

From: JShealA-Hearing Resource
Sent: Tuesday, February 16, 2021 4:59 PM
To: JShealA-HearingNPEm Resource
Subject: Draft TVA discrimination EN and letters - OUO
Attachments: Draft TVA discrimination EN and letters - OUO.pdf

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1288

Mail Envelope Properties (97be12d79d0f4034a5b58de999c352d0)

Subject: Draft TVA discrimination EN and letters - OOU
Sent Date: 2/16/2021 4:58:45 PM
Received Date: 2/16/2021 4:58:48 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 4:58:48 PM
Draft TVA discrimination EN and letters - OOU.pdf		439333

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

From: Gifford, Ian
Sent: Friday, July 31, 2020 6:27 PM
To: Solorio, Dave; Thompson, Catherine
Subject: Draft TVA discrimination EN and letters - OOU
Attachments: TVA discrimination EN 7.31.20.doc; DC - close out letter 7.31.20_OUO.docx; EH - cover letter and NOV 7-30-2020_OUO.docx; JS - cover letter and order 7-30-2020_OUO.docx; TVA cover letter 7.30.20_OUO.docx; TVA NOV 7.30.20_OUO.docx

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: 1199

Mail Envelope Properties (MN2PR09MB47957AC97C14DB99EBF3696BEA4E0)

Subject: Draft TVA discrimination EN and letters - OUO
Sent Date: 7/31/2020 6:26:59 PM
Received Date: 7/31/2020 6:27:01 PM
From: Gifford, Ian

Created By: Ian.Gifford@nrc.gov

Recipients:

"Solorio, Dave" <Dave.Solorio@nrc.gov>
Tracking Status: None
"Thompson, Catherine" <Catherine.Thompson@nrc.gov>
Tracking Status: None

Post Office: MN2PR09MB4795.namprd09.prod.outlook.com

Files	Size	Date & Time
MESSAGE	2505	7/31/2020 6:27:01 PM
TVA discrimination EN 7.31.20.doc	82808	
DC - close out letter 7.31.20_OUO.docx	31387	
EH - cover letter and NOV 7-30-2020_OUO.docx	37985	
JS - cover letter and order 7-30-2020_OUO.docx	45151	
TVA cover letter 7.30.20_OUO.docx	45034	
TVA NOV 7.30.20_OUO.docx	41761	

Options

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

**PRELIMINARY INFORMATION - NOT FOR PUBLIC DISCLOSURE UNTIL
VERIFICATION THAT LICENSEE HAS RECEIVED ACTION**

(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 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

**PRELIMINARY INFORMATION - NOT FOR PUBLIC DISCLOSURE UNTIL
VERIFICATION THAT LICENSEE HAS RECEIVED ACTION**

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.

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.

Severity Level II Problem

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

**PRELIMINARY INFORMATION - NOT FOR PUBLIC DISCLOSURE UNTIL
VERIFICATION THAT LICENSEE HAS RECEIVED ACTION**

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.

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.

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

**PRELIMINARY INFORMATION - NOT FOR PUBLIC DISCLOSURE UNTIL
VERIFICATION THAT LICENSEE HAS RECEIVED ACTION**

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 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,

**PRELIMINARY INFORMATION - NOT FOR PUBLIC DISCLOSURE UNTIL
VERIFICATION THAT LICENSEE HAS RECEIVED ACTION**

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 (301) 287-9515 Ian Gifford, OE (301) 287-9216 Dave Solorio, OE (301) 287-9282

**PRELIMINARY INFORMATION - NOT FOR PUBLIC DISCLOSURE UNTIL
VERIFICATION THAT LICENSEE HAS RECEIVED ACTION**

ELECTRONIC DISTRIBUTION: EN-20-XXX, date

OWFN

Chairman Svinicki
Comm. Baran
Comm. Caputo
Comm. Wright
Comm. Hanson

SECY
OCA
OPA
OIP

DISTRIBUTION:

G. Wilson, OE
F. Peduzzi, OE
J. Peralta, OE
S. Solorio, OE
N. Hilton, OE
C. Thompson, OE
I. Gifford, OE

OE r/f

OWFN

EDO
DEDR
DEDM
OE
OGC
NRR
OI
OIG

M. Kowal, RII
S. Sparks, RII
J. Justice, RII
D. Willis, OE

EN Binder

TWFN

OCFO
OIS
RES
ACRS
NMSS
NSIR

3WFN
OP Center

S. Kirkwood, OGC
P. Moulding, OGC
B. Hughes, NRR
J. Quichocho, OEDO

Regional Offices

RI RII
RIII RIV

MAIL
OE staff

ADAMS Accession Number: MLxxxxx

OFFICE		
NAME		
DATE		

OFFICIAL RECORD COPY

IA-20-022

[REDACTED]
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390]

