

**From:** JSheaIA-Hearing Resource  
**Sent:** Wednesday, February 17, 2021 12:52 PM  
**To:** JSheaIA-HearingNPEm Resource  
**Subject:** RE: revised script  
**Attachments:** RE revised script.pdf

**Hearing Identifier:** JShea\_IA\_NonPublic  
**Email Number:** 1302

**Mail Envelope Properties** (e6d59a16d27740bcb83336b3b63c9b1b)

**Subject:** RE: revised script  
**Sent Date:** 2/17/2021 12:51:40 PM  
**Received Date:** 2/17/2021 12:51:41 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

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**Options**  
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**Return Notification:** No  
**Reply Requested:** No  
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**Expiration Date:**

**From:** Gifford, Ian  
**Sent:** Tuesday, February 18, 2020 3:45 PM  
**To:** Thompson, Catherine  
**Subject:** RE: revised script  
**Attachments:** Overview for Panel 2-19-2020\_OUO.docx

Hi Kitty,

Attached is a new version with some changes to my script (mostly names). I also rearranged it so that my case is first.

Thanks,  
Ian

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**From:** Thompson, Catherine  
**Sent:** Tuesday, February 18, 2020 11:10 AM  
**To:** Gifford, Ian  
**Subject:** revised script

Ian – attached is the revised script

Talk again at 2!

Kitty

**Hearing Identifier:** JShea\_IA\_NonPublic  
**Email Number:** 778

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**Sent Date:** 2/18/2020 3:44:44 PM  
**Received Date:** 2/18/2020 3:44:46 PM  
**From:** Gifford, Ian

**Created By:** Ian.Gifford@nrc.gov

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

**Post Office:** MN2PR09MB4825.namprd09.prod.outlook.com

<b>Files</b>	<b>Size</b>	<b>Date &amp; Time</b>
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**Options**  
**Priority:** Normal  
**Return Notification:** No  
**Reply Requested:** No  
**Sensitivity:** Normal  
**Expiration Date:**

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**Enforcement Panel  
February 19, 2020**

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**TVA Corporate Discrimination Case (2-2019-015)**

Overview:

This investigation was initiated to determine whether a former Manager of Emerging Regulatory Issues employed by the TVA at the TVA Corporate Office in Chattanooga, TN, was the subject of discrimination for participating in a protected activity.

By report dated January 22, 2019, OI substantiated the allegation, including deliberate misconduct by two individuals.

Case background:

- Between 2016 and 2017, the CI, Beth Wetzel, was under the direct supervision of Eric Henderson, the former Director of CNL. During this time, the Wetzel raised numerous safety concerns and submitted an allegation to the NRC regarding a chilled work environment.
- Wetzel contacted Joe Shea, the VP of Regulatory Affairs, with concerns that Henderson was creating a hostile work environment by retaliating against the individuals that raised safety concerns. Three previous ECP investigations within CNL confirmed a “work environment that could be found to be chilled” and a “perception of retaliation.”
- On March 9, 2018, Henderson filed a complaint with TVA accusing several employees, including Wetzel, of creating a hostile workplace and engaging in insubordinate conduct. In the complaint, Henderson specifically cited assertions made to the NRC about a chilled work environment as an example of retaliatory behavior imposed by Wetzel.
- Wetzel was placed on paid administrative leave on October 15, 2018 and terminated on January 14, 2019. The Notice of Termination cited the Wetzel’s concerns of retaliation made to the Senior Attorney during the investigative interview and the CI’s statements to Shea as contributing factors for termination.

**Prima Facie Element Details**

Element 1: Did the Employee Engage in Protected Activity? Yes

- Wetzel raised numerous safety concerns and submitted an allegation to the NRC regarding a chilled work environment (RII-2017-A-0114) on July 24, 2017.
- Wetzel raised concerns of retaliation to Shea and the Senior Attorney during an investigation.

