

From: JSheaIA-Hearing Resource
Sent: Sunday, February 14, 2021 11:56 AM
To: JSheaIA-HearingNPEm Resource
Subject: EAWs
Attachments: ML21045A044_Redacted.pdf

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1239

Mail Envelope Properties (60c2cfee6f304917948b064e442c1e83)

Subject: EAWs
Sent Date: 2/14/2021 11:55:47 AM
Received Date: 2/14/2021 11:55:50 AM
From: JShealA-Hearing Resource

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

Recipients:
"JShealA-HearingNPEm Resource" <JShealA-HearingNPEm.Resource@nrc.gov>
Tracking Status: None

Post Office: HQPWMSMRS02.nrc.gov

Files	Size	Date & Time
MESSAGE	3	2/14/2021 11:55:50 AM
ML21045A044_Redacted.pdf	800218	

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

From: Thompson, Catherine
Sent: Thursday, February 6, 2020 8:00 AM
To: Gifford, Ian
Cc: Solorio, Dave
Subject: EAWs
Attachments: TVA Sequoyah EAW NRC 1260 2-05-2020.pdf; SHEA EAW NRC 1260 2-5-2020.pdf; HENDERSON EAW NRC 1260 2-5-2020.pdf; TVA Watts Bar EAW NRC 1260 2-05-2020.pdf

Ian,

Attached are EAWs:

Sequoyah
Watts Bar (I added EA number and the CP for SLII to yours)
Shea
Henderson

Let me know if you find anything not aligned or wrong. I think the combined ones for Shea and Henderson work ok, and I added the case numbers and SQN and WBN as needed to make it easier to follow. I'm going to start on the choice letter now, but call if you want to discuss [REDACTED].

Thanks,
Kitty

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1013

Mail Envelope Properties (MN2PR09MB345683674734CDD86B17B24C8C1D0)

Subject: EAWs
Sent Date: 2/6/2020 7:59:56 AM
Received Date: 2/6/2020 8:00:00 AM
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	434	2/6/2020 8:00:00 AM
TVA Sequoyah EAW NRC 1260 2-05-2020.pdf		1677211
SHEA EAW NRC 1260 2-5-2020.pdf		2482207
HENDERSON EAW NRC 1260 2-5-2020.pdf		2480931
TVA Watts Bar EAW NRC 1260 2-05-2020.pdf		2491076

Options

Priority: Normal

Return Notification: No

Reply Requested: No

Sensitivity: Normal

Expiration Date:



ENFORCEMENT ACTION WORKSHEET

EA#:	EA 2020-06
Date of Panel:	
Licensee:	TVA
Facility/Location:	Sequoyah
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:	October 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): 2

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:

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.

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

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):

Escalate to SL I for Willful

ENFORCEMENT ACTION WORKSHEET (continued)

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

In certain cases, the severity level of a violation may be escalated based on unique escalating factors such as whether the adverse action was taken because the employee had contacted the NRC or whether the applicable NRC employee protection regulation (e.g., 10 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated.

Enforcement Policy Example 6.10.b.1, Severity Level II 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 without an escalating factor present.

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. The CI reported the adverse action to the NRC on August 13, 2018. 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.

SLII with escalating factor results in SLI.

● 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:

● 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)

Apparent Violation #: 2

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:

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.

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

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):

Escalate to SL II for Willful

ENFORCEMENT ACTION WORKSHEET (continued)

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

In certain cases, the severity level of a violation may be escalated based on unique escalating factors such as whether the adverse action was taken because the employee had contacted the NRC or whether the applicable NRC employee protection regulation (e.g., 10 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated.

Enforcement Policy Example 6.10.c.1, Severity Level III violation of 10 CFR 50.7: A mid- or 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 less adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., verbal counseling); and no escalating factor is present.

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. The unique factor is her violation of 10 CFR 50.5, which caused TVA to be in violation of 10 CFR 50.7.

SLIII with escalating factor results in SLII.

