

From: JShealA-Hearing Resource
Sent: Tuesday, February 16, 2021 2:52 PM
To: JShealA-HearingNPEm Resource
Subject: XXXXXX 6-24-20 PEC script
Attachments: XXXXXX 6-24-20 PEC script_redacted.pdf

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1278

Mail Envelope Properties (112c1329680d42468adb38795d9b3753)

Subject: XXXXXX 6-24-20 PEC script
Sent Date: 2/16/2021 2:51:45 PM
Received Date: 2/16/2021 2:51:46 PM
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	2/16/2021 2:51:46 PM
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Options
Priority: Normal
Return Notification: No
Reply Requested: No
Sensitivity: Normal
Expiration Date:

From: JShealA-Hearing Resource
Sent: Saturday, February 13, 2021 9:57 PM
To: JShealA-HearingNPEm Resource
Subject: XXXXXX 6-24-20 PEC script
Attachments: XXXXXX 6-24-20 PEC Script.pdf

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1156

Mail Envelope Properties (3856064142c747dafc14420b3c62dff)

Subject: XXXXXX 6-24-20 PEC script
Sent Date: 2/13/2021 9:57:02 PM
Received Date: 2/13/2021 9:57:03 PM
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
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XXXXXX 6-24-20 PEC Script.pdf		170116

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

Predecisional Enforcement Conference

Slide 1 [Opening] - [George Wilson]:

Good morning, my name is George Wilson. I'm the Director of the Office of Enforcement.

Before we get started, Ian Gifford will review details of today's video teleconference and answer any questions.

The purpose of today's teleconference is to obtain information that will be used to determine if a violation of discrimination occurred which was contrary to the requirements of 10 CFR 50.5 and 10 CFR 50.7 on Employee Protection. It is important to note that this predecisional conference is an important step in our enforcement process. We want to offer you an opportunity to make statements to us so that we can fully and thoroughly process the potential non-compliance. Our role is not to debate the facts with you but to receive and process the information that is presented. We will use today's information along with the information you submitted prior to this PEC to inform the final enforcement decision.

In a few moments, I'll go over the agenda and provide some meeting guidelines. But first, I'd like to begin with introductions. (***introduce those on the call***)

Slide 2 [Agenda] - [George Wilson]:

The agenda for today's teleconference consists of opening remarks by me, followed by an enforcement policy overview by Catherine Thompson, and then an overview of the case specifics by Dave Solorio, the supervisor having oversight of discrimination concerns. Following Mr. Solorio's overview of the case specifics, you will be provided an opportunity to present

information for NRC's consideration. The NRC staff looks forward to understanding your perspective on the issue. We'd also like you to tell us if you believe there are errors in our understanding of the facts and circumstances; and to discuss any aggravating or mitigating circumstances that we should consider.

Following your presentation, and comments by Mr. McBrearty, NRC staff will caucus in a separate breakout room on webex and upon our return, will ask additional questions as necessary. You will also have access to a separate breakout room, if you wish to use it.

At the end of this teleconference, I will make closing remarks on behalf of the NRC, and this meeting will be adjourned.

Slide 3 [Meeting Guidelines] - [George Wilson]:

Now, let's cover some of the meeting guidelines associated with this conference.

In accordance with our normal practice, any written material you provide today will be placed in the NRC's document management system (ADAMS), but will be withheld from public disclosure until this matter is concluded.

NRC representatives may ask questions as they deem necessary after the caucus.

This meeting is being transcribed; therefore, it's important that all individuals speak clearly and identify themselves to assist the transcriber. In case the transcriber has follow-up questions, please remain on the teleconference for a few minutes after the meeting adjourns. The written transcript will provide the NRC with a record of the information that is presented today and will be used in reaching a final agency decision in the matters that we will discuss. The transcript is

not normally released to the public; however, if requested under the Freedom of Information Act, release would be considered, subject to redactions allowed by the Freedom of Information Act. In accordance with the NRC Enforcement Policy and Manual, this conference is closed to public observation because it involves the findings of an NRC Office of Investigations report that has not been publicly disclosed and involves personnel issues related to discrimination. With the exception of the transcription already mentioned, no portion of this PEC shall be recorded. In addition, information discussed in this PEC shall not be discussed in the public domain.

