

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

TENNESSEE VALLEY AUTHORITY

(Enforcement Action)

Docket No. EA-20-006
EA-20-007

NRC Staff's Consolidated Response in Opposition to TVA's
Motions for Summary Disposition

Sara Brock Kirkwood
Kevin C. Roach
Joe I. Gillespie
Thomas S. Steinfeldt
Joseph D. McManus

Counsel for NRC Staff
September 15, 2021

TABLE OF CONTENTS

Introduction	1
Background.....	6
A. Structure/History of the NOV and TVA's Response	6
B. Background of Mr. McBrearty and Ms. Wetzel's Protected Activity.....	7
1. Michael McBrearty.....	8
2. Beth Wetzel	10
C. Legal Standards for Summary Disposition	13
Argument	15
I. TVA fails to meet its burden for summary disposition on Violations 1 through 3.	15
A. TVA's narrow construction of Energy Reorganization Act Section 211 is contrary to applicable Sixth Circuit precedent	15
B. Paid administrative leave can constitute an adverse action under the Energy Reorganization Act, and the facts demonstrate that TVA's placement of Mr. McBrearty on paid administrative leave was an adverse action.....	20
1. Courts hold that long-term paid administrative leave, in response to engaging in protected activity, can be a materially adverse action	23
2. Other circuits have held that paid administrative leave can dissuade reasonable workers from engaging in protected activity.....	26
3. The facts demonstrate that the administrative leave imposed by TVA constitutes an adverse action because of its duration and stigmatizing effect, magnified by TVA's untimely and misleading investigation	27
C. TVA's investigation of Mr. McBrearty and Ms. Wetzel constitutes an adverse action because it would likely deter protected activity and because it was a pretext to retaliate	30
1. A retaliatory investigation may constitute an adverse action if it might well dissuade a reasonable worker from engaging in protected activity	31
2. Alternatively, the investigation constitutes an adverse action because, under a standard derived from the Whistleblower Protection Act, TVA's investigation was a pretext to retaliate	41
3. TVA's arguments challenging the Staff's deposition testimony fail to demonstrate a lack of material dispute	48
II. Material facts are in dispute concerning Violation 4, and TVA fails to meet its burden for summary disposition	52
A. The protected activities underlying Violation 4 are rooted in Ms. Wetzel's ongoing concerns about a chilled work environment and are, therefore, nuclear safety related	53
1. Ms. Wetzel's complaint to the NRC.....	54
2. Ms. Wetzel's participation in the TVA OGC investigation.....	56

3.	Ms. Wetzel’s expressed concerns about retaliation.....	58
4.	The Violation 4 Motion’s discussion of TVA deposition questions for the NRC Staff is immaterial	59
B.	TVA’s assertion that Ms. Wetzel’s statements in Violation 4 were not protected activity because they were inappropriate and disrespectful indicates a genuine dispute of material fact	63
1.	TVA’s assertion that Ms. Wetzel’s conduct was disrespectful as a matter of law is incorrect, and TVA’s cited cases are inapposite	64
2.	Circumstances surrounding TVA’s investigative and disciplinary process for Ms. Wetzel raise genuine issues of material fact as to whether TVA’s termination decision was pretextual.....	66
C.	TVA’s claim of a “reasonable belief” that Ms. Wetzel did not engage in protected activity is no basis for summary disposition.....	68
D.	Conclusion.....	70
III.	TVA misconstrues the role of the Staff in an enforcement hearing	70
IV.	TVA failed to comply with the 10 C.F.R. § 2.710(a) requirement to provide a short statement of material facts	72
	Conclusion	75

TABLE OF AUTHORITIES

Judicial Opinions

<i>Am. Nuclear Res., Inc. v. U.S. Dep’t of Labor</i> , 134 F.3d 1292 (6th Cir. 1998).....	53, 65
<i>Anderson v. Liberty Lobby</i> , 477 U.S. 242 (1986).....	14, 15
<i>Anemone v. Metro Transp. Auth.</i> , 410 F. Supp. 2d 255 (S.D.N.Y. 2006).....	39
<i>Berry v. Stevinson Chevrolet</i> , 74 F.3d 980 (10th Cir. 1996).....	38
<i>Billings v. Town of Grafton</i> , 515 F.3d 39 (1st Cir. 2008).....	38
<i>Bowman v. Shawnee State Univ.</i> , 220 F.3d 456 (6th Cir. 2000)	27
<i>Burlington N. & Santa Fe Ry. Co. v. White</i> , 548 U.S. 53 (2006)	passim
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986).....	14
<i>Cox v. Onondaga Cty. Sheriff’s Dep’t</i> , 760 F.3d 139 (2d Cir. 2014).....	39
<i>Dahlia v. Rodriguez</i> , 735 F.3d 1060 (9th Cir. 2013).....	26
<i>Dendinger v. Ohio</i> , 207 F. App’x 521 (6th Cir. 2006)	27
<i>Doyle v. Dep’t of Veterans Affairs</i> , 855 F. App’x 753 (Fed. Cir. May 14, 2021)	43, 46
<i>Dunham v. Brock</i> , 794 F.2d 1037 (5th Cir. 1986).....	65
<i>Hornsby v. Watt</i> , 217 F. Supp. 3d 58 (D.D.C. 2016).....	26
<i>Jackson v. City of Columbus</i> , 194 F.3d 737 (6th Cir. 1999).....	27
<i>Joseph v. Leavitt</i> , 465 F.3d 87 (2d Cir. 2006)	27
<i>JPMorgan Chase Bank v. Liberty Mut. Ins. Co.</i> , 209 F.R.D. 361 (S.D.N.Y. 2002).....	49
<i>Kahn v. U.S. Sec’y of Labor</i> , 64 F.3d 271 (7th Cir. 1995).....	65
<i>Littleton v. Pilot Travel Ctrs., LLC</i> , 568 F.3d 641 (8th Cir. 2009).....	27

<i>Ma v. Am. Elec. Power, Inc.</i> , 647 F. App'x 641 (6th Cir. 2016).....	65, 66
<i>McCoy v. City of Shreveport</i> , 492 F.3d 551 (5th Cir. 2007).....	26
<i>McNeill v. U.S. Dep't of Labor</i> , 243 F. App'x 93 (6th Cir. 2007).....	19, 24, 25, 27
<i>Michael v. Caterpillar Fin. Servs. Corp.</i> , 496 F.3d 584 (6th Cir. 2007).....	23, 24, 27, 29
<i>Monaghan v. Worldpay US, Inc.</i> , 955 F.3d 855 (11th Cir. 2020).....	19
<i>Oncale v. Sundowner Offshore Servs., Inc.</i> , 523 U.S. 75 (1998).....	17
<i>Peltier v. United States</i> , 388 F.3d 984 (6th Cir. 2004).....	19, 27
<i>Poller v. CBS, Inc.</i> , 368 U.S. 464, 467.....	13
<i>Renzi v. Union Pac. R.R. Co.</i> , No. 16 C 2641, 2018 WL 3970149 (N.D. Ill. Aug. 20, 2018).....	40
<i>Richardson v. Petasis</i> , 160 F. Supp. 3d 88 (D.D.C. 2015).....	26
<i>Rochon v. Gonzales</i> , 438 F.3d 1212 (D.C. Cir. 2006).....	16
<i>Singleton v. Mo. Dep't of Corr.</i> , 423 F.3d 886 (8th Cir. 2005).....	26, 27
<i>Sistek v. Dep't of Veterans Affairs</i> , 955 F.3d 948 (Fed. Cir. 2020).....	42, 43
<i>Spirit Airlines, Inc. v. Nw. Airlines, Inc.</i> , 431 F.3d 917 (6th Cir. 2005).....	13
<i>Stewart v. Miss. Transp. Comm'n</i> , 586 F.3d 321 (5th Cir. 2009).....	26
<i>Stone & Webster Eng'g Corp. v. Herman</i> , 115 F.3d 1568 (11th Cir. 1997).....	22
<i>Ulrich v. Soft Drink, Brewery Workers, and Delivery Emps.</i> , 425 F. Supp. 3d 234 (S.D.N.Y. 2019).....	39
<i>United States v. Ancient Coin Collectors Guild</i> , 899 F.3d 295 (4th Cir. 2018).....	49, 71
<i>Vander Boegh v. Energy Solutions, Inc.</i> , 2012 WL 1576158 (W.D. Ky. 2012).....	18
<i>Vander Boegh v. EnergySolutions, Inc.</i> , 536 F. App'x 522 (6th Cir. 2013).....	passim

<i>Velikonja v. Gonzales</i> , 466 F.3d 122 (D.C. Cir. 2006).....	37
<i>Wash. v. Ill. Dep't of Revenue</i> , 420 F.3d 658 (7th Cir. 2005)	16
<i>Weger v. City of Ladue</i> , 500 F.3d 710 (8th Cir. 2007)	27
<i>Weissman v. Dawn Joy Fashions, Inc.</i> , 214 F.3d 224 (2d Cir. 2000).....	69
<i>Williams v. Admin. Review Bd.</i> , 376 F.3d 471 (5th Cir. 2004)	26
Commission Legal Issuances	
<i>Advanced Med. Sys., Inc.</i> (Geneva, Ohio), CLI-93-22, 38 NRC 98 (1993)	13, 14
<i>Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.</i> (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287 (2010).....	13, 14, 15
<i>Five Star Prods., Inc. and Constr. Prods. Research, Inc.</i> , CLI-93-23, 38 NRC 169 (1993).....	68
<i>Tenn. Valley Auth.</i> (Watts Bar Nuclear Plant, Unit 1), CLI-04-24, 60 NRC 160 (2004)	18, 37, 70
Atomic Safety and Licensing Appeal Board Decisions	
<i>Radiation Tech., Inc.</i> (Rockaway, N.J.), ALAB-567, 10 NRC 533, 537 (1979).....	70, 71
Atomic Safety and Licensing Board Decisions	
<i>Earthline Techs.</i> (Ashtabula, Ohio), LBP-03-6, 57 NRC 251 (2003)	24
<i>Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.</i> (Pilgrim Nuclear Power Station), LBP-07-12, 66 NRC 113 (2007).....	14
<i>Fla. Power & Light Co.</i> (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-12-4, 75 NRC 213 (2012)	13, 14
<i>Fla. Power & Light Co.</i> (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-16-3, 83 NRC 169 (2016)	13, 15
<i>Pac. Gas and Elec. Co.</i> (Stanislaus Nuclear Project, Unit No. 1), LBP-77-45, 6 NRC 159 (1977)	72
<i>Powertech USA, Inc.</i> (Dewey-Burdock <i>In Situ</i> Uranium Recovery Facility), LBP-18-5, 88 NRC 95 (2018).....	14
<i>Progress Energy Fla., Inc.</i> (Levy County Nuclear Power Plant, Units 1 and 2), LBP-10-20, 72 NRC 571 (2010).....	13, 14, 52

