

From: Alan Kabat <kabat@bernabeipllc.com>
Sent: Friday, April 5, 2019 8:44 PM
To: Checkle, Melanie; Luina, Scott
Subject: [External_Sender] FW: McBrearty / TVA, 4-1760-18-153
Attachments: 2019 04 05 Kabat to OSHA.pdf; 2019 03 26 TVA reply to McBrearty 2019-03-08 response.pdf

Ms. Checkle and Mr. Luina,

Am re-sending this as I received an error message that it did not go through the first time. Will take out the exhibits this time, in case that was the problem.

Thank you,
Alan Kabat

From: Alan Kabat
Sent: Friday, April 05, 2019 12:07 PM
To: Melanie.Checkle@nrc.gov; Luina, Scott
Cc: Michael McBrearty
Subject: FW: McBrearty / TVA, 4-1760-18-153

Dear Ms. Checkle and Mr. Luina,

Attached please find additional information relevant to Mr. McBrearty's NRC complaint.

To summarize, TVA sent a short letter to OSHA (March 26, also attached), claiming that Mr. Shea's and Ms. Henderson's communications with Mr. McBrearty were not hostile, and the attached response contradicts that. The attached response also provides additional explanation of how Mr. Shea and Ms. Henderson were trying to circumvent NRC procedures.

Thank you for your continued interest,

Alan

Alan R. Kabat
Bernabei & Kabat, PLLC
1400 - 16th Street, N.W., Suite 500
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From: Alan Kabat

Sent: Friday, April 5, 2019 11:15 AM

To: 'Chin, Steven C' <scchin@tva.gov>; Fehlman, Lauren - OSHA <LFehlman@DOL.GOV>

Cc: Bernier, Michael Vincent <mvernoier@tva.gov>; Rhinehart, Carol B <cbrhinehart@tva.gov>

Subject: RE: McBrearty / TVA, 4-1760-18-153

Dear Ms. Fehlman,

Attached please find Mr. McBrearty's response to TVA's March 26 submission, with exhibits.

Thank you,

Alan

Alan R. Kabat

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From: Chin, Steven C <scchin@tva.gov<mailto:scchin@tva.gov>>

Sent: Tuesday, March 26, 2019 5:47 PM

To: Fehlman, Lauren - OSHA <LFehlman@DOL.GOV<mailto:LFehlman@DOL.GOV>>

Cc: Bernier, Michael Vincent <mvernoier@tva.gov<mailto:mvernoier@tva.gov>>; Rhinehart, Carol B <cbrhinehart@tva.gov<mailto:cbrhinehart@tva.gov>>; Alan Kabat <kabat@bernabeipllc.com<mailto:kabat@bernabeipllc.com>>

Subject: RE: McBrearty / TVA, 4-1760-18-153

Dear Ms. Fehlman,

Please find attached to this email, TVA's reply to Mr. McBrearty's supplemental response dated March 8, 2019. Mr. Kabat has been carbon copied on this email. A courtesy copy will follow by regular mail.

Sincerely,
Steve

Steve C. Chin
Attorney
Office of the General Counsel

Tennessee Valley Authority
400 West Summit Hill Drive, WT6
Knoxville, TN 37902

865.632.3052 (w)

scchin@tva.gov<<mailto:scchin@tva.gov>>

[https://lakeinfo.tva.gov/web/images/tva_logo_32b.png]<<https://tva.com/>>

[https://lakeinfo.tva.gov/web/images/blue_line.png]

[<https://lakeinfo.tva.gov/web/images/facebook2.png>]<<https://www.facebook.com/TVA/>>[<https://lakeinfo.tva.gov/web/images/twitter2.png>]<<https://twitter.com/tvanews>>[<https://lakeinfo.tva.gov/web/images/instagram2.png>]<<https://instagram.com/tva>>[<https://lakeinfo.tva.gov/web/images/youtube2.png>]<<https://www.youtube.com/user/TVANewsVideo>>[<https://lakeinfo.tva.gov/web/images/linkedin2.png>]<<https://www.linkedin.com/company/tva>>[<https://lakeinfo.tva.gov/web/images/flickr2.png>]<<https://www.flickr.com/photos/tennesseevalleyauthority/>>

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From: Alan Kabat <kabat@bernabeipllc.com<<mailto:kabat@bernabeipllc.com>>>

Sent: Friday, March 8, 2019 3:55 PM

To: Fehlman, Lauren - OSHA <LFehlman@DOL.GOV<<mailto:LFehlman@DOL.GOV>>>

Cc: Chin, Steven C <scchin@tva.gov<<mailto:scchin@tva.gov>>>; Bernier, Michael Vincent <mvbernier@tva.gov<<mailto:mvbernier@tva.gov>>>; Rhinehart, Carol B <cbrhinehart@tva.gov<<mailto:cbrhinehart@tva.gov>>>

Subject: McBrearty / TVA, 4-1760-18-153

TVA External Message. Please use caution when opening.

Ms. Fehlman,

The attached response to TVA's supplemental submission is also being sent to you by regular mail; TVA's counsel is copied here.

