

From: JSheaIA-Hearing Resource
Sent: Wednesday, February 17, 2021 2:31 AM
To: JSheaIA-HearingNPEm Resource
Subject: FYI: TVA discrimination letters signed - OOU attachment
Attachments: ML21040A232_Redacted.pdf

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1299

Mail Envelope Properties (83ed7016e3924fc098b934d07fccfd33)

Subject: FYI: TVA discrimination letters signed - OOU attachment
Sent Date: 2/17/2021 2:30:49 AM
Received Date: 2/17/2021 2:30:50 AM
From: JShealA-Hearing Resource

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

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

Post Office: HQPWMSMRS02.nrc.gov

| Files | Size | Date & Time |
|--------------------------|-------------|------------------------|
| MESSAGE | 3 | 2/17/2021 2:30:50 AM |
| ML21040A232_Redacted.pdf | 435805 | |

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

From: Gifford, Ian
Sent: Tuesday, March 3, 2020 9:30 AM
To: Hughes, Brian; Burnell, Scott; Wilkins, Lynnea; Cook, Christopher; McCoppin, Michael; Kirkwood, Sara; McIntyre, David
Cc: Sparks, Scott; Kowal, Mark; Wilson, George; Hilton, Nick; Solorio, Dave; Thompson, Catherine; Kowal, Mark; Peduzzi, Francis
Subject: FYI: TVA discrimination letters signed - OOU attachment
Attachments: TVA 2020 Discrimination Communication Plan_Final.docx

All,

The TVA letter and individual letters were signed out by George Wilson yesterday afternoon. The TVA letter should be publicly available in ADAMS later today; however, **the individual letters will remain non-public with limited viewer rights at this time.**

The TVA letter can be found here:

[View ADAMS Properties ML20058G833](#)
[Open ADAMS Document \(Choice Letter to Tennessee Valley Authority re: Apparent Violations of Employee Protection Requirements \(Office of Investigations Report Nos. 2-2018-033 and 2-2019-015\)\)](#)

For reference, I have attached the communication plan for the TVA discrimination cases.

If you have any questions, please let me know.

Thanks,
Ian

Ian A. Gifford, Ph.D.
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U.S. Nuclear Regulatory Commission
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Ian.Gifford@nrc.gov

Hearing Identifier: JShea_IA_NonPublic
Email Number: 511

Mail Envelope Properties (BL0PR0901MB4499A37F1048A28450FD8FE9EAE40)

Subject: FYI: TVA discrimination letters signed - OUO attachment
Sent Date: 3/3/2020 9:30:09 AM
Received Date: 3/3/2020 9:30:10 AM
From: Gifford, Ian

Created By: Ian.Gifford@nrc.gov

Recipients:

"Sparks, Scott" <Scott.Sparks@nrc.gov>
Tracking Status: None
"Kowal, Mark" <Mark.Kowal@nrc.gov>
Tracking Status: None
"Wilson, George" <George.Wilson@nrc.gov>
Tracking Status: None
"Hilton, Nick" <Nick.Hilton@nrc.gov>
Tracking Status: None
"Solorio, Dave" <Dave.Solorio@nrc.gov>
Tracking Status: None
"Thompson, Catherine" <Catherine.Thompson@nrc.gov>
Tracking Status: None
"Kowal, Mark" <Mark.Kowal@nrc.gov>
Tracking Status: None
"Peduzzi, Francis" <Francis.Peduzzi@nrc.gov>
Tracking Status: None
"Hughes, Brian" <Brian.Hughes@nrc.gov>
Tracking Status: None
"Burnell, Scott" <Scott.Burnell@nrc.gov>
Tracking Status: None
"Wilkins, Lynnea" <Lynnea.Wilkins@nrc.gov>
Tracking Status: None
"Cook, Christopher" <Christopher.Cook@nrc.gov>
Tracking Status: None
"McCoppin, Michael" <Michael.McCoppin@nrc.gov>
Tracking Status: None
"Kirkwood, Sara" <Sara.Kirkwood@nrc.gov>
Tracking Status: None
"McIntyre, David" <David.McIntyre@nrc.gov>
Tracking Status: None

Post Office: BL0PR0901MB4499.namprd09.prod.outlook.com

| Files | Size | Date & Time |
|---|-------------|------------------------|
| MESSAGE | 1332 | 3/3/2020 9:30:10 AM |
| TVA 2020 Discrimination Communication Plan_Final.docx | | 46383 |

Options

Priority: Normal
Return Notification: No
Reply Requested: No

Sensitivity:
Expiration Date:

Normal

STATUS OF AGENCY ACTIONS FOR TVA DISCRIMINATION CASES

Key messages

- A letter will be issued to the Tennessee Valley Authority (TVA) identifying significant potential enforcement actions involving two Office of Investigation (OI) cases for alleged discrimination of two TVA licensing employees in 2018. The letter will be public and provide TVA with the option of either attending a Predecisional Enforcement Conference (PEC) or Alternative Dispute Resolution (ADR).
- In addition, [REDACTED] individual managers will receive non-public letters requesting their attendance at a PEC due to apparent deliberate misconduct associated with retaliation for employees engaging in protected activity.
- The NRC staff is reviewing a number of TVA-related issues, including other enforcement actions, these two separate discrimination issues, and potential closure of a Chilling Effect Letter. The staff understands the interrelationship of the issues and will continue to assess, coordinate, and respond with a broad and integrated approach.
- TVA's nuclear plants continue to operate safely. This is based on insights gained from NRC assessments, including the NRC's Reactor Oversight Process and Performance Indicators. The NRC conducts more than 2,000 hours of safety and security inspections every year at each TVA nuclear plant. The NRC's resident inspectors maintain an onsite presence and have been focused on understanding the status of TVA's safety culture. Additional information about plant safety can be found in the "Status of Agency Actions for TVA January 2020" communication plan.
- All communications involving pending enforcement actions at TVA will be closely coordinated through the Office of Enforcement (OE) and Region II to ensure proper messaging to internal and external stakeholders.

Background

- One OI substantiated discrimination case (2-2018-033) issued in October 2019. The investigation was initiated to determine whether a former Site Licensing Manager employed at TVA Sequoyah Nuclear Plant, was discriminated against for engaging in protected activity. Based on the evidence developed during the investigation, the allegation was substantiated. The preponderance of the evidence indicated that the deliberate misconduct of the former Director of Corporate Nuclear Licensing and the [REDACTED] in violation of 10 CFR 50.5, caused the TVA to be in violation of 10 CFR 50.7, the employee protection regulation.
- A second OI substantiated discrimination case (2-2019-015) was issued in January 2020. The investigation was initiated to determine whether a former Manager of Emerging Regulatory Issues employed at the TVA Corporate Office in Chattanooga, TN, was the subject of discrimination for participating in a protected activity. Based on the evidence developed during the investigation, the allegation was substantiated. The preponderance of the evidence indicated that the deliberate misconduct of the former Director of Corporate Nuclear Licensing and the Vice President of Regulatory Affairs, in violation of 10 CFR 50.5, caused the TVA to be

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in violation of 10 CFR 50.7, the employee protection regulation. In addition, the Department of Labor substantiated discrimination in August 2019 (which is a public process). After appealing the finding, TVA and the individual subsequently settled the DOL complaint.

- The pertinent requirements are:
 - 10 CFR 50.7(a), states, in part, that discrimination by a Commission licensee or a contractor or subcontractor of a Commission licensee against an employee for engaging in certain protected activities is prohibited.
 - 10 CFR 50.5(a) states, in part, that any employee of a licensee or any contractor, may not engage in deliberate misconduct that causes a licensee to be in violation of any regulation of the Commission.

- Apparent Violations
 - a. TVA:
 - Four apparent violations total (SLI and SLII for Sequoyah related to ROI 2-2018-033, and SLI and SLII for TVA Corporate related to ROI 2-2019-015).
 - Each apparent violation carries a civil penalty of up to \$300,000 which results in a total civil penalty to TVA of \$1,200,000. The \$300,000 civil penalty is the maximum civil monetary penalty for a violation per the Enforcement Policy (ML19352E921). Corrective action credit could lower the civil penalty and will be determined as more information is gathered during the enforcement process.
 - b. Individual Actions:
 - SLI apparent violation for the [REDACTED] with a 5-year ban.
 - SLI apparent violation for the Vice President of Regulatory Affairs with a 5-year ban.
 - SLII apparent violation for the former Director of Corporate Nuclear Licensing with a 1-year ban.

- Alternative Dispute Resolution
 - a. One Choice Letter will be sent to TVA offering ADR or a PEC.
 - b. The individuals will be sent Conference Letters without the option for ADR, and the plan is to hold their conferences before the TVA ADR/PEC.