Other Agency Administrative Decisions

<i>Dodd v. Polysar Latex</i> , 88-SWD-4, 1994 WL 897252, Secretary's Decision (Dep't of Labor Sept. 22, 1994)	54
<i>Melton v. Yellow Transp., Inc.</i> , 2005-STA-002 (ARB Sept. 30, 2008)	18
<i>Overall v. Tenn. Valley Auth.</i> , 1999-ERA-025 (ARB July 16, 2007)	17, 18
<i>Russell v. Dep't of Justice</i> , 76 M.S.P.R. 317 (1997)	30, 42, 43, 44

Statutes

5 U.S.C. § 2302, <i>Prohibited personnel practices</i>	43
42 U.S.C. § 2000e-2, Title VII of the Civil Rights Act of 1994, Section 703a, <i>Unlawful employment practices</i>	16
42 U.S.C. § 2000e-3, Title VII of the Civil Rights Act of 1994, Section 704a, <i>Other unlawful employment practices</i>	16
42 U.S.C. § 5851, Energy Reorganization Act Section 211, <i>Employee Protection</i>	passim

Regulations

10 C.F.R. § 2.710, <i>Motions for Summary Disposition</i>	13, 72, 75, 1
10 C.F.R. § 50.7, <i>Employee protection</i>	passim

Other Authorities

<i>Earthline Techs.</i> , EA-99-290 (Jan. 4, 2002) (ML020090029)	24
In the Matter of Tennessee Valley Authority, Chattanooga, TN, 85 Fed. Reg. 70,203 (Nov. 4, 2020)	52
NRC Allegation Manual, December 2016 Revision (ML17003A227)	10
NRC Enforcement Manual, Revision 11, Change 7 (ML20329A339)	6
Policy Statement; Freedom of Employees in the Nuclear Industry To Raise Safety Concerns Without Fear of Retaliation, 61 Fed. Reg. 24,336 (May 14, 1996)	53
S. Rep. No. 112-155 (2012)	42
<i>Wolf Creek Nuclear Operating Corp.</i> , EA-18-037 (Dec. 17, 2018) (ML18333A043)	24

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

TENNESSEE VALLEY AUTHORITY

(Enforcement Action)

Docket Nos. EA-20-006
EA-20-007

**NRC Staff's Consolidated Response in Opposition to TVA's
Motions for Summary Disposition**

INTRODUCTION

Pursuant to the Atomic Safety and Licensing Board's (Board) August 18, 2021 order,¹ the Nuclear Regulatory Commission (NRC) Staff hereby files² its consolidated response in opposition to Tennessee Valley Authority's (TVA) motions for summary disposition.³

The Board should deny TVA's motions because TVA fails to meet its burden to demonstrate that no material facts remain in dispute and that it is entitled to summary disposition as a matter of law. To the contrary, TVA inaccurately portrays the applicable legal standards for establishing both "protected activity" and "adverse action" as elements of a violation of 10 C.F.R. § 50.7. Namely, TVA narrowly characterizes relevant legal authority for

¹ Licensing Board Order (Suspending Scheduling Order and Directing Responses to Summary Disposition Motions) (Aug. 18, 2021) (unpublished) ([ADAMS Accession No. ML21230A242](#)).

² All facts the Staff relied on in this consolidated response are derived from information that is already in the possession of TVA, included in the disclosures of the Staff or TVA, or from the deposition testimony taken in this proceeding. The Staff has filed public (with redactions of information designated as confidential) and non-public versions (without redactions) of its consolidated response, consistent with the Board's February 8, 2021, Protective Order (Governing Non-Disclosure of Certain Documents Claimed to be Confidential). However, the Staff does not concede that documents designated by TVA as confidential have been properly designated as such.

³ [TVA's] Motion for Summary Disposition of Violations 1, 2, and 3 (Lack of Adverse Employment Action) (Aug. 16, 2021) ([ML21228A261](#)) ("TVA Motion Regarding Violations 1–3"); [TVA's] Motion for Summary Disposition of Violation 4 (Lack of Nuclear Safety-Related Protected Activity) (Aug. 16, 2021) ([ML21228A260](#)) ("TVA Motion Regarding Violation 4").

interpreting Energy Reorganization Act (ERA) Section 211, while also ignoring relevant, material facts that directly undermine its legal position. As the Staff will explain, material facts remain in dispute for all four violations in this case.

Regarding Violations 1 and 3, TVA asserts that Ms. Erin Henderson's filing of a complaint against Mr. Michael McBrearty and Ms. Beth Wetzel and the resulting TVA internal investigation cannot be an adverse action because "ERA Section 211 and Section 50.7 ("adverse actions") do not include an employee's filing of a complaint that prompts a company investigation."⁴ However, TVA's attempt to so narrowly construe the legal standard for adverse actions is contrary to applicable precedent. ERA Section 211 states that "[n]o employer may discharge ... or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment" because of the employee's participation in protected activity.⁵ The corresponding language of 10 C.F.R. § 50.7 states "[d]iscrimination includes discharge and *other actions* that relate to compensation, terms, conditions, or privileges of employment." Thus, Section 50.7 is clear that a range of employer actions can constitute discrimination depending on the substantive effect on the employee's work environment.

Consistent with that language, the U.S. Court of Appeals for the Sixth Circuit has, when analyzing alleged discrimination in retaliation for an employee's protected activity, broadly considered whether "a reasonable employee would have found the challenged action materially adverse, which ... means it well might have dissuaded a reasonable worker from [engaging in protected activity.]"⁶ The Department of Labor applies this same framework when interpreting ERA Section 211 and other employee protection statutes.

⁴ TVA Motion Regarding Violations 1–3, at 4–5 (ML21228A261).

⁵ [Energy Reorganization Act § 211](#), 42 U.S.C. § 5851 ("ERA Section 211").

⁶ *Vander Boegh v. EnergySolutions, Inc.*, 536 F. App'x 522, 529 (6th Cir. 2013) (unpublished) (quoting *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006)).

The disputed facts in this case bear directly on why Ms. Henderson's complaint and the resulting investigation were materially adverse to Mr. McBrearty and Ms. Wetzel and would dissuade a reasonable worker from engaging in protected activity. The accusations in Ms. Henderson's complaint objectively demonstrate that her claims were based, in part, on her employees' participating in protected activity. Her characterization of these protected activities as harassment triggered the TVA OGC investigation. In turn, the evidence reflects that TVA's investigation and resulting report were not objective, serious inquiries, but instead sought from the outset to validate pre-formed conclusions in order to substantiate Ms. Henderson's complaint and gather evidence in a biased and incomplete manner to use as reasons to terminate both Mr. McBrearty's and Ms. Wetzel's employment.⁷ The facts demonstrate that, throughout the investigation, TVA officials were not only aware of Mr. McBrearty and Ms. Wetzel's protected activities—the same activities about which Ms. Henderson complained—but TVA structured the investigation to build a case to justify terminating Mr. McBrearty and Ms. Wetzel. This understanding is apparent in the documentation underlying TVA's investigation report. Accordingly, this retaliatory investigation of TVA employees would dissuade a reasonable employee from engaging in future protected activity. Furthermore, TVA has not provided clear and convincing evidence that it would have performed this investigation absent the protected activity. Because these material facts remain in dispute, granting summary disposition is not appropriate for Violations 1 and 3.

Regarding Violation 2, TVA is similarly wrong as a matter of law in asserting that paid administrative leave cannot be an adverse action. As explained above, the applicable test is whether a reasonable employee would have found the employer's action materially adverse and been dissuaded from engaging in protected activity. Unsurprisingly, the relevant caselaw

⁷ Attach. 2, Office of Investigations (OI) Report of Investigation (ROI) 2-2018-033, Ex. 17, Report of Investigation of Erin Henderson's Allegations of Harassment and Hostile Work Environment, 1–32 (May 25, 2018) ([ML21042A026](#)) (“Draft Slater Report”) (including numerous citations to Henderson Complaint throughout report).

reflects that this is a highly fact-specific inquiry in which “context matters.”⁸ Because the record in this case amply demonstrates why TVA’s placement of Mr. McBrearty on paid administrative leave was materially adverse, material facts remain in dispute.

As the Staff will explain, courts have considered multiple factors in determining whether administrative leave is an adverse action, including the duration, the notice provided to the employee, the timeliness of the employer’s investigation, and the potential effect on the employee’s reputation. The administrative leave that TVA imposed on Mr. McBrearty was objectively adverse in each respect. Here, despite placing Mr. McBrearty in leave status for nearly three months and suspending his access to the facility, TVA management provided Mr. McBrearty essentially no explanation other than that an investigation had occurred and that his actions constituted harassment against Ms. Henderson.⁹ Even though TVA’s internal investigation had already been completed and internal records demonstrate that TVA officials were actively seeking to terminate him, he was kept on leave, in the dark about the status of TVA’s inquiry. He recognized the situation was isolating and stigmatizing.¹⁰ Significantly, other TVA employees did so as well. Not only did the situation generate concern and confusion from his colleagues, but TVA’s own senior management had concerns about the impact of the long duration of Mr. McBrearty’s paid administrative leave on Mr. McBrearty himself, and on the overall nuclear safety culture at the Sequoyah Nuclear Plant.¹¹ Because these material facts remain in dispute, granting summary disposition is not appropriate for Violation 2.

⁸ “[T]he significance of any given act of retaliation will often depend upon the particular circumstances. Context matters.” *Burlington N.*, 548 U.S. at 69.

⁹ Attach. 3, Signed Transcript and Errata for the Deposition of Michael McBrearty, at 243–49 (June 29, 2021) (ML21237A471 (non-public)) (“McBrearty Dep. Tr.”).

¹⁰ Attach. 4, OI ROI 2-2018-033, Ex. 3, at 137 (ML21048A396) (“McBrearty OI Tr.”) (“And I thought, I started thinking to myself that, you know, maybe, they’re just trying to wear me down and they’re hoping I’ll go find another job.”).

¹¹ Attach. 4, McBrearty OI Tr., 4, *Id.* at 139–40 (ML21048A396) (testifying that his licensing group colleagues at Sequoyah were “livid” about the way he was treated); Attach. 5, OI ROI 2-2018-033, Ex. 22, at 38 (ML21042A025) (“Dodds OI Tr.”) (indicating that Sequoyah licensing employees were asking “where’s our boss?”); Attach. 6, Signed Transcript of the Deposition of Ralph Dodds, at 106:20–107:7

Finally, with respect to Violation 4, TVA denies that Ms. Wetzel engaged in protected activity and asserts that it terminated Ms. Wetzel for “disrespectful conduct.” As the Staff will explain, in addition to TVA having misstated the scope of what constitutes protected activity, TVA’s position relies on, or simply omits, numerous material facts that are in dispute, including facts that raise significant issues of evidentiary weight and witness credibility for the Board to consider.

