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

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

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

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

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

Case Summary

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

Also, between 2016 and 2017, other staff members under the former Director of CNL's supervision raised safety concerns. The CI believed that the former Director of CNL was creating a hostile work environment by retaliating against the individuals that raised safety concerns. Based on this belief, the CI became concerned that the former Director of CNL would take punitive action against the CI in retaliation for raising safety concerns and questioning management's decisions (Exhibit 4, pp.21). The CI

Commented [SD1]: This and prior paragraph is well written and makes compelling case for what the protected activity was best you can. Well done

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started a rotation to the Nuclear Energy Institute in April 2018 to “get away from an overall toxic environment” (Exhibit 4, pp. 22).

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

On March 9, 2018, the former Director of CNL filed a complaint with TVA accusing several employees, including the CI, of creating a hostile workplace and engaging in insubordinate conduct (Exhibit 10). All employees listed in the complaint had previously filed complaints with the former Director of CNL, the VP of Regulatory Affairs, the NRC, and/or the TVA ECP. In response to the former Director of CNL’s complaint, TVA OGC initiated an internal investigation and the Senior Attorney interviewed CNL employees, including the CI. The interviewees were not aware that the investigation related to their creation of a hostile work environment for the former Director of CNL, but rather believed TVA OGC was investigating the overall work environment within CNL caused by the former Director of CNL. During the interview with the Senior Attorney in April 2018, the CI was asked about the CNL work environment and stated that the former Director of CNL was “vindictive” and created a “toxic” work environment.

Subsequent to the interview with the Senior Attorney, the CI communicated through emails with the VP of Regulatory Affairs expressing concern that the former Director of CNL would use the CI’s travel vouchers “as an investigative tool.” The CI stated that the former Director of CNL “used HR to investigate people, reported people to ECP, threatened to have people for cause drug tested, pulled badging gate records.” The CI also stated that the former Director of CNL “has demonstrated a longstanding pattern of using TVA processes as punitive and retaliatory tools” (Exhibit 11, pp. 14). The VP of Regulatory Affairs responded in an email stating, “you have raised some very serious assertions against your supervisor. I have turned these over for further evaluation to an appropriately independent review party” (Exhibit 11, pp. 14). Rather than report this to ECP or HR, the VP of

Commented [SD2]: Good to cite other evidence to back up conclusion

Commented [SD3]: This litany of ECP complaints support’s CIs concerns with the former CNL manager. Good work.

Commented [SD4]: I want to make sure I’m fully understanding this sentence so see me about it so we can go over together.

Commented [SD5]: Question. So the attorney mislead the employees as to the purpose of the interview? Not just the CI but all of those interviewed? If the former Director of CNL made an allegation the attorney hid that from those he interviewed? I’m trying to figure out if the attorney was misleading people to get them to divulge information he could then use to craft a reason to fire them.

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Regulatory Affairs sent them to TVA OGC who was investigating harassment by staff of the former Director of CNL.

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

Element 1: Did the employee engage in protected activity?

Yes.

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

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

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

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

Yes.

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Commented [SD6]: Just wondering, has anyone said the VP should have sent to ECP or HR (at min I would have copied them on the email forwarding the issue so they could weigh in on whether they should be involved or not). I think so but wonder if anyone was able to confirm he should have.

Commented [SD7]: Please go over manger's transcript with me as to what he was asked about this series of events. IF we would get to a PEC with this manager we need to press him on how this looks. OGC issues no action for CI and manager asks OGC to go back and find a reason to take an action against the CI. How do we know other conversations didn't take place resulting in revision to recommend CI's termination? Did OI ask very probing question about the manager's request of the OGC attorney (transcripts for both individuals say about these events...). I'm very concerned attorney didn't recommend termination initially. If an attorney doesn't see an issue from the evidence then there isn't one. Manager seems very culpable.

Commented [SD8]: Please review with me the details of their logic cause I'm not connecting the dots as to who what she said and the email to the VP manager violated these standards

Commented [SD9]: I'm restarting after letting sit a while so may not recall if next question already answered. What corporate policy is in effect to provide the standard for what the CI violated. Further was the CI aware of the policy or did they write one up after the CI made their statements?