Sincerely,
Alan

Alan R. Kabat
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Hearing Identifier: JShea_IA_NonPublic
Email Number: 1120

Mail Envelope Properties (A1CB061A1E01EB44AFF4BA017F27C2C002754C9FA2)

Subject: [External_Sender] FW: McBrearty / TVA, 4-1760-18-153
Sent Date: 4/5/2019 8:43:59 PM
Received Date: 4/5/2019 8:42:12 PM
From: Alan Kabat

Created By: kabat@bernabeipllc.com

Recipients:
"Checkle, Melanie" <Melanie.Checkle@nrc.gov>
Tracking Status: None
"Luina, Scott" <Scott.Luina@nrc.gov>
Tracking Status: None

Post Office: BW-Ex.bernabeipllc.local

| Files | Size | Date & Time |
|---|-------------|------------------------|
| MESSAGE | 8328 | 4/5/2019 8:42:12 PM |
| 2019 04 05 Kabat to OSHA.pdf | 199309 | |
| 2019 03 26 TVA reply to McBrearty 2019-03-08 response.pdf | 186566 | |

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DEVIN WRIGLEY

KAIYA LYONS*

*ADMITTED IN MN ONLY

By Email and First Class Mail

April 5, 2019

Ms. Lauren Fehlman, Regional Investigator
U.S. Department of Labor-OSHA
2296 Henderson Mill Road, NE,
Suite 200
Atlanta, GA 30345-2739

Re: *McBrearty / Tennessee Valley Authority*, No. 4-1760-18-153

Dear Ms. Fehlman:

I write to provide Mr. McBrearty's response to TVA's March 26, 2019 submission.

TVA's March 26, 2019 response again fails to address Mr. McBrearty's original complaint, including the safety issues he raised to both Joseph Shea and Erin Henderson during a Corporate Licensing Peer Team Teleconference just over two weeks prior to his suspension and constructive discharge. *See* McBrearty's Response to TVA's Position Statement, at 16-17 (December 14, 2018 letter).

Instead, TVA's March 26, 2019 response focusses on several cherry-picked snippets of communications over a two-year period regarding the two violations. Thus, TVA's response misrepresents the emails as somehow being demonstrative of a healthy cooperative work environment and proper behavior of Mr. Shea and Ms. Henderson, which was not the case.

I. TVA's Exhibit 1 is Merely a Status Update on the Kirk Key Violation.

Exhibit 1 to TVA's response is an email dated March 14, 2016, from Mr. McBrearty to Mr. Shea, Ms. Henderson, and others. It summarizes a conversation between Mr. McBrearty and Mr. Jonathon Bartley, NRC Region II Engineering Branch Chief, regarding TVA's disagreement letter on the Kirk Key violation, and describes NRC's plan for the service life issue. TVA

offered this email as supposed evidence that, “Henderson and Shea worked in a cooperative manner with McBrearty on these alleged safety concerns.”

To add context to what had transpired in the three months prior to that March 14, 2016 email, Mr. McBrearty repeatedly challenged Mr. Shea and Ms. Henderson regarding their (Mr. Shea and Ms. Henderson) decision not to comply with either TVA process or NRC process, and submit informational letters on the two regulatory violations instead of either denying or correcting the violations (as prescribed in TVA procedures and as required by NRC process). Mr. McBrearty had previously informed Mr. Shea and Ms. Henderson of telephone conversations he had with Mr. Bartley where Mr. Bartley repeatedly told Mr. McBrearty that TVA was going “outside of NRC process” by submitting informational letters instead of submitting denial letters. *See* OSHA Complaint, at 5 (Sept. 26, 2018).

With respect to the Kirk Key violation, in the March 14, 2016 email (TVA’s Exhibit 1), Mr. McBrearty pointed out that, “[J]onathan [Bartley] indicated he plans to have one of his electrical engineers conduct an independent review of our letter to determine if we have provided any new information...,” and that, “There is no current schedule for when the NRC will complete this review, as Jonathan Bartley is currently short-staffed with higher priority work.” Mr. McBrearty’s email was conveying the uncertainty and lack of formality regarding the NRC review caused by TVA failing to follow NRC process. In contrast, if Mr. Shea and Ms. Henderson had followed NRC process and submitted a denial letter (as strongly recommended by Mr. McBrearty and others within TVA Licensing), then the NRC would have been legally compelled to follow NRC regulatory process, including establishing a schedule for completing the review, requiring independent review of the NRC Region II position by the NRC Office of Enforcement and by multiple layers of NRC management, all in order to ensure correct and consistent application of NRC regulations, and finally providing TVA with a docketed written response either accepting or denying TVA’s position. Mr. McBrearty’s March 14, 2016 email properly sought to convey this message in a professional manner (or else Mr. Shea and Ms. Henderson would likely have accused him of being hostile).

In the March 14, 2016 email, Mr. McBrearty also noted, “We may need to rethink our approach on these NCV’s to ensure we mitigate any potential for future compliance issues.” In this statement, Mr. McBrearty was recommending and encouraging Mr. Shea and Ms. Henderson to re-evaluate their decision to not follow TVA and NRC process in addressing these violations, since this approach may result in additional future compliance issues (*i.e.*, the NRC could issue additional escalated violations for failing to properly address both the Kirk Key and the Service Life NCV’s). Mr. McBrearty subsequently generated multiple Condition Reports (*see* OSHA Complaint, at 7-8 (Sept. 26, 2018)) for Corporate Licensing (Mr. Shea’s and Ms. Henderson’s

organization) to evaluate the decision-making that led TVA not to follow NRC process, and to develop and implement lessons learned to prevent future occurrences. However, Ms. Henderson repeatedly dismissed Mr. McBrearty's recommendation and closed the CR's without taking any action. *See* OSHA Complaint, at 8 (Sept. 26, 2018). In November and December 2017 (*see id.* at 6) the NRC subsequently considered issuing additional enforcement action for TVA's failure to implement corrective actions for the Service Life violation as required by federal regulations (*i.e.*, this is exactly the potential future compliance issue that Mr. McBrearty was pointing out to Mr. Shea and Ms. Henderson in the March 14, 2016 email). During the June 2017 NRC Problem Identification & Resolution Inspection, the NRC challenged whether TVA adequately addressed the Kirk Key issue until TVA (at Mr. McBrearty's recommendation) finally committed to submitting a License Amendment Request to address the violation. *See* OSHA Complaint, at 7 (Sept. 26, 2018).