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Element 2: Was the Employer Aware of the Protected Activity at the Time of the Adverse Action?      Yes

- Henderson believed that Wetzel was responsible for filing an allegation of a chilled work environment to the NRC and cited that as an example of retaliatory behavior in the formal complaint filed with TVA.
- The CI raised concerns of retaliation directly to Shea. Shea was also aware of concerns of retaliation made by Wetzel to the Senior Attorney during the investigation. Shea testified to the OI agent that Wetzel had raised these concerns on several occasions, verbally and in writing.

Element 3: Was an Adverse Action Taken Against the Employee?      Yes

- Henderson filed a formal complaint with TVA accusing Wetzel of creating a hostile work environment. The formal complaint resulted in an investigation by TVA OGC that contributed to Wetzel’s termination.
- Wetzel was placed on paid administrative leave by Shea on October 15, 2018 and terminated on January 14, 2019.

Element 4: Was the Adverse Action Taken, at least in part, because of the Protected Activities?  
Yes

- The formal complaint filed by Henderson cited assertions made to the NRC about a chilled work environment as an example of Wetzel’s retaliatory behavior. The formal complaint resulted in an investigation by TVA OGC that contributed to Wetzel’s termination.
- The Notice of Termination stated that Wetzel was being terminated, in part, for derogatory statements made about Henderson during an investigative interview with the Senior Attorney. These statements made by Wetzel related to concerns of retaliation.

Preliminary Conclusion:

Based on the evidence, the allegation that the Wetzel was discriminated against for engaging in protected activities was substantiated. The preponderance of the evidence indicated that the deliberate misconduct of Henderson and Shea, in violation of 10 CFR 50.5, caused TVA to be in violation of 10 CFR 50.7, the employee protection regulation.

OE proposes two violations for TVA Corporate in this case and individual actions against Henderson and Shea. We will discuss the details of the civil penalties and individual actions after Kitty provides background on the TVA Sequoyah case.

**Sequoyah Discrimination Case (2-2018-033)**

Overview:

This investigation was initiated on August 22, 2019, to determine whether a former Tennessee Valley Authority (TVA) Site Licensing Manager (CI) employed at Sequoyah was discriminated against for engaging in protected activity.

By report dated October 3, 2019, the Office of Investigations (OI) substantiated the allegation.

Case background:

- Between 2015 and 2018, the former TVA Site Licensing Manager was involved with ongoing communications with Corporate Nuclear Licensing (CNL), which included the VP of Regulatory Affairs and the former Director of CNL, about how to respond to two non-cited violations (NCVs) issued by the NRC during an inspection. The CI attempted to address the NCVs but was unable to get them resolved with CNL in a timely manner, leaving Sequoyah in non-compliance for years. Raising concerns about regulatory non-compliance is a protected activity.
- During this time, the CI was also involved with several complaints and investigations involving the Employee Concerns Program (ECP), Human Resources (HR), and the TVA Office of General Counsel (OGC). In 2017, the CI filed two ECP complaints against the former Director of CNL. On March 9, 2018, the former Director of CNL submitted a formal complaint of harassment against the CI to stop his actions regarding the NCVs and ECP complaints. This led to a TVA OGC investigation. In 2018, a draft TVA OGC report stated that the CI misused the ECP and said that this was a form of retaliation against the former Director of CNL. Using the ECP is considered a protected activity.
- On May 25, 2018, based on the draft TVA OGC report, the CI was placed on paid administrative leave, as recommended by the Senior VP of Engineering and Operations Support. The OGC investigation was re-opened and continued until August. Because of this, the CI was essentially placed on indefinite suspension. For almost three months, the CI was provided with inconsistent information on when he may return to work and if he faced possible termination or further disciplinary action from TVA. On August 16, 2018, the CI resigned from TVA.

**Prima Facie Element Details**

Element 1: Did the Employee Engage in Protected Activity? Yes

- The CI attempted numerous times to respond appropriately to the NCVs and raised concerns about regulatory non-compliance, which are considered protected activities.

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- The CI filed ECP complaints against the former Director of CNL, which are considered protected activities.

### Element 2: Was an Adverse Action Taken Against the Employee? Yes

- On March 9, 2018, the former Director of CNL submitted a formal complaint against the CI. The formal complaint resulted in an investigation by TVA OGC.
- On May 25, 2018, the CI was put on paid administrative leave and essentially indefinite suspension based on the draft TVA OGC report. He resigned on August 16, 2018.