● Actual Consequences: Choose an item:

● Potential Consequences: Yes

● Impacting the Regulatory Process: Choose an item:

● **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 SLII. 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: Choose an item:

● 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)

4. Individual Actions: Yes

Number of IAs: 2

Add IA

Delete IA

Individual Action #:

• Traditional Enforcement (SL):	SL I
• 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):	SL II
• 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#:	IA 2020-008
Date of Panel:	
Licensee:	TVA Vice President of Regulatory Affairs
Facility/Location:	Sequoyah (SQN), Watts Bar I (WBN)
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 (SQN); 2-2019-15 (WBN)
OI Report Date:	October 3, 2019 (SQN); January 21, 2020 (WBN)
Inspector:	

1. Summary of Issues Considered for Escalated Enforcement:
 These investigations were initiated to determine whether a former TVA Site Licensing Manager at Sequoyah (2-2018-033) and a former Manager of Emerging Regulatory Issues at TVA Corporate Office, Watts Bar (2-2019-15) were discriminated against for engaging in protected activity by 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. Summaries 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 the escalated enforcement process for the Vice President of Regulatory Affairs at TVA.

● 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 and the CI at TVA Watts Bar I were discriminated against for engaging in protecting activity, in violation of 10 CFR 50.5 and 10 CFR 50.7.

Background information:

SQN 2-2018-033:

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.

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.

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.

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.

WBN 2-2019-15:

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. On July 24, 2017, the CI

ENFORCEMENT ACTION WORKSHEET (continued)

submitted an allegation to the NRC (RII-2017-A-0114) raising concerns that the former Director of CNL was creating a chilled work environment, among other issues. The CI also wrote condition reports 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.

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. 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 the complaint, the former Director of CNL specifically cites assertions made to the NRC about a chilled work environment as an example of retaliatory behavior imposed by the employee. 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.

The former Director of CNL and the VP of Regulatory Affairs were aware that the CI had raised safety concerns. The former Director of CNL also believed that the CI was responsible for filing an allegation of a chilled work environment to the NRC and cited that as an example of retaliatory behavior by the CI in the former Director of CNL's formal complaint filed with TVA. The CI 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.

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. 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.

• Proposed Severity Level (SL):

Escalate to SL I for Willful

ENFORCEMENT ACTION WORKSHEET (continued)

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

In certain cases, the severity level of a violation may be escalated based on unique escalating factors such as whether the adverse action was taken because the employee had contacted the NRC or whether the applicable NRC employee protection regulation (e.g., 10 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated.

Enforcement Policy Example 6.10.b.1, Severity Level II 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 without an escalating factor present.

SQN 2-2018-033: 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.

WBN 2-2019-15: The Vice President of Regulatory Affairs (executive-level corporate manager), is the decisionmaker who caused the CI to be put on paid administrative leave and played a significant role in the decision to terminate the CI. The CI reported the adverse action to the NRC on August 13, 2018.

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 Vice President of Regulatory Affairs position and the significance of these actions, a 3 year ban is proposed.

● 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:

ENFORCEMENT ACTION WORKSHEET (continued)

• Explain Bases for discretion:

• Proposed next action:

Choice letter (Written/PEC/ADR)

ENFORCEMENT ACTION WORKSHEET (continued)

4. Individual Actions: Select One

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 and Watts Bar case summaries and Prima Facie Analyses, 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 a chilled work environment, and using the ECP are protected activities.

SQN 2-2018-033: 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.

WBN 2-2019-15: The VP of Regulatory Affairs placed the CI on paid administrative leave and played a significant role in terminating the CI. As contributing factors for these adverse actions, the VP of Regulatory Affairs cited the CI's statements made during the TVA OGC investigation and fear of retaliation communicated by the CI to the VP of Regulatory Affairs, which are protected activities.

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.



ENFORCEMENT ACTION WORKSHEET

EA#:	IA 2020-009
Date of Panel:	
Licensee:	former TVA Director of Corporate Nuclear Licensing
Facility/Location:	Sequoyah (SQN); Watts Bar I (WBN)
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 (SQN); 2-2019-15 (WBN)
OI Report Date:	October 3, 2019 (SQN); January 21, 2020 (WBN)
Inspector:	

1. Summary of Issues Considered for Escalated Enforcement:

These investigations were initiated to determine whether a former TVA Site Licensing Manager at Sequoyah (2-2018-033) and a former Manager of Emerging Regulatory Issues at TVA Corporate Office, Watts Bar (2-2019-15) were discriminated against for engaging in protected activity by the former TVA Director of Corporate Nuclear Licensing, 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. Summaries 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 the escalated enforcement process for the former Director of Corporate Nuclear Licensing at TVA.