SUBJECT: NUCLEAR REGULATORY COMMISSION OFFICE OF INVESTIGATIONS
REPORT NO. 2-2018-033

[REDACTED]:

This refers to an investigation completed on October 3, 2019, by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) to determine, in part, whether you, the Senior Vice President of Engineering and Operations Support, engaged in deliberate misconduct, in violation of 10 CFR 50.5, "Deliberate Misconduct," that caused an NRC licensee to be in violation of 10 CFR 50.7, "Employee Protection." The NRC determined that you placed a former Sequoyah employee on paid administrative leave, in part, for engaging in protected activities. As a result of the investigation, the NRC provided you, by letter dated March 2, 2020, the opportunity to attend a closed predecisional enforcement conference (PEC) to discuss this apparent violation, its causes, and your corrective actions. The conference was held on June 24, 2020.

Based on the NRC OI investigation, testimony at the PEC, exhibits, and supplemental information, the NRC concluded that your actions did not constitute deliberate misconduct. Therefore, individual enforcement action against you is not warranted. Nonetheless, your actions contributed to a violation of NRC requirements. A copy of the enforcement action issued to TVA is enclosed.

You are not required to respond to this letter. However, if you choose to provide a response, your response should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, and marked "Open by Addressee Only," within 30 days of the date of this letter. If you have any questions concerning this matter, please contact Catherine Thompson at 301-287-9515 or email catherine.thompson@nrc.gov, or Ian Gifford at 301-287-9216 or email ian.gifford@nrc.gov.

This letter, and your response, if you choose to submit one, will not be made publicly available either electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). However, you should be aware that all final NRC documents, including the final OI investigation report, are official agency records and may be made available to the public under the Freedom of Information Act (FOIA), subject to redaction of certain information in accordance with the FOIA. In addition, this letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. The NRC-3 system notice,

which provides detailed information about this system of records, can be accessed from our Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Sincerely,

George A. Wilson, Director
Office of Enforcement

Docket Nos.: 05000259, 05000260
05000296, 05000327
05000328, 05000390
05000391

License No.: DPR-33, DPR-52,
DPR-68, DPR-77,
DPR-79, NPF-90,
NPF-96

[Enclosure: as stated]

DISTRIBUTION:

ADAMS sensitive, non-public, OE-RPOES

OEMAIL

OE: IA File

Official Use Only – Predecisional Enforcement Information

IA-20-009

Ms. Erin Henderson
ADDRESS REMOVED

SUBJECT: NOTICE OF VIOLATION, NUCLEAR REGULATORY COMMISSION OFFICE OF INVESTIGATIONS REPORT NOS. 2-2018-033 AND 2-2019-015

Dear Ms. Henderson:

This letter refers to two investigations completed on October 3, 2019, and January 21, 2020, by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) concerning your activities at the Tennessee Valley Authority (TVA). The purpose of these NRC OI investigations was to determine whether two former employees were the subject of employment discrimination in violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, "Employee Protection."

On June 23, 2020, a predecisional enforcement conference (PEC) was conducted with you to discuss the apparent violation, the significance, the root causes, and your corrective actions.

Based on the information developed during the investigations, testimony at the PECs, exhibits, and supplemental information, the NRC determined that a deliberate violation of NRC requirements occurred. This violation is cited in the enclosed Notice of Violation (Notice) (Enclosure 1).

NRC OI investigation 2-2018-033: The NRC determined that a former Sequoyah employee was subject to a harassment investigation, in part, for engaging in protected activities. The NRC determined that the former employee engaged in protected activity when raising concerns regarding the regulatory response to the Kirk Key and Service Life Non-Cited Violations (NCVs), when filing Employee Concerns Program (ECP) complaints alleging that you created a chilled work environment, and when raising concerns to both the TVA Corporate Functional Area Manager and TVA Office of General Counsel (OGC) attorney regarding the chilled work environment in Corporate Nuclear Licensing (CNL). You were aware of the protected activities because: 1) the former employee expressed concerns regarding the NCVs directly to you and 2) you received direct communication from the ECP regarding those complaints.

The former employee suffered an adverse action when you filed a complaint launching a harassment investigation against the former employee. There is a nexus between the former employee raising concerns and you launching the investigation. Specifically, the former employee raised concerns via various emails and text messages about ongoing CNL delays regarding the Kirk Key license amendment request, as well as a chilled work environment in CNL. On March 9, 2018, you filed a complaint against the former employee, triggering an investigation, and cited as examples of harassment, the ECP concerns the former employee had filed, as well as the various emails and text messages.

NRC OI investigation 2-2019-015: The NRC determined that the former employee was subject

Official Use Only – Predecisional Enforcement Information

to a harassment investigation, in part, for engaging in protected activity. The NRC determined that the former employee engaged in protected activity when expressing concerns regarding the chilled work environment that you were creating. The NRC determined that you were aware of the former employee's protected activity because you identified this activity in your formal complaint as an example of the former employee's harassing behavior.