Today, no final NRC decision will be discussed, made, or announced at this meeting. The parties will be informed in writing if the NRC decides to take an enforcement action. Based on availability of the transcript and any supplemental information you may provide, we plan to make a final determination by the end of July.

Does anyone have any questions regarding the agenda or the meeting guidelines that I just described?

Then, at this time, Ms. Thompson will provide an overview of the enforcement policy, followed by Mr. Solorio providing an overview of the case specifics.

Slide 4 [Enforcement Program] – [CATHERINE THOMPSON]:

We are conducting today's teleconference to obtain information related to an apparent violation of the NRC's Employee Protection Rule, 10 CFR 50.7 and 10 CFR 50.5, Deliberate Misconduct.

The NRC has determined that you apparently engaged in deliberate misconduct that caused Tennessee Valley Authority (TVA), an NRC licensee, to discriminate against a former TVA Site

Licensing Manager, Mr. McBrearty, for engaging in protected activities. Your actions resulted in Mr. McBrearty being placed on administrative leave.

To ensure a safety conscious work environment, a high value is placed on employees being free to raise nuclear safety concerns regardless of the merits of the concern. The NRC's authority is limited to taking an enforcement action against the licensee or contractor when we make a finding of discrimination. As appropriate, enforcement actions include issuing a notice of violation, assessing a civil penalty, issuing an order modifying an NRC license or, in criminal cases, referring the case to the Department of Justice for prosecution. Over the years, the NRC has made referrals to DOJ and they have prosecuted some cases. Additionally, nuclear workers may seek personal remedy regarding for discrimination cases via the Department of Labor (DOL).

Because the subject matter involves predecisional discrimination information and findings by our Office of Investigations (OI), this teleconference is closed to the public. Mr. McBrearty was invited to attend the teleconference, and he also on this teleconference. He will be given the opportunity to provide comments for NRC's consideration.

It is important to note that this teleconference is predecisional and is an important step in our enforcement process. We want to offer you an opportunity to make statements to us so that we can fully and thoroughly process the apparent violations. Our role is not to debate the facts with you but to receive and process the information that is presented today.

This teleconference will provide an opportunity for the NRC to ask clarifying questions. And, it will provide you the opportunity to (1) comment on the information that was provided in the conference letter, (2) to provide or to present additional relevant information, such as

aggravating or mitigating circumstances, and (3) to also discuss corrective actions that have been taken or are planned.

Slide 5 [Enforcement Process_Severity Levels] – [CATHERINE THOMPSON]:

Presently, the concern is being processed accordance with our guidelines for escalated enforcement. In accordance with Section 6.10 of the Enforcement Policy, the issue might be dispositioned as a Severity Level I, II, or III violation.

The NRC is considering a notice of violation or a ban. A notice of violation describes the NRC requirement that was violated, the circumstances of the violation, the severity level of the violation; and may require a written response. The NRC considers issuing a ban to a licensee official when their actions are deliberate and result in the NRC no longer having reasonable assurance that licensed activities will be conducted in an adequate manner. Bans are typically fixed at one, three, or five years. When the NRC determines the length of a ban, we consider the position of the individual in the organization and the significance of the underlying violations.

Slide 6 [Enforcement Process_Post Conference Process] – [CATHERINE THOMPSON]:

We will conduct an internal agency panel to make a final decision. In addition to what has previously been developed by NRC's Office of Investigation we will consider information presented today.

If the Agency determines that a violation of 10 CFR 50.5 and 10 CFR 50.7 occurred, you will receive a public notification of the Agency's enforcement action. Additionally, the NRC will issue a press release.