Thus, Exhibit 1 in the TVA response letter merely reflects a status update provided by Mr. McBrearty to Mr. Shea and Ms. Henderson, and does not in any way reflect Henderson and Shea working in a cooperative manner with Mr. McBrearty on the alleged safety concerns. In fact, for over two years, Mr. Shea and Ms. Henderson repeatedly rebuked Mr. McBrearty for his consistent attempts to bring TVA into compliance with federal regulations, and finally in May 2018, Mr. Shea and Ms. Henderson retaliated against Mr. McBrearty through his suspension and subsequent constructive discharge in August 2018. Mr. McBrearty's intention was to conduct his job responsibilities in a professional manner, and he sought to ensure TVA maintained both regulatory compliance and credibility and trust with the NRC.

II. TVA's Exhibit 2 was Merely Sent in Response to Mr. Shea's Request.

Exhibit 2 to TVA's response is an email from Mr. McBrearty to Mr. Shea providing an update on the status of Mr. Bartley's review of the Kirk Key letter, again noting the schedule was hindered and uncertain due to NRC resource availability and low priority. TVA's response letter misleadingly notes that Mr. McBrearty left Ms. Henderson off the original email. In fact, Mr. McBrearty sent this email to Mr. Shea alone because Mr. Shea previously asked Mr. McBrearty to keep him apprised of the schedule. For that reason, Mr. McBrearty also did not include his own site management on the email as it was simply a response to a request from Mr. Shea. Mr. Shea responded with a simple, "Thanks Mike." Mr. Shea never questioned or inquired as to why Mr. McBrearty did not include others on this email. This example provides further evidence of TVA's false claims that Mr. McBrearty somehow retaliated against Ms. Henderson by leaving her off of emails. TVA's Exhibit 2 email in no way supports TVA's description that "Shea's communication represents the antithesis of retaliation."

III. TVA’s Exhibit 3 Shows that It was Shea and Henderson Who Delayed TVA’s Response to on the Service Life Denial Letter.

Exhibit 3 to TVA’s response is a series of emails from between October 4, 2017, and December 12, 2017, between Ms. Henderson and Mr. McBrearty. TVA’s response inaccurately describes these emails as evidence of collaboration between Ms. Henderson and Mr. McBrearty on resolving the Service Life denial letter. As described below, the multiple emails from Ms. Henderson reflected Ms. Henderson’s repeated badgering and harassment of McBrearty regarding a Communication Plan on the Service Life violation issue, directly contrary to TVA’s assertion that the emails show that “Henderson actively sought to ensure adequate communications between Corporate Nuclear Licensing and Sequoyah Nuclear Plant...”

By way of explanation, in approximately March 2017, Jonathan Bartley informed Mr. McBrearty that the NRC finished their review of the Kirk Key informational letter, and that the NRC upheld the original violation. *See* OSHA Complaint, at 7 (Sept. 26, 2018). Shortly thereafter, TVA Corporate and Sequoyah Site Licensing personnel raised concerns that the NRC would want to review TVA’s corrective actions for the Kirk Key violation and the Service Life violation during the NRC Problem Identification & Resolution (PI&R) Inspection scheduled for June 2017. *Id.* at 6. The scope of this NRC inspection includes reviewing the adequacy of licensees’ corrective actions for violations described in NRC inspection reports which would have included both the Kirk Key and Service Life violations. TVA had not implemented any corrective action for either violation, and had not denied either violation. *Id.* . The NRC’s procedures specifically direct the NRC’s Biennial inspection team to review the licensee’s corrective actions for violations including NCVs, which would include the Kirk Key violation and the Service Life violation. *See* NRC Inspection Manual, Inspection Procedure 71152: Problem Identification and Resolution, at 2, 4, and 12 (2015) (attached hereto as Exhibit A).

Mr. Shea then directed Mr. McBrearty to rewrite the Service Life informational letter as a denial letter, reversing his 2015 direction for Mr. McBrearty to rewrite the original denial letter as an informational letter. *See* OSHA Complaint, at 6. TVA’s Office of General Counsel (OGC) and an external independent regulatory expert both recommended that it may be more appropriate for TVA to submit a Backfit Appeal letter to the NRC (instead of a denial), since the time period for submitting a denial letter appeared to have expired. It was subsequently decided to submit a combined denial/backfit appeal letter to address the potential that the NRC may quickly dismiss the denial aspect of the letter for lack of timeliness.

Mr. Shea also directed Mr. McBrearty to develop a Communication Plan for communicating TVA’s position to the NRC. Mr. McBrearty developed the Communication

Plan, which included the main message to be communicated to NRC management, and a simple matrix that identified the TVA management personnel that would conduct the communications and the dates for making each communication. Mr. Shea reviewed and concurred with the Communication Plan, and the Communication Plan was widely shared with the cognizant TVA management personnel. The dates in the plan were specifically based on the date that Mr. Shea was expected to approve and sign the denial/backfit letter.