The former employee suffered an adverse action when you filed a complaint launching a harassment investigation against the former employee. There is a nexus between the former employee's protected activity of raising concerns about a chilled work environment and you launching the investigation. You identify in your complaint that you believe that the former employee was the source of the allegation of a chilled work environment and identify this as an act of harassment. Thus, the document that triggered the former employee's investigation, your complaint, explicitly identifies the nexus between the protected activity and the adverse action.

Your deliberate actions placed TVA in violation of 10 CFR 50.7, "Employee Protection," and you in violation of 10 CFR 50.5, "Deliberate Misconduct." Enclosure 2 includes a copy of the letter and Notice of Violation issued to TVA. Given the significance of the underlying issue and the deliberate nature of your actions, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level II.

You should be aware that if you are involved in NRC-licensed activities in the future, additional deliberate violations could result in more significant enforcement action or criminal action.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

Instead of providing a response to the Notice, you may request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve this issue. This request must be made within 30 days of the issuance date of the Notice. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ is mediation. Additional information concerning the NRC's program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution at Cornell University has agreed to facilitate NRC's program as an intake neutral.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Official Use Only – Predecisional Enforcement Information

In addition, this letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. This system, which is not publicly-accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

If you have any questions concerning this matter, please contact Catherine Thompson at 301-287-9515 or email catherine.thompson@nrc.gov, or Ian Gifford at 301-287-9216 or email ian.gifford@nrc.gov.

Sincerely,

George Wilson, Director
Office of Enforcement

Enclosures: 1. Notice of Violation
2. Notice of Violation to TVA

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Official Use Only – Predecisional Enforcement Information

Official Use Only – Predecisional Enforcement Information

NOTICE OF VIOLATION

Ms. Erin Henderson
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390]

IA-20-009

During NRC investigations completed on October 3, 2019 (NRC OI 2-2018-033), and January 21, 2020 (2-2019-015), a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

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.

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.

Contrary to the above, on March 9, 2018, you engaged in deliberate misconduct that caused Tennessee Valley Authority (TVA), an NRC licensee, to discriminate against a former Sequoyah employee and a former corporate employee for engaging in protected activities. Specifically, a former Sequoyah employee engaged in a protected activity by raising concerns regarding a chilled work environment, filing complaints with the Employee Concerns Program, and by raising concerns regarding the response to two non-cited violations. In addition, a former corporate employee engaged in a protected activity by raising concerns of a chilled work environment. After becoming aware of these protected activities, you, as the Director of Corporate Nuclear Licensing, filed a formal complaint against the former employees. The formal complaint initiated an investigation by the TVA Office of the General Counsel that resulted in the former Sequoyah employee being placed on administrative leave and the termination of the former corporate employee. Your action was based, at least in part, on the former employees engaging in protected activities.

This is a Severity Level II violation.

Pursuant to the provisions of 10 CFR 2.201, you is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, and marked "Open by Addressee Only," within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; IA-20-009" and should include: (1) the reason for the violation, or, if contested, the basis for disputing the violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued

Official Use Only – Predecisional Enforcement Information

requiring information as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Your response will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's Agencywide Document Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21. This letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. This system, which is not publicly-accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Dated this ___ day of (Month) 20(XX)

IA-20-008

Mr. Joseph Shea
ADDRESS REMOVED

SUBJECT: ORDER WITH 5-YEAR BAN (NRC OFFICE OF INVESTIGATIONS REPORT NO. 2-2019-015)

Dear Mr. Shea:

The enclosed order is being issued to you as a result of the June 25, 2020, predecisional enforcement conference (PEC).

On January 21, 2020, the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) completed an investigation concerning your activities at the Tennessee Valley Authority (TVA) Corporate Office (OI report 2-2019-015). The purpose of the investigation was to determine whether a former corporate employee was the subject of discrimination for participating in a protected activity in violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, "Employee Protection."

In letter dated March 2, 2020, the NRC notified you of an apparent violation of 10 CFR 50.5, "Deliberate Misconduct." Based on the evidence developed during the investigation and subsequent staff analysis, it appeared that you, as the Vice President of Regulatory Affairs, engaged in deliberate misconduct that caused an NRC licensee to be in violation of 10 CFR 50.7, "Employee Protection." Specifically, the NRC determined that a former corporate employee was placed on paid administrative leave and terminated, in part, for engaging in protected activities, including raising concerns about a chilled work environment. To address this apparent violation, the NRC provided you an opportunity to participate in a closed PEC. On June 25, 2020, you participated in a PEC with the NRC.

