

From: JSheaIA-Hearing Resource
Sent: Wednesday, February 17, 2021 1:42 AM
To: JSheaIA-HearingNPEm Resource
Subject: Dave's Friday comments on - Choice Letter- TVA_IAG 2-20-2020
Attachments: ML21047A518_Redacted.pdf

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1295

Mail Envelope Properties (0b430ee4ab764ac6ba0c477979e65bf0)

Subject: Dave's Friday comments on - Choice Letter- TVA_IAG 2-20-2020
Sent Date: 2/17/2021 1:42:22 AM
Received Date: 2/17/2021 1:42:24 AM
From: JShealA-Hearing Resource

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

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

Post Office: HQPWMSMRS02.nrc.gov

Files	Size	Date & Time
MESSAGE	3	2/17/2021 1:42:24 AM
ML21047A518_Redacted.pdf	827261	

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

From: JShealA-Hearing Resource
Sent: Sunday, February 14, 2021 12:30 AM
To: JShealA-HearingNPEm Resource
Subject: Dave's Friday comments on - Choice Letter- TVA_IAG 2-20-2020
Attachments: Dave's Friday comments on - Choice Letter-TVA_IAG 2-20-2020.docx

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1229

Mail Envelope Properties (ff72b2ac1287401b8583fa1172863d4d)

Subject: Dave's Friday comments on - Choice Letter- TVA_IAG 2-20-2020
Sent Date: 2/14/2021 12:29:44 AM
Received Date: 2/14/2021 12:29:45 AM
From: JShealA-Hearing Resource

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

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

Post Office: HQPWMSMRS02.nrc.gov

Files	Size	Date & Time	
MESSAGE	3	2/14/2021 12:29:45 AM	
Dave's Friday comments on - Choice Letter-TVA_IAG 2-20-2020.docx			47883

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

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[Date]

EA-2020-06
EA-2020-07

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

SUBJECT: APPARENT VIOLATIONS OF EMPLOYEE PROTECTION REQUIREMENTS
(OFFICE OF INVESTIGATIONS REPORT NOS. 2-2018-033 and 2-2019-015)

Dear Mr. Barstow:

This letter refers to two investigations by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) related to Tennessee Valley Authority (TVA). The first investigation is related to TVA Sequoyah Nuclear Plant (Sequoyah), completed on October 3, 2019 (2-2018-033). The second investigation is related to TVA Corporate, completed on January 21, 2020 (2-2019-015).

The purpose of the NRC OI investigation 2-2018-033 was to determine whether a former Site Licensing Manager employed by TVA at Sequoyah was the subject of employment discrimination in violation of the NRC's "Employee Protection" regulation, specifically, 10 CFR 50.7. The NRC determined that the former employee was placed on paid administrative leave on May 25, 2018, in part, for engaging in protected activities. Between 2015 and 2018, the former employee raised concerns numerous times to Corporate Nuclear Licensing (CNL), which included the Vice President (VP) of Regulatory Affairs and the former Director of CNL, about TVA's regulatory non-compliance regarding two NRC non-cited violations (NCV): 1) the Molded Case Circuit Breaker Service Life NCV, and 2) the Removal of Kirk Key Interlocks NCV. In addition, the former employee used the TVA Employee Concerns Program (ECP): 1) in April 2017, the former employee filed a complaint with ECP against the former Director of CNL for harassment and creating an environment that could negatively impact SCWE, and 2) in July 2017, the former employee filed a complaint with ECP against the former Director of CNL for mentioning the first ECP complaint in a meeting. In March 2018, the former Director of CNL, encouraged by the VP of Regulatory Affairs, submitted a formal complaint to stop the former employee's communications and actions, which led to a TVA Office of General Council (OGC) investigation. On May 25, 2018, a draft report from the TVA OGC investigation was given to TVA management which stated that the former employee used the ECP as a form of retaliation against the former Director of CNL. On May 25, 2018, the former employee was placed on paid administrative leave at the recommendation of the [REDACTED]

[REDACTED] The former employee was kept on paid administrative leave for an extended period of time before resigning on August 16, 2018, believing that he would soon be

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terminated. Raising concerns about regulatory non-compliance and using the ECP are protected activities.

