

From: JSheaIA-Hearing Resource
Sent: Wednesday, February 17, 2021 9:15 PM
To: JSheaIA-HearingNPEm Resource
Subject: FW: EN-20-014, Notice of Violation and Proposed Imposition of Civil Penalty
Attachments: ML21045A134_Redacted.pdf

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1318

Mail Envelope Properties (e8e54eec29554eeeb57ffeb0b8e8c919)

Subject: FW: EN-20-014, Notice of Violation and Proposed Imposition of Civil Penalty
Sent Date: 2/17/2021 9:14:55 PM
Received Date: 2/17/2021 9:14:56 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	2/17/2021 9:14:56 PM
ML21045A134_Redacted.pdf	661105	

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

From: Gifford, Ian
Sent: Monday, August 10, 2020 2:40 PM
To: Thompson, Catherine; Solorio, Dave
Subject: FW: EN-20-014, Notice of Violation and Proposed Imposition of Civil Penalty TVA Discrimination (EA-20-006, EA-20-007, IA-20-007 & IA-20-009)
Attachments: EN-20-014 TVA discrimination.docx

FYI

From: Hasan, Nasreen
Sent: Monday, August 10, 2020 2:14 PM
To: CHAIRMAN Resource ; CMRBARAN Resource ; CMRCaputo Resource ; CMRWright Resource ; CMRHanson Resource
Cc: Held, Wesley ; Vietti-Cook, Annette ; Laufer, Richard ; Doane, Margaret ; Roberts, Darrell ; Haney, Catherine ; Dudes, Laura ; Arribas-Colon, Maria ; Clark, Brooke ; Wilson, George ; Gifford, Ian ; Dorman, Dan
Subject: EN-20-014, Notice of Violation and Proposed Imposition of Civil Penalty TVA Discrimination (EA-20-006, EA-20-007, IA-20-007 & IA-20-009)

August 10, 2020
EN 20-014
OFFICE OF ENFORCEMENT
NOTIFICATION OF SIGNIFICANT ENFORCEMENT ACTION

Licensee: Tennessee Valley Authority EA-20-006
Chattanooga, TN EA-20-007
Docket No.: 52000259/260/296, 05000327/328, 05000390/391
License No.: DPR-33/52/68, DPR-77/79, NPF-90/96

Individual: Former Vice President of Regulatory Affairs IA-20-008

Individual: Former Director of Corporate Nuclear Licensing IA-20-009

This is to provide notification to, and advance consultation with, the Commission that the Office of Enforcement plans to issue enforcement actions related to discrimination at Tennessee Valley Authority on or about August 24, 2020.

[View ADAMS Properties ML20218A796](#)
[Open ADAMS Document \(EN-20-014, Notice of Violation and Proposed Imposition of Civil Penalty - \\$606,942, Order Prohibiting Involvement in NRC-Licensed Activities \(EA-20-006, EA-20-007, IA-20-007 & IA-20-009\)\)](#)

Thank you,
Nasreen Hasan
Administrative Assistant
Office of Enforcement
Location: O-14B16

*Mailstop: O-14A50
Office #: (301)287-9527*

Thank you,
Nasreen Hasan
*Administrative Assistant
Office of Enforcement
Location: O-14B16
Mailstop: O-14A50
Office #: (301)287-9527*

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1061

Mail Envelope Properties (MN2PR09MB47952865266748669C3FC0E2EA440)

Subject: FW: EN-20-014, Notice of Violation and Proposed Imposition of Civil Penalty
TVA Discrimination (EA-20-006, EA-20-007, IA-20-007 & IA-20-009)
Sent Date: 8/10/2020 2:40:24 PM
Received Date: 8/10/2020 2:40:25 PM
From: Gifford, Ian

Created By: Ian.Gifford@nrc.gov

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

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

Files	Size	Date & Time
MESSAGE	2241	8/10/2020 2:40:25 PM
EN-20-014 TVA discrimination.docx		41300

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

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VERIFICATION THAT LICENSEE HAS RECEIVED ACTION**

August 10, 2020
EN 20-014

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-20-006 EA-20-007
<u>Individual:</u>	Joseph Shea	IA-20-008
<u>Individual:</u>	Erin Henderson	IA-20-009
<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 August 24, 2020, to the 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 August 24, 2020, 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 August 24, 2020, 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 regarding a chilled work environment. After becoming aware of this protected activity, the former Director of CNL filed a formal complaint against the

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former corporate employee (Severity Level II violation).¹ 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.

The following additional details are provided for consideration. Based on an investigation by the NRC Office of Investigations, statements 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 to 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 the asserted disrespectful behavior.

¹ By filing a formal complaint, the former Director of CNL initiated an investigation. While initiating an investigation is not always considered an adverse action, when an investigation is so closely related to a personnel action that it could have been a pretext for gathering evidence to retaliate, and the employer does not show by clear and convincing evidence that the evidence would have been gathered absent the protected disclosure, then the employee will prevail on his whistleblowing claim.

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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 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 [REDACTED] recommending that the former Sequoyah employee be placed on 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, Sections 2.3.4 and 8.0, 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." The staff has considered whether credit is warranted for identification and corrective action. Credit is not warranted for identification, as the violations were identified by the NRC. Credit for corrective action is likewise not warranted in this case. The corrective actions outlined by TVA may be effective. However, TVA's discussion of corrective actions offered no long-term, comprehensive effectiveness review to ensure sustained compliance with regulatory requirements throughout the nuclear fleet. And the licensee's actions do not comprehensively address the broader environment for raising concerns, nor do they identify and address the root cause of the retaliation and discrimination. Additionally, TVA did not present sufficient information that an extent of cause and extent of condition had been evaluated and addressed to preclude recurrence of the violations.

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 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. Pursuant to the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, the maximum civil monetary penalty for a violation is \$303,471 per violation, per day.

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

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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 were in response to unprofessional behavior and not in retaliation for protected activities.

After considering the information provided in the PEC, the NRC staff has 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 the 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 employees were in response to unprofessional behavior and not in retaliation for protected activities.

After considering the information provided in the PEC, the NRC staff considered issuing an Order prohibiting involvement in NRC-licensed activities. However, because Ms. Henderson was not the decisionmaker who placed either of the two former employees on paid administrative leave or terminated the former corporate employee, the staff concluded that a Severity Level II NOV was appropriate.

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], [REDACTED] of TVA, [REDACTED]. 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, 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, on that former employee's engaging in protected activity.

The licensee, Mr. Shea, and Ms. Henderson have not been specifically informed of the enforcement action. The schedule of issuance and notification is:

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Mailing of Notice August 24, 2020
Telephone Notification of Licensee August 24, 2020

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 licensee's 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 thirty (30) 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 Ian Gifford, OE Dave Solorio, OE
(301) 287-9515 (301) 287-9216 (301) 287-9282

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ELECTRONIC DISTRIBUTION: EN-20-014, August 10, 2020

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

DISTRIBUTION:

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Non-Publicly Available

ADAMS Accession Number: ML20218A796

OFFICE	OE/CRB	OE/CRB	OE/CRB	OI
NAME	IGifford	CThompson	DSolorio	AShuttleworth
DATE	08/06/2020	08/06/2020	08/06/2020	08/06/2020
OFFICE	OGC	OE/OD	OEDO	
NAME	BClark	GWilson	DDorman /RA/ by DRoberts /for/	
DATE	08/06/2020	08/06/2020	08/10/2020	

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