As set forth in the Notice of Violation and subsequent Order imposing the civil penalty along with its Appendix, the Staff concluded that TVA discriminated against Ms. Wetzel for, at least in part, engaging in protected activity.¹² The evidence demonstrates that Ms. Wetzel engaged in protected activity when she raised concerns of a chilled work environment to the NRC, as well as when she raised such concerns both to the TVA attorney conducting the TVA internal investigation and to Mr. Shea, Ms. Henderson’s supervisor and a TVA Corporate Vice President. Summary disposition is inappropriate because the parties dispute the interpretation of the concerns Ms. Wetzel raised regarding retaliation, as well as the inferences to be drawn from the biases and incompleteness of TVA’s internal investigation of those concerns. The record likewise undermines TVA’s claim that it has the necessary “clear and convincing” evidence of a legitimate non-discriminatory reason for terminating Ms. Wetzel. Among other things, the evidence relied on by the Staff demonstrates the factual foundation for Ms. Wetzel’s reasonable concerns of retaliation, demonstrates TVA’s awareness of her protected activity and a lack of internal TVA documentation required under TVA’s own disciplinary policy, and

(July 20, 2021) (ML21232A637 (non-public)) (“Dodds Dep. Tr.”) (discussing that he developed safety conscious work environment (SCWE) mitigation plans to be prepared to address chilled work environment concerns related to Mr. McBrearty’s circumstances, and that one of McBrearty’s employees asked Mr. Dodds what was he allowed to say and who was he allowed to talk to without getting in trouble like Mr. McBrearty).

¹² Notice of Violation and Proposed Imposition of Civil Penalty to TVA (EA-20-006 & EA-20-007) (Aug. 24, 2020) (ML20232B803) (“NOV”). TVA Order Imposing Civil Monetary Penalty (Oct. 29, 2020) (ML20297A544) (“Imposition Order”); Appendix to the Order (Oct. 29, 2020) (ML20297A552) (“Order Appendix”).

contradicts TVA's characterization of her conduct in its decision to terminate her. Because resolution of these genuine disputes of material fact requires weighing of evidence and assessment of witness credibility at hearing, summary disposition is not appropriate.

Accordingly, the Board should deny TVA's motions for summary disposition.

BACKGROUND

This proceeding arises out of the NRC Staff's issuance of a Notice of Violation (NOV) and an order imposing a \$606,942 civil monetary penalty against TVA for retaliating against two former TVA employees (Mr. Michael McBrearty and Ms. Beth Wetzel) for their participation in protected activity.¹³

In this section, the Staff provides a synopsis of 1) the structure and procedural history of the NOV and TVA's response, and 2) threshold events bearing on Mr. McBrearty and Ms. Wetzel's protected activity. This brief background provides context for the Staff's detailed Argument below regarding the applicable legal standards (in particular the basis for "adverse actions") and the genuine disputes of material fact that remain in this case, which demonstrate why the Board should deny TVA's motions.

A. Structure/History of the NOV and TVA's Response

On August 24, 2020, the NRC issued TVA a NOV and proposed imposition of civil penalty citing TVA for four violations of 10 C.F.R. § 50.7. Because violations 1 and 2 related to TVA's retaliation against Mr. McBrearty and violations 3 and 4 related to TVA's retaliation against Ms. Wetzel, the NRC summarized the violations as two overarching "problems," each supported by two examples of actions that violated 10 C.F.R. § 50.7.¹⁴ The NOV identified the first two violations as problem A related to the retaliation against Mr. McBrearty. Problem A was

¹³ NOV at 1–2 (ML20232B803); Imposition Order (ML20297A544).

¹⁴ Grouping closely related violations as examples of a problem is in accordance with the direction in the NRC Enforcement Manual, Revision 11, Change 7, Section 1.3.5, "Documenting Related Violations." (ML20329A339).

identified as a Severity Level II problem with a proposed civil penalty of \$303,471.¹⁵ The NRC identified the other two violations as problem B related to the retaliation against Ms. Wetzel. Problem B was identified as a Severity Level I problem with a proposed a civil penalty of \$303,471, for a combined total civil penalty of \$606,942.¹⁶

On September 23, 2020, TVA responded in writing to dispute the NOV, referring simply to violations 1 through 4 (rather than problems A and B).¹⁷ On October 29, 2020, the NRC issued TVA the Order imposing the civil penalty that included an Appendix describing the violations. In the Appendix, although the NRC retained TVA's description of the violations as simply violations 1 through 4, the content of the violations and their associated civil penalty remained unchanged from the NOV and proposed civil penalty.¹⁸

On November 30, 2020, TVA requested a hearing, which it is allowed by rule, and the Staff did not oppose.¹⁹ The parties conducted discovery from mid-February 2021 to mid-July 2021 that included the disclosure of several thousand documents by each party, interrogatories from the Staff to which TVA responded, and 19 depositions of current and former TVA employees and NRC Staff. On August 16, 2021, TVA submitted two motions seeking summary disposition of the four violations of 10 C.F.R. § 50.7.

B. Background of Mr. McBrearty and Ms. Wetzel's Protected Activity

Below, the Staff briefly summarizes certain threshold events bearing on Mr. McBrearty and Ms. Wetzel's protected activity. This provides context for the Staff's subsequent detailed Argument demonstrating that TVA took adverse actions against Mr. McBrearty and Ms. Wetzel due, in part, to this protected activity. These facts (as well as the other facts referenced

¹⁵ NOV at 1–2 (ML20232B803).

¹⁶ *Id.* at 2. See also Cover Letter to NOV and Proposed Civil Penalty, at 2–3 (Aug. 24, 2020) (ML20218A568).

¹⁷ TVA Answer to Notice of Violation (EA-20-06 and EA-20-07) (Sept. 23, 2020) (ML20274A014).

¹⁸ See Order Appendix at 1–4 (ML20297A552).

¹⁹ TVA's Answer and Request for Hearing (Nov. 30, 2020) (ML20335A574).

throughout this response) are supported by witnesses and documentary material and will be proven at hearing.

1. Michael McBrearty

On July 31, 2015, the NRC completed a two-week onsite inspection at Sequoyah Nuclear Plant, focusing on TVA's evaluations of changes, tests, and experiments and permanent plant modifications.²⁰ The NRC provided its inspection report to TVA on September 14, 2015, which documented five non-cited violations (NCVs).²¹ Three of these NCVs are relevant to this proceeding because of the concerns that Mr. McBrearty subsequently raised to TVA about them.

Two of these findings (the "kirk-key" violations) involved TVA's decision to remove mechanical kirk-key interlocks from the crosstie breaker for the Sequoyah shared Unit 1A and Unit 2A Essential Raw Water Cooling motor control centers.²² The NRC inspectors found that such a change failed to meet design basis requirements to provide interlocks between shared onsite emergency and shutdown AC electric systems, because the mechanical interlocks prevented an operator from inadvertently placing the power sources in parallel.²³ The inspectors further found that TVA did not meet the requirements of 10 C.F.R. § 50.59 and that to implement this change, TVA should have requested a license amendment pursuant to 10 C.F.R. § 50.90.²⁴ A third violation (the "service life" violation), focused on the decision by TVA that

²⁰ Statement of Disputed Material Fact ("SDMF") 1.

²¹ SDMF 2; Letter from Jonathan H. Bartley, Chief, Engineering Branch 1, Division of Reactor Safety, U.S. NRC, to Joseph W. Shea, Vice President, Nuclear Licensing, TVA, at 1 (Sept. 14, 2015) ([ML15257A435](#)) ("Sept. 2015 SQN Inspection Report").

²² SDMF 3; Sept. 2015 SQN Inspection Report, Enclosure, at [unnumbered pp. 2](#).

²³ *Id.*

²⁴ *Id.*

certain Class 1E molded case circuit breakers did not need to be assigned a service life.²⁵

Following the issuance of these violations, TVA did not formally accept or deny the violations.²⁶

At hearing, the Staff intends to show that over the course of two years, Michael McBrearty raised concerns with TVA's handling of these violations and compliance with the NRC requirements in meetings, emails, the corrective action program, and the employee concerns program.²⁷ Further, the Staff will show that after unsatisfactory responses to his corrective action reports, Mr. McBrearty raised concerns to responsible individuals and the employee concerns program about the unwillingness of TVA Corporate Nuclear Licensing (CNL) to enter and address items in the corrective action program.²⁸ The Staff will show that in response to this activity, Ms. Henderson filed a formal complaint triggering an investigation into Mr. McBrearty that repeatedly identifies Mr. McBrearty's raising of these concerns as harassing, and that the resulting decision to place Mr. McBrearty on administrative leave was based, at least in part, on his raising of these concerns.

At hearing, the Staff will demonstrate that Mr. McBrearty's actions were protected activities. The evidence will also show that TVA had knowledge of this protected activity and took material adverse actions against Mr. McBrearty due in part to this protected activity by (1) filing a complaint against Mr. McBrearty that triggered an investigation and (2) placing Mr. McBrearty on paid administrative leave for nearly three months.

²⁵ SDMF 4.

²⁶ SDMF 5. On January 8, 2016, TVA provided "observations on the basis for the [kirk-key] NCVs," and on March 9, 2018, TVA submitted a license amendment request to "complete the implementation of the design change." Letter from J.W. Shea, Vice President, TVA, to U.S. NRC (Jan. 8, 2016) ([ML16012A480](#)); Letter from J.W. Shea, Vice President, TVA, to U.S. NRC (Mar. 9, 2018) ([ML18071A349](#)). The NRC issued the requested license amendments on May 7, 2019. Letter from Andrew Hon, Project Manager, U.S. NRC, to Joseph W. Shea, Vice President, TVA (May 7, 2019) ([ML19058A029](#)). TVA provided no formal response to the Service Life NCVs until December 21, 2017. Letter from J.W. Shea, Vice President, TVA, to U.S. NRC (Dec. 21, 2017) ([ML17355A493](#)). The NRC withdrew the NCV on June 1, 2018. Letter from Mark S. Miller, Deputy Director, U.S. NRC, to Joseph W. Shea, Vice President, TVA (June 1, 2018) ([ML18152A748](#)).

²⁷ SDMF 6.

²⁸ SDMF 7.