### Element 3: Was the Employer Aware of the Protected Activity at the Time of the Adverse Action? Yes

- The CI raised awareness of his concerns about non-compliance with the former Director of CNL and VP for Regulatory Affairs. The CI was also involved with several ECP complaints with the former Director of CNL. On March 9, 2018, the former Director of CNL submitted a formal complaint against the CI.
- The Senior VP of Engineering and Operations Support, TVA, said he was aware of the Service Life NCV issue, and was also aware of the ECP complaints. On May 25, 2018, he recommended that the CI be placed on paid administrative leave which resulted with indefinite suspension based on the TVA OGC report.

### Element 4: Was the Adverse Action Taken, at least in part, because of the Protected Activities?

Yes

- On March 9, 2018, the former Director of CNL submitted the formal complaint of harassment against the CI to stop his actions and behaviors regarding the NCVs and ECP complaints. This complaint was ultimately investigated by TVA OGC. The draft TVA OGC report stated that the CI misused the ECP and was the basis for the CI being placed on paid administrative leave.
- On May 25, 2018, the CI was placed on administrative leave, and essentially an indefinite suspension, at the recommendation of Senior VP of Engineering and Operations Support, TVA. The CI resigned on August 16, 2018 after three months of on-going OGC investigation.

### Preliminary Conclusion:

- The preponderance of the evidence indicated that the deliberate misconduct of the former Director of CNL and the Senior VP of Engineering and Operations Support, in violation of 10 CFR 50.5, caused TVA to be in violation of 10 CFR 50.7, the employee protection regulation.



**Proposed Actions**

**SLI for TVA (Sequoyah): two violations**

- Violation 1: Enforcement Policy Example 6.10.b.1, Severity Level II violation of 10 CFR 50.7: An executive-level corporate manager is the decisionmaker.
- The TVA Senior VP of Engineering and Operations Support (executive level corporate manager) is the decisionmaker who caused the CI to be put on paid administrative leave and indefinite suspension until he eventually resigned.
- A unique factor is present: The Senior VP of Engineering and Operations Support, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7.
- SLII with escalating factor results in SLI.
- Base civil penalty of \$300,000 for SLI. 2X Base due to no ID or CA credits. However, civil penalty capped at statutory maximum of \$303,471 due to single day violation.
- Violation 2: Enforcement Policy Example 6.10.c.1, Severity Level III violation of 10 CFR 50.7: A mid- or senior-level plant manager (or equivalent) or a corporate-level line manager (or equivalent) is the decisionmaker or plays a significant role in the adverse action decisionmaking process.
- The former Director of CNL (corporate level line-manager) played a significant role in the adverse action process. She initiated the complaint, after years of ongoing communications with the CI and multiple ECP/HR investigations, that led to the TVA OGC investigation and the CI's suspension.
- A unique factor is present: The former Director of CNL, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7
- SLIII with escalating factor results in SLII.
- Base civil penalty of \$300,000 for SL I. 2X Base due to no ID or CA credits. However, civil penalty capped at statutory maximum (\$303,471) due to single day violation.
- Proposed next action: Choice letter

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### **SLI for TVA (Corporate) two violations**

- Violation 1: Enforcement Policy Example 6.10.b.1, Severity Level II violation of 10 CFR 50.7: An executive-level corporate manager is the decisionmaker.
- The TVA VP of Regulatory Affairs (executive level corporate manager), is the decisionmaker who put the CI on paid administrative leave and played a significant role in the decision to terminate the CI.
- A unique factor is present: The VP of Regulatory Affairs, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7.
- SLII with escalating factor results in SLI.
- Base civil penalty of \$300,000 for SL I. 2X Base due to no ID or CA credits. However, civil penalty capped at statutory maximum (\$303,471) due to single day violation.
- Violation 2: Enforcement Policy Example 6.10.c.1, Severity Level III violation of 10 CFR 50.7: A mid- or senior-level plant manager (or equivalent) or a corporate-level line manager (or equivalent) is the decisionmaker or plays a significant role in the adverse action decisionmaking process.
- The former Director of CNL (corporate level line-manager) played a significant role in the adverse action process. She played a significant role initiating an investigation against the CI, with the expectation of an adverse action, by filing a formal complaint with TVA accusing the CI of retaliatory behavior for contacting the NRC with concerns of a chilled work environment.
- Two unique factors are present: 1) the former Director of CNL, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7 and 2) the adverse action was taken, in part, because the CI had contacted the NRC with concerns about a chilled work environment.
- SLIII with escalating factor results in SLII.
- Base civil penalty of \$300,000 for SL I. 2X Base due to no ID or CA credits. However, civil penalty capped at statutory maximum (\$303,471) due to single day violation.
- Proposed next action: Choice letter

