVA OGC report was provided to the TVA managers, the CI was placed on paid administrative leave because he was under investigation for harassment and that his actions undermined the ability for the CNL staff to perform their duties. On May 30, 2018, the CI provided the Director of Plant Support with a recovery plan which included various actions such as a 360-performance assessment. The recovery plan was well-received. In June and July 2018, the CI had numerous discussions with the Director of Plant Support and was told that the investigation was taking longer than expected or that he would not hear for several more weeks. At this point the CI began looking for other employment, believing that he would be fired. On August 13, 2018, the CI reported his concerns to the NRC and on August 16, 2018, the CI resigned from TVA.

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Element 1: Did the Employee Engage in Protected Activity?

Yes.

Between 2015 and 2018 the CI was involved in numerous discussions, disagreements and meetings with CNL regarding the Service Life NCV and the Kirk Key NCV. These violations were identified by the NRC during an inspection and required a response, either submit a denial letter or implement corrective actions, within 30 days. However, CNL told the CI to provide only informational letters, which was out of process for both TVA and the NRC. The CI told CNL on numerous occasions, via phone discussions, meetings, emails, texts, and a CAP, that they were in non-compliance and needed to deny the NCV or implement corrective actions. Sequoyah did not provide an appropriate response until 2017 and 2018, leaving them in non-compliance for over two years. *The CI's numerous inquiries and attempts to respond appropriately to these NCVs and to raise concerns about regulatory non-compliance is considered protected activity.*

The CI was involved in several ECP complaints. In 2017, the CI filed two ECP complaints against the former Director of CNL. In 2018, the draft TVA OGC report stated that the CI misused the ECP and said that this was a form of retaliation against the former Director of CNL. The draft TVA OGC report was used as a basis for placing the CI on administrative leave. *Using the ECP is considered protected activity.*

Element 2: Was the Employer Aware of the Protected Activity at the Time of the Adverse Action?

Yes.

The former Director of CNL and VP for Regulatory Affairs were aware of the CI's ongoing attempts to address the NCVs. There were many interactions with the CI between 2015 and 2018 over the two NCVs, as evidenced by the interview testimonies and exhibits. The CI raised awareness of his concerns about non-compliance with the two individuals through his numerous meetings, phone calls, CRs, CAP, emails and texts. The former Director of CNL and VP for Regulatory Affairs were involved with most of these communications, but they disagreed with the CI on the strategy and approach to resolve the NCVs.

The CI was involved with several ECP complaints with the former Director of CNL. In addition, the VP of Regulatory Affairs encouraged the former Director of CNL to submit the formal complaint of harassment against the CI with HR. This complaint was ultimately investigated by TVA OGC. The draft TVA OGC report, which stated that the CI misused the ECP, was the basis for the CI being placed on administrative leave.

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Element 3: Was an Adverse Action taken against the Employee?

Yes.

On May 25, 2018, the CI was put on paid administrative leave due to an investigation of harassment and undermining the CNL's staff's ability to perform their duties. For the next three months the CI attempted to return to work by submitting a recovery plan and maintaining contact with his management. The CI was given inconsistent information on the status of his employment during this time and remained on paid administrative leave until he resigned in August 2018, believing that he was ultimately going to be terminated from employment. The removal of the CI's site access, placement on paid administrative leave, and changes to employment terms and conditions for three months, are considered adverse actions.

Element 4: Was the Adverse Action Taken, at least in part, for Engaging in Protected Activity?

Yes.

From 2015 to 2018, the CI raised concerns many times about regulatory non-compliance and submitted two ECP complaints. The former Director of CNL and the VP of Regulatory Affairs were directly involved with, or aware of, the CI's protected activities.

In 2016, an ECP complaint and investigation (not filed by the CI) found that the actions of the former Director of CNL could lead to potential future substantiation of harassment and intimidation claims. In 2018, the former Director of CNL filed a formal complaint, with the encouragement of the VP of Regulatory affairs, against the CI and four other TVA employees for harassment. One of these other individuals was then placed on a Performance Improvement Plan (PIP) and moved to another department, one took an early separation from TVA after being told he had performance issues which he disagreed with, and one was placed on a PIP and subsequently terminated from employment in 2019. It is reasonable to assume that the former Director of CNL filed the formal complaint to stop the CI's actions, which were protected activities.

The TVA OGC investigation, which resulted from the 2018 formal complaint by the former Director of CNL, did not follow TVA process. The CI's direct supervisors were not notified of the investigation and were not allowed to review the evidence despite multiple requests. The CI was interviewed once by TVA OGC in April 2018 but was not informed of the nature of the interview, did not know he was the subject of a harassment allegation and was not asked specific questions about his actions towards the former Director of CNL. The draft TVA OGC report in May 2018 stated that the CI created a harassing environment for the former Director of CNL by abusing the ECP and writing a CAP to restore regulatory compliance, which are protected activities. Numerous TVA management voiced concern over the report. For example, the Director of Plant Support implemented a SCWE mitigation plan to address any potential chilling effect, and the Senior VP of Engineering and Operations Support instructed OGC to rewrite the

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report to find a different justification for their finding of harassment, other than the CI's use of the ECP. The CI was placed on paid administrative leave on the same day the draft report was provided to TVA management.

The final TVA OGC report referenced emails from the CI as evidence of harassing behavior, but no underlying evidence was provided. Witnesses testified that the conclusions of the final TVA OGC report appeared to be based mainly on testimony from the former Director of CNL and the Manager in Regulatory Compliance. Further, the OI investigation as well as TVA managers noted that much of the evidence was presented as factual but was not supported by evidence and appeared to be hearsay.

The CI was described by the majority of those interviewed as competent, professional, and a good employee. The OI investigation did not find any evidence that his communications were excessive, harassing or intimidating. The CI's position as Site Licensing Manager required that he address the NCVs and restore compliance, so his meetings, emails, texts etc., where he raised these concerns, were reasonable actions as well as protected activities. The TVA OGC report, on the other hand, found the CI to be unprofessional and challenging, and that the CI's use of the ECP was a form of retaliation. Therefore, they believed that they had a legitimate business reason for placing the CI on administrative leave. The TVA OGC report, however, did not acknowledge or recognize that the CI's actions were protected activities.