Based on the NRC OI investigation, testimony at the PEC, exhibits, and supplemental information, the NRC determined that you placed a former corporate employee on paid administrative leave on October 15, 2018, and terminated the former corporate employee on January 14, 2019, in part, for engaging in protected activity, including raising concerns about a chilled work environment. The former employee engaged in protected activity when expressing concerns to you regarding the chilled work environment that the former Director of Corporate Nuclear Licensing (CNL) was creating. The former employee also engaged in protected activity when testifying to the Department of Labor and TVA Employee Concerns Program (ECP) regarding complaints filed by the former Corporate Functional Area Manager and another former employee. Further, you received a copy of the TVA Office of General Counsel (OGC) draft report prepared by the TVA OGC attorney that identified the concerns of the former employee.

Official Use Only – Predecisional Enforcement Information

The former employee suffered an adverse action when you placed the former employee on leave, lowered the former employee's performance appraisal, and ultimately terminated the former employee. There is a nexus between the former employee's protected activity of raising concerns about a chilled work environment and your termination of the former employee. You stated during the PEC that you terminated the former employee for being disrespectful to the former Director of CNL. However, the examples used in the TVA OGC report as evidence that the former employee was disrespectful to the former Director of CNL were: 1) raising concerns about a chilled work environment in a TVA OGC interview and 2) raising concerns about reprisal directly to you. You admit that you never counseled the former employee about disrespectful behavior directed at the former Director of CNL.

The NRC determined that you placed the former employee on paid administrative leave on October 15, 2018 and terminated her on January 14, 2019, in part, for engaging in protected activities. Accordingly, the NRC determined that your actions were deliberate and in violation of the requirements in 10 CFR 50.5, "Deliberate Misconduct." The NRC considers deliberate violations of 10 CFR 50.7, "Employee Protection," significant because of the potential that individuals might not raise safety issues for fear of retaliation.

Given the significance of the underlying issue, your position within TVA that has a very broad sphere of influence, and the deliberate nature of your actions, this violation of 10 CFR 50.5, "Deliberate misconduct," has been categorized at Severity Level I, in accordance with the NRC Enforcement Policy.

The NRC also determined that your actions warrant issuance of an Order that prohibits your involvement in NRC-licensed activities for a period of 5 years because your actions have resulted in the loss of reasonable assurance that you may be relied upon, at this time, to comply with NRC requirements. This Order, which is set forth in Enclosure 1, also requires you to provide to the NRC in writing the name, address, and telephone number of the employer for your first subsequent employment in NRC-licensed activities following completion of the 5-year prohibition. You are required to provide a written answer to this Order. Additionally, you or any other person adversely affected by this Order, may request a hearing on this Order within 20 days of the Order's issuance. Please see the enclosed Order for further instructions regarding acknowledging receipt of the Order and requesting a hearing.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of the enclosed Order shall be subject to criminal prosecution as set forth in that section. Violation of the enclosed Order may also subject the person to civil monetary penalty.

In accordance with Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.390, of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), and your response will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's Agencywide Document Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that

it can be made available to the public without redaction. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Sincerely,

George A Wilson, Director
Office of Enforcement

Enclosures:

1. Order Prohibiting Involvement in NRC-Licensed Activities
2. TVA Letter (ADAMS Accession No.: MLXXX)

cc: w/ enclosures:
State of Tennessee

DRAFT

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

)

IA-20-008

Joseph Shea)

)

)

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
IMMEDIATELY EFFECTIVE

I.

Mr. Joseph Shea is employed as Vice President of Regulatory Affairs at Tennessee Valley Authority (TVA). TVA holds Browns Ferry Units 1, 2 and 3 License Nos. DPR-33, DPR-52, and DPR-68 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), on December 20, 1973, June 28, 1974 and July 2, 1976, respectively. The facilities are located on the Licensee's site in Athens, Alabama. TVA holds Sequoyah Units 1 and 2 License Nos. DPR-77 and DPR-79 issued by the NRC pursuant to Part 50 of 10 CFR, on September 17, 1980 and September 15, 1981, respectively. The facilities are located on the Licensee's site in Soddy-Daisy, Tennessee. TVA holds Watts Bar Units 1 and 2 License Nos. NPF-90 and NPF-96 issued by the NRC pursuant to Part 50 of Title 10 of 10 CFR, on February 7, 1996 and October 22, 2015, respectively. The facilities are located on the Licensee's site in Spring City, Tennessee. The licensee authorizes the operation of these facilities in accordance with the conditions specified therein.

II.

On January 21, 2020, an investigation was completed by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) related to TVA (OI Report No. 2-2019-015). The purpose of the investigation was to determine whether a former corporate employee was the subject of discrimination for participating in a protected activity in violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, "Employee Protection."