In approximately April 2017, the revised denial/backfit letter was again reviewed and approved by Sequoyah management up to and including the Site Vice President, and approved by TVA OGC; the only remaining signature prior to submittal to the NRC was Mr. Shea's. Mr. Shea instructed Mr. McBrearty to begin implementing the approved Communication Plan by communicating TVA's position to the NRC RII Division of Reactor Projects Branch Chief (who was then Alan Blamey) and to the NRC resident inspectors on April 10, 2017, during Sequoyah's 2017 End-of-Cycle Annual Assessment Public Meeting. Ms. Henderson also began implementing this plan by communicating with Joel Munday, the NRC Region II Director of the Division of Reactor Projects while she met with him on or about April 10, 2017 at the Browns Ferry Plant. On April 10, 2017, Mr. McBrearty did as Mr. Shea directed. However, Mr. Shea never signed the letter, and he instead subsequently decided he wanted to get yet another external independent review of the letter before approving and submitting to the NRC. Mr. Shea's "false start" on implementing the Communication Plan, which Mr. McBrearty specifically refers to in TVA's Exhibit 3, reflected poorly on TVA's reputation with the NRC.

In the ensuing several months, it took a prolonged period of time for Mr. Shea to identify and arrange an independent external reviewer, and the entire issue seemed to lose TVA Corporate Licensing management attention after the NRC completed the June 2017 PI&R inspection without inquiring about the Service Life violation. In September and October 2017, there was renewed attention to submitting the denial/backfit appeal letter, and the issue was actively being tracked by TVA executives. Mr. McBrearty had discussions with Mr. Shea and Ms. Henderson regarding the submittal and the associated Communication Plan. Mr. McBrearty repeatedly informed Mr. Shea and Ms. Henderson that the Communication Plan did not have to change from the plan developed in April, other than updating the specific dates of communicating with the NRC, and that these dates would be established based on the expected date that Mr. Shea would sign the denial/backfit letter. Mr. McBrearty was hesitant to revise the Communication Plan with new specific dates because of the "false start" that occurred in April 2017 when Mr. Shea suddenly changed his mind and failed to sign the TVA denial/backfit appeal letter. As shown in TVA's Exhibit 3, Mr. McBrearty clearly stated the following in his December 12, 2017, email to Ms. Henderson, Mr. Shea, and Mr. Anthony Williams (the Sequoyah Site Vice President to whom Mr. McBrearty reported):

Erin,

The thought was to update the dates once we had a very clear line of sight on obtaining Joe's [referring to Mr. Shea] final signature. The actions in the plan will not change other than to identify some new names in new positions (e.g., new NRC Branch Chiefs, and new NRR Office Director). I want to preclude another false start on the communications as occurred earlier in April/May.

I will be in DC this afternoon if you want to meet and discuss more if you have any suggested changes.

Thanks,
Mike

It is also noteworthy that Mr. McBrearty reported to Mr. Williams (the Sequoyah Site Vice President), and Mr. Williams was satisfied with Mr. McBrearty's efforts, including the Communication Plan. As shown in TVA's Exhibit 3, Ms. Henderson continued her harassing emails to Mr. McBrearty, even though Mr. McBrearty did not report to her.

IV. Mr. Polickoski's Communications with Mr. McBrearty Provide Further Confirmation of Ms. Henderson's Abusive Workplace Tactics.

To provide further evidentiary information regarding the unhealthy work environment in Mr. Shea's and Ms. Henderson's organization, which highlights their harsh and abusive management style, we are providing OSHA with text messages dated December 12, 2017, between Mr. McBrearty and James Polickoski (the Corporate Licensing CFAM at the time and a direct report to Ms. Henderson) (attached hereto as Exhibit B). Mr. Polickoski contacted Mr. McBrearty and again expressed extreme frustration in working for Ms. Henderson. We previously provided OSHA and TVA with other examples where Mr. Polickoski expressed his frustration in working for Ms. Henderson, and sought Mr. McBrearty's help in intervening. *See* McBrearty's Response to TVA's Position Statement, at 6-8 (Dec. 14, 2018).

By way of explanation, Mr. Polickoski was the Corporate Licensing Lead on two recent significant NRC team inspections conducted at the Watts Bar Nuclear Plant and at Sequoyah. During these two inspections, the NRC identified numerous (7 in total) Unresolved Issues (URI's) relating to compliance with regulatory requirements for environmental qualification of safety-related equipment. This issue was tangential to the Sequoyah service life violation. The

NRC had scheduled a public meeting at the NRC office in Rockville, Maryland to discuss the URI's, and it was assumed Mr. Polickoski, as the TVA corporate lead, would be sent to participate in this meeting; however, Ms. Henderson inexplicably would not allow Mr. Polickoski to attend and participate. In the text message to Mr. McBrearty, Mr. Polickoski requested that Mr. McBrearty engage Ms. Henderson and advocate the value and importance of Mr. Polickoski attending and participating in the meeting on behalf of TVA. *See* Exhibit B.

Mr. Polickoski's text message states, "My gut says Erin feels threatened when folks have depth of knowledge and/or relationships..." as his belief as to why she did not want him to attend the NRC public meeting. *Id.* This is consistent with Mr. Polickoski's comments described in Mr. McBrearty's Response to TVA's Position Statement (Dec. 14, 2018), which describes Mr. Polickoski's complaints that, "[M]s. Henderson often called him into her office for hours at a time to help her prepare for regular daily meetings. Mr. Polickoski explained that Ms. Henderson is very ignorant and lacks knowledge of the NRC regulatory process and issues, and he has to spend countless hours briefing her on meeting topics so she can be prepared to participate in any discussion. Mr. Polickoski also expressed resentment that Ms. Henderson does not invite him to these same meetings, and she improperly takes credit for his accomplishments." *Id.* at 7.

