

April 22, 2021

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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In the Matter of )  
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 ) Docket Nos. EA-20-006, EA-20-007  
Tennessee Valley Authority )  
Chattanooga, Tennessee )  
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**TVA Responses and Objections to the NRC Staff's  
Interrogatories and Request for Production**

Pursuant to 10 C.F.R. § 2.706, Tennessee Valley Authority ("TVA") hereby submits the following responses and objections to the NRC Staff's Interrogatories and Request for Production.<sup>1</sup>

**PRELIMINARY STATEMENT**

1. TVA's responses to the NRC Staff's Interrogatories and Request for Production are based on information currently available to TVA. TVA's investigation and development of all facts and circumstances relating to this action is ongoing, and TVA will continue to comply with its ongoing obligations to supplement its disclosures and responses pursuant to 10 CFR §§ 2.704 and 2.705 to the extent that TVA identifies additional responsive documents or information. It is anticipated that further discovery, independent investigation, legal research, and analysis will supply additional facts and add meaning to known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead to substantial additions to, changes in,

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<sup>1</sup> NRC Staff Interrogatories and Request for Production (Apr. 1, 2021) (ADAMS Accession No. ML21091A174). By Order dated April 9, 2021 (ADAMS Accession No. ML21099A069), the Atomic Safety and Licensing Board granted TVA's unopposed motion for a one-week extension of time to respond to the NRC Staff Interrogatories and Requests for Production.

and variations from the responses set forth herein. TVA expressly reserves the right to supplement, clarify, revise, or correct any or all of the responses and objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response(s). Further, these responses and objections are made without prejudice to, and are not a waiver of, TVA's right to rely on other facts or documents at trial.

2. By making the accompanying responses and objections to the NRC Staff's Interrogatories and Request for Production, TVA does not waive, and hereby expressly reserves, its right to assert any and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings, on any and all grounds including, but not limited to, competency, relevancy, materiality, and privilege. Further, TVA makes the responses and objections herein without in any way implying that it considers the requests and interrogatories, and responses to the requests and interrogatories, to be relevant or material to the subject matter of this action.

3. TVA will produce responsive documents not already produced to the NRC Staff or otherwise not already in the NRC Staff's possession to the extent that such documents are in the possession, custody, or control of TVA, as set forth in Subpart G of Chapter 10 of the Code of Federal Regulations. TVA's possession, custody, or control does not include any constructive possession that may be conferred by TVA's right or power to compel the production of documents or information from third parties.

4. Nothing in this response should be construed as an admission by TVA with respect to the admissibility or relevance of any fact or document, or of the truth or accuracy of any characterization or statement of any kind contained in the NRC Staff's Interrogatories and Request for Production.

## **GENERAL OBJECTIONS**

1. TVA objects to each instruction, definition, document request, and interrogatory to the extent that it purports to impose any requirement or discovery obligation greater than or different from those under Subpart G of Chapter 10 of the Code of Federal Regulations and the applicable Orders of the Board.

2. TVA objects to each document request and interrogatory that is unreasonably broad in scope, unduly burdensome and oppressive, not relevant to the subject matter of this action, or not reasonably calculated to lead to the discovery of admissible evidence.

3. TVA objects to each instruction, definition, document request, and interrogatory to the extent that it seeks documents protected from disclosure by the attorney-client privilege, deliberative process privilege, attorney work product doctrine, or any other applicable privilege. Should any such disclosure by TVA occur, it is inadvertent and shall not constitute a waiver of any privilege.

4. TVA objects to each instruction, definition, document request, and interrogatory as overbroad and unduly burdensome to the extent it seeks documents or information that are readily or more accessible to the NRC Staff from the Staff's own files, from documents or information in the Staff's possession, or from documents or information that TVA or other persons have previously produced to the NRC Staff. Responding to such requests and interrogatory would be oppressive, unduly burdensome, and unnecessarily expensive, and the burden of responding to such requests and interrogatory is substantially the same or less for the Staff as for TVA. This objection encompasses, but is not limited to, documents and information previously provided by TVA to the NRC Staff in the course of the NRC's Office of Investigations 2-2018-033 and 2-2019-015, all transcripts of depositions of employees and former employees of TVA, all correspondence

between TVA and the NRC Staff, all other information provided by TVA to the NRC Staff. All such documents and information are not being reproduced.

5. TVA objects to each interrogatory to the extent that it is compound or otherwise includes numerous separate requests.

6. TVA incorporates by reference every general objection set forth above into each specific response set forth below. The failure to include any general objection in any specific response does not waive any general objection to that request.

### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

1. TVA objects to the scope of the definition for the term “Identify” because it requires TVA to respond in a manner that is overly burdensome and to unnecessarily provide information that is possessed by, evident to, or reasonably attainable by the NRC Staff. For example, the definition as it relates to documents requires TVA to list the title, subject matter, date, author, addressee, file designation or other identifying designation, and present location and custodian for each document. The Request for Production of Documents asks TVA to produce each document identified in response to the interrogatories. However, in many cases the NRC Staff can obtain this information without requiring TVA to separately produce it in every instance where a document is referenced. In these responses, TVA has identified each such referenced document, such as by listing the bates number or other information sufficient to locate the referenced document.

### **RESPONSES TO INTERROGATORIES**

#### **INTERROGATORY NO. 1:**

Identify all individuals likely to have discoverable information relative to disputed issues and who were not included in the list of current and former TVA employees in TVA’s initial disclosures dated February 18, 2021.

**Response:**

TVA incorporates into this Response its Preliminary Statement, General Objections, and Objections to Instructions and Definitions set forth above.

Subject to and without waiving the foregoing, TVA responds as follows: In its initial disclosures dated February 18, 2021, TVA previously identified current and former employees who are likely to have discoverable information relative to disputed issues. TVA is obligated to supplement its initial disclosures and will continue to comply with that obligation.

**INTERROGATORY NO. 2:**

With respect to TVA0008976-0001, identify the following:

- a. Who is the author of this document?
- b. When was this document prepared?
- c. For what purpose was this document prepared?
- d. Provide the attachments referenced in the document.

**Response:**

TVA incorporates into this Response its Preliminary Statement, General Objections, and Objections to Instructions and Definitions set forth above.

Subject to and without waiving the foregoing, TVA responds as follows: Mr. Joseph Shea authored TVA0008976-0001. The metadata from the document indicates that it was prepared on June 22, 2018. TVA understands from Mr. Shea that this document is a typed summary of Mr. Shea's contemporaneous handwritten notes of meetings that took place on October 11, 2017, with Mr. Tony Williams (Sequoyah Nuclear Plant Site Vice President) and Mr. Michael McBrearty (Sequoyah Nuclear Plant Site Licensing Manager). TVA understands from Mr. Shea that he prepared the document so that he would have a typed version of his notes showing steps he had taken to address Mr. McBrearty's behaviors. The attachments to this document are Mr. Shea's

contemporaneous handwritten notes and were provided to the NRC Staff at Ms. Erin Henderson's Pre-decisional Enforcement Conference ("PEC") on June 23, 2020, in Exhibit EH89.

**INTERROGATORY NO. 3:**

With respect to TVA0009056-0001, provide the following:

- a. Was this email sent in response to a written or verbal request? If written, provide the incoming document. If verbal, identify the request.
- b. There are several attachments to the email which do not appear to have been provided. Provide the attachments, or identify where the attachments have previously been provided.
- c. Explain why the two individuals who were copied on the email were copied.

**Response:**

TVA incorporates into this Response its Preliminary Statement, General Objections, and Objections to Instructions and Definitions set forth above.

Subject to and without waiving the foregoing, TVA responds as follows: TVA understands from Ms. Henderson that this email was sent in response to a request from TVA Attorney Mr. John Slater. However, Ms. Henderson does not recall with any greater specificity whether the request was oral or written, except that the request might have been via telephone.

Several of the attachments were previously produced to the NRC Staff as Exhibits in Ms. Henderson's June 23, 2020 PEC, including EH81, EH77, EH74, and EH73. In addition, TVA's disclosures in this adjudicatory proceeding included the first three attachments. *See* Document 1 at TVADOC0009057-TVADOC0009076; Document 2 at TVADOC0009077; Document 3 at TVADOC0009078. The fourth document is produced with this Response at Bates number TVADOC0009953.