Based on the evidence developed during the investigation and subsequent staff analysis, it appeared that Mr. Joseph Shea, as the Vice President of Regulatory Affairs at TVA, engaged in deliberate misconduct, in violation of 10 CFR 50.5, "Deliberate Misconduct," that caused an NRC licensee to be in violation of 10 CFR 50.7, "Employee Protection." Specifically, the NRC determined that a former corporate employee was placed on paid administrative leave on October 15, 2018, and terminated on January 14, 2019 by Mr. Joseph Shea, in part, for

engaging in protected activity, including raising concerns about a chilled work environment. The former employee engaged in protected activity when expressing concerns to Mr. Joseph Shea regarding the chilled work environment that the former Director of Corporate Nuclear Licensing (CNL) was creating. The former employee also engaged in protected activity when she testifying to the Department of Labor and TVA Employee Concerns Program (ECP) regarding complaints filed by the former Corporate Functional Area Manager and another former employee. Further, Mr. Joseph Shea received a copy of the TVA Office of General Counsel (OGC) draft report prepared by the TVA OGC attorney that identified the concerns of the former employee.

The former employee suffered an adverse action when Mr. Joseph Shea placed the former employee on leave, lowered the former employee's performance appraisal, and ultimately terminated the former employee. There is a nexus between the former employee's protected activity of raising concerns about a chilled work environment and Mr. Joseph Shea's termination of the former employee. Mr. Joseph Shea stated during the predecisional enforcement conference that Mr. Joseph Shea terminated the former employee for being disrespectful to the former Director of CNL. However, the examples used in the TVA OGC report as evidence that the former employee was disrespectful to the former Director of CNL were: 1) raising concerns about a chilled work environment in a TVA OGC interview and 2) raising concerns about reprisal directly to Mr. Joseph Shea. Mr. Joseph Shea admit that Mr. Joseph Shea never counseled the former employee about disrespectful behavior directed at the former Director of CNL.

The NRC has determined that Mr. Joseph Shea placed the former employee on paid administrative leave on October 15, 2018 and terminated her on January 14, 2019, in part, for engaging in protected activities. Accordingly, the NRC has determined that Mr. Joseph Shea's actions were deliberate and violated the requirements in 10 CFR 50.5, "Deliberate misconduct." The NRC considers deliberate violations of 10 CFR 50.7, "Employee protection," significant because of the potential that individuals might not raise safety issues for fear of retaliation.

III.

Based on the above, Mr. Joseph Shea, the **Vice President of Regulatory Affairs** at TVA engaged in deliberate misconduct, in violation of 10 CFR 50.5, "Deliberate Misconduct," that caused the Licensee to be in violation of 10 CFR 50.7, "Employee Protection." The NRC must be able to rely on TVA and its employees to comply with NRC requirements, including the requirement prohibiting discrimination against an employee for engaging in protected activities. Mr. Joseph Shea's action in causing TVA to violate 10 CFR 50.7 and Mr. Joseph Shea's violation of 10 CFR 50.5 have raised serious doubt as to whether Mr. Joseph Shea can be relied upon to comply with NRC requirements.

Consequently, given the significance of the underlying issues, Mr. Joseph 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. Joseph Shea were permitted at this time to be involved in NRC-licensed activities. Therefore, Mr. Joseph Shea is prohibited from any involvement in NRC-licensed activities for a period of 5 years from the effective date of this Order. Additionally, Mr. Joseph Shea is required to notify the NRC of Mr. Joseph Shea first employment in NRC licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, the significance of Mr. Joseph Shea's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV.

Accordingly, pursuant to sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 50.5. IT IS HEREBY ORDERED, EFFECTIVE UPON THE DATE OF ISSUANCE, THAT:

1. Mr. Joseph Shea is prohibited for 5 years, from the effective date of this Order, from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. If Mr. Joseph Shea is currently involved with an NRC licensee engaged in any other NRC-licensed activities, Mr. Joseph Shea must immediately cease those activities, and inform the NRC of the name, address, and telephone number of the employer, and provide a copy of this order to the employer.
3. Mr. Joseph Shea shall, within 20 days of acceptance of Mr. Joseph Shea's first employment offer involving NRC-licensed activities, as defined in paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, of the name, address, and telephone number of the employer or the entity where Mr. Joseph Shea is, or will be, involved in the NRC-licensed activities. In the notification, Mr. Joseph Shea shall include a statement of Mr. Joseph Shea's commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that Mr. Joseph Shea will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Joseph Shea of good cause.

V.