- Previous TVA Discrimination Cases: In 2009, the NRC issued a confirmatory order (CO) (EA-09-009; ML093510993) to TVA to address safety conscious work environment (SCWE) issues related to adverse actions taken against employees for raising concerns at Browns Ferry, including a contractor. In 2017, the NRC issued another CO (EA-17-022; ML17208A647) to TVA, in part, to address deficiencies noted in TVA's implementation of the 2009 CO. TVA has submitted formal requests to the NRC since January 2018 to combine these two COs into one.

- NRC Integrated Approach:

The NRC staff (e.g., OE, Office of the General Counsel (OGC), Region II, OI) identified potential common themes related to the issues above. The recommended approach is to evaluate the above issues in parallel and in accordance with existing processes (i.e., enforcement, inspection, assessment, allegations, investigations). Continued dialogue between OE, OGC,

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Region II, and OI is warranted to assess and respond with a broad and integrated view when practical (i.e., identification of common causes and concerns, leveraging NRC processes and regulatory oversight).

Audience

| Internal Stakeholders | External Stake holders |
|---|--|
| <ul style="list-style-type: none"> • Commission • OEDO • OE • OI • OPA • OCA • NRR • Region II • TVA Tiger Team • 2.206 Petition Review Board | <ul style="list-style-type: none"> • Public • Specific Congressional/Senate members and staff as determined by OCA • Tennessee State Liaison Officer • Media representatives |

Communication Team

| Title | Names/Numbers |
|--|---|
| Region II | Tom Stephen (Acting BC) 404-997-4703 |
| Office of Investigation Point of Contact (POC) RII | Alex Echavarria 404-997-4698 |
| Tiger Team | Ken O'Brien 630-829-9700 |
| NRR | Brian Hughes 301-415-6582 |
| Office of the Executive Director of Operations | Steve West 301-415-1713 Chris Cook 301-415-6397 |
| Office of General Counsel | Sara Kirkwood 301-287-9187 |
| RII Regional Counsel | Sarah Price 404-997-4414 |
| Office of Enforcement | Catherine Thompson 301-287-9515 Ian Gifford 301-287-9216 Lisamarie Jarriel 301-287-9006 Dori Willis 301-287-9423 |
| Public Affairs Officer/RII | Roger Hannah 404-997-4417 Joey Ledford 404-997-4416 |
| Public Affairs HQ | Scott Burnell 301-415-8204 |
| State Liaison Office/RII | John Pelchat 404-997-4427 |
| Office of Congressional Affairs | Lynnea Wilkins 301-415-1377 |

Communication Tools

Questions and Answers are provided in the attachment. The Communication Team will use available tools on an as-needed basis depending on stakeholder involvement and inquiry type.

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Next Steps:

| Step | Action | Responsible Organization | Date | Status |
|-------------|--|-----------------------------------|-------------|---------------|
| 1 | Panel – Both Discrimination Case | OE | 2/19/2020 | Complete |
| 2 | Notification calls to TVA and individuals | OE | 2/28/2020 | |
| 3 | Issue non-public conference letter to TVA individuals | OE | 3/2/2020 | |
| 4 | Issue Choice Letter to TVA | OE | 3/2/2020 | |
| 5 | Confirm Conference Date for TVA individuals | OE (I. Gifford/C. Thompson) | TBD | |
| 6 | Conduct PEC for TVA individuals | OE (Lead), OGC, NRR and Region II | TBD | |
| 7 | Potentially Conduct ADR with TVA | OE (Lead), OGC, NRR and Region II | TBD | |
| 6 | Final Caucus | OE (Lead), OGC, NRR and Region II | TBD | |
| 7 | Develop / Refine final action documents | OE (I. Gifford/C. Thompson) | TBD | |
| 8 | Route final action documents for review | OE (Lead), OGC, NRR and Region II | TBD | |
| 9 | Inform OPA and other internal stakeholders of proposed date to issue final actions | OE (I. Gifford/C. Thompson) | TBD | |
| 10 | Issue Enforcement Notifications | OE (I. Gifford/C. Thompson) | TBD | |
| 11 | Issuance of final actions to TVA and individuals | OE (G. Wilson) | TBD | |

Questions & Answers

Q1. How did the discrimination concern come to the attention of NRC?

The individuals who were the subject of the alleged retaliations contacted the NRC and the individuals' concerns were handled through the NRC's allegation process.

Q2. What is the NRC's threshold for investigating discrimination concerns?

OI investigates cases that meet the prima facie threshold as determined during the allegation review process.

Q3. What is the prima facie threshold for discrimination cases?

To constitute a prima facie case, the complainant must assert that:

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- A. The individual engaged in a protected activity;
- B. Management had knowledge of the protected activity;
- C. An adverse action was taken (or threatened); and
- D. A nexus exists between the adverse action and the protected activity (i.e., the action was taken in part (contributing factor), or in close temporal proximity to, the protected activity).