Mr. Shea and Mr. Chris Chandler were copied on the email. TVA understands that Ms. Henderson cannot recall specifically why she included Mr. Shea and Mr. Chandler on this email. When they were copied, Mr. Shea was Ms. Henderson's supervisor, and Mr. Chandler was her

primary point of contact with TVA's Office of General Counsel ("OGC") as the lead nuclear attorney in the company.

INTERROGATORY NO. 4:

With respect to TVA 0009130-0001: This document references a planned discussion with Ms. Wetzel for "Friday" (presumably Friday Aug. 24<sup>th</sup>). Did this discussion take place on that Friday, or was it moved to a later date? If the discussion was moved to a later date, please explain why the date was changed. Did this discussion take place at all? If so, please provide the content of what was discussed and who was present at the meeting. If the discussion was cancelled please explain the reasons for the cancellation.

**Response:**

TVA incorporates into this Response its Preliminary Statement, General Objections, and Objections to Instructions and Definitions set forth above.

Subject to and without waiving the foregoing, TVA responds as follows: TVA understands that this discussion did not take place on August 24, 2018. The discussion was moved to October 15, 2018, for the reasons Mr. Shea explained at his June 25, 2020 PEC. Shea PEC Tr. at 71:19-74:2. TVA understands that Mr. Shea, Ms. Amanda Poland (a Director in Human Resources), and Ms. Beth Wetzel were present at the October 15, 2018 meeting, during which Ms. Wetzel was placed on paid administrative leave.

INTERROGATORY NO. 5:

With respect to TVA0009132-0001, why was this document forwarded to Ms. Henderson?

**Response:**

TVA incorporates into this Response its Preliminary Statement, General Objections, and Objections to Instructions and Definitions set forth above.

Subject to and without waiving the foregoing, TVA responds as follows: TVA understands from Mr. Shea that Mr. Shea forwarded this document to Ms. Henderson because Ms. Henderson was Ms. Wetzel's supervisor.

INTERROGATORY NO. 6:

At her pre-decisional enforcement conference, Ms. Henderson made the statement that she raised a potential ethics concern to "Mike's supervisor and HR." (Henderson PEC Tr. at 26.).

- a. Which supervisor did Ms. Henderson raise this concern to, and how was the concern raised?
- b. How was the concern raised to HR, was there a written complaint?
- c. Provide any documentation, not already provided, regarding how Ms. Henderson raised the referenced concern.

Response:

TVA incorporates into this Response its Preliminary Statement, General Objections, and Objections to Instructions and Definitions set forth above.

Subject to and without waiving the foregoing, TVA responds as follows: TVA believes that the reference to "Mike's supervisor" in this context is a transcription or speaking error, and the transcript should read "my supervisor." As Ms. Henderson described during her PEC,

I raised all of this with Joe [Shea, Ms. Henderson's supervisor], and in conjunction with HR, it was collectively determined that that [*sic*] because Michelle had oversight responsibilities of Mike, HR should investigate if their relationship constituted an ethics violation.

Henderson PEC Tr. at 72:18-22. For purposes of this Response, TVA assumes that the "potential ethics concern" referenced in this Interrogatory was "related to a potential inappropriate relationship between [Ms. Henderson's] subordinate, Michelle Connor, and Mike." Henderson PEC Tr. at 26:14-16. TVA is unaware of any documentation, not already provided to the NRC Staff, regarding how Ms. Henderson raised that concern to her supervisor. TVA understands that, to the best of Ms. Henderson's recollection, Ms. Henderson discussed that concern orally with an

HR representative, likely John Thomas Wheeler, and Ms. Henderson's supervisor, Mr. Shea. TVA understands that Ms. Henderson does not recall having submitted a written complaint regarding that concern.

**INTERROGATORY NO. 7:**

TVA alleges that Mr. McBrearty openly disparaged and openly berated Ms. Henderson. For each time TVA alleges that Mr. McBrearty openly disparaged or berated Ms. Henderson, provide:

- a. The date this occurred;
- b. Who was present;
- c. The content of the alleged disparagement, (e.g. written/verbal, etc.);
- d. Whether there was any follow-up with Mr. McBrearty after this occurred.
- e. The date the follow-up occurred;
- f. Who was present for the follow-up;
- g. The content of the follow-up interaction.

**Response:**

TVA incorporates into this Response its Preliminary Statement, General Objections, and Objections to Instructions and Definitions set forth above. TVA objects that the phrase "follow-up" as used in this Interrogatory is vague, ambiguous, and subject to multiple interpretations. For purpose of this Response, TVA interprets "follow-up" to mean communications from TVA personnel to Mr. McBrearty regarding his behaviors and actions. TVA further objects to this Interrogatory because it mischaracterizes the record regarding TVA's position because Ms. Henderson, and not TVA directly, alleged that Mr. McBrearty openly disparaged and openly berated her.

Subject to and without waiving the foregoing, TVA responds as follows: Ms. Henderson stated in her PEC that Mr. McBrearty "openly disparaged" and "openly berated" her. As Ms. Henderson also stated in her PEC: "[I]t has been over two years since [she] submitted a written complaint," and she is "certain [she] do[es] not recall every instance of Mike's hostility in the years prior." Henderson PEC Tr. at 74:7-10. However, "[w]here [she] do[es] have records,

including emails and [] contemporaneously written notes,” she provided them at her PEC. Henderson PEC Tr. at 74:10-12. Indeed, Ms. Henderson described the examples identified below during her PEC (Henderson PEC Tr. at 77:8-82:15), and/or these examples were documented in Exhibits (Henderson PEC Exhibits EH30, EH91, EH80, EH81). In addition, these same events were described during TVA’s June 30, 2020 PEC. TVA PEC Tr. at 55:8-20, 58:3-66:12; TVA PEC Exhibit TVA13.

TVA understands the following from Ms. Henderson and her contemporaneous written notes (Henderson PEC Exhibit EH30):

- On February 14, 2017, Mr. James Polickoski (the Licensing Corporate Functional Area Manager at the time and Ms. Henderson’s direct report) told Ms. Henderson that Mr. McBrearty was open about his hostility towards her. Mr. Polickoski also informed Ms. Henderson that he counseled Mr. McBrearty about his hostility. Henderson PEC Exhibit EH30.
- On February 15, 2017, Mr. Shea told Ms. Henderson that Mr. McBrearty was unwilling to talk to her. Mr. Shea further stated that he would meet privately with Mr. McBrearty because Mr. McBrearty would like to express all of the reasons that he does not like Ms. Henderson. Henderson PEC Exhibit EH30.
- On February 15, 2017, Ms. Henderson noted that “Joe [Shea] asked Mike [McBrearty] if I was aligned with his proposed plan on a security related issue. Joe told me that Mike responded no because he is unwilling to talk to me. I asked Joe about the discussion and he stated that he plans to meet privately with Mike because Mike would like to express all of the reasons that he does not like me.” Henderson PEC Exhibit EH30.
- On February 17, 2017, Mr. Polickoski (who directly reported to Ms. Henderson) told Ms. Henderson that Mr. McBrearty puts Mr. Polickoski in a “bad place” by speaking very negatively about Ms. Henderson. Mr. Polickoski states that if Mr. McBrearty is that open with Mr. Polickoski (even though they are not friends), he can only imagine what else he is saying about Ms. Henderson. Ms. Henderson informed Mr. Shea that Mr. McBrearty is crossing a boundary by speaking to one of her directs in that way and that this is a hostile work environment. Henderson PEC Exhibit EH30.
- On March 16, 2017, Mr. Pete Wilson, an employee in Corporate Nuclear Licensing, and Mr. Polickoski told Ms. Henderson that Mr. McBrearty frequently discusses his opinion that Ms. Michelle Conner (the Licensing Corporate Functional Area Manager prior to Mr. Polickoski) was “done wrong.” Henderson PEC Exhibit EH30.