In accordance with 10 CFR 2.202, Mr. Joseph Shea must submit a written answer to this Order under oath or affirmation within 20 days of its publication in the Federal Register. Mr. Joseph Shea failure to respond to this Order could result in additional enforcement

action in accordance with the Commission's Enforcement Policy. In addition, Mr. Joseph Shea, and any other person adversely affected by this Order, may request a hearing on this Order within 20 days of its publication in the Federal Register. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at <https://www.nrc.gov/site-help/e-submittals.html>. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants

separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals.html>, by e-mail to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than Mr. Joseph Shea requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by Mr. Joseph Shea or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Joseph Shea or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date this Order is published in the Federal Register without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

George A. Wilson, Director
Office of Enforcement

Dated at Rockville, Maryland, this XX day of XX 2020.

Official Use Only – Predecisional Enforcement Information

EA-20-06

EA-20-07

Mr. Jim Barstow
Vice President Nuclear Regulatory Affairs
& Support Services
Tennessee Valley Authority
1101 Market Street, LP 4A-C
Chattanooga, TN 37402-2801

SUBJECT: TENNESSEE VALLEY AUTHORITY - NOTICE OF VIOLATION AND
PROPOSED IMPOSITION OF CIVIL PENALTY – \$606,942, NRC OFFICE OF
INVESTIGATION REPORT NUMBERS 2-2018-033 AND 2-2019-015

Dear Mr. Barstow:

This letter refers to two investigations completed on October 3, 2019, and January 21, 2020, by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) relating to activities at the Tennessee Valley Authority (TVA). The purpose of these investigations was to determine whether two former employees were the subjects of employment discrimination in violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, "Employee Protection."

In a letter dated March 2, 2020, Agencywide Documents Access and Management System (ADAMS) Accession No. ML 20058G833, the NRC notified you of apparent violations of 10 CFR 50.7, "Employee Protection," which the NRC was considering for escalated enforcement action in accordance with the NRC Enforcement Policy. In the letter, the NRC requested TVA's participation in a predecisional enforcement conference (PEC) to address the apparent violations.

On June 30, 2020, the NRC held a PEC with members of your staff to discuss the apparent violations, their significance, their root causes, and your corrective actions. The conference was closed to public observations pursuant to NRC practice regarding cases involving potential discrimination. Also, the NRC conducted three related PECs for individuals involved during the week of June 22, 2020, that were also closed to the public.

Based on the NRC OI investigations, testimony at the PECs, exhibits, and supplemental information, the NRC determined that four violations of NRC requirement 10 CFR 50.7 occurred. The NRC considers violations of 10 CFR 50.7 significant because of the potential that individuals might not raise safety issues for fear of retaliation. These violations are cited in the enclosed Notice of Violation (Notice).

[NRC OI investigation 2-2018-033 \(October 3, 2019\)](#)

Official Use Only – Predecisional Enforcement Information

The NRC determined that a former employee was first subject to a harassment investigation by the former Director of Corporate Nuclear Licensing (CNL) and then placed on administrative leave by the Senior Vice President of Engineering and Operations Support on May 25, 2018, in part, for engaging in the protected activity of filing Employee Concerns Program (ECP) complaints (see Attachment 1).

- Violation 1: Based on the deliberate action and the level of manager involved in the adverse action (the former Director of CNL), this violation has been categorized in accordance with the “NRC Enforcement Policy,” at Severity Level (SL) II. See NRC Enforcement Policy, Violation Example 6.10.c.1.
- Violation 2: Based on the level of the manager involved in the adverse action (the Senior Vice President of Engineering and Operations Support), this violation has been categorized in accordance with the “NRC Enforcement Policy,” at SL II. See NRC Enforcement Policy, Violation Example 6.10.b.1.

NRC OI investigation 2-2019-015 (January 21, 2020):

The NRC determined that a former employee was subject to a harassment investigation by the former Director of CNL, then placed on paid administrative leave on October 15, 2018, and terminated on January 14, 2019, by the Vice President of Regulatory Affairs, in part, for engaging in the protected activity of raising concerns of a chilled work environment (see Attachment 2).

- Violation 3: Based on the deliberate action and the level of manager involved in the adverse action (the former Director of CNL), this violation has been categorized in accordance with the “NRC Enforcement Policy,” at SL II. See NRC Enforcement Policy, Violation Example 6.10.c.1.
- Violation 4: Based on the deliberate action and the level of the manager involved in the adverse action (the Vice President of Regulatory Affairs), this violation has been categorized in accordance with the “NRC Enforcement Policy,” at SL I. See NRC Enforcement Policy, Violation Example 6.10.b.1.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$240,000 is considered for each SL II violation and a base civil penalty in the amount of \$300,000 is considered for the SL 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 SL I and SL 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

Official Use Only – Predecisional Enforcement Information

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.

