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

This investigation was initiated to determine whether a former TVA Site Licensing Manager employed at Sequoyah was discriminated against for engaging in protected activities.

Case Summary

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

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

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repeatedly questioning the appropriateness of the action and delaying the submittal.

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

On March 9, 2018, with full support of the VP of Regulatory Affairs, the former Director of CNL submitted a formal complaint to HR and the VP of Regulatory Affairs of harassment against the CI (Exhibit 16) to stop his actions and behaviors regarding the NCVs and filing complaints with the ECP. The VP of Regulatory Affairs discussed the complaint with the Senior VP of Engineering and Operations Support, TVA and others and decided to request TVA OGC investigate the matter since HR and ECP already investigated similar issues with the same individuals. On May 25, 2018, a draft TVA OGC report was provided to TVA managers (Exhibit 17). The VP of Regulatory Affairs was told on the same day by the Senior VP of Engineering and Operations Support, TVA, that the CI's management would be informing the CI that he was under investigation, that he was found culpable of some violation of standards, and that he would be placed on paid administrative leave. The Senior VP of Engineering and Operations Support, TVA, met with the CI's manager, the Director of Plant Support at Sequoyah, and recommended that the CI be put on paid administrative leave that same day (Exhibit 20). **The Director of Plant Support at Sequoyah agreed with this recommendation because it was TVA's procedure to place an employee on a 2 or 3-day suspension if they were under investigation.**

According to the Director of Plant Support at Sequoyah, the conclusion of the draft TVA OGC report was that the CI had not used the ECP in good faith, but rather to harass a manager. Further, the Senior VP of Engineering and Operations Support, TVA, said that the draft TVA OGC report mentioned part of the retaliation used by the CI was writing ECP complaints. Both individuals recognized that using ECP was a protected activity and should not be viewed as a form of retaliation against the former Director of CNL. The Senior VP of Engineering and Operations Support, TVA, stated that he struggled with what appropriate disciplinary action could be done because it was linked to a

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protected activity (i.e. reporting to ECP) and directed TVA OGC to rewrite the report without using the ECP as evidence of harassment and a basis for disciplinary action. The investigation was re-opened and continued until August. Because of this, the CI was essentially placed on indefinite suspension. For almost three months, the CI was provided with inconsistent information on when he may return to work and if he faced possible termination or further disciplinary action from TVA. During this time, the Director of Plant Support at Sequoyah was not provided with any evidence that supported the draft report, although TVA discipline policy stated that the supervisor shall be provided the underlying basis of the investigation and the supervisor kept requesting it. On August 10, 2018, in the final report, TVA OGC substantiated the former Director of CNL's allegation of harassment and found that the CI's conduct and behavior violated TVA policy and federal statutes (Exhibit 18). TVA OGC recommended that the CI be terminated, and the Senior VP of Engineering and Operations Support, TVA, stated that he agreed with this recommendation.

- **Paid Leave and Resignation:** On May 25, 2018, the same day the draft TVA OGC report was provided to the TVA managers, the CI was placed on paid administrative leave because he was under investigation for harassment and that his actions undermined the ability for the CNL staff to perform their duties. On May 30, 2018, the CI provided the Director of Plant Support, Sequoyah, with a recovery plan which included various actions such as a 360-performance assessment. The recovery plan was well-received, and the CI was told that termination was no longer being considered and he would receive a 2-day unpaid suspension. In June and July 2018, the CI had numerous discussions with the Director of Plant Support at Sequoyah and was told that the investigation was taking longer than expected or that he would not hear for several more weeks. At this point the CI began looking for other employment, believing that he would be fired. On August 13, 2018, the CI reported his concerns to the NRC and on August 16, 2018, the CI resigned from TVA.

Element 1: Did the Employee Engage in Protected Activity?

Yes.

Raising concerns about regulatory non-compliance: 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.

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

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

Yes.

The former Director of CNL: There were many interactions between the CI and the former Director of CNL and the VP of Regulatory Affairs between 2015 and 2018 over the two NCVs, as evidenced by the interview testimonies and exhibits. The CI raised awareness of his concerns about non-compliance with the two individuals through his numerous meetings, phone calls, CRs, CAP, emails and texts. The CI was also involved with several ECP complaints with the former Director of CNL in 2016 and 2017. On March 9, 2018, the former Director of CNL submitted the formal complaint of harassment against the CI to stop his actions and behaviors regarding the NCVs and ECP complaints. This complaint was ultimately investigated by TVA OGC. On May 25, 2019, the draft TVA OGC report was given to management, which stated that the CI misused the ECP, and was the basis for the CI being placed on administrative leave.