The former Director of CNL and the VP of Regulatory Affairs are management positions. Therefore, both should be aware of, and understand, the employee protection rule (10 CFR 50.7), and that raising concerns of regulatory non-compliance and using the ECP are protected activities. The VP of Regulatory Affairs encouraged the former Director of CNL to submit a formal complaint against the CI to stop the CI's communications and actions, which were protected activities. This ultimately led to the TVA OGC investigation and the CI being placed on administrative leave.

The actions by the former Director of CNL and the VP of Regulatory Affairs constitutes deliberate misconduct, in violation of 10 CFR 50.5, which caused the licensee to be in violation of 10 CFR 50.7.

Conclusion

Based on the evidence, the allegation that the CI, a former Site Licensing Manger employed at TVA Sequoyah Nuclear Plant, was discriminated against for raising safety concerns was substantiated. The preponderance of the evidence indicated that the deliberate misconduct of the former Director of CNL and the VP of Regulatory Affairs, in violation of 10 CFR 50.5, caused the TVA to be in violation of 10 CFR 50.7, the employee protection rule.

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**Summary of Office of Investigations (OI) Report No. 2-2019-015
Tennessee Valley Authority, Watts Bar Nuclear Plant**

This investigation was initiated to determine whether a former Manager of Emerging Regulatory Issues employed by the Tennessee Valley Authority (TVA) at the TVA Corporate Office in Chattanooga, TN, was the subject of discrimination for participating in a protected activity. Based on the evidence developed during the investigation, the allegation was substantiated. The preponderance of evidence indicated that the deliberate misconduct (10 CFR 50.5) of the former Director of Corporate Nuclear Licensing (CNL) and the former Vice President (VP) of Regulatory Affairs caused the licensee to be in violation of the employee protection regulation (10 CFR 50.7).

Previous Determinations by NRC Region II and the Department of Labor (DOL)

On October 23, 2018, Regional Counsel, NRC, Region II, concluded that the Concerned Individual (CI) alleged sufficient facts to establish a prima facie case of discrimination (Exhibit 2).

The CI's whistleblower complaint to the DOL was investigated and "found to have merit." The DOL investigation concluded that the TVA Office of the General Counsel (OGC) investigation initiated into the former Director of CNL's complaint was an "internal chilled work environment investigation" and the CI's participation in the interview was a protected activity. The DOL report concluded that there is reasonable cause to believe that TVA violated Section 211 of the Energy Reorganization Act (ERA) and that the "circumstances in this case are sufficient to raise the inference that the CI's protected activity was a contributing factor in the adverse actions taken" (Exhibit 20).

Case Summary

Between 2016 and 2017, the CI, former Manager of Emerging Regulatory Issues, was employed in CNL under the direct supervision of the former Director of CNL. During this time, the CI raised numerous safety concerns, including: violations of Part 26 Fatigue Rule requirements at Watts Bar 2; failure to adhere to the Fukushima requirements at Sequoyah; concerns regarding a Watts Bar 2 surveillance extension request; and failure to meet NRC commitments in Information Notice 2017-3 to identify Anchor Darling double disc gate valve susceptibility to failure at Browns Ferry (Exhibit 20, pp. 3). On July 24, 2017, the CI submitted an allegation to the NRC (RII-2017-A-0114) raising concerns that the former Director of CNL was creating a chilled work environment, among other issues. The CI also wrote condition reports and discussed safety issues during meetings (Exhibit 4, pp.21).

Also, between 2016 and 2017, other staff members under the former Director of CNL's supervision raised safety concerns. The CI believed that the former Director of CNL was creating a hostile work environment by retaliating against the individuals that raised safety concerns. Based on this belief, the

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CI became concerned that the former Director of CNL would take punitive action against the CI in retaliation for raising safety concerns and questioning management's decisions (Exhibit 4, pp.21). The CI started a rotation to the Nuclear Energy Institute in April 2018 to "get away from an overall toxic environment" (Exhibit 4, pp. 22).

Examples of the perceived hostile work environment are illustrated in three Employee Concerns Program (ECP) complaints made about the former Director of CNL. Note that none of the ECP complaints were filed by the CI. In July 2016, the first complaint was filed claiming harassment and intimidation by the former Director of CNL. The ECP findings stated that, while retaliation was not substantiated, the "investigation concludes that behaviors exhibited by the former Director of CNL, including the perception that employees were written up after disagreeing with the [former Director of CNL], have the potential to create a work environment that is not conducive to raising safety concerns" (Exhibit 7, pp. 11). The ECP closure letter also stated that the former Director of CNL's behavior could lead to a "work environment that could be found to be chilled or that could lead to potential future substantiation of Harassment, Intimidation, Retaliation, or Discrimination (HIRD) based on fear to raise nuclear safety or quality issues" (Exhibit 7, pp. 3). A second ECP complaint against the former Director of CNL in April 2017 was not substantiated but resulted in an ECP finding that "there remains mistrust and tension that has had an impact on both the [Sequoyah] Licensing staff and Corporate Licensing Staff" (Exhibit 7, pp. 16). A third ECP complaint against the former Director of CNL in July 2017 was "partially substantiated" and concluded that ECP could find "no intent on the part of the former Director of CNL to retaliate ... but finds that the former Director of CNL's actions could create a perception of retaliation" (Exhibit 7).

On March 9, 2018, the former Director of CNL filed a complaint with TVA accusing several employees, including the CI, of creating a hostile workplace and engaging in insubordinate conduct (Exhibit 10). All employees listed in the complaint had previously filed complaints with the former Director of CNL, the VP of Regulatory Affairs, the NRC, and/or the TVA ECP. In the complaint, the former Director of CNL specifically cites assertions made to the NRC about a chilled work environment as an example of retaliatory behavior imposed by the employees (Exhibit 10, pp.7). The former Director of CNL also indicates a belief that the CI was the source of the allegation submitted to the NRC (Exhibit 10, pp. 7). In response to the former Director of CNL's complaint, TVA OGC initiated an internal investigation and the Senior Attorney interviewed CNL employees, including the CI. The interviewees were not aware that the investigation related to their creation of a hostile work environment for the former Director of CNL, but rather believed TVA OGC was investigating the overall work environment within CNL caused by the former Director of CNL. During the interview with the Senior Attorney in April 2018, the CI was asked about the CNL work environment and stated that the former Director of CNL was "vindictive" and created a "toxic" work environment.

