

From: JSheaIA-Hearing Resource
Sent: Tuesday, February 16, 2021 4:55 PM
To: JSheaIA-HearingNPEm Resource
Subject: Re: Draft TVA discrimination EN and letters - OUO
Attachments: Re Draft TVA discrimination EN and letters - OUO.pdf

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1287

Mail Envelope Properties (f833e131dc814e38a52202c2bca067a8)

Subject: Re: Draft TVA discrimination EN and letters - OUO
Sent Date: 2/16/2021 4:54:46 PM
Received Date: 2/16/2021 4:54:47 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 4:54:47 PM
Re Draft TVA discrimination EN and letters - OUO.pdf		223073

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

From: Solorio, Dave
Sent: Saturday, August 1, 2020 11:14 PM
To: Gifford, Ian; Thompson, Catherine
Subject: Re: Draft TVA discrimination EN and letters - OOU
Attachments: TVA discrimination EN 7.31.20 (Solorio, Dave).docx

From: Gifford, Ian
Sent: Friday, July 31, 2020 6:26 PM
To: Solorio, Dave ; Thompson, Catherine
Subject: Draft TVA discrimination EN and letters - OOU

Attachments are OOU – Predecisional Enforcement Information

Dave and Kitty,

Attached are draft versions of the EN and letters/NOV/Order. I tried to make the language in each as consistent as possible, although they could not all be uniform given that some need more detail than others. In each document, I tried to highlight all areas that either need to be updated before finalizing or have information that needs to be verified before finalizing.

- For the EN – It fits pretty well within the four page goal if you account for the extra spacing for on the first and last page. After further discussion with George, extra detail was only provided for the SL I violation since that is the only one that requires advance consultation with the Commission. The format generally fits a standard EN.
- I tried to make two spaces after each period, but this will need to be verified.
- All concurrence blocks and distribution lists need to be either verified or added.
- I think we should make one more cross comparison with the language in the templates to make sure that everything is in line. Given the template language for each of these is subtly different, I think extra checks are a good idea.
- Once we have a good working draft, we should share with Nick (he said he wouldn't have a chance to look before Monday anyway so no rush today or this weekend).
- I expressed concern to George about pushing forward with the EN before the letters are finalized (in case we have to change something in the letter based on feedback from offices/regions during concurrence). He understood the concern and agreed to delay the EN somewhat, but he also has timelines from OEDO. We should discuss the path forward on Monday, but I think getting the letters out for concurrence ASAP should be a priority and then we can put finishing touches on the EN.
- Having stared at these documents too long today, I am sure there are some typos or incorrect info cut and paste somewhere. I'll take a look again on Monday but greatly appreciate careful reviews just in case.

Have a nice weekend,

Ian

Ian A. Gifford, Ph.D.

Differing Views Program Manager

Office of Enforcement

U.S. Nuclear Regulatory Commission

Telephone: 301-287-9216

Ian.Gifford@nrc.gov

NEW [Differing Views Best Practices Guide!](#)

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1198

Mail Envelope Properties (DM5PR09MB37526D7AA719AA8A64A5D042864C0)

Subject: Re: Draft TVA discrimination EN and letters - OUO
Sent Date: 8/1/2020 11:13:46 PM
Received Date: 8/1/2020 11:13:46 PM
From: Solorio, Dave

Created By: Dave.Solorio@nrc.gov

Recipients:
"Gifford, Ian" <Ian.Gifford@nrc.gov>
Tracking Status: None
"Thompson, Catherine" <Catherine.Thompson@nrc.gov>
Tracking Status: None

Post Office: DM5PR09MB3752.namprd09.prod.outlook.com

Files	Size	Date & Time
MESSAGE	2702	8/1/2020 11:13:46 PM
TVA discrimination EN 7.31.20 (Solorio, Dave).docx		38848