- On March 29, 2017, Ms. Carla Edmondson (Mr. Shea’s Executive Management Assistant), told Ms. Henderson that another corporate nuclear licensing employee, Mr. Chris Riedl (a Senior Program Manager in Corporate Nuclear Licensing) expressed concern that it was difficult to work with Mr. McBrearty because he was expressing his issues with Ms. Henderson. Henderson PEC Exhibit EH30.
- On April 25, 2017, Mr. Wilson told Ms. Henderson that Mr. McBrearty was using the lessons-learned condition report (which TVA understands to be Condition Report 1262488) to publicly “poke her in the eye.” Mr. Wilson further told Ms. Henderson that Mr. McBrearty is on a “rampage” against her. Henderson PEC Exhibit EH30.
- On July 3, 2017, Mr. Shea told Ms. Henderson that Mr. McBrearty was “whining” about Ms. Henderson over a proposed drop-in meeting. Mr. Shea pointed out a disconnect between the email Mr. McBrearty sent to Ms. Henderson and then the “inflated” email Mr. McBrearty then sent to Mr. Shea immediately following. Henderson PEC Exhibit EH30.
- On March 2, 2018, Mr. McBrearty sent an email containing bold, red text berating Ms. Henderson for calling the NRC directly. Henderson PEC Exhibit EH91. Mr. McBrearty subsequently forwarded this email and the follow-up discussion with Mr. Shea to other individuals such as Mr. Ed Schrull (the Fleet Licensing Manager in Corporate Nuclear Licensing) (TVADOC0004076 - TVADOC0004080) and Mr. Jonathan Johnson (a Senior Program Manager in Sequoyah Nuclear Plant Licensing) (TVADOC0004048 - TVADOC0004052). After receiving the March 2, 2018 email from Mr. McBrearty, Mr. Polickoski spoke with Mr. McBrearty’s supervisor Mr. Al Dodds (the Director of Plant Support for the Sequoyah Nuclear Plant), regarding Mr. McBrearty’s behavior, (Henderson PEC Exhibit EH92), and Mr. Shea responded directly to Mr. McBrearty’s email (Henderson PEC Exhibit EH91).

The TVA Employee Concerns Program (“ECP”) further documented instances of Mr. McBrearty’s behaviors described above in ECP’s 2017 investigation report, NEC-17-00410, stating:

- “[Mr. McBrearty] had stated his preference for not working with [Ms. Henderson].” Henderson PEC Exhibit EH4.
- The “belief that [Mr. McBrearty] has not been able to move past actions that occurred to his friend as a result of the friend’s [Ms. Conner’s] conflict with [Ms. Henderson].” Henderson PEC Exhibit EH4.
- “Others felt that [Mr. McBrearty] simply did not understand what went into the decision made about [Mr. McBrearty’s] friend.” Henderson PEC Exhibit EH4.
- “[T]hose interviewed indicated the belief that [Mr. McBrearty’s] animosity toward [Ms. Henderson] is because of his personal friendship with [Ms. Conner].” Henderson PEC Exhibit EH4.

- The “tension between [Mr. McBrearty] and [Ms. Henderson] is a complication to work that is already challenging.” Henderson PEC Exhibit EH4.
- One individual expressed a belief that Mr. McBrearty was using the Service Life NCV to “poke” at Ms. Henderson and Mr. Shea. Henderson PEC Exhibit EH4.

TVA also understands that Mr. McBrearty forwarded Ms. Henderson’s emails to a wide audience, without Ms. Henderson’s knowledge, in a manner could be construed as openly disparaging Ms. Henderson. Ms. Henderson would learn about this from her supervisor or subordinates.

For example, on February 13, 2017, Mr. McBrearty mass forwarded one of Ms. Henderson’s emails to Mr. Polickoski and Mr. Shea, and to numerous other individuals identified in the email. Henderson PEC Exhibit EH81. Mr. McBrearty later forwarded the same email to Ms. Conner. TVADOC0002770 - TVADOC0002773. Mr. McBrearty then mass forwarded his email responding to Ms. Henderson to Mr. Shea, Mr. Wilson, Mr. Polickoski, Ms. Conner, and to numerous other individuals identified in the email. Henderson PEC Exhibit EH80. Mr. Shea subsequently responded to Mr. McBrearty’s mass forward email and copied Ms. Henderson and Mr. Dennis Dimopolous (Mr. McBrearty’s supervisor and the Director of Plant Support at the Sequoyah Nuclear Plant at that time), and Mr. Gregory Boerschig (Vice President of Nuclear Oversight who was acting as the Sequoyah Site Vice President at the time). Henderson PEC Exhibit EH80.

Additional follow-up interactions with Mr. McBrearty regarding these behaviors are described in response to Interrogatory No. 11.

INTERROGATORY NO. 8:

TVA alleges that Mr. McBrearty left Ms. Henderson out of communications on key regulatory decisions and key meetings on regulatory compliance. For each instance where this occurred identify:

- a. The date this occurred;
- b. Who was the recipient of the communications;
- c. What was the regulatory decision/regulatory compliance at issue;
- d. Whether there was any follow-up with Mr. McBrearty after this occurred;
- e. The date the follow-up occurred;
- f. Who was present for the follow-up;
- g. The content of the follow-up interaction.

**Response:**

TVA incorporates into this Response its Preliminary Statement, General Objections, and Objections to Instructions and Definitions set forth above. TVA objects that the phrase “key regulatory decisions and key meetings on regulatory compliance” as used in this Interrogatory is vague, ambiguous, and subject to multiple interpretations. For purposes of this Response, TVA interprets “key regulatory decisions and key meetings on regulatory compliance” as it was used by Ms. Henderson in her PEC, when she stated:

Mike's behaviors and actions included leaving me out of communications on key regulatory decisions, leaving me and sometimes even members of my team out of the loop on key meetings on regulatory compliance issues, refusing to talk to me about regulatory issues, disparaging me to my subordinates, and berating me in emails to a large audience, creating a very challenging work environment for my subordinates, and otherwise preventing me from being able to do my job.

Henderson PEC Tr. at 73:22-74:6.

Subject to and without waiving the foregoing, TVA responds as follows: As Ms. Henderson stated in her PEC: “[I]t has been over two years since [she] submitted a written complaint,” and she is “certain [she] do[es] not recall every instance of Mike’s hostility in the years prior.” Henderson PEC Tr. at 74:7-10. However, “[w]here [she] do[es] have records, including emails and [] contemporaneously written notes,” she provided them at her June 23, 2020 PEC. Henderson PEC Tr. at 74:10-12. Indeed, the examples identified below were described in Ms. Henderson’s PEC and provided as Exhibits. Henderson PEC Tr. at 74:14-77:8; Henderson PEC Exhibits EH30, EH71-79.

As a general matter, the recipients of the emails described below are identified in those emails. The topics of the regulatory decision/regulatory compliance at issue can also be identified by reviewing the relevant records identified below.

TVA understands from Ms. Henderson the following:

- On January 28, 2017, Mr. McBrearty left Ms. Henderson off an email related to a Sequoyah Notice of Enforcement Discretion. Henderson PEC Exhibit EH71. As shown in Henderson PEC Exhibit EH71, Mr. McBrearty instead sent the email to her direct report, Mr. Polickoski, among others in the licensing organization.
- On January 29, 2017, Mr. McBrearty left Ms. Henderson off an email related to a Sequoyah Notice of Enforcement Discretion. Henderson PEC Exhibit EH72. As shown in Henderson PEC Exhibit EH72, he instead sent the email to her supervisor, Mr. Shea, and her direct report Mr. Polickoski. As also shown in Henderson PEC Exhibit EH72, Ms. Henderson requested directly to Mr. McBrearty that he include her on such emails. Ms. Henderson then forwarded that request to Mr. McBrearty's supervisor at that time, Mr. Dimopolous.
- On September 8, 2017, Mr. McBrearty sent Mr. Shea a plan for submitting and communicating a denial letter for the service life non-cited violation ("NCV"). Henderson PEC Exhibit EH78. As shown in Henderson PEC Exhibit EH78, Ms. Henderson was not aware that she had been assigned action items in the draft plan.
- On October 4, 2017, Mr. McBrearty left Ms. Henderson off an email asking for Corporate Nuclear Licensing to weigh in on a topic. Henderson PEC Exhibit EH74. Both the topic of the email and the distribution list on the email can be seen in Henderson PEC Exhibit EH74.
- On October 4, 2017, Mr. McBrearty set up a meeting to discuss the pros and cons of how to respond to a pending Choice Letter. Henderson PEC Exhibit EH77. As shown in Henderson PEC Exhibit EH77, Mr. McBrearty did not invite Ms. Henderson and instead invited her supervisor, Mr. Shea, and her direct report, Mr. Polickoski.
- On October 19, 2017, Mr. McBrearty set up a meeting with Mr. Michael Balduzzi (TVA's Chief Nuclear Officer at that time), to inform him of a regulatory decision on a safeguards issue, and informed Mr. Shea, without informing Ms. Henderson. Mr. Shea then informed Mr. McBrearty that he expected Ms. Henderson and another individual to attend this meeting. Henderson PEC Exhibit EH76.
- On November 17, 2017, Mr. Shea told Mr. McBrearty to coordinate with Ms. Henderson regarding actions going forward regarding a fleet strategy for escalating inspection issues that amount to "backfits." Henderson PEC Exhibit EH79. Mr. McBrearty stated that he would do so but did not contact Ms. Henderson.