Subsequent to the interview with the Senior Attorney, the CI communicated through emails with the VP of Regulatory Affairs expressing concern that the former Director of CNL would use the CI's travel vouchers "as an investigative tool." The CI stated that the former Director of CNL "used HR to

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investigate people, reported people to ECP, threatened to have people for cause drug tested, pulled badging gate records.” The CI also stated that the former Director of CNL “has demonstrated a longstanding pattern of using TVA processes as punitive and retaliatory tools” (Exhibit 11, pp. 14). The VP of Regulatory Affairs responded in an email stating, “you have raised some very serious assertions against your supervisor. I have turned these over for further evaluation to an appropriately independent review party” (Exhibit 11, pp. 14). Rather than report this to ECP or HR, the VP of Regulatory Affairs sent them to TVA OGC who was investigating harassment by staff of the former Director of CNL.

The Senior Attorney issued investigative findings on August 10, 2018, that recommended termination of one staff member but did not include any recommended action against the CI. The VP of Regulatory Affairs requested that TVA OGC revisit the investigation and provide a recommendation specific to the CI (Exhibit 20). At the request of the VP of Regulatory Affairs, TVA OGC issued a supplemental memorandum on August 30, 2018, concluding that the CI participated in a pattern of harassing behavior against the former Director of CNL and violated various TVA policies (Exhibit 14). The TVA Executive Review Board (ERB) voted to terminate the CI based on, among other things, TVA’s Code of Conduct, the TVA No Fear Executive Policy, the Whistleblower Protection Act, and Section 211 of the Energy Reorganization Act (Exhibit 16). The Notice of Termination cites the CI’s statements made to the Senior Attorney during the investigative interview and the CI’s statements to the VP of Regulatory affairs as contributing factors to the CI’s termination. The CI was placed on paid administrative leave on October 15, 2018, and given the opportunity to be terminated or take a no-fault separation agreement. The CI was terminated on January 14, 2019.

Element 1: Did the employee engage in protected activity?

Yes.

Between 2016 and 2017, the CI raised numerous safety concerns, including: violations of the Part 26 Fatigue Rule requirements at Watts Bar 2; failure to adhere to the Fukushima requirements at Sequoyah; concerns regarding a Watts Bar 2 surveillance extension request; and failure to meet NRC commitments in Information Notice 2017-3 to identify Anchor Darling double disc gate valve susceptibility to failure at Brown Ferry. On July 24, 2017, the CI submitted an allegation to the NRC (RII-2017-A-0114) raising concerns that the former Director of CNL was creating a chilled work environment, among other issues. The CI also wrote CRs and discussed safety issues during meetings.

The CI believed that the former Director of CNL was retaliating against other TVA employees that had raised safety concerns and was concerned about retaliatory actions from the former Director of CNL. The CI reported concerns of retaliation and a hostile work environment to the VP of Regulatory Affairs. In April 2018, the CI was interviewed by the Senior Attorney and asked questions about office relationships and whether there was a chilled work environment. The CI believed that the interview was focused on the hostile work environment caused by the former Director of CNL and answered honestly

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when asked about the former Director of CNL, stating that the former Director of CNL was vindictive and created a toxic work environment.

Raising safety concerns and reporting concerns of a chilled work environment are protected activities.

Element 2: Was the employer aware of the protected activity at the time of the adverse action?

Yes.

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

The VP of Regulatory Affairs completed portions of the Proposed Adverse Action Review Form that proposed termination of the CI. Question one asked if managers have any knowledge of the CI potentially participating in protected activity in the past 12 months and the VP of Regulatory Affairs indicated that the CI raised safety or quality issues, submitted condition reports, and participated in an investigation.

Element 3: Was an adverse action taken against the employee?

Yes.

The former Director of CNL filed a formal complaint with TVA accusing several employees, including the CI, of creating a hostile work environment. In that formal complaint, the former Director of CNL cites an allegation made to the NRC about a chilled work environment as an example of the CI's retaliatory behavior. The formal complaint resulted in an investigation by TVA OGC that contributed to the CI's termination.

On September 19, 2018, the VP of Regulatory Affairs provided the recommendation and justification to ERB members to offer the CI a no-fault separation agreement or be terminated. The CI was placed on paid administrative leave by the VP of Regulatory Affairs on October 15, 2018, and terminated on January 14, 2019.

Element 4: Was the adverse action taken, at least in part, for engaging in protected activity?

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Yes.

The former Director of CNL filed a formal complaint with TVA accusing several employees, including the CI, of creating a hostile work environment. In that formal complaint, the former Director of CNL cites assertions made to the NRC about a chilled work environment as an example of the CI's retaliatory behavior. The formal complaint resulted in an investigation by TVA OGC that contributed to the CI's termination.

The Notice of Termination stated that the CI was being terminated, in part, for derogatory statements made about the former Director of CNL during an investigative interview with the Senior Attorney.

In addition, question five of the Proposed Adverse Action Review outlines the justification for the proposed action and states that the CI's "behaviors, as described in the report, repeatedly undermined and disrespected her supervisor by insinuating that [the former Director of CNL] had initiated inappropriate investigations of TVA employees, for vindictive motives, despite having provided no reasonable basis or specific knowledge to support that assertion. [The CI] has continued to push this unsupported theory throughout the period of the investigation, making these assertions to the attorney investigator, as well as [the VP of Regulatory Affairs] in various written communications." The statements made during the TVA OGC interview and to the VP of Regulatory Affairs were contributing factors to the adverse action.

