

From: JShealA-Hearing Resource
Sent: Saturday, February 13, 2021 5:43 PM
To: JShealA-HearingNPEm Resource
Subject: 1 question about - Draft TVA NOV cover letter 7.24.20
Attachments: 1 question about - Draft TVA NOV cover letter 7.24.20.docx

Hearing Identifier: JShea_IA_NonPublic
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Subject: 1 qstion about - Draft TVA NOV cover letter 7.24.20
Sent Date: 2/13/2021 5:42:45 PM
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From: JShealA-Hearing Resource

Created By: JShealA-Hearing.Resource@nrc.gov

Recipients:
"JShealA-HearingNPEm Resource" <JShealA-HearingNPEm.Resource@nrc.gov>
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Options
Priority: Normal
Return Notification: No
Reply Requested: No
Sensitivity: Normal
Expiration Date:

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EA-20-06

EA-20-07

Mr. Jim Barstow
Vice President Nuclear Regulatory Affairs
& Support Services
Tennessee Valley Authority
1101 Market Street, LP 4A-C
Chattanooga, TN 37402-2801

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY –
\$606,942 (NRC INVESTIGATION REPORT NUMBERS 2-2018-033
AND 2-2019-015)

Dear Mr. Barstow:

This letter refers to two investigations completed by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) related to Tennessee Valley Authority (TVA). The purpose of these investigations was to determine whether two former employees were the subjects of employment discrimination in violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, "Employee Protection."

In a letter dated March 2, 2020, Agencywide Documents Access and Management System (ADAMS) Accession No. ML 20058G833, the NRC notified you of apparent violations of 10 CFR 50.7, "Employee Protection," which the NRC was considering for escalated enforcement action in accordance with the NRC Enforcement Policy. In the letter, the NRC requested TVA's participation in a predecisional enforcement conference (PEC) to address the apparent violations.

On June 30, 2020, the NRC held a remote PEC with members of your staff to discuss the apparent violations, their significance, their root causes, and your corrective actions. The conference was closed to public observations pursuant to NRC practice regarding cases involving potential discrimination. Also, the NRC conducted three related PECs during the week of June 22, 2020 that were also closed to the public.

Based on the NRC OI investigations, the testimony at the PECs, the exhibits and supplemental information, the NRC has determined that four violations of NRC requirement 10 CFR 50.7 occurred. The NRC considers violations of 10 CFR 50.7 significant because of the potential that individuals might not raise safety issues for fear of retaliation. These violations are cited in the enclosed Notice of Violation (Notice).

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NRC OI investigation 2-2018-033 (October 3, 2019)

The NRC determined that a former employee was first subject to a harassment investigation by the former Director of Corporate Nuclear Licensing (CNL) and then placed on administrative leave by the Senior Vice President of Engineering and Operations Support on May 25, 2018, in part, for engaging in the protected activity of filing Employee Concerns Program (ECP) complaints (see Attachment 1).

- Violation 1: Based on the deliberate action and the level of manager involved in the adverse action (the former Director of CNL), this violation has been categorized in accordance with the “NRC Enforcement Policy,” at Severity Level (SL) II. See NRC Enforcement Policy, Violation Example 6.10.c.1.
- Violation 2: Based on the level of the manager involved in the adverse action (the Senior Vice President of Engineering and Operations Support), this violation has been categorized in accordance with the “NRC Enforcement Policy,” at SL II. See NRC Enforcement Policy, Violation Example 6.10.b.1.

NRC OI investigation 2-2019-015 (January 21, 2020):

The NRC determined that a former employee was subject to a harassment investigation by the former Director of CNL, then placed on paid administrative leave on October 15, 2018, and terminated on January 14, 2019, by the Vice President of Regulatory Affairs, in part, for engaging in the protected activity of raising concerns of a chilled work environment (see Attachment 2).

