

**From:** JSheaIA-Hearing Resource  
**Sent:** Wednesday, February 17, 2021 8:23 PM  
**To:** JSheaIA-HearingNPEm Resource  
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**From:** Gifford, Ian  
**Sent:** Thursday, February 20, 2020 1:19 PM  
**To:** Solorio, Dave; Thompson, Catherine  
**Subject:** draft Comm Plan  
**Attachments:** TVA 2020 Discrimination Communication Plan.docx

Dave and Kitty,

Attached is a draft Comm Plan using Dori's format. I updated the content to reflect our cases and edited/deleted some the Q&As. I highlighted two tables with POCs and next steps because:

- 1) I want to consult with you all and see if the names and steps are correct, and
- 2) I am not sure if we have to put proposed dates for future actions?

Thanks,  
Ian

Ian A. Gifford, Ph.D.  
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**From:** Gifford, Ian

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

**Recipients:**

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

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## STATUS OF AGENCY ACTIONS FOR TVA DISCRIMINATION CASES

### Key messages

- Significant enforcement action involving two Office of Investigation (OI) discrimination cases for alleged discrimination of two Tennessee Valley Authority (TVA) employees in 2018;
- The NRC staff is evaluating multiple actions associated with TVA, including the Tiger Team enforcement actions, two separate discrimination issues, ongoing evaluation of potential closure of a Chilling Effect Letter, and other issues, in parallel and in accordance with existing processes (i.e., enforcement, inspection, assessment, allegations, investigations). The staff is cognizant of the potential interrelationship of the issues and will continue 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).
- All communications involving pending enforcement actions at TVA will be closely coordinated through the Office of Enforcement (OE) to ensure proper messaging to internal and external stakeholders.
- TVA's nuclear plants have been and continue to operate safely, as evidenced by acceptable plant safety performance. This is based on insights gained from NRC assessments, including but not limited to results from the NRC's Reactor Oversight Process and Performance Indicators. The NRC conducts over 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.

### 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] TVA, 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 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 in violation of 10 CFR 50.7, the employee protection regulation. In addition, the Department of Labor substantiated this case in August 2019 (which is a public process).
- The pertinent requirements are:

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- 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 \$303,471 which results in a total civil penalty to TVA of \$1,213,884.
  - b. Individuals:
    - [REDACTED]
    - 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 (ADR)
  - a. One Choice Letter will be sent to TVA offering ADR or a Predecisional Enforcement Conference (PEC).
  - b. The individuals will be sent Conference Letters without the option for ADR.
- Previous TVA Discriminations: 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, 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, 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"> <li>● Commission</li> <li>● OEDO</li> <li>● OE</li> <li>● OI</li> </ul>	<ul style="list-style-type: none"> <li>● Public</li> <li>● Specific Congressional/Senate members and staff as determined by OCA</li> <li>● Tennessee State Liaison Officer</li> </ul>

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<ul style="list-style-type: none"> <li>• OPA</li> <li>• OCA</li> <li>• NRR</li> <li>• Region II</li> <li>• TVA Tiger Team</li> <li>• 2.206 Petition Review Board</li> </ul>	<ul style="list-style-type: none"> <li>• Media representatives</li> </ul>
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**Communication Team**

<b>Title</b>	<b>Names/Numbers</b>
<b>Region II</b>	Omar López-Santiago 404-997-4703 Tom Stephen (Acting BC) 404-997-4703
<b>Office of Investigation Point of Contact (POC) RII</b>	Craig Kontz 404-997-4415/4715
<b>Tiger Team</b>	Ken O'Brien 630-829-9700
<b>Project Manager NRR</b>	Andy Hon
<b>Office of the Executive Director of Operations</b>	
<b>Office of General Counsel</b>	Marcia Simon 301-287-9176
<b>RII Regional Counsel</b>	Sarah Price 404-997-4414
<b>Office of Enforcement</b>	Catherine Thompson 301-287-9515 Ian Gifford 301-287-9216 Lisamarie Jarriel 301-287-9006 Dori Willis 301-287-9423
<b>Public Affairs Officer/RII</b>	Roger Hannah 404-997-4417 Joey Ledford 404-997-4416
<b>State Liaison Office/RII</b>	John Pelchat 404-997-4427
<b>Office of Congressional Affairs</b>	Lynnea Wilkins
<b>Office of Investigation</b>	

**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.

**Next Steps:**

<b>Step</b>	<b>Action</b>	<b>Responsible Organization</b>	<b>Date</b>	<b>Status</b>
1	Panel – Both Discrimination Case	OE	2/19/2020	Complete
2	Notification call to TVA	OE	2/28/2020	
3	Issue non-public conference letter to TVA individuals	OE	2/28/2020	
4	Issue Choice Letter to TVA	OE	2/28/2020	
5	Confirm Conference Date for TVA Executives	OE (I. Gifford/C. Thompson)		
6	Conduct PEC for TVA individuals	OE (Lead), OGC, NRR and Region II		
7	Potentially Conduct ADR with TVA	OE (Lead), OGC, NRR and Region II		

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6	Final Caucus	OE (Lead), OGC, NRR and Region II		
7	Develop / Refine final action documents	OE (I. Gifford/C. Thompson)		
8	Route final action documents for review	OE (Lead), OGC, NRR and Region II		
9	Inform OPA and other internal stakeholders of proposed date to issue final actions	OE (I. Gifford/C. Thompson)		
10	Issue Enforcement Notifications	OE (I. Gifford/C. Thompson)		
11	Issuance of final actions to TVA and individuals	OE (G. Wilson)		

**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 individual's concern was 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 process.

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

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

- 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 individual file a claim with the Department of Labor (DOL)?*

Yes, the individuals did not file a claim with DOL. The DOL substantiated one case in August 2019 (which is a public process). TVA appealed the DOL determination and the case was settled between the parties involved.

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

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Section 6.10 of the Enforcement Policy 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 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 letter be publicly available?*

The conference letter, which includes 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 letter will be re-classified as public. The redacted OI report will not be made public, but would be re-evaluated under FOIA, if requested.

Q8. *What is a redacted OI Report?*

A redacted OI Report is copy of OI's Report of Investigation, with appropriate redactions 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. *Why wasn't Alternative Dispute Resolution (ADR) offered in the letter to the individuals?*

It was decided at the enforcement panel that ADR would not be offered to the individuals in the early stage of the process. The reasons for not offering ADR 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.

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Q11. *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 assessment. Specifically, in this case, the NRC inspectors noted an increase of operational issues that were of minor and very low safety significance.