- As further explained in Ms. Henderson’s contemporaneous notes (Henderson PEC Exhibit EH30), “Joe noted that Mike was leaving me off of emails again related to security issue. I told him that I had noticed that and Jim [Polickoski] must have too because he forwarded me a couple of things that I was not on, including a critical phone call where a decision regarding what direction [Sequoyah Nuclear Plant] was going to go with the letter was going to be made. I told Joe that I did not mention it to him because I didn’t want to keep coming to him on it. He texted that he talked to Dennis [Dimopolous] about it. After he and I discussed that he would call Dennis [Dimopolous] and/or Tony [Williams], Joe sent me a text that he chose not to. I provided a response for him to consider. Joe also responded via text. See email.”

As Ms. Henderson described in her PEC, in addition to failing to communicate with her, Mr. McBrearty was also “sometimes [leaving] the members of my team out of the loop on key meetings on regulatory and compliance issues.” Henderson PEC Tr. at 75:23-25. TVA understands from Ms. Henderson the following:

- On October 3, 2017, Mr. McBrearty did not inform anyone in Corporate Nuclear Licensing (“CNL”) of a planned root cause analysis on a safeguards matter. Henderson PEC Exhibit EH73.
- On October 26, 2017, Ms. Henderson was made aware that Sequoyah had scheduled a mock for a 95001 inspection without informing CNL directly. Henderson PEC Exhibit EH75.

TVA understands from Ms. Henderson that there are other examples indicating that she was consistently omitted from Mr. McBrearty’s emails such that even her colleagues were aware of the situation to the point where they noted instances where Ms. Henderson *was* included on an email. For example:

- On December 7, 2016, Mr. Polickoski sent Ms. Henderson an email exclaiming, “You got included!!!” after Sequoyah licensing included Ms. Henderson on an email. Henderson PEC Exhibit EH70.
- Several months later, on or about February 28, 2017, Ms. Henderson recorded in her notes that “Joe pointed out via text that McBrearty emailed me.” Henderson PEC Exhibit EH30.

TVA’s ECP further documented similar instances of Mr. McBrearty’s behaviors in ECP’s 2017 investigation report, NEC-17-00410. The investigation report stated that some individuals “were aware of instances where the [Mr. McBrearty] had deleted [Ms. Henderson] from email

chains on which she had originally been included.” Henderson PEC Exhibit EH4. Another individual “recalled that [Mr. McBrearty] had stated his preference for not working with [Ms. Henderson].” Henderson PEC Exhibit EH4.

Through the course of discovery, TVA is also aware of two additional examples of emails for which it appears that Mr. McBrearty did not send to Ms. Henderson but did send to her supervisor and her direct report. TVA understands from Ms. Henderson that she should have directly received these emails for the performance of her duties:

- On January 5, 2017, Mr. McBrearty left Ms. Henderson off an email related to a Sequoyah 10 CFR 50.72 notification. TVADOC0009950 - TVADOC0009951. As shown in TVADOC0009950 - TVADOC0009951, Mr. McBrearty instead sent the email to her direct report, Mr. Polickoski, and her supervisor, Mr. Shea.
- On May 28, 2017, Mr. McBrearty left Ms. Henderson off an email related to a Sequoyah 10 CFR 50.72 update. TVADOC0009952. As shown in TVADOC0009952, Mr. McBrearty instead sent the email to her direct reports, Mr. Polickoski and Mr. Wilson, and her supervisor, Mr. Shea, among others.

Additional follow up interactions with Mr. McBrearty regarding these behaviors are provided in response to Interrogatory No. 11.

#### INTERROGATORY NO. 9:

TVA alleges that a portion of Ms. Henderson’s job duties were removed, and she was no longer doing portions of her job that required interactions with Sequoyah licensing (SQN Licensing). Identify:

- a. Who was responsible for removing these duties from Ms. Henderson?
- b. Was this reduction in job duties for Ms. Henderson or its basis ever communicated to anyone at SQN Licensing or otherwise documented? If so, explain when and how it was communicated or documented.
- c. What was the timeframe in which Ms. Henderson was not performing her duties with respect to SQN Licensing?
- d. Specifically, what duties was Ms. Henderson no longer responsible for? In the absence of Ms. Henderson performing them, who was responsible for those duties?

## **Response**

TVA incorporates into this Response its Preliminary Statement, General Objections, and Objections to Instructions and Definitions set forth above. TVA objects to this Interrogatory because it mischaracterizes the record regarding TVA's position.

Subject to and without waiving the foregoing, TVA responds as follows: It is TVA's understanding that Ms. Henderson did not have any job duties "removed." Instead, TVA understands that Ms. Henderson and Mr. Shea mutually decided that Ms. Henderson would limit certain interactions with Sequoyah licensing to minimize her interactions with Mr. McBrearty. These interactions were primarily Ms. Henderson's attendance at licensing peer team meetings. Instead, Ms. Henderson primarily relied on her subordinate, Mr. Jim Polickoski, to attend these meetings. TVA understands that this was an informal decision.

It is TVA's understanding that the decision for Ms. Henderson to limit certain interactions with Sequoyah licensing was a mutual decision made between Ms. Henderson and Mr. Shea. As Ms. Henderson explained during her PEC, "Joe and I agreed that I should limit my interaction with the peer team because of Mike's hostility. . . . Joe and I thought that limiting my engagement in licensing matters with Sequoyah might reduce this hostility." Henderson PEC Tr. at 83:12-21.

It is TVA's understanding that the decision to limit Ms. Henderson's interaction with Sequoyah licensing was not communicated to anyone at Sequoyah licensing or otherwise documented. Mr. Polickoski was informed of this decision because he led the peer team meetings. TVA is not aware of anyone else to whom this decision was communicated.

It is TVA's understanding that Ms. Henderson began limiting certain interactions with Sequoyah licensing and Mr. McBrearty in October 2017, and continued to limit her interactions in this manner through May 2018. As discussed, TVA understands that Ms. Henderson did not

abdicate responsibility for performing any duties, but instead limited certain in-person interactions with Sequoyah licensing. TVA understands the specific examples where Ms. Henderson limited interactions were licensing peer team meetings, quarterly management review meetings at Sequoyah, and certain interactions with Mr. McBrearty to discuss licensing decisions. Instead, Ms. Henderson relied on her subordinate, Mr. Polickoski, to attend these meetings on behalf of CNL and relied on Mr. Polickoski and Mr. Shea to handle certain discussions with Mr. McBrearty regarding licensing decisions.

**INTERROGATORY NO. 10:**

TVA alleges that Mr. McBrearty “admitted to his misbehaviors” regarding his behavior toward Ms. Henderson. (TVA Answer at 10).

- a. Does this statement refer to one or multiple instances of Mr. McBrearty allegedly admitting to misbehaviors?
- b. Identify the documents or communications in which the admission(s) is documented or occurred.
- c. When and to whom did McBrearty make this admission(s)?
- d. Was the admission(s) made in writing or verbally?

**Response:**

TVA incorporates into this Response its Preliminary Statement, General Objections, and Objections to Instructions and Definitions set forth above. TVA objects that the phrase “this statement” as used in this Interrogatory is vague, ambiguous, and subject to multiple interpretations. For purposes of its response TVA interprets “this statement” to mean the following statement on page 10 of TVA’s Answer: “Moreover, as demonstrated at TVA’s and Ms. Henderson’s PECs, Mr. McBrearty admitted to his misbehaviors when he was placed on paid administrative leave.”

Subject to and without waiving the foregoing, TVA responds as follows: TVA is aware of two records documenting Mr. McBrearty’s admission to his misbehaviors. TVA refers NRC Staff

to Exhibit 16 of the June 24, 2020 PEC Presentation Exhibits, which contains a May 25, 2018 e-mail from Al Dodds to Tony Williams and David Czufin memorializing a conversation with McBrearty on May 25, 2018. TVA further refers NRC Staff to the document TVADOC0008730, in which Al Dodds states that McBrearty “admits fault.”

**INTERROGATORY NO. 11:**

TVA alleges that TVA management counseled Mr. McBrearty regarding his behavior toward Ms. Henderson.

