

From: Thompson, Catherine
Sent: Thursday, January 30, 2020 3:07 PM
To: Solorio, Dave; Gifford, Ian
Subject: EAWs for TVA, Henderson and Shea
Attachments: TVA EAW NRC 1260.pdf; HENDERSON EAW NRC 1260.pdf; SHEA EAW NRC 1260.pdf

Dave and Ian,

Since we are tight on time, I've attached draft EAWs filled out the best I can for now. They will be revised as we talk through them with Nick and everyone next week. I just wanted to get something drafted. Also – I think it might be too complicated to combine both cases into one EAW like I originally proposed. The cases are different enough that it might get confusing to put them both together, but we can discuss and will be easy enough to combine them if that is best. We can talk to Bob about EA numbers next week.

Attached:

- EAW for TVA/Sequoyah
- EAW for Shea
- EAW for Henderson.

Also Note:

- most of the information is the same for all the EAWs
- I said they were all SLI (because of corporate level and deliberate), with a CP for TVA, and a ban (years TBD) for Shea and Henderson. I think these actions will be based on combining cases, so we will have to discuss.
- Need to add information about previous enforcement and outstanding COs for TVA
- And of course I'm not sure they are exactly correct – I will revise after discussions next week.

Thanks,
Kitty

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1217

Mail Envelope Properties (MN2PR09MB3456E7AF50C2CCC1134FCB438C040)

Subject: EAWs for TVA, Henderson and Shea
Sent Date: 1/30/2020 3:06:51 PM
Received Date: 1/30/2020 3:06:54 PM
From: Thompson, Catherine

Created By: Catherine.Thompson@nrc.gov

Recipients:

"Solorio, Dave" <Dave.Solorio@nrc.gov>
Tracking Status: None
"Gifford, Ian" <Ian.Gifford@nrc.gov>
Tracking Status: None

Post Office: MN2PR09MB3456.namprd09.prod.outlook.com

Files	Size	Date & Time
MESSAGE	1113	1/30/2020 3:06:54 PM
TVA EAW NRC 1260.pdf		1690184
HENDERSON EAW NRC 1260.pdf		1688319
SHEA EAW NRC 1260.pdf		1688336

Options

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



ENFORCEMENT ACTION WORKSHEET

EA#:	
Date of Panel:	
Licensee:	TVA (Sequoyah)
Facility/Location:	
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:	10-3-2019
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): 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 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:

1. 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.
2. 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
3. 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):

SL I

ENFORCEMENT ACTION WORKSHEET (continued)

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

Enforcement Policy Example 6.10.a.1, Severity Level 1 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 with at least one of the following escalating factors:

- (a) The adverse action against the employee had a widespread site impact on other employees' willingness to raise concerns, or
- (b) The employer failed to take meaningful action to investigate and address the allegation of discrimination, if such allegation was first raised internally within the employer's processes addressing employee concerns; or

Enforcement Policy Example 6.10.a.2, Severity Level 1 violation of 10 CFR 50.7: A mid- or a 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 more adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., suspension without pay); and either a.1(a) or a.1(b) above is cited, or other unique factors are present.

Individual 1, 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. Neither a.1(a) or a.1(b) apply since it is not known if the adverse action had a widespread site impact and the CI did not raise the allegation within the employer's processes. The CI reported the adverse action to the NRC on August 13, 2018. However, 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.

Individual 2, 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. Neither a.1(a) or a.1(b) apply, as discussed above, but the unique factor is her violation of 10 CFR 50.5, which 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:

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: 2

Add IA

Delete IA

Individual Action #:

• 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 #:

• Traditional Enforcement (SL):	SLI
• 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 personnel 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#:	
Date of Panel:	
Licensee:	former Director of Corporate Nuclear Licensing (Sequoyah)
Facility/Location:	
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:	10-3-2019
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): 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 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 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:

1. 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.
2. 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
3. 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):

SL I

ENFORCEMENT ACTION WORKSHEET (continued)

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

Enforcement Policy Example 6.10.a.2, Severity Level 1 violation of 10 CFR 50.7: A mid- or a 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 more adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., suspension without pay); and either a.1(a) or a.1(b) is cited, or other unique factors are present.

- (a) The adverse action against the employee had a widespread site impact on other employees' willingness to raise concerns, or
- (b) The employer failed to take meaningful action to investigate and address the allegation of discrimination, if such allegation was first raised internally within the employer's processes addressing employee concerns

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. Neither a.1(a) or a.1(b) apply since it is not known if the adverse action had a widespread site impact and the CI did not raise the allegation within the employer's processes. The CI reported the adverse action to the NRC on August 13, 2018. However, a unique factor is present: the former Director of Corporate Nuclear Licensing, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7.

The individual was a corporate level manager who deliberately violated 10 CFR 50.7. Given the manager's sphere of influence and the significance of the action, a X year ban is proposed (TBD).

● 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:

● Explain Bases for discretion:

ENFORCEMENT ACTION WORKSHEET (continued)

• Proposed next action:

Choice letter (Written/PEC/ADR)

Large empty rectangular area for inputting the proposed next action and choice letter.

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 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

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 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 using the ECP are protected activities. The former Director of Corporate Nuclear Licensing 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.

The actions by the former Director of Corporate Nuclear Licensing 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):

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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.
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ENFORCEMENT ACTION WORKSHEET

EA#:	
Date of Panel:	
Licensee:	Vice President of Regulatory Affairs, Sequoyah
Facility/Location:	
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:	10-3-2019
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): 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 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:

1. 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.
2. 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
3. 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):

SL I

ENFORCEMENT ACTION WORKSHEET (continued)

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

Enforcement Policy Example 6.10.a.1, Severity Level 1 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 with at least one of the following escalating factors:

- (a) The adverse action against the employee had a widespread site impact on other employees' willingness to raise concerns, or
- (b) The employer failed to take meaningful action to investigate and address the allegation of discrimination, if such allegation was first raised internally within the employer's processes addressing employee concerns; or

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. Neither a.1(a) or a.1(b) apply since it is not known if the adverse action had a widespread site impact and the CI did not raise the allegation within the employer's processes. The CI reported the adverse action to the NRC on August 13, 2018. However, 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 executive's sphere of influence and the significance of the action, a X year ban is proposed (TBD).

● 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:

● 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)

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 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

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 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 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 personnel 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.