As shown in Exhibit B, Mr. McBrearty agreed to Mr. Polickoski's request and then sent a courteous and professional message to Mr. Shea and Ms. Henderson recommending that Mr. Polickoski attend the NRC public meeting. As shown in Exhibit B, Mr. Shea responded harshly and completely ignored the subject of Mr. McBrearty's message, and instead wrote, "Mike... where is the service life letter... if we are looking to sign out Friday, I am expecting it should be signature ready with all concurrences and validation material in Carla's hands by tomorrow... is that on track?" It is noted that the service life letter referred to by Mr. Shea is the same letter that was signature ready (*i.e.*, reviewed and approved up to and including the Sequoyah Site Vice President) approximately 4 to 6 times over the prior two years, including the aforementioned "false start" in April 2017. Yet, each time Mr. Shea failed to either sign the letter or provide recommended changes to the letter. The only apparent reason it was now of such importance to Mr. Shea was because the NRC had informed Sequoyah that they (NRC) were considering issuing a new Cited Severity Level IV Violation (which would require a written response) for TVA's failure to implement corrective actions for the original service life violation issued in 2015. *See* OSHA Complaint, at 6 (Sept. 26, 2018). This proposed NRC action would reflect negatively on Mr. Shea's and Ms. Henderson's performance.

As shown in Exhibit B, Ms. Henderson's response thanked Mr. McBrearty for his recommendation that Mr. Polickoski should attend the public meeting (but declined his request

for Mr. Polickoski to attend the meeting), and then, similar to Mr. Shea's response, badgered Mr. McBrearty on the status of the aforementioned Communication Plan for the two-year old service life issue (Ms. Henderson's text refers to the "SL" which is the service life letter).

It is also noted that, in TVA's Position Statement (Nov. 20, 2018), Ms. Henderson completely dismissed the regulatory violations as "two narrow technical issues that are a couple of years old," and TVA characterized the issue as Mr. McBrearty merely disagreeing with a "business decision." Yet, TVA's March 26, 2019 letter now actually provides evidence that both Mr. Shea and Ms. Henderson clearly recognized the significance of these two regulatory non-compliance issues. The final Service Life Denial/Backfit Appeal Letter approved by both Mr. Shea and Ms. Henderson, and which was submitted to the NRC, indicates TVA's cost to correct the violation at Sequoyah alone would be *over \$205 million dollars*. See J. Shea to NRC, Denial of a Non-Cited Violation, at E-22 (Dec. 21, 2017) (attached hereto as Exhibit C). The TVA Watts Bar and Browns Ferry nuclear plants would require similar corrective action if TVA was unsuccessful finding a regulatory solution.

Thus, TVA's three exhibits, submitted in response to Mr. McBrearty's OSHA Complaint and his subsequent submissions, provide self-contradicting evidence on Mr. Shea's and Ms. Henderson's recognition of the significance of these violations and the need for TVA to properly respond to the violations. These inconsistent responses are probative evidence that Mr. Shea and Ms. Henderson acted in an inconsistent and untrustworthy manner during the TVA investigation of Ms. Henderson's "complaint" about Mr. McBrearty and several other highly experienced TVA managers.

Finally, on December 15, 2017, after the signature-ready Denial/Backfit Appeal letter had yet again been provided to Mr. Shea for his approval, Mr. Polickoski contacted Mr. McBrearty and informed him of a change that Mr. Shea insisted be made to the final letter. Mr. Polickoski explained that Mr. Shea wanted to change the wording on Page E-8 of the Denial/Backfit Appeal letter to remove a specific reference to a November 3, 2015 NRC Drop-In meeting conducted by Mr. Shea and Ms. Henderson at the NRC Region II Office. Specifically, Mr. Shea insisted that the wording be changed to remove the words "Drop-In meeting," from the letter, and simply state that TVA discussed the SQN NCV with NRC Region II on November 3, 2015. Mr. Polickoski explained that Mr. Shea wanted this change made because it showed that Mr. Shea and Ms. Henderson had acted improperly in discussing a pre-decisional enforcement issue with the NRC during a Drop-In meeting, which is strictly prohibited by NRC rules. See NRC Management Directive 3.5, "ATTENDANCE AT NRC STAFF-SPONSORED MEETINGS," at 11 and 20 (Dec. 23, 2011) (attached hereto as Exhibit D). Mr. McBrearty objected to this change, and subsequently told Mr. Polickoski that Mr. Shea and Ms. Henderson would need to

accept responsibility for any such change, and they (Shea and Henderson) would need to provide objective evidence to support any rewording. TVA Corporate Regulatory Affairs and the Sequoyah Licensing Group have electronic copies of the numerous earlier versions of both the initial Service Life “Information Letter” and the Denial/Backfit Appeal Letter, which will show that this wording change was not made until the final version of the Denial/Backfit Appeal Letter in December 2017 (all previous versions contained the words “Drop-In Meeting”). OSHA should request these versions from TVA. This is another example of improper conduct by Mr. Shea and Ms. Henderson that reflects their lack of candor.

In summary, all of TVA’s responses provided in response to Mr. McBrearty’s original OSHA complaint (Sept. 26, 2018) and his supplemental submissions, fail to address Mr. McBrearty’s original complaint, including the safety issues he raised to both Joseph Shea and Erin Henderson during a Corporate Licensing Peer Team Teleconference just over two weeks prior to his suspension and constructive discharge. *See also* McBrearty’s Response to TVA’s Position Statement, at 16-17 (Dec. 14, 2018).