TVA failed to provide clear and convincing evidence that TVA would have taken the same adverse action even if the CI had not engaged in protected activity.

The former Director of CNL serves in a management position and, based on this position, training, and experience in the nuclear industry, had a clear knowledge and understanding of the employee protection regulation (10 CFR 50.7). The former Director of CNL believed that the CI had reported concerns of a chilled work environment to the NRC and used that as an example of the CI's retaliatory behavior when filing a formal complaint with TVA. It is reasonable to assume that the former Director of CNL filed a complaint with TVA against the CI with the expectation that it would lead to a personnel action against the CI. Therefore, the preponderance of the evidence demonstrates the deliberate misconduct of the former Director of CNL, in violation of 10 CFR 50.5, caused TVA to be in violation of 10 CFR 50.7, the employee protection regulation.

The VP of Regulatory Affairs serves in a management position and, based on this position, training, and experience in the nuclear industry, had a clear knowledge and understanding of the employee protection regulation (10 CFR 50.7). The VP of Regulatory Affairs received information directly from the CI related to fear of retaliation by the former Director of CNL. The VP of Regulatory Affairs also had knowledge of previous ECP findings in relation to the former Director of CNL creating a perception of retaliation and a work environment that is not conducive to raising safety concerns. Despite knowing this, the VP of Regulatory Affairs chose not to report the CI's concerns of retaliation to ECP or Human

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Resources, but instead provided them to TVA OGC as part of an investigation into whether the CI was harassing the former Director of CNL. It is reasonable to assume that the VP of Regulatory Affairs provided this information to TVA OGC with the expectation that it would lead to an employment action against the CI. The VP of Regulatory Affairs used the CI's statements made during the TVA OGC investigation, as well as the fear of retaliation communicated by the CI to the VP of Regulatory Affairs, as evidence of harassing behavior in the justification of adverse action against the CI. Therefore, the preponderance of the evidence demonstrates the deliberate misconduct of the VP of Regulatory Affairs, in violation of 10 CFR 50.5, caused TVA to be in violation of 10 CFR 50.7, the employee protection regulation.

Conclusion

Based on the evidence, the allegation that the CI, a former Manager of Emerging Regulatory Issues employed at the TVA Corporate Office in Chattanooga, TN, was discriminated against for engaging in a protected activity was substantiated. The preponderance of the evidence indicated that the deliberate misconduct of the former Director of CNL and the VP of Regulatory Affairs, in violation of 10 CFR 50.5, caused TVA to be in violation of 10 CFR 50.7, the employee protection regulation.

Timeline of Key Events

2006 – CI begins working for TVA.

2016 – Former Director of CNL hired as the CI's supervisor.

July 2016 – September 2017

- Three ECP complaints filed against the former Director of CNL (none submitted by the CI). ECP concludes the former Director of CNL may be creating a chilled work environment and could create the perception of retaliation.
- CI discussed various nuclear safety related issues with the former Director of CNL and VP of Regulatory Affairs.

July 24, 2017 – CI submitted an allegation to the NRC raising concerns that the former Director of CNL was creating a chilled work environment, among other issues.

December 2017 – CI raises concerns to the former Director of CNL and other TVA management about TVA's response to NRC Information Notice 2017-03 (Anchor Darling double disc gate valves wedge-pin and stem separation).

March 2018 – Former Director of CNL alleges harassment by staff, including the CI.

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April 2018 – CI interviewed by the Senior Attorney and discusses the work environment created by the former Director of CNL.

April 2018 – CI goes on rotation to the Nuclear Energy Institute.

May 2018 – CI expresses concerns of retaliation by the former Director of CNL to VP of Regulatory Affairs.

August 10, 2018 – Senior Attorney concludes investigation and issues report related to harassment of the former Director of CNL by staff. The report does not discuss the CI but recommends termination of a different employee.

August 30, 2018 – Supplemental TVA OGC memorandum issued stating that the CI retaliated against the former Director of CNL and recommends termination.

September 19, 2018 – TVA ERB provided a package recommending termination of the CI.

October 15, 2018 – CI meets with VP of Regulatory Affairs for a performance review and is suspended with pay and given the opportunity to take a no-fault separation settlement or be terminated.

December 5, 2018 – CI signs the voluntary separation agreement. CI later rescinds this agreement on December 11, 2018.

January 14, 2019 – CI is terminated.



ENFORCEMENT ACTION WORKSHEET

| | |
|--|---|
| EA#: | IA 2020-008 |
| Date of Panel: | February 12, 2020 |
| Licensee: | TVA Vice President of Regulatory Affairs |
| Facility/Location: | Sequoyah (SQN), Watts Bar I (WBN) |
| Licensee Type: | Operating Reactor |
| Docket No(s): | |
| Inspection Report No(s): | |
| Date of Exit Meeting: | |
| Date of IR or Choice Letter Issuance: | |
| ML Number of case documents (if known): | |
| OI Report No: | 2-2018-033 (SQN); 2-2019-015 (WBN) |
| OI Report Date: | October 3, 2019 (SQN); January 21, 2020 (WBN) |
| Inspector: | |

1. Summary of Issues Considered for Escalated Enforcement:

These investigations were initiated to determine whether a former TVA Site Licensing Manager at Sequoyah (2-2018-033) and a former Manager of Emerging Regulatory Issues at TVA Corporate Office (2-2019-015) were discriminated against for engaging in protected activity by the TVA Vice President of Regulatory Affairs, in violation of 10 CFR 50.5, the deliberate misconduct rule, which caused the licensee to be in violation of 10 CFR 50.7, the employee protection rule. Summaries attached.

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

3. Regional Recommendation:

Summarize the Region's recommendation, e.g. number and significance of apparent violations.

OE recommends the escalated enforcement process for the Vice President of Regulatory Affairs at TVA.

- Number of Apparent Violations (AV): 1

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

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

The CI at TVA Sequoyah and the CI at TVA Corporate were discriminated against for engaging in protecting activity, in violation of 10 CFR 50.5 and 10 CFR 50.7.