Slide 7 [Enforcement Process_Outcomes] – [CATHERINE THOMPSON]:

The possible outcomes for escalated enforcement actions include the issuance of a Notice of Violation (NOV), or the issuance of an Order for a 1 to 5-year ban. Additionally, a potential outcome is that no enforcement action is taken by the NRC.

Slide 8 [Apparent Violation] - DAVE SOLORIO:

Good Morning. At this time, I will provide a summary of the apparent violation, and then I will turn things over to you.

The purpose of the NRC OI investigation 2-2018-033 was to determine whether Mr. McBrearty was the subject of employment discrimination in violation of 10 CFR 50.7, “Employee Protection.” The NRC determined that Mr. McBrearty was apparently placed on paid administrative leave on May 25, 2018, which led to his constructive discharge, in part, for engaging in protected activities. Between 2015 and 2018, Mr. McBrearty raised concerns to Corporate Nuclear Licensing (CNL), which included a corporate manager, about TVA’s regulatory non-compliance regarding two NRC non-cited violations (NCV): 1) the Molded Case Circuit Breaker Service Life NCV; and 2) the Removal of Kirk Key Interlocks NCV. In addition, Mr. McBrearty raised numerous concerns about a chilled work environment to both the ECP and other TVA employees.

The NRC staff reviewed the evidence gathered during these NRC OI investigations and determined that the actions taken against this former employee was in apparent violation of the NRC’s rule prohibiting deliberate misconduct, 10 CFR 50.5 (a). Based on the evidence developed during the investigations and subsequent staff analysis, it appears that you, as the Senior Vice President of Engineering and Operations Support, engaged in deliberate

misconduct that caused an NRC licensee to be in violation of 10 CFR 50.7, “Employee Protection”.

Slide 9 [Apparent Violation] - DAVE SOLORIO:

10 CFR 50.5 (a) states, in relevant part, that any employee of a licensee 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.

Slide 10 [Apparent Violation] - DAVE SOLORIO:

10 CFR 50.7 (a) states, in relevant part, that discrimination by a Commission licensee 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.

Slide 11 [Apparent Violation] - DAVE SOLORIO:

On May 25, 2018, you apparently engaged in deliberate misconduct that caused TVA, an NRC licensee, to discriminate against Mr. McBrearty for engaging in a protected activity. Specifically, Mr. McBrearty engaged in a protected activity by filing complaints with the Employee Concerns Program. After becoming aware of this protected activity, you, as the Senior Vice President of Engineering and Operations Support, recommended that Mr. McBrearty be placed on paid administrative leave for nearly three months until, at which point, he was constructively discharged. Your apparent action was based, at least in part, on Mr. McBrearty engaging in a protected activity.

Slide 12 [REDACTED Presentation] - [George Wilson]:

We will now have a presentation by [REDACTED].

Slide 13 [McBrearty Comments] – [George Wilson]:

Mr. McBrearty do you have any comments?

Slide 14 [REDACTED Comments] - [George Wilson]:

[REDACTED], do you have any comments on what you heard from Mr. McBrearty?

Slide 15 [Caucus] [George Wilson]:

[CAUCUS]

Slide 16 [Post Caucus: NRC Questions] - [George Wilson]:

[RETURN FROM CAUCUS / NRC QUESTIONS]

Slide 17 [Close] - [George Wilson]:

I'd like to this opportunity to re-emphasize some of the points made during my opening remarks.

No final decision has been made on the part of the NRC. We will consider the information gathered by the Office of Investigations and information presented here today. The NRC staff will meet after the completion of the PEC to reach a final Agency decision as to whether a violation occurred. I'll also remind you that any statements, or the lack thereof, made by an NRC employee at this conference, are not intended to represent final Agency positions or determinations.

Before we close this teleconference, does the court reporter have any questions or clarifications?

Finally, I'd like to thank you for your presentation and participation. This concludes our teleconference.