TVA’s own responses include the following information supporting Mr. McBrearty’s complaint:

- ECP File NEC-16-00638 (Exhibit E to TVA letter dated Nov. 20, 2018)

“The Senior Manager of Fleet Regulatory Operations (Ms. Henderson) has a pattern of writing up individuals on service reviews in a manner that can appear to be retaliatory. For example some individuals reported having negative comments added to their service reviews about the need for respectful communications when the employees may have expressed an opinion different from hers. The investigator noted five separate instances in three different departments in the past three years (not including the Concerned Individual’s stated fear of being written up), where employees were either placed on a Performance Improvement Plan or have received negative comments on service reviews for what they perceived as disagreeing with the Senior Manager. ***Two individuals indicated that they are under a physician’s care for ongoing stress-related illnesses that developed once they began working for the Senior Manager.***” (emphasis added)

“Just as the CI has missed a number of days since working for the Senior Manager, there are instances where employees report that the Senior Manager’s (Ms. Henderson) management style is suspected to be a factor in absenteeism of others, and to have resulted in lower productivity among those who report to her.”

Note: At TVA, a Performance Improvement Plan requires that an employee remedy the stated performance deficiencies (as assessed and described by the employee’s manager) within 90 days or else face possible termination of employment.

- ECP File NEC-17-00410 (Exhibit F to TVA letter dated Nov. 20, 2018)

“Another individual stated that they would not feel safe going to the Vice President of Licensing [Mr. Shea] or their management chain of command about any issues involving the SM (Senior Manager, Ms. Henderson).”

“Some stated they lacked trust in management and feared they would be demoted for difficulties that they have experienced while working for the SM [Henderson]. At least one person felt the SM [Henderson] had recently questioned the individuals about working relationships between the site and Corporate Licensing. This individual felt the SM [Henderson] was trying to elicit negative responses about the CI [McBrearty].”

Individuals within Mr. Shea’s and Ms. Henderson’s organization repeatedly contacted Mr. McBrearty to express their complaints and frustrations working for Mr. Shea and Ms. Henderson:

- James Polickoski, the Licensing CFAM and a manger reporting directly to Ms. Henderson, repeatedly vented his frustrations to Mr. McBrearty, including asking Mr. McBrearty to intervene on his behalf regarding Ms. Henderson’s treatment toward him. *See Exhibit B; see also* McBrearty’s Response to TVA’s Position Statement, at 6-8.
- Thomas Hess, an experienced and long-term TVA Corporate Licensing employee, suddenly resigned in July 2018 because of the long-standing caustic and hostile work environment. Mr. Hess contacted Mr. McBrearty while Mr. McBrearty was on suspension and explained to Mr. McBrearty that everyone in Corporate Regulatory Affairs is afraid to make a mistake and afraid to speak up to either Mr. Shea or Ms. Henderson. Mr. Hess said he could not take going into work each day, which is why he resigned. *See also* McBrearty’s Response to TVA’s Position Statement, at 10.
- Jon Johnson, who reported to Ms. Henderson in 2014 and 2015, told Mr. McBrearty of numerous inappropriate comments that Ms. Henderson made during her tenure as his manager. *See also id.* at 7.

TVA's March 26, 2019, response focusses on a few carefully selected snippets of communications over a two year period regarding the two NRC-identified violations, and TVA's response misrepresents the emails as somehow being demonstrative of a healthy cooperative work environment and proper behavior of Mr. Shea and Ms. Henderson. When placed in proper context, the information provided by TVA instead reflects the ongoing unethical and retaliatory management style of Mr. Shea and Ms. Henderson. The additional information provided in the discussion herein of the Exhibits to this letter support that same conclusion.

V. Conclusion.

TVA's own ECP investigations established that Ms. Henderson has a long established pattern of retaliating against individuals who disagree with her. TVA failed to take action to put a stop to Ms. Henderson's behavior. Instead, Mr. Shea (the Vice President of Regulatory Affairs) has behaved in an inappropriate manner that encourages Ms. Henderson to continue this retaliatory management style. TVA is reduced to arguing that numerous, highly experienced, senior managers and individuals, all with very good work performance histories both at TVA and with other previous employers, are now all of a sudden somehow "conspiring" against Ms. Henderson. TVA's conspiracy theory is false and OSHA should not condone TVA's attempt to conjure up a vast conspiracy out of thin air. There is no conspiracy; the only common thread is that all of the named individuals, including Mr. McBrearty, properly disagreed with Ms. Henderson (who is much less experienced) on regulatory issues. Ms. Henderson and TVA have now retaliated against all of the individuals (Mr. McBrearty, Ms. Conner, Ms. Wetzel, and Mr. Schull) by either direct termination, constructive termination, or removing the individual from their position. TVA's actions explain why an experienced individual like Thomas Hess chose to quietly resign from TVA Corporate Regulatory Affairs in July 2018 rather than face retaliation if he had raised concerns about the toxic and corrosive work environment that Ms. Henderson created. *See also* McBrearty's Response to TVA's Position Statement, at 10 (Dec. 14, 2018).