**One choice letter to TVA offering ADR or PEC,**

**Four violations, 4 X \$303,471 = \$1,213,884**

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### **SLI - Individual Action for Senior VP of Engineering and Operations Support**

- Enforcement Policy Example 6.10.b.1, Severity Level II violation of 10 CFR 50.7: An executive-level corporate manager the decisionmaker.
- The Senior VP of Engineering and Operations Support (executive level corporate manager) is the decisionmaker who caused the CI to be put on paid administrative leave, essentially resulting in an indefinite suspension, until the CI eventually resigned because he, in part, used the ECP.
- A unique factor is present: The Senior VP of Engineering and Operations Support, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7.
- SLII with escalating factor results in SLI.
- Given the Senior VP of Engineering and Operations Support and the significance of these actions, a 5-year ban is proposed.
- Proposed next action: Letter - PEC

### **SLI - Individual Action for VP of Regulatory Affairs**

- Enforcement Policy Example 6.10.b.1, Severity Level II violation of 10 CFR 50.7: An executive-level corporate manager is the decisionmaker.
- The TVA VP of Regulatory Affairs (executive level corporate manager), is the decisionmaker who put the CI on paid administrative leave and played a significant role in the decision to terminate the CI.
- A unique factor is present: The VP of Regulatory Affairs, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7.
- SLII with escalating factor results in SLI.
- Given the VP of Regulatory Affairs position and the significance of these actions, a 5-year ban is proposed.
- Proposed next action: Letter - PEC

### **SL II - Individual Action for the former Director of CNL (one violation, two examples)**

- Enforcement Policy Example 6.10.c.1, Severity Level III violation of 10 CFR 50.7: A mid- or senior-level plant manager (or equivalent) or a corporate-level line manager (or

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equivalent) is the decisionmaker or plays a significant role in the adverse action decisionmaking process.

- Example 1: The former Director of CNL initiated the complaint, after years of ongoing communications with the CI and multiple ECP/HR investigations, that led to the TVA OGC investigation and the CI's suspension (Sequoyah).
- Example 2: The former Director of CNL played a significant role initiating an investigation against the CI, with the expectation of an adverse action, by filing a formal complaint with TVA accusing the CI of retaliatory behavior for contacting the NRC with concerns of a chilled work environment (Corporate).
- Two unique factors are present: 1) the former Director of CNL, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7 and 2) the adverse action was taken, in part, because the CI had contacted the NRC with concerns about a chilled work environment.
- SLIII with escalating factor results in SLII.
- Given the former Director of CNL's position and the significance of these actions, a 1-year ban is proposed.
- Proposed next action: Letter – PEC

**One violation with two examples (Sequoyah and Corporate); 1-year ban**

### Next Steps:

- Conduct a call with Senior VP of Engineering and Operations Support, the VP of Regulatory Affairs, and the former Director of CNL, to offer PEC only.
- Conduct a call with TVA to offer ADR or PEC.
- Letters will be issued by HQ (OE has the lead). The drafts will be provided to the Region for review. The letters will be sent to OGC for NLO. Redacted OI reports will be included with these letters.
- OE will contact the CIs to offer them the opportunity to attend the PECs for the individuals.
- If the TVA chooses ADR, OE will contact the CIs to solicit any potential corrective actions; however, OE will not offer them the opportunity to participate in the actual ADR mediation session.
- Individual PECs to be held before TVA in the proposed order of Henderson, Shea, and [REDACTED].