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

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(Date)
EN 20-XXX

OFFICE OF ENFORCEMENT
NOTIFICATION OF SIGNIFICANT ENFORCEMENT ACTION

<u>Licensee:</u>	Tennessee Valley Authority Chattanooga, TN Docket No.: 52000259/260/296, 05000327/328, 05000390/391 License No.: DPR-33/52/68, DPR-77/79, NPF-90/96	EA-20-06 EA-20-07
<u>Individual:</u>	Joseph Shea Chattanooga, TN	IA-20- 08
<u>Individual:</u>	Erin Henderson Chattanooga, TN	IA-20- 09
<u>Subject:</u>	NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$ 606,942, ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES TO AN INDIVIDUAL, AND NOTICE OF VIOLATION SEVERITY LEVEL II TO AN INDIVIDUAL	

This is to provide notification to, and advance consultation with, the Commission, in accordance with Enforcement Policy, Section 2.3.10, "Commission Notification and Consultation on Enforcement Actions," that the Office of Enforcement (OE) plans to issue a Notice of Violation (NOV) and Proposed Imposition of Civil Penalty in the amount of \$ 606,942 on or about date calculated 10 calendar days from date of EN to Tennessee Valley Authority (TVA). This action is based on a Severity Level I problem and Severity Level II problem involving violations of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, "Employee Protection." OE also plans to issue two individual actions involving violations of 10 CFR 50.5, "Deliberate Misconduct," that caused an NRC licensee, TVA, to be in violation of 10 CFR 50.7, "Employee Protection." Regarding the first individual action, OE plans to issue an Order prohibiting involvement in NRC-licensed activities for 5 years on or about date to Mr. Joseph Shea, the former Vice President of Regulatory Affairs of TVA. Regarding the second individual action, OE plans to issue a Severity Level II NOV on or about date to Ms. Erin Henderson, the former Director of Corporate Nuclear Licensing (CNL) of TVA.

The NOV and Proposed Imposition of a Civil Penalty in the amount of \$ 606,942 to TVA is based on a Severity Level I problem and Severity Level II problem involving violations of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, "Employee Protection."

Severity Level I Problem

A former corporate employee was subjected to adverse action after engaging in protected activity. Specifically, the former corporate employee engaged in a protected

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activity by raising concerns of a chilled work environment. After becoming aware of this protected activity, the former Director of CNL filed a formal complaint against the former corporate employee (Severity Level II violation). The formal complaint initiated an investigation by the TVA Office of the General Counsel (OGC) that resulted in the former Vice President of Regulatory Affairs placing the former corporate employee on paid administrative leave followed by termination (Severity Level I violation). This action was based, at least in part, on the former corporate employee engaging in a protected activity. The Severity Level I and Severity Level II violations are combined into a single Severity Level I problem because they are related to discrimination against one individual.

Given that Severity Level I violations require advance consultation with the Commission, the following additional details are provided for consideration. Based on an investigation by the NRC Office of Investigations, testimony at the predecisional enforcement conferences (PECs), exhibits and supplemental information provided by the licensee and the individuals involved, the NRC determined that the former corporate employee was placed on paid administrative leave on October 15, 2018, and terminated on January 14, 2019, in part, for engaging in protected activities. The NRC determined that the former employee engaged in protected activity when expressing concerns to a TVA OGC attorney during an investigation and the Vice President of Regulatory Affairs regarding the chilled work environment created by the former Director of CNL. The Vice President of Regulatory Affairs was aware of the former corporate employee's protected activity of raising concerns regarding the chilled work environment because the former corporate employee raised these concerns directly to the Vice President of Regulatory Affairs. The Vice President of Regulatory Affairs also received a copy of the TVA OGC draft investigation report prepared by the TVA OGC attorney that identified the concerns of the former corporate employee. (when we use "the" it implies we read about it earlier so we should say "a TVA OGC draft investigation initiated in response to")

The former corporate employee suffered an adverse action when the Vice President of Regulatory Affairs placed the former corporate employee on paid administrative leave, lowered the former corporate employee's performance appraisal, and ultimately terminated the former corporate employee.