To emphasize the importance of prompt identification and correction of violations, the NRC has determined, as provided for in Section 2.3.4 of the NRC Enforcement Policy, to issue the enclosed Notice of Violation (Notice) and Proposed Imposition of Civil Penalty of twice the base amount of \$240,000 each of the three SL II violations, and twice the base amount of \$300,000 for the SL I violation. The total sum amount of these four violations is \$2,040,000 (3 X \$480,000 + \$600,000). However, because violations 1 and 2 are related to one individual, they can be considered a single SL II problem. The base civil penalty of \$240,000 for SL II is doubled but capped at the statutory maximum of \$303,471 for a single day violation. Further, because violations 3 and 4 are related to a one individual, they can be considered a single SL I problem. The base civil penalty of \$300,000 for SL I is doubled but capped at the statutory maximum of \$303,471 for a single day violation. Therefore, a civil penalty of \$606,942 (2 X \$303,471) is imposed.

If you disagree with this enforcement sanction, you may deny the violations, as described in the enclosed Notice, or you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral (the "mediator") works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's ADR program can be found at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>.

The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. If you are interested in pursuing this issue through

Official Use Only – Predecisional Enforcement Information

the ADR program, please contact: (1) the ICR at 877-733-9415; and (2) Catherine Thompson at 301-287-9515 or email catherine.thompson@nrc.gov, or Ian Gifford at 301-287-9216 or email ian.gifford@nrc.gov within 10 days of the date of this letter. If you decide to participate in ADR, your submitted signed agreement to mediate using the NRC ADR program will stay the 30-day time period for payment of the civil penalty until the ADR process is completed.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be made available electronically for public inspection in the NRC Public Document Room and from ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also make available, within ADAMS, the NRC presentation from the PEC held on June 30, 2020. To the extent possible, your response should not include any personal privacy or proprietary information so that it can be made available to the public without redaction. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

If you have any questions concerning this matter, please contact Catherine Thompson at 301-287-9515 or email catherine.thompson@nrc.gov, or Ian Gifford at 301-287-9216 or email ian.gifford@nrc.gov.

Sincerely,

George A. Wilson, Director
Office of Enforcement

Docket Nos.: 05000259, 05000260
05000296, 05000327
05000328, 05000390
05000391

License No.: DPR-33, DPR-52,
DPR-68, DPR-77,
DPR-79, NPF-90,
NPF-96

Enclosures:

1. Notice of Violation and Proposed

Official Use Only – Predecisional Enforcement Information

- Imposition of Civil Penalty
- 2. NUREG/BR-0254 Payment Methods
- 3. NUREG/BR-0317 Rev. 2, Enforcement
Alternative Dispute Resolution Program

DRAFT

NRC OI investigation 2-2018-033 (October 3, 2019)

Based on the NRC OI investigation, testimony at the PECs, exhibits, and supplemental information, the NRC determined that a former employee was first subject to a harassment investigation and then placed on administrative leave on May 25, 2018, in part, for engaging in protected activities. The NRC determined that the former employee engaged in protected activity when raising concerns regarding the regulatory response to the Kirk Key and Service Life Non-Cited Violations (NCV), filing ECP complaints regarding the former Director of CNL's alleged creation of a chilled work environment, and raising concerns to both the TVA Corporate Functional Area Manager and a TVA Office of General Counsel (OGC) attorney regarding the chilled work environment in CNL. These individuals involved in adverse actions against the former employee were aware of the protected activities because: 1) the former employee expressed concerns regarding the NCVs directly to the Vice President of Regulatory Affairs and the former Director of CNL, and 2) the Vice President of Regulatory Affairs, former Director of CNL, and Senior Vice President of Engineering and Operations Support received direct communication from the ECP regarding those complaints, as well as a **copy of the TVA OGC report that discussed the former employee's concerns.**

The former employee suffered an adverse action when the former Director of CNL filed a complaint launching a harassment investigation against the former employee, and when the Senior Vice President of Engineering and Operations Support placed the former employee on administrative leave.

There is a nexus between the former employee raising concerns and the former Director of CNL filing a formal complaint. Specifically, the former employee raised concerns via various emails and text messages about ongoing CNL delays regarding the Kirk Key license amendment request as well as a chilled work environment in CNL. On March 9, 2018, the former Director of CNL filed a formal complaint against the former employee and others, triggering an investigation, and cited as examples of harassment, the ECP concerns the former employee filed, as well as the various emails and text messages. Similarly, there is a nexus between the former employee filing ECP complaints and raising chilled work environment concerns, and the former employee being put on administrative leave by the Senior Vice President of Engineering and Operations Support. The Senior Vice President of Engineering and Operations Support was aware that the former employee's ECP complaint had been partially substantiated because the Senior Vice President of Engineering and Operations Support received a letter requiring action, and that another ECP complaint found precursors of a chilled work environment in CNL. Upon receipt of the TVA OGC report, which based its finding that the former employee had harassed the former Director of CNL through allegedly unfounded ECP complaints, the Senior Vice President of Engineering and Operations Support drove to the site and recommended that the Sequoyah Plant Support Director to put the former employee on administrative leave.