Background information:

SQN 2-2018-033:

Between 2015 and 2018, the Concerned Individual (CI), the former TVA Site Licensing Manager, was involved with ongoing communications with Corporate Nuclear Licensing (CNL), which included the former Director of CNL and the Vice President (VP) of Regulatory Affairs, about how to respond to two non-cited violations (NCVs) issued by the NRC during an inspection. In addition, the CI was involved with several complaints and investigations involving the Employee Concerns Program (ECP), Human Resources (HR), or the TVA Office of General Counsel (OGC). On May 25, 2018, the CI was placed on paid administrative leave and on August 16, 2018, the CI resigned from TVA.

Between 2015 and 2018 the CI was involved in numerous discussions, disagreements and meetings with CNL regarding the Service Life NCV and the Kirk Key NCV. These violations were identified by the NRC during an inspection and required a response, either submit a denial letter or implement corrective actions, within 30 days. However, CNL told the CI to provide only informational letters, which was out of process for both TVA and the NRC. The CI told CNL on numerous occasions, via phone discussions, meetings, emails, texts, and a CAP, that they were in non-compliance and needed to deny the NCV or implement corrective actions. Sequoyah did not provide an appropriate response until 2017 and 2018, leaving them in non-compliance for over two years. The CI's numerous inquiries and attempts to respond appropriately to these NCVs and to raise concerns about regulatory non-compliance is considered protected activity.

The CI was involved in several ECP complaints. In 2017, the CI filed two ECP complaints against the former Director of CNL. In March 2018, with full support of the VP of Regulatory Affairs, the former Director of CNL submitted a formal complaint to HR and the VP of Regulatory Affairs of harassment against the CI. This complaint was investigated by TVA OGC. In 2018, the draft TVA OGC report stated that the CI misused the ECP and said that this was a form of retaliation against the former Director of CNL. The draft TVA OGC report was used as a basis for placing the CI on administrative leave. Using the ECP is considered protected activity.

On May 25, 2018, the CI was put on paid administrative leave due to an investigation of harassment and undermining the CNL's staff's ability to perform their duties. For the next three months the CI attempted to return to work by submitting a recovery plan and maintaining contact with his management. The CI was given inconsistent information on the status of his employment during this time and remained on paid administrative leave until he resigned in August 2018, believing that he was ultimately going to be terminated from employment.

WBN 2-2019-015:

Between 2016 and 2017, the CI raised numerous safety concerns, including: violations of the Part 26 Fatigue Rule requirements at Watts Bar 2; failure to adhere to the Fukushima requirements at Sequoyah; concerns regarding a Watts Bar 2 surveillance extension request; and failure to meet NRC commitments in Information Notice 2017-3 to identify Anchor Darling double disc gate valve susceptibility to failure at Brown Ferry. On July 24, 2017, the CI

ENFORCEMENT ACTION WORKSHEET (continued)

submitted an allegation to the NRC (RII-2017-A-0114) raising concerns that the former Director of CNL was creating a chilled work environment, among other issues. The CI also wrote condition reports and discussed safety issues during meetings. The CI believed that the former Director of CNL was retaliating against other TVA employees that had raised safety concerns and was concerned about retaliatory actions from the former Director of CNL. The CI reported concerns of retaliation and a hostile work environment to the VP of Regulatory Affairs.

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

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

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

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

ENFORCEMENT ACTION WORKSHEET (continued)

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

In certain cases, the severity level of a violation may be escalated based on unique escalating factors such as whether the adverse action was taken because the employee had contacted the NRC or whether the applicable NRC employee protection regulation (e.g., 10 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated.

Enforcement Policy Example 6.10.b.1, Severity Level II violation of 10 CFR 50.7: An executive-level corporate manager (or equivalent) (which for this definition includes a site vice president) is the decisionmaker or plays a significant role in the adverse action decisionmaking process regardless of the severity of the adverse action but without an escalating factor present.

SQN 2-2018-033: The TVA Vice President of Regulatory Affairs (executive level corporate manager), is the decisionmaker who caused the CI to be put on paid administrative leave for three months until the CI resigned, believing that he would ultimately be terminated from employment. The CI reported the adverse action to the NRC on August 13, 2018.

WBN 2-2019-015: The Vice President of Regulatory Affairs (executive-level corporate manager), is the decisionmaker who caused the CI to be put on paid administrative leave and played a significant role in the decision to terminate the CI.

A unique factor is present: the Vice President of Regulatory Affairs, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7.

Given the Vice President of Regulatory Affairs position and the significance of these actions, a 3 year ban is proposed.

● Actual Consequences: No

● Potential Consequences: Yes

● Impacting the Regulatory Process: No

● If "Yes" was answered to any of the three preceding questions, Explain:
Potential Chilling effect on other employees

● Willful: Yes

● Civil Penalty Warranted (explain):
No

● Identification Credit: No - NRC Identified

● Corrective Action Credit: No

● Describe/List Corrective Actions:

● Previous Escalated Enforcement (Last 2 yrs or 2 Inspections): Choose an item:

● Discretion to mitigate/escalate the CP: Choose an item:

ENFORCEMENT ACTION WORKSHEET (continued)

• Explain Bases for discretion:

• Proposed next action:

Choice letter (Written/PEC/ADR)

ENFORCEMENT ACTION WORKSHEET (continued)

4. Individual Actions: Select One

Number of IAs:

Add IA

Delete IA

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

See attached Sequoyah and Watts Bar case summaries and Prima Facie Analyses, and other TVA cases.

6. Any Additional Information?

See other TVA cases (tiger team) and report/actions

7. Draft NOV(s):

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

10 CFR 50.5 (a) states that any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not: (1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission.

The VP of Regulatory Affairs holds an executive level corporate position and therefore, should be aware of, and understand, the employee protection rule (10 CFR 50.7), and that raising concerns of regulatory non-compliance and a chilled work environment, and using the ECP are protected activities.

SQN 2-2018-033: The VP of Regulatory Affairs encouraged the former Director of Corporate Nuclear Licensing to submit a formal complaint against the CI to stop the CI's communications and actions, which were protected activities. This ultimately led to the TVA OGC investigation and the CI being placed on administrative leave.