There is also a nexus between the former corporate employee's protected activity of raising concerns about a chilled work environment and the Vice President of Regulatory Affairs' termination of the former corporate employee. The Vice President of Regulatory Affairs stated that the former corporate employee was terminated for being disrespectful to the former Director of CNL. However, the examples used in the TVA OGC investigation report as evidence that the former corporate employee was disrespectful to the former Director of CNL were: 1) the former corporate employee raised concerns about a chilled work environment during a TVA OGC investigation and 2) the former corporate employee raised concerns about reprisal directly to the Vice President of Regulatory Affairs. The Vice President of Regulatory Affairs admits never counseling the former corporate employee about disrespectful behavior directed at the former Director of CNL before he took action to terminate the employee.

Severity Level II Problem

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A former Sequoyah employee was subjected to adverse action after engaging in protected activity. Specifically, the former Sequoyah employee engaged in a protected activity by raising concerns regarding a chilled work environment, filing complaints with the TVA Employee Concerns Program (ECP), and raising concerns regarding the response to two non-cited violations. After becoming aware of this protected activity, the former Director of CNL filed a formal complaint against the former Sequoyah employee (Severity Level II violation). The formal complaint initiated an investigation by the TVA OGC that resulted in the Senior Vice President of Engineering and Operations Support recommending that the former Sequoyah employee be placed on a paid administrative leave until the former Sequoyah employee resigned (Severity Level II violation). This action was based, at least in part, on the former Sequoyah employee engaging in a protected activity. The two Severity Level II violations are combined into a single Severity Level II problem because they are related to discrimination against one individual. We need something in writing to say we do this or when this gets a hearing we will not have defense.

In a letter dated March 2, 2020, the NRC outlined the apparent violations and offered the licensee the opportunity to attend a PEC or to request an Alternate Dispute Resolution with the NRC. In response to the NRC letter, TVA requested a PEC, which was held on June 30, 2020. During the PEC, TVA denied that violations of 10 CFR 50.7 occurred, based in large part, on TVA's position that the adverse actions taken against the former corporate employee and the former Sequoyah employee were in response to their unprofessional behavior and not in retaliation for protected activities.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$240,000 is considered for each Severity Level II violation and a base civil penalty in the amount of \$300,000 is considered for the Severity Level I violation of 10 CFR 50.7, "Employee Protection." Because this was not the first non-willful Severity Level III violation within 2 years (these are Severity Level I and Severity Level II), the NRC considered whether credit was warranted for identification and corrective action. Credit was not warranted for identification, as the violations were identified by the NRC. The NRC considered the corrective actions taken by TVA, including but not limited to, fleet-wide communications discussing safety culture and the NRC apparent violations, focused meetings and presentations with TVA licensing groups discussing safety culture, policy revisions to address adverse action screening, and a pilot nuclear investigation protocol. After considering the corrective actions discussed during the PEC and provided as exhibits by TVA, the NRC determined that credit for corrective actions is not warranted in this case because the licensee's actions are not comprehensive to address the broader environment for raising concerns nor do they address the root cause of the retaliation and discrimination. While the safety conscious work environment (SCWE) mitigation plans and fleet-wide communications were transparent in alerting staff to the concerns raised by the Department of Labor and NRC, they also stated that TVA disagrees with the findings and failed to communicate corrective actions. No training was provided to increase awareness of SCWE, no corrective actions were presented to address employee termination without prior counseling, and the corrective actions did not address the failure by TVA management to implement recommendations and address concerns identified by TVA ECP. The corrective actions outlined by TVA regarding future updates to the non-Executive Review Board adverse action procedure and the pilot nuclear investigation protocol may be effective; however, their long-term impact and broad applicability throughout the nuclear fleet are not sufficient to credit as corrective actions when determining the civil penalty.

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Because credit for identification and corrective action are not warranted, and in accordance with the Enforcement Policy, the NRC plans to issue the NOV and Proposed Imposition of Civil Penalty of twice the base amount of \$240,000 for the Severity Level II problem, and twice the base amount of \$300,000 for the Severity Level I problem. The base civil penalty of \$240,000 for Severity Level II is doubled but capped at the statutory maximum of \$303,471 for a single day violation. The base civil penalty of \$300,000 for Severity Level I is doubled but capped at the statutory maximum of \$303,471 for a single day violation. This results in a civil penalty of \$606,942 (2 X \$303,471).