- a. Who provided this counseling? (Identify the individual(s) involved specific to each instance of counseling).
- b. Identify the date(s) when TVA management provided this counseling.

**Response:**

TVA incorporates into this Response its Preliminary Statement, General Objections, and Objections to Instructions and Definitions set forth above. TVA objects to the use of the terms “management,” and “counseled,” as used in this Interrogatory, as vague, ambiguous, and subject to multiple interpretations. TVA interprets “management” to include TVA Corporate employees and employees at the TVA Sequoyah site with managerial or oversight responsibilities who were at a higher seniority level, within TVA as Mr. McBrearty. TVA interprets “counseled” to include instances in which TVA “management,” as defined above, spoke with Mr. McBrearty regarding his conduct related to Ms. Henderson.

Subject to and without waiving the foregoing, TVA refers the Staff to the following portions of TVA’s Predecisional Enforcement Conference on June 30, 2020:

- On January 29, 2017 Erin Henderson e-mailed Mr. McBrearty. TVA PEC Tr. at 58:15-20.
- Between February 23 and February 27, 2017 Mr. McBrearty’s supervisor, Dennis Dimopolous, spoke to McBrearty. TVA PEC Tr. at 59:19-25.

- On April 7, 2017, Erin Henderson e-mailed Mr. McBrearty. TVA PEC Tr. at 61:8-22.
- On July 25, 2017, Tony Williams spoke with Mr. McBrearty. TVA PEC Tr. at 62:20-22.
- On October 11, 2017, Joseph Shea met with Mr. McBrearty. TVA PEC Tr. at 64:12-17.
- On October 19, 2017, Joseph Shea e-mailed Mr. McBrearty. TVA PEC Tr. at 64:18-22.
- On November 17, 2017, Joseph Shea e-mailed Mr. McBrearty. TVA PEC Tr. at 65:5-9.
- On March 2, 2018, Joseph Shea e-mailed Mr. McBrearty. TVA PEC Tr. at 65:15-66:3.
- On March 6, 2018, Jim Polickoski spoke with Mr. McBrearty. TVA PEC Tr. at 66:4-8.
- In April 2018, Mr. McBrearty’s performance review noted problems with the use of “Reply all” in emails. Henderson PEC Exhibit EH90.

In addition, TVA refers the NRC Staff to TVADOC0008730, an email from Mr. McBrearty’s direct supervisor reflecting that Mr. McBrearty had been spoken to three times in the prior year.

INTERROGATORY NO. 12:

TVA alleges there was a “consensus recommendation and decision to place Mr. McBrearty on paid administrative leave.” (TVA Answer at 14-15).

- a. Name each individual directly involved in this recommendation?
- b. For each individual who agreed with this recommendation, identify where this view is documented.
- c. What does “consensus” mean in this context—i.e., does it mean that everyone involved agreed or that a majority agreed?
- d. What was the process by which agreement was reached?
- e. What was the process by which agreement was assessed?
- f. Did anyone disagree or suggest alternative approaches at any stage of the process leading to the recommendation?
- g. What were the bases for disagreement?
- h. What was the process for addressing matters of disagreement?

**Response:**

TVA incorporates into this Response its Preliminary Statement, General Objections, and Objections to Instructions and Definitions set forth above.

**Subpart (a):** TVA objects that the term “directly involved” as used in this Interrogatory is vague, ambiguous, and subject to multiple interpretations. For purposes of its Response, TVA interprets “each individual directly involved” to mean the individuals who were present on a phone call on May 24, 2018, and on a phone call on May 25, 2018, during which the decision to recommend that Mr. McBrearty’s supervisor place him on administrative leave was discussed, and to which the quoted portion of TVA’s Answer refers when it discusses the recommendation regarding Mr. McBrearty. Subject to that objection, TVA responds that it understands that the individuals present on one or both phone calls were: Ms. Jennifer Grace, Ms. Amanda Poland, Ms. Emily Walker, Mr. David Czufin, Mr. John Slater, Mr. Steve Bono, Mr. Christopher Chandler, and Mr. Tony Williams.

**Subpart (b):** TVA objects that the term “each individual” as used in this Interrogatory is vague, ambiguous, and subject to multiple interpretations. For purposes of this Response, TVA responds with respect to the individuals included in its response to Subpart (a) of this Interrogatory. TVA further objects that “this recommendation” is vague, ambiguous, and subject to multiple interpretations. For purposes of this Response, TVA defines “this recommendation” as the recommendation to place Mr. McBrearty on administrative leave reached at the meeting referenced in Subpart (a). TVA further objects to this Interrogatory to the extent it presupposes there is documentation of the opinion or agreement of each individual participant on the May 24, 2018, or May 25, 2018 phone calls, and further states that it is aware of no such documentation..

**Subpart (c):** TVA objects to the term “this context” as used in this Interrogatory vague, ambiguous, and subject to multiple interpretations. For purposes of this Response, TVA interprets “this context” to mean the May 24, 2018, or May 25, 2018 phone calls to which the quoted portion of TVA’s Answer refers. TVA further objects that the phrase “everyone involved” as used in this Interrogatory is vague, ambiguous, and subject to multiple interpretations. For purposes of this Response, TVA interprets this term to mean the participants on the May 24, 2018, or May 25, 2018 phone calls to which the quoted portion of TVA’s answer refers. Subject to these objections, TVA responds that all participants on the May 24, 2018 or May 25, 2018 phone calls agreed with the recommendation that Mr. McBrearty be placed on administrative leave. In addition, Al Dodds (Mr. McBrearty’s direct supervisor) agreed with this recommendation when it was presented to him on May 25, 2018.

**Subpart (d):** TVA objects to the term “process” as used in this Interrogatory as vague and ambiguous and subject to multiple interpretations. For purposes of this Response, TVA interprets “process” to mean the means by which the individuals who participated in the May 24, 2018 or May 25, 2018 phone calls to which the quoted portion of TVA’s Answer refers reached the decision to recommend that Mr. McBrearty be placed on administrative leave. Subject to that objection, TVA responds that the participants met by phone, discussed the findings of the Report of Investigation into Erin Henderson’s Allegations of Harassment and Hostile Work Environment by John Slater, included as Exhibit 6 of the June 24, 2020 PEC Presentation Exhibits, which led to an agreed-upon recommendation regarding administrative leave for Mr. McBrearty.

**Subpart (e):** TVA objects to the terms “process” and “assessed” as used in this Interrogatory as vague, ambiguous, and subject to multiple interpretations. TVA refers the Staff to its response to Subpart (d) of this Interrogatory in response to this subpart.

**Subparts (f)-(h):** TVA objects that the term “process” as used in this Interrogatory as vague, ambiguous, and subject to multiple interpretations. TVA likewise objects to the phrase “at any stage of the process leading up to the recommendation” with the same objections. For purposes of this Response, TVA interprets “process” to mean the means by which the individuals who attended the May 24, 2018 or May 25, 2018 phone calls to which the quoted portion of TVA’s Answer refers reached, during those phone calls, the decision to recommend that Mr. McBrearty be placed on administrative leave. To the extent this Interrogatory requests information about TVA employee opinions regarding placing Mr. McBrearty on administrative leave outside this meeting, TVA objects to the Interrogatory as overly broad and unduly burdensome. TVA further objects to the phrase “disagree or suggest alternative approaches” as used in this Interrogatory as vague, ambiguous, and subject to multiple interpretations. For purposes of this Response, TVA interprets this phrase to inquire whether any participants on the May 24, 2018 or May 25, 2018 phone calls either disagreed with the ultimate recommendation decided at that meeting to place Mr. McBrearty on administrative leave, or suggested during that meeting that TVA take no action against Mr. McBrearty or take some action other than administrative leave. Subject to those objections, TVA responds that TVA’s understanding is that no individual on the phone calls disagreed with the ultimate recommendation, suggested that TVA take no action against Mr. McBrearty, or suggested that TVA take some action other than administrative leave.

**INTERROGATORY NO. 13:**

TVA alleges that Ms. Henderson believed Ms. Wetzel conspired with Mr. McBrearty against Ms. Henderson and that Ms. Wetzel was dishonest about what Ms. Henderson said in closed door meetings. For each instance where Ms. Wetzel acted in such a manner, identify:

- a. The date this occurred;
- b. Who was involved and/or present;
- c. The documented basis for Ms. Henderson’s belief that Ms. Wetzel conspired against Ms. Henderson with Mr. McBrearty or made dishonest statements about her in meetings;

d. The content of any follow up interaction with Ms. Wetzel.