WBN 2-2019-015: The VP of Regulatory Affairs placed the CI on paid administrative leave and played a significant role in terminating the CI. As contributing factors for these adverse actions, the VP of Regulatory Affairs cited the CI's statements made during the TVA OGC investigation and fear of retaliation communicated by the CI to the VP of Regulatory Affairs, which are protected activities.

The actions by the VP of Regulatory Affairs constitutes deliberate misconduct, in violation of 10 CFR 50.5, which caused the licensee to be in violation of 10 CFR 50.7.

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

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

EA: Issued by Enforcement Staff (Headquarters or Regional)

Date of Panel:

Licensee:

Facility/Location:

Licensee Type:

Docket No(s):

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

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



ENFORCEMENT ACTION WORKSHEET

| | |
|--|-------------------|
| EA#: | EA 2020-06 |
| Date of Panel: | February 12, 2020 |
| Licensee: | TVA |
| Facility/Location: | Sequoyah |
| Licensee Type: | Operating Reactor |
| Docket No(s): | |
| Inspection Report No(s): | |
| Date of Exit Meeting: | |
| Date of IR or Choice Letter Issuance: | |
| ML Number of case documents (if known): | |
| OI Report No: | 2-2018-033 |
| OI Report Date: | October 3, 2019 |
| Inspector: | |

1. Summary of Issues Considered for Escalated Enforcement:

This investigation was initiated to determine whether a former TVA Site Licensing Manager employed at Sequoyah was discriminated against for raising safety concerns by the former TVA Director of Corporate Nuclear Licensing and the TVA Vice President of Regulatory Affairs, in violation of 10 CFR 50.5, the deliberate misconduct rule, which caused the licensee to be in violation of 10 CFR 50.7, the employee protection rule. Summary attached

2. Is willfulness involved? Yes

- OI's determination: Deliberate
- OGC's determination: Deliberate
- Regional determination: N/A

3. Regional Recommendation:

Summarize the Region's recommendation, e.g. number and significance of apparent violations.

OE recommends continuing the escalated enforcement process regarding:

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

- Number of Apparent Violations (AV): 2

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

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

The CI at TVA Sequoyah was discriminated against for raising safety concerns, in violation of 10 CFR 50.5 and 10 CFR 50.7.

Background information:

Between 2015 and 2018, the Concerned Individual (CI), the former TVA Site Licensing Manager, was involved with ongoing communications with Corporate Nuclear Licensing (CNL), which included the former Director of CNL and the Vice President (VP) of Regulatory Affairs, about how to respond to two non-cited violations (NCVs) issued by the NRC during an inspection. In addition, the CI was involved with several complaints and investigations involving the Employee Concerns Program (ECP), Human Resources (HR), or the TVA Office of General Counsel (OGC). On May 25, 2018, the CI was placed on paid administrative leave and on August 16, 2018, the CI resigned from TVA:

Between 2015 and 2018 the CI was involved in numerous discussions, disagreements and meetings with CNL regarding the Service Life NCV and the Kirk Key NCV. These violations were identified by the NRC during an inspection and required a response, either submit a denial letter or implement corrective actions, within 30 days. However, CNL told the CI to provide only informational letters, which was out of process for both TVA and the NRC. The CI told CNL on numerous occasions, via phone discussions, meetings, emails, texts, and a CAP, that they were in non-compliance and needed to deny the NCV or implement corrective actions. Sequoyah did not provide an appropriate response until 2017 and 2018, leaving them in non-compliance for over two years. The CI's numerous inquiries and attempts to respond appropriately to these NCVs and to raise concerns about regulatory non-compliance is considered protected activity.

The CI was involved in several ECP complaints. In 2017, the CI filed two ECP complaints against the former Director of CNL. In March 2018, with full support of the VP of Regulatory Affairs, the former Director of CNL submitted a formal complaint to HR and the VP of Regulatory Affairs of harassment against the CI. This complaint was investigated by TVA OGC. In 2018, the draft TVA OGC report stated that the CI misused the ECP and said that this was a form of retaliation against the former Director of CNL. The draft TVA OGC report was used as a basis for placing the CI on administrative leave. Using the ECP is considered protected activity.

On May 25, 2018, the CI was put on paid administrative leave due to an investigation of harassment and undermining the CNL's staff's ability to perform their duties. For the next three months the CI attempted to return to work by submitting a recovery plan and maintaining contact with his management. The CI was given inconsistent information on the status of his employment during this time and remained on paid administrative leave until he resigned in August 2018, believing that he was ultimately going to be terminated from employment.

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

ENFORCEMENT ACTION WORKSHEET (continued)

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

In certain cases, the severity level of a violation may be escalated based on unique escalating factors such as whether the adverse action was taken because the employee had contacted the NRC or whether the applicable NRC employee protection regulation (e.g., 10 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated.

Enforcement Policy Example 6.10.b.1, Severity Level II violation of 10 CFR 50.7: An executive-level corporate manager (or equivalent) (which for this definition includes a site vice president) is the decisionmaker or plays a significant role in the adverse action decisionmaking process regardless of the severity of the adverse action but without an escalating factor present.

The TVA Vice President of Regulatory Affairs (executive level corporate manager), is the decisionmaker who caused the CI to be put on paid administrative leave for three months until the CI resigned, believing that he would ultimately be terminated from employment. The CI reported the adverse action to the NRC on August 13, 2018. A unique factor is present: The Vice President of Regulatory Affairs, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7.

SLII with escalating factor results in SLI.

● Actual Consequences: No

● Potential Consequences: Yes

● Impacting the Regulatory Process: No

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

Potential Chilling effect on other employees

● Willful: Yes

● Civil Penalty Warranted (explain):

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

● Identification Credit: No - NRC Identified

● Corrective Action Credit: No

● Describe/List Corrective Actions:

● Previous Escalated Enforcement (Last 2 yrs or 2 Inspections): Choose an item:

● Discretion to mitigate/escalate the CP: Choose an item:

● Explain Bases for discretion:

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

ENFORCEMENT ACTION WORKSHEET (continued)

Empty workspace for enforcement action worksheet.