The purpose of the NRC OI investigation 2-2019-015 was to determine whether a former Manager of Emerging Regulatory Issues employed by TVA in the Corporate Office was the subject of employment discrimination for participating in a protected activity in violation of the NRC's "Employee Protection" regulation, specifically, 10 CFR 50.7. The NRC determined that the former employee was placed on paid administrative leave on October 15, 2018, and terminated on January 14, 2019, in part, for engaging in protected activities. Between 2016 and 2017, the former employee raised numerous safety concerns, including: violations of the Part 26 Fatigue Rule requirements at Watts Bar 2; failure to adhere to the Fukushima requirements at Sequoyah; concerns regarding a Watts Bar 2 surveillance extension request; and failure to meet NRC commitments in Information Notice 2017-3 to identify Anchor Darling double disc gate valve susceptibility to failure at Brown Ferry. On July 24, 2017, the former employee submitted an allegation to the NRC (RII-2017-A-0114) raising concerns that the former Director of CNL was creating a chilled work environment, among other issues. The former employee also wrote condition reports and discussed safety issues during meetings. **The former employee believed that the former Director of CNL was retaliating against other TVA employees that had raised safety concerns and was concerned about retaliatory actions from the former Director of CNL.**

On March 9, 2018, the former Director of CNL filed a complaint with TVA accusing several employees, including the CI, of creating a hostile workplace and engaging in insubordinate conduct. In the complaint, the former Director of CNL specifically cited assertions made to the NRC about a chilled work environment as an example of retaliatory behavior imposed by the former employee. The former employee reported concerns of retaliation and a hostile work environment to the Vice President of Regulatory Affairs and the TVA attorney during the investigative interview. Contacting the NRC and raising concerns of a chilled work environment are protected activities.

NRC staff reviewed the evidence gathered during these NRC OI investigations and determined that the actions taken against these former employees were in apparent violations of 10 CFR 50.7, and that the apparent violations were willful. These apparent violations are being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy can be found on the NRC's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

The apparent violations, which are based on the NRC's OI investigations and staff's analysis of the evidence, were discussed with you during a [date] telephone conversation.

Since the NRC has not made a final determination in this matter, no Notice of Violations are being issued at this time. In addition, please be advised that the characterization of the apparent violations, and the number of violations, may change as a result of further NRC review.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) request to participate in a closed predecisional enforcement conference (PEC), or

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Commented [DS1]: These words seems to need little more. We are putting in a letter to utility the CI felt XYZ. So what? Did this feeling lead CI to do something that was protected is all I think is missing. Wait, was the CI's belief ALSO part of the allegation? Then that makes the information relevant to include in the letter....

Commented [DS2]: Letter does NOT previously bring up topic of investigative interview. Yes its in 1st ROI paragraph above BUT nobody would know the same investigation included the WB CI matter. So prior to this sentence you need another sentence or words added to a sentence explaining how the investigative interview got started I think. Agree?

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(2) request to participate in an alternative dispute resolution (ADR) session. These options are discussed in the paragraphs that follow. 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 within 10 days of the date of this letter to notify the NRC of your intended response.

If you choose to request a PEC, the conference will afford you the opportunity to provide your perspective on these matters and any other information that you believe the NRC should take into consideration before making an enforcement decision. This may include information to determine whether a violation occurred, information to determinate the significance of the violation, information related to the identification of the violation, and information related to any corrective actions taken or planned. The decision to hold a PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference would be conducted to obtain information to assist the NRC in making an enforcement decision. If a PEC is held, it will be transcribed, and the NRC may issue a public meeting notice to announce the time and date of the conference; however, the PEC will be closed to public observation since information related to an OI report will be discussed, and the report has not been made public. A PEC should be held within 30 days of the date of this letter.

Commented [DS3]: Sometimes 1 space, sometimes 2 spaces after period. Fix before sending outside our little group.

The NRC's Enforcement Policy permits the individual who was the subject of the alleged employment discrimination to participate in the conference. Accordingly, that individual would be invited to attend the PEC and may participate by observing the conference. Following your presentation, the individual may, if desired, present their views on why they believe the discrimination occurred and comment on your presentation. You would then be afforded an opportunity to respond and the NRC may ask some clarifying questions. Under no circumstances would the NRC staff permit you or the former employee to cross-examine or question each other.