- 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 and the CI at TVA Watts Bar I were discriminated against for engaging in protecting activity, in violation of 10 CFR 50.5 and 10 CFR 50.7.

Background information:

SQN 2-2018-033:

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.

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.

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.

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.

WBN 2-2019-15:

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. On July 24, 2017, the CI submitted an allegation to the NRC (RII-2017-A-0114) raising concerns that the former Director of CNL was creating a

ENFORCEMENT ACTION WORKSHEET (continued)

chilled work environment, among other issues. The CI also wrote condition reports 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.

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. 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 the complaint, the former Director of CNL specifically cites assertions made to the NRC about a chilled work environment as an example of retaliatory behavior imposed by the employee. 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.

The former Director of CNL and the VP of Regulatory Affairs were aware that the CI had raised safety concerns. The former Director of CNL also believed that the CI was responsible for filing an allegation of a chilled work environment to the NRC and cited that as an example of retaliatory behavior by the CI in the former Director of CNL's formal complaint filed with TVA. The CI 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.

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. 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.

- Proposed Severity Level (SL): Escalate to SL II for Willful

ENFORCEMENT ACTION WORKSHEET (continued)

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

In certain cases, the severity level of a violation may be escalated based on unique escalating factors such as whether the adverse action was taken because the employee had contacted the NRC or whether the applicable NRC employee protection regulation (e.g., 10 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated.

Enforcement Policy Example 6.10.c.1, Severity Level III violation of 10 CFR 50.7: A mid- or 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 less adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., verbal counseling); and no escalating factor is present.

SQN 2-2018-033: The former Director of CNL (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. The CI reported the adverse action to the NRC on August 13, 2018. A unique factor is present: the former Director of CNL, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7.

WBN 2-2019-15: The former Director of CNL (corporate-level line manager), played a significant role initiating an investigation against the CI, with the expectation of an adverse action, by filing a formal complaint with TVA accusing the CI of retaliatory behavior for contacting the NRC with concerns of a chilled work environment. Two unique factors are present: the former Director of CNL, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7 and the adverse action was taken, in part, because the CI had contacted the NRC with concerns about a chilled work environment.

Given the manager's position and the significance of the actions, a 1 year ban is proposed.

● 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:

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:

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 and Watts Bar case summaries and Prima Facie Analyses, 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 CNL 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 a chilled work environment, and using the ECP are protected activities.

SQN 2-2018-033: The former Director of CNL 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.

WBN 2-2019-15: The former Director of CNL filed a formal complaint against the CI based, in part, for contacting the NRC with concerns of a chilled work environment, which is a protected activity.

The actions by the former Director of CNL constitute 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#:	EA 2020-007
Date of Panel:	February 20, 2020
Licensee:	Tennessee Valley Authority (TVA)
Facility/Location:	Watts Bar 1
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:	2-2019-015
OI Report Date:	January 21, 2020
Inspector:	

1. Summary of Issues Considered for Escalated Enforcement:

This investigation was initiated to determine whether a former Manager of Emerging Regulatory Issues (CI) employed by the Tennessee Valley Authority (TVA) at the TVA Corporate Office in Chattanooga, TN, was discriminated against for participating in a protected activity by the former Director of Corporate Nuclear Licensing (CNL) and the Vice President (VP) 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:

OE recommends continuing the escalated enforcement process regarding:

1. TVA
2. former Director of Corporate Nuclear Licensing
3. Vice President of Regulatory Affairs

● Number of Apparent Violations (AV): 2

ENFORCEMENT ACTION WORKSHEET (continued)

Apparent Violation #: 1

Brief statement of violation (e.g. inadequate survey, 10 CFR 20.1501):

The CI at TVA was discriminated against for engaging in protected activity, in violation of 10 CFR 50.5 and 10 CFR 50.7.

Background information:

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. On July 24, 2017, the CI submitted an allegation to the NRC (RII-2017-A-0114) raising concerns that the former Director of CNL was creating a chilled work environment, among other issues. The CI also wrote condition reports 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.