The Order prohibiting involvement in NRC-licensed activities for 5 years to Mr. Shea, the former Vice President of Regulatory Affairs of TVA, is based on the Severity Level I violation described above. Specifically, Mr. Shea violated 10 CFR 50.5, "Deliberate Misconduct," that caused an NRC licensee, TVA, to be in violation of 10 CFR 50.7, "Employee Protection."

In a letter dated March 2, 2020, the NRC outlined the apparent violation and requested that Mr. Shea attend a PEC, which was held on June 25, 2020. During the PEC, Mr. Shea denied that a violation of 10 CFR 50.5 occurred, based in large part, on Mr. Shea's position that the adverse actions taken against the former corporate employee was in response to unprofessional behavior and not in retaliation for protected activities.

After considering the information provided in the PEC, the NRC concluded that, given the significance of the underlying issues, Mr. Shea's position within TVA that has a very broad sphere of influence, and the deliberate nature of the actions, the NRC lacks the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Shea were permitted at this time to be involved in NRC-licensed activities. Therefore, Mr. Shea is prohibited from any involvement in NRC-licensed activities for a period of 5 years from the effective date of the Order. Additionally, Mr. Shea is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period.

The Severity Level II NOV (single violation with two examples) to Ms. Henderson, the former Director of CNL of TVA, is based on two Severity Level II violations described above. Specifically, Ms. Henderson violated 10 CFR 50.5, "Deliberate Misconduct," that caused an NRC licensee, TVA, to be in violation of 10 CFR 50.7, "Employee Protection."

In a letter dated March 2, 2020, the NRC outlined the apparent violation and requested that Ms. Henderson attend a PEC, which was held on June 23, 2020. During the PEC, Ms. Henderson denied that violations of 10 CFR 50.5 occurred, based in large part, on Ms. Henderson's position that the adverse actions taken against the former corporate employee was in response to unprofessional behavior and not in retaliation for protected activities.

After considering the information provided in the PEC, the NRC considered issuing an Order prohibiting involvement in NRC-licensed activities. However, because Ms. Henderson was not the decisionmaker that placed the former employees on paid administrative leave or terminate the former corporate employee, the staff concluded that a Severity Level II NOV was appropriate.

It should be noted that in a letter dated March 2, 2020, the NRC outlined an apparent violation

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related to the Severity Level II problem discussed above and requested that [REDACTED], Senior Vice President of Engineering and Operations Support of TVA, attend a PEC, which was held on June 24, 2020. Initially, based on information gathered during the investigation, the NRC identified an apparent violation of 10 CFR 50.5, "Deliberate Misconduct," that caused an NRC licensee, TVA, to be in violation of 10 CFR 50.7, "Employee Protection." However, after considering the circumstances of the case, including the information provided during the PEC, the NRC determined that no further enforcement action was warranted against [REDACTED] for deliberate misconduct. TVA will still receive a violation, without the deliberate misconduct escalating factor, for placing the former Sequoyah employee on paid administrative leave based, at least in part, for engaging in protected activity.

It should be noted that the licensee, Mr. Shea, and Ms. Henderson have not been specifically informed of the enforcement action. The schedule of issuance and notification is:

Mailing of Notice (date)
Telephone Notification of Licensee (date)

The States of Alabama and Tennessee will be notified.

The licensee has thirty (30) days from the date of the NOV in which to respond. Following NRC evaluation of the response, the civil penalty may be remitted, mitigated, or imposed by Order.

Mr. Shea is required to submit a written response to the Order and has twenty (20) days from the date of the Order in which to request a hearing.

Ms. Henderson has thirty (30) days from the date of the NOV in which to respond.

Contacts: Catherine Thompson, OE Ian Gifford, OE Dave Solorio, OE
(301) 287-9515 (301) 287-9216 (301) 287-9282

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