- Violation 3: Based on the deliberate action and the level of manager involved in the adverse action (the former Director of CNL), this violation has been categorized in accordance with the “NRC Enforcement Policy,” at SL II. See NRC Enforcement Policy, Violation Example 6.10.c.1.
- Violation 4: Based on the deliberate action and the level of the manager involved in the adverse action (the Vice President of Regulatory Affairs), this violation has been categorized in accordance with the “NRC Enforcement Policy,” at SL I. See NRC Enforcement Policy, Violation Example 6.10.b.1. **WHERE DO WE SAY WILFUL therefore escalating to SL1?**

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$240,000 is considered for each SL II violation, and a base civil penalty in the amount of \$300,000 is considered for the SL I violation, of 10 CFR 50.7, “Employee Protection.” The NRC considered both the Identification and Corrective Action factors with respect to the violations in accordance with the civil penalty assessment process in Section 2.3.4 of the NRC Enforcement Policy. Credit for Identification is not appropriate, since the violation was identified by the NRC. The NRC determined Corrective Action credit was not warranted because the safety conscious

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work environment (SCWE) mitigation plan implement by the Director of Plant Support at Sequoyah was not comprehensive.

To emphasize the importance of prompt identification and correction of violations, the NRC has determined, as provided for in Section 2.3.4 of the NRC Enforcement Policy, to issue the enclosed Notice of Violation (Notice) and Proposed Imposition of Civil Penalty of twice the base amount of \$240,000 each of the three SL II violations, and twice the base amount of \$300,000 for the SL I violation. The total sum amount of these four violations is \$2,040,000 (3 X \$480,000 + \$600,000). However, because violations 1 and 2 are related to one individual, they can be considered a single SLII problem. The base civil penalty of \$240,000 for SL II is doubled but capped at the statutory maximum of \$303,471 for a single day violation. Further, because violations 3 and 4 are related to a one individual, they can be considered a single SL I problem. The base civil penalty of \$300,000 for SL I is doubled but capped at the statutory maximum of \$303,471 for a single day violation. Therefore, a civil penalty of \$606,942 (2 X \$303,471) is imposed.

If you disagree with this enforcement sanction, you may deny the violations, as described in the enclosed Notice, or you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral (the “mediator”) works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC’s ADR program can be found at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>.

The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC’s program as a neutral third party. If you are interested in pursuing this issue through the ADR program, please contact: (1) the ICR at 877-733-9415; and (2) Catherine Thompson at 301-287-9515 or email catherine.thompson@nrc.gov, or Ian Gifford at 301-287-9216 or email ian.gifford@nrc.gov within 10 days of the date of this letter. If you decide to participate in ADR, your submitted signed agreement to mediate using the NRC ADR program will stay the 30-day time period for payment of the civil penalty until the ADR process is completed.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC’s “Rules of Practice,” a copy of this letter, its enclosures, and your response, if you choose to provide one, will be made available

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electronically for public inspection in the NRC Public Document Room and from ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also make available, within ADAMS, the NRC presentation from the PEC held on June 30, 2020. To the extent possible, your response, if provided, should not include any personal privacy or proprietary information so that it can be made available to the public without redaction. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

If you have any questions concerning this matter, please contact Catherine Thompson at 301-287-9515 or email catherine.thompson@nrc.gov, or Ian Gifford at 301-287-9216 or email ian.gifford@nrc.gov.

Sincerely,

George A. Wilson, Director
Office of Enforcement

Docket Nos.: 05000259, 05000260
05000296, 05000327
05000328, 05000390
05000391

License No.: DPR-33, DPR-52,
DPR-68, DPR-77,
DPR-79, NPF-90,
NPF-96

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods
3. NUREG/BR-0317 Rev. 2, Enforcement Alternative Dispute Resolution Program

NRC OI investigation 2-2018-033 (October 3, 2019)

This text is a placeholder and will be replaced with a one-page summary of OI investigation 2-2018-033.

NRC OI investigation 2-2019-015 (January 21, 2020):

This text is a placeholder and will be replaced with a one-page summary of OI investigation 2-2019-015.