Q4. *Did the individuals file a claim with the Department of Labor (DOL)?*

Yes, the individuals filed claims with DOL. For the first case (2-2018-033), the individual filed a claim with DOL, but the claim was never investigated by DOL because the individual settled with TVA in June 2019. For the second case (2-2019-015), DOL substantiated the case in August 2019 (which is a public process). TVA appealed the DOL determination and the case was settled between the parties involved in February 2020.

Q5. *How was the Severity Level determined in the discrimination case?*

Section 6.10 of the Enforcement Policy (ML19352E921) was used. The primary factors included:

- A. Whether the act was willful (i.e., deliberate)
- B. The positions (authority level) of the involved person(s)
- C. Whether the adverse action was more significant for the individual or had a widespread site impact

Q6. *What is a safety conscious work environment?*

A safety conscious work environment (SCWE) is an environment in which employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation.

Q7. *Will the conference letters to the individuals be publicly available?*

The conference letters to the individuals, which include the apparent violation and the redacted OI report (discrimination case only), will be issued as non-public. For the issuance of a final action, the conference letters will be re-classified as public. If no final action is taken, the conference letters will not be made public. The redacted OI report will not be made public at any point in the process, but would be re-evaluated under FOIA or a hearing, if requested.

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Q8. *What is a redacted OI Report?*

A redacted OI Report is copy of OI's Report of Investigation, with appropriate redactions (to protect witness identities and investigation techniques) and without the supporting documentation (exhibits or other referenced information). It is provided to discrimination case participants prior to a predecisional enforcement conference.

Q9. *How is the length of a ban be determined?*

Typically, bans are fixed at one, three, or five years. Factors considered when determining the length of a ban include, but are not limited to, the position of the individual in the organization and the significance (or potential significance) of the underlying violation. See "Action against the Individual", Section 1.4.6 of the Enforcement Manual (Part II).

Q10. *Given that TVA is already subject to two orders associated with employee protection, why are you offering them ADR yet again?*

This may be an opportunity to respond with a broad and integrated view. Specifically, TVA has identified lessons learned based on implementation of the previous two orders where modifications could improve the effectiveness of the required actions. Additionally, the current cases indicate that there are either gaps in the existing orders, or more significant actions need to be taken in addition to the existing requirements. The use of ADR provides an opportunity to enhance both effectiveness and clarity.

Q11. *Why wasn't ADR offered in the letter to the individuals?*

The reasons for not offering ADR at this point in the process included 1) the particularly egregious actions of the high-level officials (Section 2.4.3 of the Enforcement Policy), 2) the potential impact of ADR confidentiality agreements (e.g., information from a specific ADR session could not be used to determine actions for the other cases), and 3) the need for more information to determine if the discrimination had a widespread impact as described in Section 6.10 of the Enforcement Policy. The staff will determine whether ADR will be offered should final action letters be warranted.

Q12. *What is a Chilling Effect Letter?*

A Chilling Effect Letter (CEL) is a formal notification to the licensee and a regulatory tool that the NRC uses to ensure that licensees are taking appropriate actions to foster a workplace environment that encourages employees to raise safety concerns and to feel free to do so without fear of retaliation. The purpose of the CEL is to notify the licensee of the NRC's concern with the SCWE at its facility on the public record. NRC uses the CEL to obtain information about the licensee's assessment of its employees' willingness to raise safety concerns at the facility and the description of any remedial action the licensee has taken or plans to take to address any identified weakness because of its

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assessment. Specifically, in this case, the NRC inspectors noted an increase of operational issues that were of minor and very low safety significance.

Q13. Will there be a press release announcing the issuance of the letters to TVA and the individuals?

No, there will not be a press release accompanying issuance of the TVA choice letter or individual conference letters. The NRC may issue a public meeting notice to announce the time and date of a PEC with TVA; however, the PEC would be closed to public observation. News releases may be issued if the process results in ADR resolution or issuance of final actions.

Q14. Why is it safe to allow TVA plants to continue operating?

TVA's nuclear plants continue to operate safely. This is based on insights gained from NRC assessments, including the NRC's Reactor Oversight Process and Performance Indicators. The NRC conducts more than 2,000 hours of safety and security inspections every year at each TVA nuclear plant. The NRC's resident inspectors maintain an onsite presence and have been focused on understanding the status of TVA's safety culture. Additional information about plant safety can be found in the "Status of Agency Actions for TVA January 2020" communication plan.

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