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

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

The CI at TVA Sequoyah was discriminated against for raising safety concerns, in violation of 10 CFR 50.5 and 10 CFR 50.7.

Background information:

Between 2015 and 2018, the Concerned Individual (CI), the former TVA Site Licensing Manager, was involved with ongoing communications with Corporate Nuclear Licensing (CNL), which included the former Director of CNL and the Vice President (VP) of Regulatory Affairs, about how to respond to two non-cited violations (NCVs) issued by the NRC during an inspection. In addition, the CI was involved with several complaints and investigations involving the Employee Concerns Program (ECP), Human Resources (HR), or the TVA Office of General Counsel (OGC). On May 25, 2018, the CI was placed on paid administrative leave and on August 16, 2018, the CI resigned from TVA:

Between 2015 and 2018 the CI was involved in numerous discussions, disagreements and meetings with CNL regarding the Service Life NCV and the Kirk Key NCV. These violations were identified by the NRC during an inspection and required a response, either submit a denial letter or implement corrective actions, within 30 days. However, CNL told the CI to provide only informational letters, which was out of process for both TVA and the NRC. The CI told CNL on numerous occasions, via phone discussions, meetings, emails, texts, and a CAP, that they were in non-compliance and needed to deny the NCV or implement corrective actions. Sequoyah did not provide an appropriate response until 2017 and 2018, leaving them in non-compliance for over two years. The CI's numerous inquiries and attempts to respond appropriately to these NCVs and to raise concerns about regulatory non-compliance is considered protected activity.

The CI was involved in several ECP complaints. In 2017, the CI filed two ECP complaints against the former Director of CNL. In March 2018, with full support of the VP of Regulatory Affairs, the former Director of CNL submitted a formal complaint to HR and the VP of Regulatory Affairs of harassment against the CI. This complaint was investigated by TVA OGC. In 2018, the draft TVA OGC report stated that the CI misused the ECP and said that this was a form of retaliation against the former Director of CNL. The draft TVA OGC report was used as a basis for placing the CI on administrative leave. Using the ECP is considered protected activity

On May 25, 2018, the CI was put on paid administrative leave due to an investigation of harassment and undermining the CNL's staff's ability to perform their duties. For the next three months the CI attempted to return to work by submitting a recovery plan and maintaining contact with his management. The CI was given inconsistent information on the status of his employment during this time and remained on paid administrative leave until he resigned in August 2018, believing that he was ultimately going to be terminated from employment.

• Proposed Severity Level (SL):

Escalate to SL II for Willful

ENFORCEMENT ACTION WORKSHEET (continued)

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

In certain cases, the severity level of a violation may be escalated based on unique escalating factors such as whether the adverse action was taken because the employee had contacted the NRC or whether the applicable NRC employee protection regulation (e.g., 10 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated.

Enforcement Policy Example 6.10.c.1, Severity Level III violation of 10 CFR 50.7: A mid- or senior-level plant manager (or equivalent) or a corporate-level line manager (or equivalent) is the decisionmaker or plays a significant role in the adverse action decisionmaking process; the employment action is relatively less adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., verbal counseling); and no escalating factor is present.

The former Director of Corporate Nuclear Licensing (corporate level line-manager), played a significant role in the adverse action process. She initiated the complaint, after years ongoing communications with the CI and multiple ECP/HR investigations, that led to the TVA OGC investigation and the CI's suspension. The unique factor is her violation of 10 CFR 50.5, which caused TVA to be in violation of 10 CFR 50.7.

SLIII with escalating factor results in SLII.

● Actual Consequences: Choose an item:

● Potential Consequences: Yes

● Impacting the Regulatory Process: Choose an item:

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

Potential chilling effect on other employees

● Willful: Yes

● Civil Penalty Warranted (explain):

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

● Identification Credit: No - NRC Identified

● Corrective Action Credit: Choose an item:

● Describe/List Corrective Actions:

● Previous Escalated Enforcement (Last 2 yrs or 2 Inspections): Choose an item:

● Discretion to mitigate/escalate the CP: Choose an item:

● Explain Bases for discretion:

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

ENFORCEMENT ACTION WORKSHEET (continued)

4. Individual Actions: Yes

Number of IAs: 2

Add IA

Delete IA

Individual Action #:

| | |
|--|---------------------------------|
| • Traditional Enforcement (SL): | SL I |
| • Level of Individual within the organization: | Corporate Executive |
| • Benefit to wrongdoer: | Choose an item: |
| • Attitude of wrongdoer: | Choose an item: |
| • Employer's response: | None |
| • Proposed next action: | Choice Letter (Written/PEC/ADR) |
| • Proposed final action: | Choose an item: |

Individual Action #:

| | |
|--|---------------------------------|
| • Traditional Enforcement (SL): | SL II |
| • Level of Individual within the organization: | Manager |
| • Benefit to wrongdoer: | Choose an item: |
| • Attitude of wrongdoer: | Choose an item: |
| • Employer's response: | None |
| • Proposed next action: | Choice Letter (Written/PEC/ADR) |
| • Proposed final action: | Choose an item: |

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

See attached Sequoyah case summary and Prima Facie Analysis, also Watts Bar 1 and other TVA cases

6. Any Additional Information?

See other TVA cases (tiger team) and report/actions

ENFORCEMENT ACTION WORKSHEET (continued)

7. Draft NOV(s):

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

10 CFR 50.5 (a) states that any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not: (1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission.

The former Director of Corporate Nuclear Licensing and the VP of Regulatory Affairs are corporate management positions. Therefore, both should be aware of, and understand, the employee protection rule (10 CFR 50.7), and that raising concerns of regulatory non-compliance and using the ECP are protected activities. The VP of Regulatory Affairs encouraged the former Director of Corporate Nuclear Licensing to submit a formal complaint against the CI to stop the CI's communications and actions, which were protected activities. This ultimately led to the TVA OGC investigation and the CI being placed on administrative leave.