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. 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 the complaint, the former Director of CNL specifically cites assertions made to the NRC about a chilled work environment as an example of retaliatory behavior imposed by the employee. 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.

The former Director of CNL and the VP of Regulatory Affairs were aware that the CI had raised safety concerns. The former Director of CNL also believed that the CI was responsible for filing an allegation of a chilled work environment to the NRC and cited that as an example of retaliatory behavior by the CI in the former Director of CNL's formal complaint filed with TVA. The CI 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.

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. 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.

• Proposed Severity Level (SL):

Escalate to SL I for Willful

ENFORCEMENT ACTION WORKSHEET (continued)

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

In certain cases, the severity level of a violation may be escalated based on unique escalating factors such as whether the adverse action was taken because the employee had contacted the NRC or whether the applicable NRC employee protection regulation (e.g., 10 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated.

Enforcement Policy Example 6.10.b.1, Severity Level II 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 without an escalating factor present.

The Vice President of Regulatory Affairs (executive-level corporate manager), is the decisionmaker who caused the CI to be put on paid administrative leave and played a significant role in the decision to terminate the CI. 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.

● 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:

● Explain Bases for discretion:

● Proposed next action: Choice letter (Written/PEC/ADR)

ENFORCEMENT ACTION WORKSHEET (continued)

Apparent Violation #: 2

Brief statement of violation (e.g. inadequate survey, 10 CFR 20.1501):

The CI at TVA was discriminated against for engaging in protected activity, in violation of 10 CFR 50.5 and 10 CFR 50.7.

Background information:

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. On July 24, 2017, the CI submitted an allegation to the NRC (RII-2017-A-0114) raising concerns that the former Director of CNL was creating a chilled work environment, among other issues. The CI also wrote condition reports 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.

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. 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 the complaint, the former Director of CNL specifically cites assertions made to the NRC about a chilled work environment as an example of retaliatory behavior imposed by the employee. 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.

The former Director of CNL and the VP of Regulatory Affairs were aware that the CI had raised safety concerns. The former Director of CNL also believed that the CI was responsible for filing an allegation of a chilled work environment to the NRC and cited that as an example of retaliatory behavior by the CI in the former Director of CNL's formal complaint filed with TVA. The CI 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.

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. 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.

• Proposed Severity Level (SL):

Escalate to SL II for Willful

ENFORCEMENT ACTION WORKSHEET (continued)

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

In certain cases, the severity level of a violation may be escalated based on unique escalating factors such as whether the adverse action was taken because the employee had contacted the NRC or whether the applicable NRC employee protection regulation (e.g., 10 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated.

Enforcement Policy Example 6.10.c.1, Severity Level III violation of 10 CFR 50.7: A mid- or 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 less adverse to the employee's terms, conditions, compensation, or privileges of employment (e.g., verbal counseling); and no escalating factor is present.

The former Director of CNL (corporate-level line manager), played a significant role initiating an investigation against the CI, with the expectation of an adverse action, by filing a formal complaint with TVA accusing the CI of retaliatory behavior for contacting the NRC with concerns of a chilled work environment. Two unique factors are present: the former Director of CNL, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7 and the adverse action was taken, in part, because the CI had contacted the NRC with concerns about a chilled work environment.

● Actual Consequences: Choose an item:

● Potential Consequences: Yes

● Impacting the Regulatory Process: Choose an item:

● **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 SLII. 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:

● 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 #: 1

• 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 #: 2

• Traditional Enforcement (SL):	SL II
• 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 Watts Bar case summary and prima facie analysis, also Sequoyah 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 Vice President 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 a chilled work environment are protected activities. The former Director of Corporate Nuclear Licensing filed a formal complaint against the CI based, in part, for contacting the NRC with concerns of a chilled work environment, which is a protected activity. The VP of Regulatory Affairs placed the CI on paid administrative leave and played a significant role in terminating the CI. As contributing factors for these adverse actions, the VP of Regulatory Affairs cited the CI's statements made during the TVA OGC investigation and fear of retaliation communicated by the CI to the VP of Regulatory Affairs, which are protected activities.

The actions by the former Director of Corporate Nuclear Licensing and the Vice President of Regulatory Affairs constitute 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.