In lieu of a PEC, TVA may request 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 ADR process that the NRC employs is mediation. In mediation, a neutral mediator with no decisionmaking authority helps parties clarify issues, explore settlement options, and evaluate how best to advance their respective interests. The mediator's responsibility is to assist the parties in reaching an agreement. However, the mediator has no authority to impose a resolution upon the parties. Mediation is a confidential and voluntary process. If the parties (the NRC and TVA) agree to use ADR, they select a mutually agreeable neutral mediator and share equally the cost of the mediator's services. Additional information concerning the NRC's program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Scheinman's Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR. An ADR mediation session should be held within 45 days of the date of this letter.

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Enclosed are the redacted Reports of Investigation (ROI) 2-2018-033 and 2-2019-015. The OI reports provide an overview of the evidence gathered during these investigations. Because the NRC has not made a final decision regarding the apparent violations, the NRC will not make the OI reports available to the general public and we request that you also refrain from doing so. If a PEC is held, the other PEC participants will be sent a copy of the relevant redacted OI report.

A copy of this letter and its enclosures will not be made publicly available at this time. However, if the NRC subsequently issues an enforcement action to you, in accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. 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 the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Sincerely,

George Wilson, Director
NRC Office of Enforcement

Docket Nos.: 05000259, 05000260, 05000296, 05000327, 05000328, 05000390, 05000391
License No.: DPR-77, DPR-79, NPF-90

Enclosures:

1. Apparent Violations
2. Report of the Office of Investigation No. 2-2018-033
(EXEMPT FROM PUBLIC DISCLOSURE)
3. Report of the Office of Investigation No. 2-2019-015
(EXEMPT FROM PUBLIC DISCLOSURE)
4. NUREG/BR-0317 Enforcement ADR Program

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DISTRIBUTION: WITHOUT ENCLOSURES

P. Moulding, OGC
D. Castelveter, OPA
M. Kowal, RII
S. Sparks, RII
M. Doane, EDO
OE R/F.

Others – to be added

Commented [DS4]: Remember we need to help ourselves NOT overlook things so use highlighting and bold for things we need to fill in later.... At the end of the concurrence page these words could easily be overlooked without additional conditioning.

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Apparent Violations

10 CFR 50.7 (a) states that discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment.

Violations for 2-2018-033:

Violation 1: Contrary to the above, on March 9, 2018, Tennessee Valley Authority (TVA) corporate management discriminated against a former Site Licensing Manager employed at Sequoyah Nuclear Plant for engaging in a protected activity. Specifically, the former Director of Corporate Nuclear Licensing filed a formal complaint against the employee based, in part, on filing complaints with the Employee Concerns Program (ECP), which is a protected activity. The formal complaint initiated an investigation by the TVA Office of the General Counsel that resulted in the employee being placed on paid administrative leave and eventually resigning.

Violation 2: Contrary to the above, on May 25, 2018, TVA corporate management discriminated against a former Site Licensing Manager employed at the TVA Sequoyah Nuclear Plant for engaging in protected activities. Specifically, the [REDACTED] TVA, recommended that the employee be placed on paid administrative leave which led to the employee's suspension of nearly three months until the employee resigned. This action was based, in part, on filing ECP complaints, which is a protected activity.

Violations for 2-2019-015:

Violation 3: Contrary to the above, between October 15, 2018, and January 14, 2019, TVA corporate management discriminated against a former Manager of Emerging Regulatory Issues employed at the TVA Corporate Office for engaging in protected activities. Specifically, the Vice President of Regulatory Affairs placed the employee on paid administrative leave and played a significant role in terminating the employee. As contributing factors for these adverse actions, the Vice President of Regulatory Affairs cited the employee's statements made during a TVA Office of the General Counsel investigation and fear of retaliation communicated by the employee to the Vice President of Regulatory Affairs, which are protected activities.

Violation 4: Contrary to the above, on March 9, 2018, TVA corporate management discriminated against a former Manager of Emerging Regulatory Issues employed at the TVA Corporate Office for engaging in a protected activity. Specifically, the former Director of Corporate Nuclear Licensing filed a formal complaint against the employee based, in part, for contacting the NRC with concerns of a chilled work environment, which is a protected activity. The formal complaint initiated an investigation by the TVA Office of the General Counsel that resulted in termination of the employee.

Commented [DS5]: Why would we not use these same words from [REDACTED] NOV below here as well: "...which led to the employee's suspension of nearly three months until the employee resigned"