The actions by the former Director of Corporate Nuclear Licensing and the VP of Regulatory Affairs constitutes deliberate misconduct, in violation of 10 CFR 50.5, which caused the licensee to be in violation of 10 CFR 50.7.

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

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

EA: Issued by Enforcement Staff (Headquarters or Regional)

Date of Panel:

Licensee:

Facility/Location:

Licensee Type:

Docket No(s):

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

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



ENFORCEMENT ACTION WORKSHEET

| | |
|--|----------------------------------|
| EA#: | EA 2020-007 |
| Date of Panel: | February 12, 2020 |
| Licensee: | Tennessee Valley Authority (TVA) |
| Facility/Location: | Watts Bar 1 |
| Licensee Type: | Operating Reactor |
| Docket No(s): | |
| Inspection Report No(s): | |
| Date of Exit Meeting: | |
| Date of IR or Choice Letter Issuance: | |
| ML Number of case documents (if known): | |
| OI Report No: | 2-2019-015 |
| OI Report Date: | January 21, 2020 |
| Inspector: | |

1. Summary of Issues Considered for Escalated Enforcement:

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

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

3. Regional Recommendation:

OE recommends continuing the escalated enforcement process regarding:

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

● Number of Apparent Violations (AV): 2

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

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

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

Background information:

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

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

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

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

• Proposed Severity Level (SL):

Escalate to SL I for Willful

ENFORCEMENT ACTION WORKSHEET (continued)

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

In certain cases, the severity level of a violation may be escalated based on unique escalating factors such as whether the adverse action was taken because the employee had contacted the NRC or whether the applicable NRC employee protection regulation (e.g., 10 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated.

Enforcement Policy Example 6.10.b.1, Severity Level II violation of 10 CFR 50.7: An executive-level corporate manager (or equivalent) (which for this definition includes a site vice president) is the decisionmaker or plays a significant role in the adverse action decisionmaking process regardless of the severity of the adverse action but without an escalating factor present.

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

● Actual Consequences: No

● Potential Consequences: Yes

● Impacting the Regulatory Process: No

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

Potential chilling effect on other employees

● Willful: Yes

● Civil Penalty Warranted (explain):

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

● Identification Credit: No - NRC Identified

● Corrective Action Credit: No

● Describe/List Corrective Actions:

● Previous Escalated Enforcement (Last 2 yrs or 2 Inspections): Choose an item:

● Discretion to mitigate/escalate the CP: Choose an item:

● Explain Bases for discretion:

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

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

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

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

Background information:

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

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

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

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

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

ENFORCEMENT ACTION WORKSHEET (continued)

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

In certain cases, the severity level of a violation may be escalated based on unique escalating factors such as whether the adverse action was taken because the employee had contacted the NRC or whether the applicable NRC employee protection regulation (e.g., 10 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated.

Enforcement Policy Example 6.10.c.1, Severity Level III violation of 10 CFR 50.7: A mid- or senior-level plant manager (or equivalent) or a corporate-level line manager (or equivalent) is the decisionmaker or plays a significant role in the adverse action decisionmaking process; the employment action is relatively less adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., verbal counseling); and no escalating factor is present.

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

● Actual Consequences: No

● Potential Consequences: Yes

● Impacting the Regulatory Process: No

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

Potential chilling effect on other employees

● Willful: Yes

● Civil Penalty Warranted (explain):

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

● Identification Credit: No - NRC Identified

● Corrective Action Credit: No

● Describe/List Corrective Actions:

● Previous Escalated Enforcement (Last 2 yrs or 2 Inspections): Choose an item:

● Discretion to mitigate/escalate the CP: Choose an item:

● Explain Bases for discretion:

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

ENFORCEMENT ACTION WORKSHEET (continued)

4. Individual Actions: Yes

Number of IAs: 2

Add IA

Delete IA

Individual Action #: 1

| | |
|--|---------------------------------|
| • Traditional Enforcement (SL): | SLI |
| • Level of Individual within the organization: | Corporate Executive |
| • Benefit to wrongdoer: | Choose an item: |
| • Attitude of wrongdoer: | Choose an item: |
| • Employer's response: | None |
| • Proposed next action: | Choice Letter (Written/PEC/ADR) |
| • Proposed final action: | Choose an item: |

Individual Action #: 2

| | |
|--|---------------------------------|
| • Traditional Enforcement (SL): | SL II |
| • Level of Individual within the organization: | Manager |
| • Benefit to wrongdoer: | Choose an item: |
| • Attitude of wrongdoer: | Choose an item: |
| • Employer's response: | None |
| • Proposed next action: | Choice Letter (Written/PEC/ADR) |
| • Proposed final action: | Choose an item: |

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

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

6. Any Additional Information?

See other TVA cases (tiger team) and report/actions

ENFORCEMENT ACTION WORKSHEET (continued)**7. Draft NOV(s):**

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

10 CFR 50.5 (a) states that any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not: (1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission.

The former Director of Corporate Nuclear Licensing and Vice President of Regulatory Affairs are corporate management positions. Therefore, both should be aware of, and understand, the employee protection rule (10 CFR 50.7), and that raising concerns of regulatory non-compliance and a chilled work environment are protected activities. The former Director of Corporate Nuclear Licensing filed a formal complaint against the CI based, in part, for contacting the NRC with concerns of a chilled work environment, which is a protected activity. The VP of Regulatory Affairs placed the CI on paid administrative leave and played a significant role in terminating the CI. As contributing factors for these adverse actions, the VP of Regulatory Affairs cited the CI's statements made during the TVA OGC investigation and fear of retaliation communicated by the CI to the VP of Regulatory Affairs, which are protected activities.

The actions by the former Director of Corporate Nuclear Licensing and the Vice President of Regulatory Affairs constitute deliberate misconduct, in violation of 10 CFR 50.5, which caused the licensee to be in violation of 10 CFR 50.7.

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

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

EA: Issued by Enforcement Staff (Headquarters or Regional)

Date of Panel:

Licensee:

Facility/Location:

Licensee Type:

Docket No(s):

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

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