Commented [SD10]: By chance did the OGC evaluation note any of this activity? Or was it in ROI elsewhere?

Commented [SD11]: Because why? Did the attorney make that statement at beginning of interview or did OI get it from attorney in their interview?

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The VP of Regulatory Affairs was aware that the CI had raised safety concerns. The CI also raised concerns of retaliation directly to the VP of Regulatory Affairs, which the VP of Regulatory Affairs responded to via email and phone conversations. The VP of Regulatory Affairs was also aware of concerns of retaliation made by the CI to the Senior Attorney during the investigation. The VP of Regulatory Affairs testified to the OI agent that the CI had raised these concerns on several occasions, verbally and in **writing**.

Commented [SD12]: You only need to show someone in the chain knew, but curious did others know as well? Based on your recollection...

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

Commented [SD13]: By chance do you recall if OI gathered anything more regarding what happened ONCE he checked this box? Was something done to overcome a concern about firing someone who raised concerns or at least justify how it was a business reason because the CI's transgressions were so severe it was the only recourse?

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

Yes.

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

Commented [SD14]: Probably no mention of re-employment services?

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

Yes.

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

Commented [SD15]: Which was contrary to? Policy? Procedure? Prior knowledge. I think I asked this question earlier so expect to have answer. So this is more of placeholder incase earlier comment not discussed.

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

Commented [SD16]: Maybe this is my answer to prior question. Saying bad things about your boss is grounds for termination. No violation of company policy occurred, correct?

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

Commented [SD17]: Is there any more reason than you just mentioned, where my prior comment is, in the record?

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The VP of Regulatory Affairs serves in a management position and, based on this position, training, and experience in the nuclear industry, had a clear knowledge and understanding of the employee protection regulation (10 CFR 50.7). The VP of Regulatory Affairs received information directly from the CI related to fear of retaliation by the former Director of CNL. The VP of Regulatory Affairs also had knowledge of previous ECP findings in relation to the former Director of CNL creating a perception of retaliation and a work environment that is not conducive to raising safety concerns. Despite knowing this, the VP of Regulatory Affairs chose not to report the CI's concerns of retaliation to ECP or Human Resources, but instead provided them to TVA OGC as part of an investigation into whether the CI was harassing the former Director of CNL. It is reasonable to assume that the VP of Regulatory Affairs provided this information to TVA OGC with the expectation that it would lead to an employment action against the CI. The VP of Regulatory Affairs used the CI's statements made during the TVA OGC investigation, as well as the fear of retaliation communicated by the CI to the VP of Regulatory Affairs, as evidence of harassing behavior in the justification of adverse action against the CI. Therefore, the preponderance of the evidence demonstrates the deliberate misconduct of the VP of Regulatory Affairs, in violation of 10 CFR 50.5, caused TVA to be in violation of 10 CFR 50.7, the employee protection rule.

Conclusion

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

Timeline of Key Events

2006 – CI begins working for TVA.

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

July 2016 – September 2017

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

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

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Commented [SD18]: Well done. I think the kickoff meeting helped you craft this language some??

Commented [SD19]: Want to call agent to ask if any of his investigation revealed why someone with less experienced was hired to be the CI's boss. Did the CI not apply for the job?

Commented [SD20]: Not following something. Earlier I read the CI was terminated for raising concerns about her boss? If CI didn't file one of the ECP complaints about boss then only reasons were OGC interview and email/discussion with 2nd level manager, the VP correct? Might mentioning this be useful if mentioned above is all I'm trying to determine.

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

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

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

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

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

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

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

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

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

January 14, 2019 – CI is terminated.

Commented [SD21]: If the CI made statements to OGC or former Director of CNL to her boss then how could the former Director of CNL have an issue with the CI harassing her UNLESS this information was being passed back to the CI by these 2 sources?? But wait the CI is interviewed by OGC after this... so really curious as to how the former Director of CNL was being harassed by CI.... CI discusses concerns about former Director with VP 2 months later so what harassment was the CI causing??

Commented [SD22]: You don't think an event would be after the report is issued some manager tells the attorney try harder to get different outcome? Just discuss with me.

Commented [SD23]: Can't recall if it was discussed earlier as to why IF the VP checked box about engaging in PA then how did the ERB resolve this before termination?

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