2. Beth Wetzel

Ms. Wetzel engaged in protected activities at TVA that were characterized by TVA as harassment and ultimately used as reasons to terminate her. On July 24, 2017, NRC Region II received three allegations from Ms. Wetzel.²⁹ Reporting concerns to the NRC is a protected activity. Relevant to this case, one concern alleged that “[t]he Licensing Manager [Erin Henderson] has created a chilled work environment³⁰ in the Corporate Nuclear Licensing (CNL) department.”³¹ In response to this allegation, the NRC conducted a safety conscious work environment (SCWE) inspection during the week of September 18, 2017 by interviewing 22 individuals from various TVA corporate nuclear groups.³² On November 1, 2017, the NRC staff informed Ms. Wetzel that it was unable to substantiate Ms. Wetzel’s concern of a chilled work environment at TVA’s CNL department.³³

On March 9, 2018, Ms. Henderson filed a harassment complaint with her supervisor, Mr. Shea. The complaint alleged that Ms. Wetzel (and four others) “are complicit in workplace bullying and creating a hostile work environment for me.”³⁴ Ms. Henderson complained that she

²⁹ SDMF 9; Attach. 7, See Allegation Report RII-2017-A-0114, Response to Concern (and Cover Letter), at pdf 8–10 (Nov. 1, 2017) ([ML21048A379](#)).

³⁰ A chilled work environment is an environment where workers perceive that the licensee is suppressing or discouraging the raising of safety concerns or is not addressing these concerns when they are raised. See NRC Allegation Manual, December 2016 Revision, at 142 (Dec. 22, 2016) ([ML17003A227](#)).

³¹ SDMF 10; Attach. 7, Allegation Report RII-2017-A-0114, at pdf 9–10 (“AR RII-2017-A-0114”) ([ML21048A379](#)).

³² SDMF 11; Attach. 7, AR RII-2017-A-0114, at pdf 9–10.

³³ SDMF 12; Attach. 7, AR RII-2017-A-0114, at pdf 9–10. Although the NRC did not substantiate Ms. Wetzel’s concern of a chilled work environment within TVA CNL, Ms. Wetzel nonetheless engaged in a protected activity under 10 C.F.R. § 50.7 and ERA Section 211 by raising that concern to the NRC. Furthermore, an NRC finding of “unable to substantiate” does not prove that there was no chilled work environment, nor that the allegation of a chilled work environment was mistaken or filed in bad faith. It merely means that there was not enough evidence for the NRC staff to substantiate the concern at that particular time. See, e.g., Allegation Manual, December 2016 Revision, at 204 ([ML17003A227](#)) (providing suggested language for communicating with allegers the meaning of the term “unsubstantiated”).

³⁴ SDMF 14; SDMF 15; Attach. 8, OI ROI 2-2018-033, Ex. 16, Erin Henderson’s Formal Complaint, at 1 (Mar. 9, 2018) ([ML21042A026](#)) (“Henderson Complaint”).

was subjected to “repeated investigations and an NRC inspection where the accusations were determined to be unsubstantiated.”³⁵ Specifically, Ms. Henderson wrote that, on September 11, 2017, she became aware from one of her employees that Mr. McBrearty and Ms. Wetzel were the reason for the NRC conducting a chilled work environment investigation within her department.³⁶

After Ms. Henderson submitted her complaint to Mr. Shea and TVA Human Resources,³⁷ TVA’s Office of the General Counsel (OGC), at Mr. Shea’s request, initiated an investigation into Ms. Henderson’s complaint.³⁸ In April 2018, Ms. Wetzel was interviewed by Mr. John Slater, a TVA OGC attorney who she believed was conducting an investigation into complaints of the chilled work environment at CNL.³⁹ Mr. Slater told Ms. Wetzel only that he was conducting a work environment investigation, which furthered Ms. Wetzel’s belief about the nature of the investigation.⁴⁰ Ms. Wetzel truthfully answered the questions asked of her about TVA’s work environment and about Ms. Henderson in particular, and she provided her views on Ms. Henderson and disclosed her fears that Ms. Henderson would retaliate against her.⁴¹ Mr. Slater

³⁵ SDMF 13; SDMF 14; SDMF 15; Attach. 8, Henderson Complaint at 1.

³⁶ SDMF 14; Attach. 8, Henderson Complaint at 6 (“There 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 as described below.”) (emphasis added); *id.* at 7 (“9/11/17: Received feedback form a direct related to a discussion with a SQN employee, during which the SQN employee (a direct report to Mike [McBrearty]) had noticed that there has been a drastic increase in the amount of communications’ between Beth and Mike in the past couple of months. (Note, Beth has the least interface with Site Managers of all of my corporate managers. Her [individual development plan] for 2018 includes a developmental area to go to the sites more often.) The SQN employee said he thought they (Mike and Beth) are the reason for the NRC SCWE inspection in my organization.”).

³⁷ Attach. 9, email from E. Henderson to A. Poland and J. Shea submitting Henderson Complaint (Mar. 9, 2018) (TVADOC0004176).

³⁸ SDMF 16; Attach. 10, OI ROI 2-2019-015, Ex. 30, at 26 (June 12, 2019) (ML21043A062) (“Shea OI Tr.”) (“I sought an investigation which was ultimately taken up by investigators from the Office of General Counsel.”).

³⁹ SDMF 17; SDMF 20; Attach. 11, OI ROI 2-2019-015, Ex. 3, at 38–39 (May 9, 2019) (ML21048A390) (“Wetzel OI Tr.”).

⁴⁰ SDMF 21; Attach. 11, Wetzel OI Tr. at 39.

⁴¹ SDMF 23; SDMF 24; Attach. 11, Wetzel OI Tr. at 38–41.

reflected Ms. Wetzel's comments in the August 10, 2018 Final Report.⁴² There, Mr. Slater recorded that Ms. Wetzel told him that she "does not trust" Ms. Henderson and that she viewed Ms. Henderson as "vindictive."⁴³ Mr. Slater also recorded that Ms. Wetzel told him that Ms. Henderson was too young and inexperienced to be in her current role, and that TVA's CNL group was "toxic."⁴⁴ Ms. Wetzel's participation in the TVA OGC investigation, as it relates to the possible existence of a chilled work environment, is a protected activity.

In October 2018, at Mr. Shea's request, Ms. Wetzel traveled from Washington, DC to Tennessee to meet with Mr. Shea in person for her performance review.⁴⁵ At that time, Ms. Wetzel was working on loan to the Nuclear Energy Institute in Washington.⁴⁶ On October 15, 2018, Ms. Wetzel met with Mr. Shea and HR Director Amanda Poland in his office, and Mr. Shea read Ms. Wetzel's performance review out loud.⁴⁷ In doing so, Mr. Shea stated that Ms. Wetzel's testimony regarding Ms. Henderson to Mr. Slater during his investigation had created a hostile work environment for Ms. Henderson.⁴⁸ Mr. Shea informed her at that meeting that although termination was warranted in her case, TVA was willing to offer a no-fault separation in exchange for her resignation;⁴⁹ she eventually declined.⁵⁰ Prior to this meeting, Mr. Shea presented the case to fire Ms. Wetzel to a TVA Executive Review Board (required to approve adverse employment actions, such as suspensions, and terminations), where Mr. Shea stated that the reason for her dismissal, in part, was that she made "assertions to the attorney

⁴² Attach. 12, OI ROI 2-2019-015, Ex. 14, at 20–21 (Aug. 10, 2018) ([ML21043A012](#)) ("Final Slater Report").

⁴³ SDMF 23; Attach. 12, Final Slater Report at 20.

⁴⁴ SDMF 24; Attach. 12, Final Slater Report at 20.

⁴⁵ SDMF 64; Attach. 11, Wetzel OI Tr., at 48–49 ([ML21048A390](#)).

⁴⁶ SDMF 25.

⁴⁷ SDMF 65; Attach. 11, Wetzel OI Tr. at 49.

⁴⁸ SDMF 65; Attach. 11, Wetzel OI Tr. at 49–50.

⁴⁹ SDMF 65; Attach. 11, Wetzel OI Tr. at 55–56. Attach. 10, Shea OI Tr. at 53 ([ML21043A062](#)).

⁵⁰ SDMF 67; Attach. 11, Wetzel OI Tr. at 60–61 ([ML21048A390](#)); Attach. 10, Shea OI Tr. at 55–56 ([ML21043A062](#)).

investigator.”⁵¹ An August 30, 2018, TVA OGC supplemental report on Ms. Wetzel, based on Mr. Slater’s findings and recommending termination, contains this same language.⁵² These facts support the conclusion that TVA did consider Ms. Wetzel’s protected activity when seeking to terminate Ms. Wetzel’s employment; and, indeed, terminated Ms. Wetzel’s employment on January 14, 2019, based in part on her protected activity.⁵³

C. Legal Standards for Summary Disposition

In a Subpart G proceeding such as this, the standards governing summary disposition are found in 10 C.F.R. § 2.710,⁵⁴ and they “are based upon those the federal courts apply to motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.”⁵⁵ The Board may grant summary disposition only “if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statement of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.”⁵⁶ Thus, it is the movant’s burden “to show clearly and convincingly the absence of any genuine issues of material fact.”⁵⁷ Stated simply, summary disposition may be granted “only if the truth is clear.”⁵⁸ The movant for summary

⁵¹ SDMF 60; Attach. 25, OI ROI 2-2019-015, Ex. 16, Executive Review Board Package for Wetzel, at 6 (“Wetzel ERB Package”) (ML21048A391) (“Record of Action”).

⁵² SDMF 59; Attach. 12, Final Slater Report at 42 (ML21043A012).

⁵³ SDMF 68; Attach. 11, Wetzel OI Tr. at 61 (ML21048A390); Attach. 13, OI ROI 2-2019-015, Ex. 18, at 10–11 (Jan. 14, 2019) (ML21048A391) (“Wetzel Termination Letter”).

⁵⁴ Subpart L’s summary disposition regulation at 10 C.F.R. § 2.1205(c) requires the presiding officer to apply the standards for summary disposition in Subpart G—thus, Commission caselaw under Subpart L applies to Subpart G proceedings such as this. See *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-12-4, 75 NRC 213, 218 (2012).

⁵⁵ *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 297 (2010); see *Advanced Med. Sys., Inc.* (Geneva, Ohio), CLI-93-22, 38 NRC 98, 102 (1993).

⁵⁶ 10 C.F.R. § 2.710(d)(2); *Turkey Point*, LBP-12-4, 75 NRC at 218.

⁵⁷ *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-16-3, 83 NRC 169, 176 (2016) (quoting *Spirit Airlines, Inc. v. Nw. Airlines, Inc.*, 431 F.3d 917, 930 (6th Cir. 2005) (internal quotation marks omitted)).