NRC OI investigation 2-2019-015 (January 21, 2020):

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.

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.

Official Use Only – Predecisional Enforcement Information

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Sequoyah
TVA Corporate

Docket Nos.: 05000259, 05000260
05000296, 05000327
05000328, 05000390
05000391

License Nos.: DPR-33, DPR-52,
DPR-68, DPR-77,
DPR-79, NPF-90,
NPF-96

EA-20-06
EA-20-07

During NRC Office of Investigations (OI) Report No. 2-2018-033, completed on October 3, 2019, and OI Report No. 2-2019-015, completed on January 21, 2020, identified four violations of an NRC regulation, Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The violations and associated civil penalties are set forth below:

10 CFR 50.7(a), states, in part, 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.” The protected activities are established in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

- *Violation 1 (NRC OI 2-2018-033)*: Contrary to the above, on March 9, 2018, Tennessee Valley Authority (TVA) corporate management, the former Director of Corporate Nuclear Licensing (CNL), discriminated against a former Sequoyah employee for engaging in a protected activity. Specifically, the former Sequoyah employee engaged in a protected activity by raising concerns regarding a chilled work environment, filing complaints with the Employee Concerns Program, and by 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 employee. The formal complaint initiated an investigation by the TVA Office of the General Counsel that

Official Use Only – Predecisional Enforcement Information

resulted in the former employee being placed on a paid administrative leave until the former employee resigned. This action was based, at least in part, on the former employee engaging in a protected activity.

- Violation 2 (NRC OI 2-2018-033): Contrary to the above, on May 25, 2018, a TVA executive, the Senior Vice President of Engineering and Operations Support, discriminated against a former Sequoyah employee for engaging in a protected activity. Specifically, the former Sequoyah employee engaged in a protected activity by filing complaints with the Employee Concerns Program. After becoming aware of this protected activity, the Senior Vice President of Engineering and Operations Support recommended that the former employee be placed on paid administrative leave until the former employee resigned. This action was based, at least in part, on the former employee engaging in a protected activity.

This is Severity Level II problem (Enforcement Policy Sections 2.2.1.d, 6.10).
Civil Penalty - \$303,471

- Violation 3 (NRC OI 2-2019-015): Contrary to the above, on March 9, 2018, TVA corporate management, the former Director of CNL, discriminated against a former corporate employee for engaging in a protected activity. Specifically, the former corporate employee engaged in a protected 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 employee. The formal complaint initiated an investigation by the TVA Office of the General Counsel that resulted in the former employee being placed on paid administrative leave followed by termination. This action was based, at least in part, on the former employee engaging in a protected activity.
- Violation 4 (NRC OI 2-2019-015): Contrary to the above, between October 15, 2018, and January 14, 2019, TVA corporate management, the Vice President of Regulatory Affairs, discriminated against a former corporate employee for engaging in protected activities. Specifically, the former corporate employee engaged in a protected activity by raising concerns of a chilled work environment to the Vice President of Regulatory Affairs and a TVA attorney during a TVA Office of the General Counsel investigation. After becoming aware of this protected activity, the Vice President of Regulatory Affairs placed the former employee on paid administrative leave and played a significant role in terminating the former employee. These actions were based, at least in part, on the former employee engaging in a protected activity.

This is Severity Level I problem (Enforcement Policy Sections 2.2.1.d, 6.10).
Civil Penalty - \$303,471

Therefore, the total Civil Penalty is \$606,942.

Official Use Only – Predecisional Enforcement Information

Pursuant to the provisions of 10 CFR 2.201, TVA is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a copy to the Document Control Desk, Washington, DC 20555-0001, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty. This reply should be clearly marked as a "Reply to a Notice of Violation (EA-20-06 and EA-20-07)" and should include for the violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken to avoid further violations; (4) your plan and schedule for completing short and long term corrective actions and (5) the date when full compliance will be achieved.

Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, the NRC may issue an order or a Demand for Information requiring you to explain why your license should not be modified, suspended, or revoked or why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown.

TVA may pay the civil penalty in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer within 30 days of the date of this Notice addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation (EA-20-06 and EA-20-07)" and may: (1) deny the violation listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section 2.3.4 of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205 should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205 regarding the procedure for imposing (a) civil penalty.

Upon failure to pay any civil penalty which subsequently has been determined in accordance

Official Use Only – Predecisional Enforcement Information

with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above (i.e., Reply to Notice of Violation, Statement as to payment of civil penalty(ies), and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S., Nuclear Regulatory Commission, Region II, 245 Peachtree Center Ave. N.E., Suite 1200, Atlanta, GA 30303, and the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice."

Your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary information. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this XX day of XX 2020.