**Response:**

TVA incorporates into this Response its Preliminary Statement, General Objections, and Objections to Instructions and Definitions set forth above. TVA objects that the phrases “who was involved,” “closed door meetings” and “the content of any follow up interaction” as used in this Interrogatory are vague, ambiguous, and subject to multiple interpretations. TVA further objects to this Interrogatory because it mischaracterizes the record regarding TVA’s position.

Subject to and without waiving the foregoing, TVA responds as follows: TVA understands that in her March 9, 2018 complaint, Ms. Henderson stated that “[t]here are some indications that other individuals (Michelle Conner, Beth Wetzel, Ed Schrull, and Alesia Justice) may potentially be contributing to this environment or colluding with each other to facilitate creating a hostile work environment.” Henderson Complaint at 6; TVADOC0004195 - TVADOC0004202. TVA understands that the basis for this statement by Ms. Henderson is set forth in that complaint on pages 6-8.

With respect to the Interrogatory’s reference to dishonest statements in closed-door meetings, for purposes of this Response TVA understands that the Interrogatory is referring to Ms. Henderson’s belief that Ms. Wetzel was dishonest about a meeting that took place around July 25, 2017, as described on page 6 of Ms. Henderson’s Complaint. The attendees at that meeting included Ms. Wetzel, Mr. Polickoski, Mr. Wilson, and Ms. Henderson.

**INTERROGATORY NO. 14:**

TVA alleged, in its termination notice to Ms. Wetzel, that Ms. Wetzel spread false information and pursued allegations known to be false and unfounded in an attempt to undermine Ms. Henderson, and persisted in harassing and retaliating against Henderson by spreading disproven theories to undermine and discredit Ms. Henderson. For each instance where this occurred, identify:

a. The date the actions of harassment and retaliation occurred;

- b. Who was involved and/or present;
- c. How the harassment and retaliation was spread or carried out;
- d. If applicable, how the occurrence of the instances of harassment and retaliation were documented or communicated and who received this information;
- e. The content of any follow up interaction with Ms. Wetzel.

**Response:**

TVA incorporates into this Response its Preliminary Statement, General Objections, and Objections to Instructions and Definitions set forth above. TVA objects to the NRC Staff's characterization of Ms. Wetzel's termination notice in this Interrogatory. Ms. Wetzel's January 14, 2019 termination notice states in relevant part:

Specifically, an independent investigation was conducted by TVA's Office of the General Counsel into allegations that you, and others, were engaged in a campaign of harassment, retaliation, and disrespectful conduct toward your supervisor. These included allegations that you have been engaged in a pattern of disrespectful conduct toward your supervisor intended to undermine your supervisor's authority and position in the TVA Nuclear organization as a result of your supervisor having engaged in protected activity in 2016. With regard to you, the investigation substantiated that you deliberately spread false information and pursued allegations that were known to be false and unfounded, even during the course of the investigation and up to and including the present, in an attempt to undermine your supervisor's credibility and standing in the organization.

It should be noted that multiple reviews and investigations have been conducted since 2016, the investigation concluded that the allegations and innuendo spread by you and others were unfounded, yet you have continued to persist in harassing and retaliating against your supervisor by spreading those disproven theories out of a desire to undermine and discredit your supervisor.

Shea PEC Exhibit JS33. For purposes of its Response, TVA interprets the Interrogatory as requesting information supporting these statements.

Subject to and without waving the foregoing, TVA responds as follows: Information supporting these statements from the termination notice includes:

**March 2018**

On March 29, 2018, Ms. Wetzel sent to Mr. Shea an email with the subject "NEI Loanee Contract." Shea PEC Exhibit JS7. Ms. Wetzel's March 29, 2018 email asserted that an email Ms.

Henderson sent to the Nuclear Energy Institute (“NEI”) concerning Ms. Wetzel’s draft loanee assignment agreement with NEI was “both distasteful and unprofessional” because that draft agreement included Ms. Wetzel’s “salary and incentive opportunity.” Ms. Wetzel also asserted in that email that “[i]t appears this contract was written so NEI would reject it summarily.” Ms. Wetzel further asserted that, “[i]f my boss is going to be unreasonable with NEI and effectively block my loanee opportunity, would you please let me know so I know what to do next?” Ms. Wetzel’s March 29, 2018 email was previously provided to the NRC Staff at Mr. Shea’s June 25, 2020 PEC, at Exhibit JS7. A draft of this email appears to have been sent by Ms. Wetzel to “rayphillip123@bellsouth.net” earlier that same day. TVADOC0004236.

Mr. Shea responded to Ms. Wetzel on March 30, 2018, and copied Ms. Henderson. Mr. Shea’s response directed Ms. Wetzel to contact David Codevilla (the TVA OGC attorney working on the NEI Loanee contract) if Ms. Wetzel had any concerns. Mr. Shea’s response was then forwarded by Ms. Wetzel to “rayphillip123@bellsouth.net” on March 30, 2018. TVADOC0004237 – TVADOC0004238.

### **May 2018**

On May 7, 2018, Ms. Wetzel sent an email with the subject “Wetzel NEI Loanee Confirmation 2018” to Mr. Shea. Shea PEC Exhibit JS11. Ms. Wetzel’s May 7, 2018 email stated in part, “However, I know that Erin has used HR to investigate people, reported people to ECP, threatened to have people for cause drug tested, pulled badging gate records and probably a lot more actions that I’m not aware of. She has demonstrated a longstanding pattern of using TVA processes as punitive and retaliatory tools. Based on the lack of detail in her ‘NEI Loanee Confirmation 2018’ document, I anticipate her using my travel vouchers as an investigative tool.”

On May 7, 2018, Mr. Shea forwarded Ms. Wetzel's email to Ms. Jennifer Grace (an attorney in TVA's Office of General Counsel) and Ms. Poland, and copied Mr. David Czufin (the Vice President of Engineering and Operational Support). Shea PEC Exhibit JS12. Mr. Shea's forwarding email stated in part, "Amanda, Jennifer, Please read below. I propose that this be provided to Johnny [Slater] within the scope of his current work. Please advise if you agree or see a different way to act on this. If you agree, please forward to Johnny. I intend to respond to Beth today just letting her know that I received her email and will let her know if [sic] my plans in the near future.... Please advise." Shea PEC Exhibit JS12. In an email dated May 7, 2018, Ms. Grace responded to Mr. Shea, stating, "Thank you, I will provide this to John. I was the person who interfaced with Wes on outlining her travel details, so I'm familiar with this." Shea PEC Exhibit JS12. Mr. Shea responded to Ms. Wetzel on May 7, 2018 stating, "I will review your concerns and get back to you sometime next week." TVADOC0008508.

In an email dated May 12, 2018, Mr. Shea drafted a proposed response to Ms. Wetzel and sent the draft to Ms. Grace, copying Mr. Czufin and requesting input on that draft. Shea PEC Exhibit JS13. In an email dated May 14, 2018 Mr. Shea wrote to Ms. Wetzel in part, "Thank you for raising these concerns with me," and "As a separate matter, you raised some very serious assertions against your supervisor. I have turned these over for further evaluation to an appropriately independent review party. You may be apprised of any conclusions it is appropriate to share when that review is completed." Shea PEC Exhibit JS14. In an email dated May 16, 2018, Ms. Wetzel acknowledged receipt of Mr. Shea's May 14 response, stating, "Joe, I received your email." Shea PEC Exhibit JS14. On May 16, 2018, Mr. Shea forwarded Ms. Wetzel's May 14 acknowledgement to Ms. Grace and TVA attorney Mr. John Slater. TVADOC0008548 – TVADOC0008551. On May 23, 2018, Mr. Shea forwarded Ms. Wetzel's May 14

acknowledgment to an Employee Relations Consultant in HR, Ms. Emily Walker. TVADOC0004291 – TVADOC0004295.

The contents of Ms. Wetzel’s May 7, 2018 email to Mr. Shea were also discussed in Mr. Slater’s August 10, 2018 report, which quotes Ms. Wetzel’s May 7, 2018 email and states in part,

Ms. Wetzel made two of these allegations—purportedly inappropriately having people investigated by HR and pulling of gate records—during her interview. However, as set out in this Report, HR was justified under, among other things, the TVA Code of Conduct to conduct an investigation into the relationship between Mr. McBrearty and Ms. Conner and HR, not Ms. Henderson, pulled Mr. McBrearty’s and Ms. Conner’s gate records. The remaining allegations in Ms. Wetzel’s email are more of the same, with no details, and do not warrant further follow-up. Evidently, Ms. Wetzel continues to make the same allegations regarding Ms. Henderson to Mr. Shea, to the point that it rises to the level of disrespectful conduct described above.