⁵⁸ *Progress Energy Fla., Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-10-20, 72 NRC 571, 579 (2010) (citing *Poller v. CBS, Inc.*, 368 U.S. 464, 467).

disposition must satisfy two criteria: it must show that there is no genuine dispute as to any material fact, and it must also establish that its legal position is correct.⁵⁹

Regarding the first criterion, “[t]he correct inquiry is whether there are material factual issues that ‘properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.’”⁶⁰ Facts are “material” if they will “affect the outcome of [a proceeding] under governing law.”⁶¹ All facts are to be construed in the light most favorable to the nonmoving party, and any doubt as to the existence of a genuine issue of material fact is to be resolved against the movant.⁶²

The nonmoving party does not have to show that it would prevail on the issues; rather, it must “demonstrate that there is a genuine factual issue to be tried,”⁶³ by making “a sufficient showing of an essential element of [the] case [on] which [it] has the burden of proof.”⁶⁴ The nonmoving party must “go beyond the pleadings and by [the nonmoving party’s] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.”⁶⁵

In ruling on a motion for summary disposition, “a licensing board should not ... conduct a ‘trial on the affidavits.’”⁶⁶ Summary disposition should not be granted if it would require the trier of fact to engage in the making of “[c]redibility determinations, the weighing of evidence, [or] the drawing of legitimate inferences from the facts,” because those functions signal that a dispute of

⁵⁹ *Levy County*, LBP-10-20, 72 NRC at 579; *Powertech USA, Inc.* (Dewey-Burdock *In Situ* Uranium Recovery Facility), LBP-18-5, 88 NRC 95, 123 (2018).

⁶⁰ *Pilgrim*, CLI-10-11, 71 NRC at 297 (citing *Anderson v. Liberty Lobby*, 477 U.S. 242, 250 (1986)).

⁶¹ *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-07-12, 66 NRC 113, 125 (2007) (citing *Anderson*, 477 U.S. at 248).

⁶² *Anderson*, 477 U.S. at 255; *Advanced Med. Sys.*, CLI-93-22, 38 NRC at 102; *Pilgrim*, CLI-10-11, 71 NRC at 297.

⁶³ *Pilgrim*, LBP-07-12, 66 NRC at 125–26.

⁶⁴ *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

⁶⁵ *Turkey Point*, LBP-12-4, 75 NRC at 218 (citing *Celotex*, 477 U.S. at 324).

⁶⁶ *Pilgrim*, CLI-10-11, 71 NRC at 297 (quoting *Anderson*, 477 U.S. at 255).

a genuine material fact exists that must be resolved at hearing.⁶⁷ The Commission has opined that “[c]aution should be exercised in granting summary disposition, which may be denied if ‘there is a reason to believe that the better course would be to proceed to a full [hearing].’”⁶⁸

ARGUMENT

I. TVA fails to meet its burden for summary disposition on Violations 1 through 3

TVA asserts that Ms. Erin Henderson’s filing of a complaint against Mr. McBrearty and Ms. Wetzel and the resulting TVA internal investigation, along with Mr. McBrearty’s placement on paid administrative leave, cannot be an adverse action.⁶⁹ However, TVA’s position relies on a misreading of the applicable legal standard, which considers whether “a reasonable employee would have found the challenged action materially adverse, which ... means it well might have dissuaded a reasonable worker from [engaging in protected activity.]”⁷⁰ The facts disputed by the parties directly concern why Ms. Henderson’s complaint and the resulting TVA investigation was materially adverse to Mr. McBrearty and Ms. Wetzel, and would in turn dissuade a reasonable worker from engaging in protected activity. Because TVA’s legal position is incorrect and material facts remain in dispute, granting summary disposition is not appropriate for Violations 1 through 3.

A. TVA’s narrow construction of Energy Reorganization Act Section 211 is contrary to applicable Sixth Circuit precedent

In its Summary Disposition Motion, TVA argues that the Board should apply a narrow definition of an adverse action that, as a matter of law, excludes all forms of paid administrative leave and investigations, or anything that is not a “significant change in employment status.”⁷¹

TVA relies on several cases in the Sixth Circuit analyzing the scope of Title VII’s anti-

⁶⁷ *Turkey Point*, LBP-16-3, 83 NRC at 177 (2016) (citing *Anderson*, 477 U.S. at 255).

⁶⁸ *Pilgrim*, CLI-10-11, 71 NRC at 298 (citing *Anderson*, 477 U.S. at 255).

⁶⁹ TVA Motion Regarding Violations 1–3, at 4–5 (ML21228A261).

⁷⁰ *Vander Boegh*, 536 F. App’x at 529 (quoting *Burlington N.*, 548 U.S. at 68).

⁷¹ TVA Motion Regarding Violations 1–3, at 16–17 (ML21228A261).

discrimination provision.⁷² But TVA incorrectly portrays the most recent caselaw in the Sixth Circuit that governs the interpretation of ERA Section 211 in this case.⁷³ The evidence in this case confirms that when applying the correct legal standard, Mr. McBrearty's paid administrative leave, as well as Ms. Henderson's complaint and TVA's resulting investigation of both Mr. McBrearty and Ms. Wetzel, constituted materially adverse actions.⁷⁴

Contrary to TVA's characterization, the Sixth Circuit applies the broader anti-retaliation test to determine whether an action is adverse under ERA Section 211. This test assesses whether "a reasonable employee would have found the challenged action materially adverse, which ... means it well might have dissuaded a reasonable worker from [engaging in protected activity.]"⁷⁵ This anti-retaliation standard was set forth in the 2006 Supreme Court decision *Burlington Northern & Santa Fe Railroad Co. v. White*, which, in interpreting Title VII of the Civil Rights Act of 1964, distinguished Title VII's anti-discrimination (i.e., based on an employee's status in a protected class) provision from its anti-retaliation (i.e., based on an employee's protected activity) provision.⁷⁶ The Supreme Court explained that "[a] provision limited to employment-related actions would not deter the many forms that effective retaliation can take," and further added that "[t]he scope of the anti-retaliation provision extends beyond workplace-related or employment-related retaliatory acts and harm."⁷⁷ Since *Burlington Northern*, the Sixth Circuit and the Department of Labor (DOL) Administrative Review Board have likewise applied

⁷² Title VII of the Civil Rights Act of 1994, Section 703a, 42 U.S.C. § 2000e-2(a). TVA Motion Regarding Violations 1–3, at 35–38 (ML21228A261).

⁷³ ERA Section 211.

⁷⁴ SDMF 57; SDMF 68.

⁷⁵ *Vander Boegh*, 536 F. App'x at 529 (quoting *Burlington N.*, 548 U.S. at 68).

⁷⁶ 548 U.S. at 62–64; Title VII of the Civil Rights Act of 1994, Section 704a, 42 U.S.C. § 2000e-3(a). The Court agreed with the formulation established by the U.S. Courts of Appeals for the D.C. Circuit and Seventh Circuit to evaluate retaliation claims. *Burlington N.*, 548 U.S. at 67–68 (citing *Rochon v. Gonzales*, 438 F.3d 1212, 1219 (D.C. Cir. 2006); *Wash. v. Ill. Dep't of Revenue*, 420 F.3d 658, 662 (7th Cir. 2005)).

⁷⁷ *Burlington N.*, 548 U.S. at 64, 68.

the broader anti-retaliation standard to determine whether a materially adverse action has occurred when reviewing employee discrimination (retaliation for protected activity) claims under the ERA.⁷⁸ Thus, the relevant legal inquiry is not whether an employee was ultimately discharged or demoted, but instead, whether the challenged action would deter a reasonable worker from engaging in protected activity.⁷⁹

Accordingly, the Supreme Court explicitly stated that what would deter someone from engaging in protected activity is a highly fact-specific determination and “will often depend upon the particular circumstances,” including the “constellation” of expectations and relationships that cannot be “fully captured by a simple recitation of the words used or the physical acts performed.”⁸⁰ As an example, the Court explained that depending on the context, even a refusal by a supervisor to invite someone to lunch can constitute an adverse action under this test.⁸¹

And the Sixth Circuit has specifically applied this test to discrimination based on protected activity under the Energy Reorganization Act.⁸² The 2013 decision in *Vander Boegh v. EnergySolutions, Inc.* involved a plaintiff who engaged in protected activity at the Paducah Gaseous Diffusion Plant, where he served as landfill manager and raised several complaints about potential leakage at the landfill.⁸³ The plaintiff, serving in his role through a number of subcontracts, alleged that defendants drafted their bid for a new contract to exclude him from working at the facility, in violation of ERA Section 211a.⁸⁴ The District Court granted summary

⁷⁸ See, e.g., *Vander Boegh*, 536 F. App'x at 529; *Overall v. Tenn. Valley Auth.*, 1999-ERA-025 at 7–10 (ARB July 16, 2007) (Corrected Decision).

⁷⁹ *Vander Boegh*, 536 F. App'x at 529 (citing *Burlington N.*, 548 U.S. at 68).

⁸⁰ *Burlington N.*, 548 U.S. at 69 (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81–82 (1998)).

⁸¹ *Burlington N.*, 548 U.S. at 69.

⁸² *Vander Boegh*, 536 F. App'x 522.

⁸³ *Id.* at 524.

⁸⁴ *Id.* at 524–27.

judgment in favor of the defendants, finding that the plaintiff was unable to show that the qualifications in the bid “constituted a decision to terminate Plaintiff.”⁸⁵ The Court of Appeals disagreed with that finding, holding that “[a]ctionable retaliation is not limited to so-called ‘ultimate employment decisions’ that adversely alter the terms and conditions of employment.”⁸⁶ Instead, the Sixth Circuit found that the correct test for a violation of this nature is whether the action “might have dissuaded a reasonable worker from [engaging in protected activity.]”⁸⁷

Significantly, the DOL applies this same framework when interpreting ERA Section 211 and other statutes that prohibit discrimination against individuals who engage in protected activity.⁸⁸ In *Overall v. Tennessee Valley Authority*, the DOL Administrative Review Board held that the test under Section 211a is whether the action “could well have dissuaded a reasonable worker from engaging in protected activity.”⁸⁹ DOL’s interpretations of the ERA are particularly relevant here, as the Commission has found that “[t]he section 211 approach, while directly governing whistleblower compensation cases at the Department of Labor, is readily adaptable to the context of NRC enforcement cases.”⁹⁰

⁸⁵ *Id.* at 527–28; *Vander Boegh v. Energy Solutions, Inc.*, 2012 WL 1576158 (W.D. Ky. 2012).

⁸⁶ *Vander Boegh*, 536 F. App’x at 529. The Court affirmed summary judgment for two defendants on other grounds. The third defendant, after remanding to the district court, was also granted summary judgment after finding Vander Boegh lacked standing because he was not an employee of the defendant.

⁸⁷ *Id.* In fact, the court went as far as to note that even hiring an individual with a documented history of retaliating against the plaintiff to draft the bid may have been sufficient to dissuade the plaintiff from engaging in such activity, had it been raised before the District Court. *Id.* at 529, n.4.