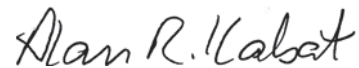
Mr. McBrearty conscientiously performed his job functions, and for over two years, tried to get Ms. Henderson and Mr. Shea to address two NRC-identified violations of regulatory requirements. Instead of addressing those violations, shortly after Mr. McBrearty raised safety concerns anew during an April 2018 Corporate Licensing Peer Team meeting – concerns that could reflect poorly on Ms. Henderson's and Mr. Shea's organization – TVA placed him on indefinite paid suspension, with the continual threat of termination, until his constructive discharge in August 2018.

For the foregoing reasons, and those set forth in Mr. McBrearty's OSHA complaint, and his December 14, 2018 and March 8, 2019 supplements, OSHA should find that TVA violated

Ms. Lauren Fehlman, Regional Investigator
U.S. Department of Labor – OSHA
April 5, 2019
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the Energy Reorganization Act, 42 U.S.C. § 5851 *et seq.*, and NRC Regulation 10 C.F.R. § 50.7, when it initiated a retaliatory investigation of Mr. McBrearty, and used that investigation to place him on paid leave in order to force his termination.

Sincerely,

A handwritten signature in black ink that reads "Alan R. Kabat". The signature is written in a cursive, slightly slanted style.

Alan R. Kabat
Attorney for Michael McBrearty

Enc.

cc: Mr. Michael McBrearty
Stephen C. Chin, Esquire (TVA)



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1401

March 26, 2019 (by email and first class mail the following day)

Ms. Lauren Fehlman, Regional Investigator
U.S. Department of Labor - OSHA
2296 Henderson Mill Road, NE, Suite 200
Atlanta, GA 30345
Fehlman.lauren@dol.gov

Re: *Michael McBrearty v. TVA*, No. 4-1760-18-153 (DOL-OSHA, filed September 26, 2018)

**TENNESSEE VALLEY AUTHORITY'S REPLY TO
COMPLAINANT'S MARCH 8, 2019 RESPONSE**

Dear Ms. Fehlman:

The Tennessee Valley Authority ("TVA") submits the following short reply to Mr. Michael McBrearty's March 8, 2019 Response in which he argued that TVA failed to address safety concerns raised in McBrearty's complaint.

McBrearty contends that Ms. Erin Henderson and/or Mr. Joseph Shea obstructed his efforts to—and retaliated against him for—raising safety concerns regarding the two central and alleged protected activities in McBrearty's complaint: (1) Key Kirk issue and (2) Service Life issue. Enclosed with this Reply are three email correspondences between McBrearty, Henderson, and Shea that dispute McBrearty's contentions; they provide evidentiary support that neither Henderson nor Shea obstructed, retaliated, thwarted, or in any way, hindered McBrearty from raising any such concerns.

Attached as Exhibit 1 is an email dated March 14, 2016, from McBrearty to Shea, Henderson and others. In this email, McBrearty summarizes his conversation with Mr. Jonathan Bartley, NRC Region II Engineering Branch Chief, about TVA's disagreement letter with the NRC on the Kirk Key issue and the letter TVA had planned to submit on the Service Life issue. Regarding the Kirk Key issue, Bartley informed McBrearty that NRC will conduct an independent review and retract the Non-Cited Violation if TVA had provided compelling information. Regarding the Service Life issue, Bartley informed McBrearty that the NRC will not take any action until the NRR "establishes an agency position on the associated industry issue via the planned Regulatory Issues Summary (RIS)." McBrearty acknowledged "We may need to rethink our approach on these NCVs to ensure we mitigate any potential for future compliance issues." This correspondence shows that Henderson and Shea worked in a cooperative manner with McBrearty on these alleged safety concerns.

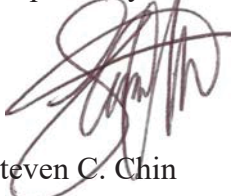
Ms. Lauren Fehlman, Regional Investigator
Page 2
March 26, 2019

Attached as Exhibit 2 is an email dated August 30, 2016, from Shea to McBrearty (copying Henderson, whom McBrearty left off the original email) in which Shea thanks McBrearty for his work on the Kirk Key Interlock disagreement letter. McBrearty informed Shea that NRC's review will be conducted later "due to resource availability and low priority." Shea's communication represents the antithesis of retaliation.

Attached as Exhibit 3 is a series of emails from between October 4, 2017, and December 12, 2017, primarily between Henderson and McBrearty. In this series of emails, Henderson and McBrearty are collaborating on resolving the Service Life denial letter. This correspondence shows that Henderson actively sought to ensure adequate communications between Corporate Nuclear Licensing and Sequoyah Nuclear Plant, not stifle such communication

These documents provide further support for TVA's steadfast position that there is no evidence that Henderson nor Shea retaliated, hindered, thwarted, or otherwise undermined McBrearty's efforts to raise safety concerns as he alleges in his complaint. In addition to the reasons set forth in TVA's position statement, McBrearty's complaint should be dismissed.

Respectfully submitted,



Steven C. Chin
Attorney
Telephone 865.632.3052
Email scchin@tva.gov

Enclosures

cc (Enclosures):

Alan R. Kabat, Esq.
Bernabei & Kabat, PLLC
1400 16th Street, NW, Suite 500
Washington, DC 20036
Kabat@Bernabeipllc.com

82308983

**Exhibit 1 - Email dated March 14, 2016 from McBrearty to Shea, Henderson
and others regarding discussions with NRC on Kirk Key issue and Service
Life issue**

Henderson, Erin Kathleen

From: McBrearty, Michael
Sent: Monday, March 14, 2016 5:03 PM
To: Shea, Joseph W; Henderson, Erin Kathleen; Conner, Teri M; Schwarz, Christopher
Cc: Giacini, Mark Allen; Johnson, Jonathan Thornton; Wetzell, Beth A; Mashburn, Fredrick C Jr
Subject: NRC Review of Kirk Key Letter and plans for review of Service Life letter

This afternoon, I spoke with Jonathan Bartley, NRC Region II Engineering Branch Chief to discuss status of issues that came out of our 2015 50.59 inspection. His organization conducted our 50.59 inspection last fall, and are responsible for reviewing the 1/11/16 disagreement letter we submitted on the kirk key Green NCV, and the letter we are still planning to submit on the service life Green NCV (Class 1E electrical equipment in mild environments).