Shea PEC Exhibit JS23 at 19 & n.69.

### **June 2018**

On June 9, 2018, Ms. Wetzel sent an email with the subject “Travel” to Mr. Shea which stated in part,

Joe,  
I know I’ve got to get my travel in. This is getting ridiculous. We are now floating my rent. But I’ve been afraid what will happen as soon as I start submitting vouchers. I don’t even try to understand my boss and why she does what she does, but I do know that she never gives up.

I’ll get on with the vouchers.

Shea PEC Exhibit JS18. On June 9, 2018, Ms. Wetzel forwarded the same email to “rayphillip123@bellsouth.net.” TVADOC0004305.

That same day, Mr. Shea responded to Ms. Wetzel by email, stating in part,

As I mentioned on the phone, Carla will be handling your voucher reviews and has approval authority for me. Not sure why anything is getting ridiculous.... have you submitted something already? Carla has been monitoring and hasn’t seen anything hit the system. What are you referring to “does what she does” and “never gives up”? Is there something beyond your last email?

Shea PEC Exhibit JS18.

Ms. Wetzel responded on June 9, 2018 stating, “[i]t’s ridiculous because I’m afraid and haven’t submitted, so now we’re floating. No action has been taken to my knowledge yet.” Shea PEC Exhibit JS18.

Mr. Shea forwarded Ms. Wetzel’s response to Mr. Czufin, Ms. Grace, Ms. Poland, Mr. Chandler, and Ms. Walker on June 9, 2018, stating, “Folks, We need to add this to our upcoming discussions this week.” Shea PEC Exhibit JS19. Ms. Grace responded on June 11, 2018, stating in part,

It sounds like Beth is continuing with some of the behaviors that John substantiated in his report were part of the creation of the hostile environment.

Shea PEC Exhibit JS20.

#### **Late June / Early July 2018 Texts and Phone Call**

Ms. Wetzel sent several text messages to Mr. Shea in late June or early July 2018. The exact dates of the text messages are not known. TVA provided copies of these text messages to the NRC at Mr. Shea’s PEC. Shea PEC Exhibit JS21. In the texts, Ms. Wetzel states in part, “Can you help push my May voucher through?”, and further states that Mr. Shea’s Executive Management Assistant was “getting different directions from management that could be hanging things up.” Shea PEC Exhibit JS21. Mr. Shea replied, “What are you referring to as different direction from management? Since Carla and I are actively engaged in your May package, what is leading you to believe there is such different direction?” to which Ms. Wetzel responded, “Past Experience.” Shea PEC Exhibit JS21. Mr. Shea further responded, in part, “Carla is being diligent to ensure you receive what is due to you under the travel policy,” and “Please ensure you follow Carla’s feedback (eg putting rent on the corporate card, etc.) to achieve timely processing,” and

“In addition, if you have a factual basis for your assertion regarding different direction, please provide that.” Shea PEC Exhibit JS21.

TVA understands that Mr. Shea called Ms. Wetzel on July 2, 2018, to follow up on her text messages to him. Mr. Shea discussed this phone call in detail during his June 25, 2020 PEC. Shea PEC Tr. at 69:1-4, 88:13-89:2. During his PEC, Mr. Shea stated, “Finally, on July 2, I called Ms. Wetzel from my office, in the presence of Carla Edmondson, to further explain her allegations against Ms. Henderson, but Ms. Wetzel provided nothing further.” Shea PEC Tr. at 69:1-4.

### **Other Relevant Information**

TVA understands that Ms. Wetzel made additional, similarly disparaging statements about Ms. Henderson to TVA employees and TVA contractors during Ms. Wetzel’s employment that were not known to Mr. Shea at the time he made the decision to separate Ms. Wetzel from employment at TVA. TVA also understands that Ms. Wetzel continued to make disparaging statements about Ms. Henderson even after Ms. Wetzel’s termination. These additional statements include:

- On June 29, 2016, Ms. Wetzel stated via email to Mr. Fred Mashburn, a former TVA employee and TVA contractor, “My boss continues to manipulate and scheme. Marie Gilman left last week to take a high priced job in Canada working for Preston. Erin proudly announced that she’s now the most senior female in nuclear. How horrible is that! As far as I can tell, she has about 5-7 year nuclear experience at most, no engineering degree, everything just handed to her.” TVADOC0002478 – TVADOC0002481.
- On September 3, 2016, in response to an email about “aggressive people” Ms. Wetzel wrote to Mr. Fred Mashburn, “I think she’s [Ms. Henderson’s] the second type but has unlimited energy. She seems to have moved onto other prey, at least for the moment.” TVADOC0002528 – TVADOC0002529.
- On April 24, 2018, Mr. John Slater interviewed Ms. Wetzel and his contemporaneous handwritten notes of his interview with Ms. Wetzel state in part, “EH has a benefactor higher than Joe.” ADAMS Accession No. ML21043A012 at 85.
- On December 18, 2018, Ms. Wetzel’s attorney wrote to the Department of Labor alleging that, “While at TVA, Ms. Henderson had a remarkable fast promotion trajectory (upon

information and belief, her father is a good friend of Chip Pardee, who was then TVA's Chief Operating Officer)." ADAMS Accession No. ML21045A056 at 42.

- On or about January 31, 2019, Ms. Wetzel was interviewed by the Department of Labor. The memorandum of that interview states in part, "Complainant also states that she would have applied for the position, but that it was made clear that the position was meant for Henderson. When asked to explain, Complainant stated that Henderson's father, Roy West, was a former VP for TVA and made sure his daughter got the promotion." ADAMS Accession No. ML21042C002 at 89.

As stated during TVA's June 30, 2020 PEC, "Ms. Henderson's father is not Roy West, does not know Chip Pardee, is not even in the nuclear industry. As Ms. Henderson testified to OI, her father installed doors and windows in Philadelphia and then became an inner-city school teacher in Philadelphia." TVA PEC Tr. at 92:25-93:5.

**INTERROGATORY NO. 15:**

Is the email dated June 21, 2018 from Meshelle Ferguson at Exhibit 22 of the June 24, 2020 PEC Presentation Exhibits (TVA HR Summary) considered the final documentation of HR's review of Ms. Henderson's allegations of a hostile work environment? If not, provide this final documentation (or if part of TVA disclosures, identify its document ID(s))?

- a. Who directed HR to conduct this review?
- b. Was anyone other than Meshelle Ferguson involved in this HR review? If so, identify these individuals by name/title.
- c. In the TVA HR Summary, Ferguson stated that she reviewed "the report written by OGC counsel, the complaint, and several emails/text messages." Identify the emails/texts reviewed by HR by their disclosure document ID or provide these documents.
- d. Was anyone interviewed for the TVA HR review? If so, for each person interviewed, provide their name/title/contact information.

**Response:**

TVA incorporates into this Response its Preliminary Statement, General Objections, and Objections to Instructions and Definitions set forth above. TVA objects to the phrase "TVA HR Summary" as used in this Interrogatory as vague and ambiguous. TVA's response to this Interrogatory refers to Meshelle Augustin's (née Ferguson) "June 21, 2018 Email." TVA further objects that the term "considered" as used in this Interrogatory is ambiguous as to subject, and the phrase "final documentation of HR's review" is vague and ambiguous and subject to multiple

interpretations. For purposes of this Response, TVA interprets “final documentation of HR’s review” to mean Ms. Augustin’s latest in time writing concerning Ms. Henderson’s allegations.

TVA further objects that the phrases “this review” and “this HR review” as used in Subparts (a) and (b), respectively, are vague, ambiguous, and subject to multiple interpretations. For purposes of this Response, TVA interprets these phrases to refer to Ms. Augustin’s review of Ms. Henderson’s complaint, the draft report of investigation prepared by TVA Senior Attorney John Slater, and Ms. Augustin’s discussions with Al Dodds and John Slater about Ms. Henderson’s allegations. TVA further objects that the phrase “involved in” in Subpart (b) is vague, ambiguous, and subject to multiple interpretations. For purposes of this response, TVA interprets “involved in” to mean TVA HR employees who supervised or contributed to Ms. Augustin’s review. TVA further objects to the term “interviewed” as used in Subpart (d) as vague, ambiguous, and subject to multiple interpretations.