⁸⁸ See *Melton v. Yellow Transp., Inc.*, 2005-STA-002 at 14 (ARB Sept. 30, 2008) (explaining that, in addition to the Surface Transportation Assistance Act applicable in *Melton*, DOL has applied this same standard to employee protection cases arising under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, the Sarbanes-Oxley Act of 2002, and many environmental protection statutes, including the Clean Air Act, Clean Water Act, and the Toxic Substances Control Act, among others).

⁸⁹ *Overall*, 1999-ERA-025, at 11.

⁹⁰ *Tenn. Valley Auth.* (Watts Bar Nuclear Plant, Unit 1), CLI-04-24, 60 NRC 160, 194 (2004) (explaining that the Commission has long held the view that its employee protection rule “rests in part on the authority of Congress’s decision in section 211 to protect nuclear whistleblowers from employer retaliation” and that “section 211 establishes a clear and straightforward evidentiary approach.” (internal citation omitted)).

Consequently, TVA relies on an inaccurate characterization of the legal standard for determining an adverse action under the ERA as interpreted in the Sixth Circuit and by the DOL.⁹¹ Applying the proper standard, the facts in this case demonstrate that the actions taken by TVA would objectively deter reasonable workers from engaging in protected activity. Furthermore, with respect to TVA's claims that administrative leave cannot be an adverse action, the cases cited by TVA would be distinguishable even if they were viewed as applicable precedent, in part because they almost exclusively involved durations of administrative leave that are significantly shorter (and lacked other objective adverse effects) than what TVA imposed on Mr. McBrearty in this case.⁹²

As discussed in more detail below, the evidence gathered during the investigation by the NRC and throughout discovery amply demonstrates that Mr. McBrearty's paid administrative leave and Ms. Henderson's complaint and resulting investigation of both Mr. McBrearty and Ms. Wetzel constituted adverse actions, because a reasonable employee would recognize those actions as materially adverse. As the Supreme Court and the Sixth Circuit have found, this is a legal test for which "context matters," and here, the context for TVA's actions demonstrates how the effects were indeed materially adverse to both employees.⁹³ Accordingly, because TVA is

⁹¹ All U.S. Courts of Appeals have adopted the materially adverse standard for determining retaliation claims under Title VII. See *Monaghan v. Worldpay US, Inc.*, 955 F.3d 855, 861–62 (11th Cir. 2020) (citing cases). In *Burlington N.*, the Supreme Court explained that "[a] provision limited to employment-related actions would not deter the many forms that effective retaliation can take." 548 U.S. at 64. "The scope of the anti-retaliation provision extends beyond workplace-related or employment-related retaliatory acts and harm." *Id.* at 67.

⁹² See SDMF 42. TVA quotes *Peltier v. United States*, 388 F.3d 984, 988 (6th Cir. 2004) for the proposition that "suspension with pay and full benefits pending a timely investigation into suspected wrongdoing is not an adverse employment action." TVA Motion Regarding Violations 1–3, at 36 (ML21228A261). This premise only reinforces the existence of disputed material facts, because TVA's investigation into Mr. McBrearty was not timely, TVA had essentially completed its investigation before placing him on leave, and its initial conclusions were based in part on his protected activity (his use of the employee concerns program). Attach. 2, Draft Slater Report at 8–9 (ML21042A026). Furthermore, the 83-day duration of leave was significantly more adverse than almost all of the cases on which TVA seeks to rely. See n.134, *infra*.

⁹³ *Burlington N.*, 548 U.S. at 69; *McNeill v. U.S. Dep't of Labor*, 243 F. App'x 93, 98–99 (6th Cir. 2007) (unpublished).

incorrect, as a matter of law, and because it has not demonstrated that there are no genuine disputes of material fact, summary disposition is inappropriate.

B. Paid administrative leave can constitute an adverse action under the Energy Reorganization Act, and the facts demonstrate that TVA's placement of Mr. McBrearty on paid administrative leave was an adverse action

In Violation 2, the NRC Staff found that TVA discriminated against Mr. McBrearty by placing him on administrative leave after he raised concerns about a chilled work environment, filed complaints with the Employee Concerns Program, and raised concerns about the regulatory response to the kirk-key and service life non-cited violations.⁹⁴ TVA claims that it is entitled to summary disposition on this matter because placement of an employee on paid administrative leave does not, as a matter of law, meet the definition of an adverse action under ERA Section 211.⁹⁵

However, using the correct standard as explained in Section I.A, *supra*, the evidence demonstrates that TVA's action of placing Mr. McBrearty on paid administrative leave was materially adverse and would deter a reasonable employee from engaging in protected activity. As documented in the report by TVA's OGC, testimony from current and former employees, and contemporaneous emails, TVA was well aware of the concerns Mr. McBrearty raised about how TVA was handling the response to the kirk-key and service life non-cited violations, the handling of items in the corrective action program, and his use of the employee concerns program to bring attention to these matters.⁹⁶ After Ms. Henderson submitted her formal complaint, characterizing Mr. McBrearty's complaints about TVA's noncompliance with NRC requirements

⁹⁴ See SDMF 6; SDMF 7; SDMF 13; NOV at 1–2 (ML20232B803); Order Appendix at 2–3 (ML20297A552).

⁹⁵ TVA Motion Regarding Violations 1–3, at 35–38 (ML21228A261).

⁹⁶ SDMF 6; SDMF 7; Attach. 2, Draft Slater Report at 8–9 (ML21042A026) (identifying Mr. McBrearty's reports to the Employee Concerns Program); Attach. 14, email from Michael McBrearty (Feb. 8, 2017) (TVADOC0002742–43) (identifying need for entering lessons learned into the corrective action program and the potential for "significant regulatory exposure"); Attach. 15, Emails between M. McBrearty and I. Hagins-Dyer (June 30, 2017) (TVADOC0003437–47) (explaining actions he took to raise his concerns directly to Ms. Henderson and Mr. Shea and that the current approach "is most likely in violation of federal law.").

as harassing,⁹⁷ TVA initiated an internal investigation to collect evidence and substantiate Ms. Henderson's complaints, as discussed below in section I.C.⁹⁸

After the conclusion of this investigation on May 25, 2018, TVA placed Mr. McBrearty on paid administrative leave.⁹⁹ Mr. McBrearty remained on administrative leave for 83 days until August 16, when he submitted his resignation effective August 30.¹⁰⁰ During this time, TVA provided Mr. McBrearty minimal explanation of why he was placed on leave other than that an "investigation had determined that Mr. McBrearty harassed . . . Ms. Henderson."¹⁰¹ Indeed, at the time Ralph "Al" Dodds, Mr. McBrearty's supervisor, placed him on leave, Mr. Dodds considered it important that he not solicit Mr. McBrearty's version of the facts so as not to interfere with the investigation.¹⁰² Mr. McBrearty contacted Mr. Dodds a few times during his administrative leave to try and ascertain his status, but no concrete information was provided on when a decision would be reached.¹⁰³ The evidence demonstrates objectively that Mr. McBrearty was stigmatized by the administrative leave, as both he and multiple other employees perceived it as damaging to his reputation.¹⁰⁴ And not only did the situation generate concern and confusion from others in the organization, TVA's own senior managers expressed apprehension about the adverse nature of the leave and the negative impact it could

⁹⁷ SDMF 13.

⁹⁸ See SDMF 16; SDMF 17; SDMF 18; SDMF 19.

⁹⁹ Attach. 16, OI Report 2-2018-033 Ex. 2, at 17 (ML21048A396) ("NRC Allegation Review Board Records"); Order Appendix at 2 (ML20297A552).

¹⁰⁰ SDMF 42; SDMF 56; Attach. 17, McBrearty Resignation Letter to Al Dodds (Aug. 16, 2018) (TVADOC0009127-0001) (Mr. McBrearty's resignation, effective Aug. 30, 2018).

¹⁰¹ SDMF 42; Attach. 3, McBrearty Dep. Tr., at 241 (ML21237A471 (non-public)).

¹⁰² SDMF 43; Attach. 6, Dodds Dep. Tr., at 29 (ML21232A637 (non-public)).

¹⁰³ SDMF 49; Attach. 6, Dodds Dep. Tr. at 122–23.

¹⁰⁴ SDMF 57; see SDMF 50; Attach. 18, Email from R. Dodds to A. Williams (July 30, 2018) (TVADOC0004309–10) (providing a timeline of concerns from other employees about the situation, including the belief by another employee that Mr. McBrearty's reputation was already damaged).

have on others raising safety concerns.¹⁰⁵ After 83 days of administrative leave and finally being told that termination was being considered, Mr. McBrearty resigned from his position, citing the impact to his professional reputation and credibility with other employees and the NRC.¹⁰⁶

Contrary to TVA's assertions in its Motion, determination of what constitutes an adverse action is dependent on the context.¹⁰⁷ The NRC staff agrees that administrative leave may not be an adverse action in all circumstances. But finding, as a matter of law, that an indefinite length of post-investigation paid administrative leave is not adverse, especially when combined with other objective evidence of how it damaged the employee's reputation and chilled others in the organization from raising concerns, would provide a troubling roadmap for employers to discriminate against individuals who engage in protected activity.¹⁰⁸

Regardless, the facts here readily satisfy the fact-dependent "materially adverse" tests already applied by courts, including the Sixth Circuit, in assessing whether paid administrative leave is an adverse action. Consequently, material facts remain in dispute, and summary disposition is not warranted.

¹⁰⁵ See SDMF 50; Attach. 18, Email from R. Dodds to A. Williams (July 30, 2018) (TVADOC0004309–10) (providing a timeline of concerns from other employees about the situation, including the belief by another employee that Mr. McBrearty's reputation was already damaged); Attach. 19, Email from R. Dodds to A. Williams and J. Shahan (July 22, 2018) (TVADOC0009050-0001) (documenting a discussion between Al Dodds and Inza Hagins-Dyer, TVA's ECP manager, where she raised concerns that an adverse action had already been creating by impacting Mr. McBrearty's site access and that Mr. Dodds had received questions from another employee expressing fear of getting in trouble for expressing opinions); Attach. 6, Dodds Dep. Tr., at 123 (ML21232A637 (non-public)) (noting that Mr. McBrearty's administrative leave exceeded two months, Mr. Dodds stated that he "would have a hard time arguing that [the leave] was not a form of discipline." Mr. Dodds also testified that one of Mr. McBrearty's employees asked Mr. Dodds what he was allowed to say and who was he allowed to talk to without getting in trouble like Mr. McBrearty. *Id.* at 106:20 to 107:7.

¹⁰⁶ SDMF 42; SDMF 56; Attach. 5, Dodds OI Tr. at 37 (ML21042A025).

¹⁰⁷ *Burlington N.*, 548 U.S. at 69.

¹⁰⁸ See *Stone & Webster Eng'g Corp. v. Herman*, 115 F.3d 1568, 1569 (11th Cir. 1997) ("But if fear of retaliation kept workers from speaking out about possible hazards, nuclear safety would be jeopardized. To protect whistleblowers, Congress forbade employers from retaliating against employees who act in prescribed ways to ensure safety.").