The Senior VP of Engineering and Operations Support, TVA: The Senior VP of Engineering and Operations Support, TVA, said he was “vaguely” aware of the Service Life NCV issue and did not recall the Kirk Key NCV. The Senior VP of Engineering and Operations Support, TVA, recalled the 2016 ECP investigation of harassment filed against the former Director of CNL, as well as the corrective action letter. He was also aware of the two other ECP complaints from 2017 by the CI and stated that he spoke with the former Director of CNL about one of the ECP complaints (mentioning the name of the ECP complainant to another employee). On May 25, 2018, the day the draft TVA OGC report was given to management, the Senior VP of Engineering and Operations Support, TVA, met with the CI’s manager, the Director of Plant Support at Sequoyah, and recommended that the CI be put on paid administrative leave. He took this action even though he knew that the draft TVA OGC report mentioned part of the retaliation used by the CI was writing ECP complaints. Further, the Senior VP of Engineering and Operations Support, TVA, stated that he struggled with what appropriate disciplinary action could be done because it was linked to a protected activity (i.e. reporting to ECP) and directed TVA OGC to rewrite the report without using the ECP as evidence of harassment and a basis for disciplinary action. **The investigation was re-opened and continued until August. Because of this, the CI was essentially placed on indefinite suspension. For almost three months, the CI was provided with inconsistent information on when he may return to work and if he faced possible termination or further disciplinary action from TVA.**

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

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Yes.

On May 25, 2018, on the day the draft TVA OGC report was given to management, the CI was put on paid administrative leave due. For the next three months the CI attempted to return to work by submitting a recovery plan and maintaining contact with his management (the Director of Plant Support, Sequoyah). The CI was given inconsistent information on the status of his employment during this time and remained on paid administrative leave until he resigned in August 2018, believing that he was ultimately going to be terminated from employment. The removal of the CI's site access, placement on paid administrative leave, and changes to employment terms and conditions for three months, are considered adverse actions.

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

Yes.

The former Director of CNL: From 2015 to 2018, the CI raised concerns many times about regulatory non-compliance and submitted two ECP complaints. On March 9, 2018, the former Director of CNL filed a formal complaint, with the encouragement of the VP of Regulatory affairs, against the CI to stop his actions and behaviors regarding the NCVs and using the ECP. This formal complaint led to the TVA OGC investigation. On May 25, 2018, the draft TVA OGC report stated that the CI created a harassing environment for the former Director of CNL by abusing the ECP and writing a CAP to restore regulatory compliance, which are protected activities. The CI was placed on paid administrative leave on the same day the draft report was released and resigned on August 16, 2019.

- The actions by the former Director of CNL constitutes deliberate misconduct, in violation of 10 CFR 50.5, which caused the licensee to be in violation of 10 CFR 50.7. Specifically, the former Director of Corporate Nuclear Licensing filed a formal complaint against the employee based, in part, on filing ECP complaints, which is a protected activity. The formal complaint initiated an investigation by the TVA Office of the General Counsel that resulted in the employee being placed on paid administrative leave and eventually resign.

The Senior VP of Engineering and Operations Support: On May 25, 2018, the day the draft TVA OGC report was given to management, the Senior VP of Engineering and Operations Support, TVA, met with the CI's manager, the Director of Plant Support at Sequoyah, and recommended that the CI be put on paid administrative leave that same day. The Senior VP of Engineering and Operations Support, TVA also instructed OGC to rewrite the report to find a different justification for their finding of harassment, other than the CI's use of the ECP. He stated that he struggled with what appropriate disciplinary action could be done because it was linked to a protected activity (i.e. reporting to ECP). **The OGC investigation was reopened and continued until August. The CI was placed on administrative leave on May 25, 2018. After**

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nearly three months on paid leave, the CI resigned on August 16, 2019, believing that he would be terminated.

- The actions by the Senior VP of Engineering and Operations Support, TVA, constitute deliberate misconduct, in violation of 10 CFR 50.5, which caused the licensee to be in violation of 10 CFR 50.7. Specifically, the Senior Vice President of Engineering and Operations Support, TVA, recommended that the employee be placed on paid administrative leave which led to the employee's suspension of nearly three months until the employee resigned. This action was, based, in part, on filing ECP complaints, which is a protected activity.

Conclusion

Based on the evidence, the allegation that the CI, a former Site Licensing Manger employed at TVA Sequoyah Nuclear Plant, was discriminated against for engaging in protected activity was substantiated. The preponderance of the evidence indicated that the deliberate misconduct of the former Director of CNL and the Senior VP of Engineering and Operations Support, TVA, in violation of 10 CFR 50.5, caused the TVA to be in violation of 10 CFR 50.7, the employee protection rule.

Timeline of Key Events:

February 2013: CI began employment with YVA as Sequoyah site Licensing Manger.

September 2015: NRC Inspection Report was issued containing the two NCVs.

2015-2018: Numerous communications with CNL on NCVs.

April 2016: the CI was accused of an inappropriate relationship with another TVA employee by the former Director of CNL, with the support of the VP of Regulatory Affairs. It was not substantiated.

July 2016: the TVA employee that was accused of inappropriate relationship with the CI filed an ECP complaint of harassment against the former Director of CNL. It was not substantiated.

April 2017: the CI filed a complaint with ECP against the former Director of CNL of harassment and creating an environment that could negatively impact SCWE. The CI's concern was not substantiated.

July 2017: the CI filed a complaint with ECP against the former Director of CNL for mentioning his first ECP complaint in a staff meeting. It was "partially substantiated"

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March 9, 2018: the former Director of CNL submitted a formal complaint to HR and the VP of Regulatory Affairs of harassment against the CI, which led to a TVA OGC investigation.

May 25, 2018: a draft TVA OGC report was provided to TVA managers.

May 25, 2018: the CI was placed on paid administrative leave.

August 13, 2018: the CI reported his concerns to the NRC.

August 16, 2018: the CI resigned from TVA.