Subject to and without waiving the foregoing, TVA responds as follows: The June 21, 2018 Email was Ms. Augustin’s latest-in-time writing concerning Ms. Henderson’s allegations. Amanda Poland (then, Director of HR) asked Ms. Augustin to review Ms. Henderson’s allegations. To do so, Ms. Augustin reviewed (1) Ms. Henderson’s complaint and (2) Mr. Slater’s draft report. Mr. Slater’s draft report described correspondence (emails and text messages) relevant to Ms. Henderson’s allegations. Ms. Augustin sent the June 21, 2018 Email to Ms. Poland and did not communicate with any other TVA HR employee about the June 21, 2018 Email. Ms. Augustin did not formally interview anyone in connection with her review of Ms. Henderson’s allegations. However, as mentioned in the June 21, 2018 Email, Ms. Augustin spoke with Al Dodds (then, Director, Plant Support Sequoyah) and John Slater (Senior Attorney).

INTERROGATORY NO. 16:

What is the “Report of Investigation prepared by Human Resources” referenced on page 3 of the TVA OGC Report dated Aug. 10, 2018? Identify and produce, if not already produced, this document.

**Response:**

TVA incorporates into this Response its Preliminary Statement, General Objections, and Objections to Instructions and Definitions set forth above. TVA refers NRC Staff to Exhibit 6 of the June 30, 2020 PEC Presentation Exhibits. TVA PEC Exhibit TVA6.

INTERROGATORY NO. 17:

Ms. Henderson stated at her PEC that she received feedback in September 2016 from ECP as it related to her performance management, that she valued the insights, and took prompt action to modify her approach to better fit individual needs.

- a. What ECP investigation is referenced in this statement and what was its purpose?
- b. Was the ECP investigation opened in response to the feedback of a person or persons, and, if so, who?
- c. What were other initiating factors for the ECP investigation?
- d. What form did the ECP feedback take? If oral, please identify who provided the feedback and who was present for the conversation. If written, identify the document where the feedback was provided.
- e. What was the content of any follow up action following the ECP investigation? Please identify where this is documented and who provided it.

**Response:**

TVA incorporates into this Response its Preliminary Statement, General Objections, and Objections to Instructions and Definitions set forth above. TVA objects to the phrases or terms “purpose”; “feedback”; “initiating factors”; “form”; and “follow-up” as vague, ambiguous, and subject to multiple interpretations.

Subject to and without waiving the foregoing, TVA responds as follows: TVA understands that the ECP investigation referenced in Ms. Henderson’s statement is NEC-16-00638, which is included in Exhibit 13 of the NRC’s Office of Investigation (“OI”) Report No. 2-2018-033. *See*

*also* Henderson PEC Exhibit EH3. Additional documentation regarding ECP investigation NEC-16-00638 was provided in Exhibit EH84 of Ms. Henderson's PEC, which contains Ms. Henderson's summary of quarterly follow-up related to that ECP investigation.

The purpose of the ECP investigation was to determine whether the Concerned Individual had been the subject of harassment and retaliation for raising safety concerns regarding reporting of the isolation of the High Pressure Fire Protection ("HPFP") System at SQN, and questioning CNL's handling of a Notice of Unusual Event report at TVA's Bellefonte nuclear plant. ECP investigation NEC-16-00638 was opened in response to the feedback of Ms. Conner. The only initiating factor for opening ECP investigation NEC-16-00638 was the concern raised by the Concerned Individual (i.e., Ms. Conner).

ECP provided feedback in written form via a Corrective Action Letter sent to Mr. Shea on September 6, 2016 (TVADOC0004959 - TVADOC0004960) and a second Corrective Action Letter sent to Mr. Czufin on September 6, 2016 (TVADOC0002526 - TVADOC0002527). Both Corrective Action Letters are contained in Exhibit 13 of OI Investigation Report 2-2018-033. Ms. Inza Hagins-Dyer of ECP provided feedback in oral form to Ms. Henderson. In addition, Ms. Henderson participated in several quarterly follow up meetings with Ms. Hagins-Dyer, some of which were also attended by Ms. Debra Keil, a senior manager in TVA's HR department. TVA's understanding is that the only people present during these conversations were Ms. Henderson, Ms. Hagins-Dyer, and Ms. Keil.

Follow up actions to ECP investigation NEC-16-00683 were taken by Mr. Shea, Mr. Czufin, and Ms. Henderson. These actions are documented in (1) the Reply to Employee Concerns Program Corrective Action Letter; Concern Number NEC-16-00638 (Second Corrective Action Letter), dated October 5, 2016, from Mr. Czufin to Mr. Boerschig, (contained in Exhibit 13 of OI

Investigation Report 2-2018-033); (2) the Response to Employee Concerns Program Corrective Action Letter Concern Number NEC-16-00638, dated October 6, 2016, from Mr. Shea to Ms. Inza Hagins-Dyer (contained in Exhibit 13 of OI Investigation Report 2-2018-033); and (3) Erin Henderson's PEC Exhibit EH84.

#### REQUEST FOR PRODUCTION OF DOCUMENTS

Produce all documents identified in response to the above interrogatories if not all already produced.

#### Response

TVA has produced the following documents (identified by Bates Nos.) to the NRC Staff via Box, a file transfer service.

- TVADOC0009950 - TVADOC0009951
- TVADOC0009952
- TVADOC0009953

Respectfully submitted,

*/Electronically signed by Timothy J. V. Walsh/*

Timothy J. V. Walsh

PILLSBURY WINTHROP SHAW PITTMAN LLP

1200 Seventeenth Street NW

Washington, DC 20036

Telephone: 202-663-8455

Facsimile: 202-663-8007

E-mail: [timothy.walsh@pillsburylaw.com](mailto:timothy.walsh@pillsburylaw.com)

Executed in Accord with 10 C.F.R. § 2.304(d)

Michael G. Lepre  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
1200 Seventeenth Street NW  
Washington, DC 20036  
Telephone: 202-663-8193  
Facsimile: 202-663-8007  
E-mail: [michael.lepre@pillsburylaw.com](mailto:michael.lepre@pillsburylaw.com)

Executed in Accord with 10 C.F.R. § 2.304(d)

Anne R. Leidich  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
1200 Seventeenth Street NW  
Washington, DC 20036  
Telephone: 202-663-8707  
Facsimile: 202-663-8007  
E-mail: [anne.leidich@pillsburylaw.com](mailto:anne.leidich@pillsburylaw.com)

Executed in Accord with 10 C.F.R. § 2.304(d)

Mary Pat Brown  
O'MELVENY & MYERS LLP  
1625 Eye St., NW  
Washington, DC 20006  
Telephone: 202-383-5376  
Facsimile: 202-383-5414  
E-mail: [mpbrown@omm.com](mailto:mpbrown@omm.com)

Executed in Accord with 10 C.F.R. § 2.304(d)

Laurel Loomis Rimon  
O'MELVENY & MYERS LLP  
1625 Eye St., NW  
Washington, DC 20006  
Telephone: 202-383-5335  
Facsimile: 202-383-5414  
E-mail: [lrimon@omm.com](mailto:lrimon@omm.com)

Dated: April 22, 2021

Counsel for TVA

**AFFIRMATION**

I, James Barstow, am the Vice President, Nuclear Regulatory Affairs and Support Services at the Tennessee Valley Authority (“TVA”), a party to this action, and am authorized to make this affirmation for and on its behalf.

I have reviewed the answers to Interrogatories 1-17 in TVA’s responses to the NRC Staff’s interrogatories. I declare under penalty of perjury under the laws of the United States of America that the answers provided in the interrogatory responses are true and correct to the best of my knowledge, information, and belief.

Executed on this 22nd day of April 2021.



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James Barstow  
Vice President, Nuclear Regulatory Affairs  
and Support Services  
Tennessee Valley Authority  
1101 Market St.,  
Chattanooga, TN 37402  
Telephone: (423) 751-5808  
Email: [jbarstow@tva.gov](mailto:jbarstow@tva.gov)

April 22, 2021

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

_____	)	
In the Matter of	)	
	)	
	)	Docket Nos. EA-20-006, EA-20-007
Tennessee Valley Authority	)	
Chattanooga, Tennessee	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing TVA Responses and Objections to the NRC Staff's Interrogatories and Request for Production have been served through the E-Filing system in the above-captioned proceeding this 22nd day of April, 2021.

*/Electronically signed by Timothy J. V. Walsh/*