1. Courts hold that long-term paid administrative leave, in response to engaging in protected activity, can be a materially adverse action

TVA insists that paid administrative leave, as a matter of law, does not constitute an adverse action under the Energy Reorganization Act.¹⁰⁹ TVA reaches that conclusion, as discussed above, by relying on a narrow reading of the statute that conflicts with the current caselaw in the Sixth Circuit and as applied in proceedings by the DOL. Accordingly, the correct test to use here to determine whether TVA took a materially adverse action is whether the action “might have dissuaded a reasonable worker from [engaging in protected activity].”¹¹⁰ Under this standard, courts have looked to factors such as the length of the paid administrative leave, the timeliness of internal investigations, the stigma that resulted from the leave, the communications made to the employee and others, and the impact on future advancement. Here, the facts demonstrate that placing Mr. McBrearty on paid administrative leave was a materially adverse action.

The Sixth Circuit has provided instructive examples of how the same facts can lead to different results between Title VII anti-discrimination (protected class) and anti-retaliation (protected activity) claims.¹¹¹ In *Michael v. Caterpillar Financial Services Corp.*, the plaintiff brought claims under both Title VII's anti-discrimination provision and the anti-retaliation provision.¹¹² Following an internal investigation into complaints into her management style, the plaintiff was placed on two days of paid administrative leave and then on a 90-day performance plan, requiring that she not engage in certain management practices, which she successfully completed.¹¹³ The court stated that, under Title VII's discrimination framework, administrative

¹⁰⁹ TVA Motion Regarding Violations 1–3, at 3–38, n.135 (ML21228A261).

¹¹⁰ *Vander Boegh*, 536 F. App'x at 529.

¹¹¹ *Michael v. Caterpillar Fin. Servs. Corp.*, 496 F.3d 584 (6th Cir. 2007).

¹¹² *Id.* at 588.

¹¹³ *Id.* at 591–92.

leave and placement on a performance plan typically do not meet the definition of an adverse action.¹¹⁴

However, the court found the same set of facts would satisfy Title VII's anti-retaliation test.¹¹⁵ Utilizing this "more liberal definition," the same standard the court later used in *Vander Boegh* for a claim under the ERA, the court found that the employer's retaliatory actions, including "brief placement on paid administrative leave and the 90-day performance plan, appear to meet this relatively low bar."¹¹⁶ Thus, contrary to TVA's assertions, paid administrative leave may constitute an adverse action under the broader anti-retaliation test used for both Title VII anti-retaliation claims and ERA claims.¹¹⁷

The Sixth Circuit has also explained when paid administrative leave would *not* meet the definition of an adverse action under the anti-retaliation standard, and its reasoning ultimately only reinforces why TVA's action here was adverse. In *McNeill v. United States Department of Labor*, a pump mechanic at D.C. Cook Nuclear Plant refused to perform an assignment when he and another employee believed the work package was deficient.¹¹⁸ His supervisor sent them home, and both employees thought they had been terminated.¹¹⁹ The facts showed that after their site access was placed on administrative hold, they were told by the employer in a matter

¹¹⁴ *Id.* at 594. The court ultimately relied on other grounds to affirm the district court's grant of summary judgment.

¹¹⁵ *Id.* at 596.

¹¹⁶ *Id.*

¹¹⁷ TVA Motion Regarding Violations 1–3, at 36 (ML21228A261). As Mr. Hilton stated in his deposition, the NRC has applied the deterrence standard in issuing enforcement actions. Attach 20, Signed Transcript of the Deposition of Nicholas Hilton, at 156–62 (July 7, 2021) (ML21236A331 (non-public)) ("Hilton Dep. Tr.") ("... an environment where others would be deterred from raising a concern, we would generally consider that as an adverse action."). See also *Earthline Techs.*, EA-99-290, at 2 (Jan. 4, 2002) (ML020090029) ("Placing an employee on paid leave after the employee raised safety concerns . . . is viewed by the NRC as a change in the terms, conditions, or privileges of employment."), *settlement approved in Earthline Techs.* (Ashtabula, Ohio), LBP-03-6, 57 NRC 251 (2003); *Wolf Creek Nuclear Operating Corp.*, EA-18-037 (Dec. 17, 2018) (ML18333A043).

¹¹⁸ *McNeill*, 243 F. App'x at 95–99 (6th Cir. 2007).

¹¹⁹ *Id.* at 96.

of hours they had not been terminated and were still on the payroll.¹²⁰ The next day, the employer called the plaintiff to explain that the supervisor did not have the authority to terminate him and that his access was being restored.¹²¹ The employer took further action to replace the supervisor and organized a meeting with other employees to explain their right to make safety complaints.¹²² The plaintiff was told to come back in the following Monday, and, over the weekend, received calls from three managers explaining that they supported him.¹²³ The plaintiff then filed a claim alleging discrimination under the ERA to the DOL that its Administrative Review Board denied.¹²⁴

The Sixth Circuit, applying the anti-retaliation test to the ERA claim, found there was substantial evidence to support the DOL Administrative Review Board's finding that this was not a materially adverse action.¹²⁵ Specifically, it found that the prompt actions taken by the company to explain that the plaintiff was not fired and the short duration of the leave would not have deterred a reasonable worker from raising concerns.¹²⁶ Consequently, short placement on administrative leave, followed by prompt action and communication with the employee, can mitigate the adverse nature of the action. And while TVA attempts to generalize this holding to mean that paid administrative leave can never constitute an adverse action, as discussed below, the facts in this case are highly distinguishable.¹²⁷

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* Additionally, the Administrative Law Judge conducted a formal hearing in the matter. The ALJ's Recommended Order and Decision concluded that the defendant did violate the ERA, though the ARB's final decision denied the complaint. *Id.*

¹²⁵ *Id. at 102.* In this case, while the Court did apply the *Burlington Northern* anti-retaliation test, it did not provide a judgment whether this or the more limiting standard should apply to discrimination under the ERA. But as discussed above, the Sixth Circuit subsequently applied the more liberal standard to claims under the ERA. *Vander Boegh*, 536 F. App'x 522.

¹²⁶ *McNeill*, 243 F. App'x at 99–102.

¹²⁷ TVA Motion Regarding Violations 1–3, at 36 (ML21228A261).

2. Other circuits have held that paid administrative leave can dissuade reasonable workers from engaging in protected activity

Other circuits have adopted similar reasoning, consistently reinforcing the fact-specific nature of the inquiry. For example, the Fifth Circuit has held that paid administrative leave can, depending on the circumstances, constitute a material adverse action, particularly if it can negatively impact future advancement, stigmatize an employee, or cause emotional distress.¹²⁸ And in *Stewart v. Mississippi Transportation Commission*, the Fifth Circuit found that an employee's three-week placement on paid administrative leave while an investigation occurred was not materially adverse, when the company also took action to ensure the employee was not stigmatized.¹²⁹ In the Ninth Circuit, applying the same standard in the context of first amendment retaliation, the court held that "under some circumstances, placement on administrative leave can constitute an adverse action."¹³⁰ And while the D.C. Circuit has not explicitly ruled on whether paid administrative leave may constitute a materially adverse action, the United States District Court for the District of Columbia has found that administrative leave can constitute an adverse action under Title VII's anti-retaliation framework.¹³¹

Finally, while TVA cites one Eighth Circuit case for the proposition that "[p]aid administrative leave is not even an adverse employment action under Title VII's broader anti-retaliation standard," this case predates the standard set forth in *Burlington Northern*.¹³² Since

¹²⁸ *McCoy v. City of Shreveport*, 492 F.3d 551 (5th Cir. 2007); *Stewart v. Miss. Transp. Comm'n*, 586 F.3d 321 (5th Cir. 2009).

¹²⁹ *Stewart*, 586 F.3d at 332; see also *Williams v. Admin. Review Bd.*, 376 F.3d 471, 476–77 (5th Cir. 2004) (holding that a retaliation-based hostile work environment that did not result in an unfavorable personnel action is cognizable under the Energy Reorganization Act).

¹³⁰ *Dahlia v. Rodriguez*, 735 F.3d 1060, 1078 (9th Cir. 2013) (en banc).

¹³¹ See *Richardson v. Petasis*, 160 F. Supp. 3d 88, 117–22 (D.D.C. 2015) (finding that "unusually long" suspension of 39 days, combined with conditions that she continue to complete certain tasks, constituted a materially adverse action for both Title VII discrimination claim and Title VII retaliation claim and that a final written warning, used as a predicate for suspension, was sufficient for a retaliation claim). But see *Hornsby v. Watt*, 217 F. Supp. 3d 58, 65–67 (D.D.C. 2016) (finding that placement on paid leave pending felony assault charges was not an adverse action).

¹³² *Singletary v. Mo. Dep't of Corr.*, 423 F.3d 886 (8th Cir. 2005) (drawing no distinction between an adverse action in the Title VII discrimination and retaliation context).

that decision, the Eighth Circuit has, in accordance with *Burlington Northern*, used a context-dependent test in whistleblower retaliation cases.¹³³ Other cases cited by TVA rest upon evaluations in the context of a Title VII discrimination (protected class) claim, which as noted above use a different (and narrower) standard, and on scenarios that, in any event, nearly all involve a far shorter duration of leave.¹³⁴

As a result, whether TVA's placement of Mr. McBrearty on paid administrative leave constitutes an adverse action is highly dependent on the context in which it took place. When examining whether such an action would discourage a reasonable worker from engaging in protected activity, courts have primarily looked to factors such as the length of the leave, the timeliness of the investigation, the stigma and professional impacts on the employee, and the manner in which it was communicated.

3. The facts demonstrate that the administrative leave imposed by TVA constitutes an adverse action because of its duration and stigmatizing effect, magnified by TVA's untimely and misleading investigation

Under this necessarily fact-specific legal inquiry, the facts in dispute amply demonstrate that Mr. McBrearty's placement on paid administrative leave would dissuade a reasonable worker from engaging in protected activity. As the Staff intends to prove at hearing, after considering the extreme length of the administrative leave (following TVA's untimely and opaque investigation), Mr. McBrearty and other TVA employees recognized TVA's action as damaging

¹³³ See *Weger v. City of Ladue*, 500 F.3d 710, 726 (8th Cir. 2007) (noting change from *Singletary's* "adverse employment action" standard to "materially adverse action" standard, an objective standard as to whether a reasonable employee might have been deterred); *Littleton v. Pilot Travel Ctrs., LLC*, 568 F.3d 641, 644 (8th Cir. 2009) (noting change in standards "post-*Burlington Northern*").