With respect to the 1/11/16 kirk key letter, Jonathan indicated he plans to have one of his electrical engineers conduct an independent review of our letter to determine if we have provided any new information that would change the NRC's understanding/characterization of the issue. If the NRC independent review determines TVA has provided compelling information to retract the NCV, the NRC would in fact retract it. There is no current schedule for when the NRC will complete this review, as Jonathan's Branch is currently short-staffed with higher priority work.

With respect to any TVA submittal on the service life NCV, Jonathan indicated he does not plan to have his group take any action on it until the program office, NRR, establishes an agency position on the associated industry issue via the planned Regulatory Issues Summary (RIS). I believe the most recent information from NRC indicated the RIS would likely not be issued until early 2017.

We may need to rethink our approach on these NCVs to ensure we mitigate any potential for future compliance issues.

Michael McBrearty
Manager, SQN Site Licensing
Office 423-843-7170
Cell 858-945-0073

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**Exhibit 2 - Email dated August 30, 2016 from Shea to McBrearty and copying
Henderson regarding Kirk Key issue**

Henderson, Erin Kathleen

From: Shea, Joseph W
Sent: Tuesday, August 30, 2016 1:53 PM
To: McBrearty, Michael
Cc: Henderson, Erin Kathleen
Subject: Re: Discussion with Jonathan Bartley

Thanks Mike.

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: McBrearty, Michael
Sent: Tuesday, August 30, 2016 1:51 PM
To: Shea, Joseph W
Subject: Discussion with Jonathan Bartley

Joe... I spoke with Jonathan Bartley regarding status of NRC review of Kirk Key Interlock disagreement letter. He indicated the review has started and will likely be completed later in the year (November timeframe) due to resource availability and low priority.

Mike

Office 423-843-7170
Cell 858-945-0073

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Exhibit 3 - A series of emails dated from October 4, 2017 to December 12, 2017 primarily between Henderson and McBrearty regarding Service Life issue

Henderson, Erin Kathleen

From: McBrearty, Michael
Sent: Tuesday, December 12, 2017 11:00 AM
To: Henderson, Erin Kathleen
Cc: Shea, Joseph W; Williams, Anthony Lawrence IV
Subject: Re: Denial

Erin,

The thought was to update the dates once we had a very clear line of sight on obtaining Joe's final signature. The actions in the plan will not change other than to identify some new names in new positions (e.g., new NRC Branch Chiefs, new NRR Office Director). I want to preclude another false start on the communications as occurred earlier in April/May timeframe.

I will be in DC this afternoon if you want to meet and discuss more or if you have any suggested changes.

Thanks,

Mike

Sent from my iPhone

On Dec 12, 2017, at 10:32 AM, Henderson, Erin Kathleen <ekwest@tva.gov> wrote:

Mike,

Unless I've missed something (keep me straight if I did), this is the most recent email on the communication plan I was asking about. This needs to be updated to per your email below to reflect the new submittal date and the communications you mentioned having this week. Given the infrequent nature of denials and the date of the original violation, I think it'd be prudent for Tony to reach out to Laura or Cathy as well. It's important we spend the next week ensuring adequate communications on the intent to submit (internally and externally) and that will get more difficult as we approach the holidays.

Thanks,
Erin

From: McBrearty, Michael
Sent: Wednesday, October 04, 2017 4:26 PM
To: Henderson, Erin Kathleen
Cc: Dimopoulos, Dennis G; Shea, Joseph W; Williams, Anthony Lawrence IV
Subject: RE: Denial

Erin,

I moved the submittal date out to 10/20 on the POD. I have attached the most recent Communication Plan and will update it to reflect new dates. I used similar timeframes for this communication plan as we previously agreed to and planned back in April/May (i.e., the communications start about one week prior to the submittal), and did not change the actual talking points.

Thanks,
Mike

Michael McBrearty
Manager, SQN Site Licensing
Office 423-843-7170
Cell 858-945-0073

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From: Henderson, Erin Kathleen
Sent: Wednesday, October 04, 2017 3:03 PM
To: McBrearty, Michael
Cc: Dimopoulos, Dennis G; Shea, Joseph W; Williams, Anthony Lawrence IV
Subject: Re: Denial

Mike,

I wanted to check again on the status of the communication plan for the SL denial. I noticed the date moved out on the POD again this week. I recognize you're dealing with the security issue- just want to understand if we expect the 10/13 date to be a good date so I'm clear on when we'll be getting aligned on talking points and prepared to execute a communication plan related to that denial? I think the communication plan needs to be implemented well before the letter would hit the NRC's desk.

Thanks,
Erin

Erin
302.507.1192

On Sep 21, 2017, at 1:35 PM, McBrearty, Michael <mmcbrearty@tva.gov> wrote:

Yes, will do.

Mike

Michael McBrearty
Manager, SQN Site Licensing
Office 423-843-7170
Cell 858-945-0073

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