¹³⁴ See, e.g., *McNeill*, 243 F. App'x at 95–96 (5 day suspension); *Michael*, 496 F.3d at 594 (2 day suspension); *Bowman v. Shawnee State Univ.*, 220 F.3d 456, 462 (6th Cir. 2000) (10 day suspension); *Jackson v. City of Columbus*, 194 F.3d 737, 752 (6th Cir. 1999) (4 day suspension); *Dendinger v. Ohio*, 207 F. App'x 521, 524 (6th Cir. 2006) (unpublished) (15 day suspension with opportunity for a hearing). But see *Joseph v. Leavitt*, 465 F.3d 87, 91 (2d Cir. 2006) (five month suspension pending criminal charges not adverse); *Peltier*, 388 F.3d at 988 (six month suspension pending grand jury proceeding not adverse); *Singletary*, 423 F.3d at 889 (89 day paid suspension not materially adverse).

both to his reputation and to the willingness of others to raise safety concerns.¹³⁵ Accordingly, TVA fails to support its claim that there are no material facts in dispute.¹³⁶

Again, Mr. McBrearty was placed on administrative leave for 83 days before he resigned from his position. During this time, he was not clearly informed of what specific actions resulted in this decision.¹³⁷ His position and role, as a site licensing manager, involved frequent communication with colleagues, subordinates, and representatives from the NRC, and Mr. McBrearty believed his abrupt and lengthy removal from his position irreparably harmed his credibility.¹³⁸ And when he resigned from his position, Mr. McBrearty cited his belief that he had lost credibility and his reputation had been so damaged that he would no longer be able to perform his job effectively.¹³⁹

Not only was he abruptly placed on leave for such a significant period of time, but others in the organization likewise saw his placement on leave as punishment for raising concerns about TVA's compliance with NRC requirement and for raising these concerns to other TVA employees, managers, and the employee concerns program.¹⁴⁰

¹³⁵ SDMF 42; SDMF 50.

¹³⁶ TVA Motion Regarding Violations 1–3 at 37 (ML21228A261).

¹³⁷ SDMF 42; Attach. 16, NRC Allegation Review Board Records, at 17 (ML21048A396). Attach. 5, Dodds OI Tr., at 39–40 (ML21042A025) (where Dodds noted he had never been provided the underlying evidence).

¹³⁸ SDMF 57; Attach. 5, Dodds OI Tr., at 37 (ML21042A025) (“Mike McBrearty, said, I can't keep hanging on like this. My reputation is ruined. And even if you guys say, hey, we were right -- we were wrong, and you were right, come on back to the company. This is my reputation with the NRC has been damaged, with my employees has been damaged, with the whole site.”); Attach. 4, McBrearty OI Tr., at 137 (ML21048A396) (“And, at that point, I thought, you know, they could call me any day and say you're terminated. And I got bills to pay . . . it was strange to me they were letting this go for two, over two months.” “I started thinking . . . they're just trying to wear me down and they're hoping I'll go find another job.”)

¹³⁹ SDMF 57; Attach. 5, Dodds OI Tr., at 37 (ML21042A025).

¹⁴⁰ SDMF 50; Attach. 19, Email from R. Dodds to A. Williams and J. Shahan (July 22, 2018) (TVADOC0009050-0001) (documenting SCWE concerns he received and conversation with Inza Hagins-Dyer); Attach. 18, Email from R. Dodds to A. Williams (July 30, 2018) (TVADOC0004310) (summarizing a discussion with an employee that Mr. McBrearty's reputation was already damaged).

The evidence, as shown from the OI report and discovery, demonstrates that during his time on leave, TVA was working behind the scenes not to gather more information, but attempting to justify the conclusion of the report (that Ms. Henderson had been “harassed”) while reducing the investigation’s reliance on his complaints made through ECP and the writing of corrective action reports.¹⁴¹ And during this time, the silence from TVA about his status led to considerable speculation from other TVA employees as to what was occurring, to the point that others, including Al Dodds and ECP Senior Manager Ms. Inza Hagins-Dyer, had serious concerns over its chilling effect.¹⁴²

As the Supreme Court has held, in complex cases of retaliation, context matters. Considerable evidence has been produced during discovery demonstrating that Michael McBrearty was subjected to adverse effects well in excess of the “relatively low bar” that legally constitutes a materially adverse action.¹⁴³ The actions TVA took and the objective inferences to be drawn from them, along with the credibility of the witnesses, are the subject of a material dispute. And as such, the Board should deny summary disposition for Violation 2. TVA is incorrect as a matter of law that a retaliatory investigation cannot constitute an adverse action, and TVA fails to demonstrate that there are no genuine disputes of fact regarding the retaliatory nature of TVA’s investigation.

¹⁴¹ SDMF 48; SDMF 53; see, e.g., Attach. 21, email from C. Chandler, TVA OGC, to J. Grace, TVA OGC (July 5, 2018) (TVADOC0011153) (providing edits report to reduce reliance on ECP complaints); Attach. 19, Email from R. Dodds to A. Williams and J. Shahan (July 22, 2018) (TVADOC0009050-0001) (referring to original investigation as a “failed prior attempt to base discipline on his use of ECP.”).

¹⁴² SDMF 45; SDMF 50; SDMF 51; Attach. 52, TVA Special Pulsing Summary, Enclosure, at [unnumbered attachment p. 5-6](#) (July 12, 2018) (ML21045A127) (ECP Pulsing survey showing only 50% of licensing employees believed they could raise issues about actions or decisions made by CNL without fear of retaliation). Attach. 19, email from R. Dodds to A. Williams and J. Shahan (July 22, 2018) (TVADOC0009050-0001) (noting need to “recover our lost Safety Culture margin,” receipt of an anonymous note, and that Ms. Hagins-Dyer thinks TVA may have “already created a significant adverse action”); Attach. 18, email from R. Dodds to A. Williams (July 30, 2018) (TVADOC0004309–10) (outlining concerns that had been raised).

¹⁴³ *Michael*, 496 F.3d at 596.

C. TVA’s investigation of Mr. McBrearty and Ms. Wetzel constitutes an adverse action because it would likely deter protected activity and because it was a pretext to retaliate

In Violations 1 and 3, the Staff found that TVA discriminated against Mr. McBrearty and Ms. Wetzel, respectively, based on Ms. Henderson’s filing of a complaint that triggered an investigation based, at least in part, on the employees’ protected activity.¹⁴⁴ TVA claims that, as a matter of law, this filing of a complaint is not an adverse action and cannot constitute discrimination under the Energy Reorganization Act.¹⁴⁵ But TVA’s argument is incorrect. As explained below in Section I.C.1, under the anti-retaliation standard, what constitutes a materially adverse action is inextricably intertwined with the facts of the case and depends heavily on the context in which the action took place.¹⁴⁶ Here, the facts demonstrate that not only can a complaint resulting in a retaliatory investigation dissuade a reasonable employee from engaging in protected activity, TVA’s investigation led to serious adverse impacts to Mr. McBrearty and Ms. Wetzel.

Additionally, as discussed below in Section I.C.2, TVA’s actions would also constitute an adverse action under an alternative legal analysis that draws on caselaw interpreting the Whistleblower Protection Act (WPA).¹⁴⁷ That legal test establishes that where an investigation is so closely related to a personnel action that it could be a pretext for gathering evidence to retaliate, the investigation is an adverse action.¹⁴⁸ The facts show that TVA used the investigation into Ms. Henderson’s complaint not as an objective inquiry, but as a pretext to gather evidence to retaliate against Mr. McBrearty and Ms. Wetzel for engaging in protected

¹⁴⁴ See SDMF 13; SDMF 14; NOV at 1–2 (ML20232B803); Order Appendix at 1, 3 (ML20297A552).

¹⁴⁵ TVA Motion Regarding Violations 1–3, at 12 (ML21228A261).

¹⁴⁶ *Burlington N.*, 548 U.S. at 68.

¹⁴⁷ 5 U.S.C. § 2302.

¹⁴⁸ *Russell v. Dep’t of Justice*, 76 M.S.P.R. 317, 324 (1997) (stating that where “an investigation is so closely related to the personnel action that it could have been a pretext for gathering evidence to retaliate, and the agency 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 the whistleblowing claim.).

activity. Thus, the facts demonstrate that TVA's action would likewise be adverse when analyzed under this alternative framework.

1. A retaliatory investigation may constitute an adverse action if it might well dissuade a reasonable worker from engaging in protected activity

On its face, Ms. Henderson's March 2018 complaint to TVA demonstrated that her concerns were primarily based on protected activities of TVA employees, namely Mr. McBrearty and Ms. Wetzel.¹⁴⁹ Their protected activities specifically involved concerns with the handling of the NCVs and the chilled work environment in CNL.¹⁵⁰ Thus, as the evidence shows, Ms. Henderson's complaint and the resulting investigation into Mr. McBrearty and Ms. Wetzel constituted adverse actions against them, because the retaliatory nature of the investigation might well dissuade a reasonable worker from engaging in protected activity.

As discussed above, under *Burlington Northern*, the touchstone for material adversity is deterrence. Applying the test of whether the investigation would "dissuade a reasonable employee from engaging in protected activity" is both consistent with precedent and aligned with the regulatory purpose of ERA Section 211 and 10 C.F.R. § 50.7 of ensuring that employers do not discourage their employees from raising nuclear safety concerns.¹⁵¹ Thus, the Board should also apply the Title VII anti-retaliation standard to find that the retaliatory investigation into Mr. McBrearty and Ms. Wetzel constituted an adverse action under the ERA and the NRC's implementing regulations.

¹⁴⁹ See, e.g., SDMF 13; 14; 15; Attach. 8, Henderson Complaint, at 1, 3–4, 6–8 (ML21042A026).

¹⁵⁰ See Section I.B, *supra* (discussing that Mr. McBrearty raised concerns of a chilled work environment, filed complaints with the ECP, and raised concerns about regulatory responses to non-cited violations); see also Section II.A.1–3, *infra* (discussing that Ms. Wetzel submitted an allegation to the NRC of a chilled work environment under Ms. Henderson's supervision; discussed her related concerns with Mr. Slater, the TVA attorney who investigated Ms. Henderson's complaint; and communicated them to Mr. Shea, Ms. Henderson's supervisor).

¹⁵¹ *Burlington N.*, 548 U.S. at 68.

(a) TVA conducted its investigation of Mr. McBrearty and Ms. Wetzel in a biased, retaliatory manner

Numerous disputed facts in the record demonstrate the incomplete, biased, and retaliatory nature of TVA's investigation. The result was an investigation that systematically disregarded Mr. McBrearty and Ms. Wetzel's protected activity, or even held it against them. For example, the investigation fundamentally relied on mischaracterizations by Ms. Henderson that Mr. Slater either did not attempt to, or failed to, corroborate.¹⁵² Mr. Slater relied on Ms. Henderson's statements, without verifying her assertion with the ECP, that the ECP found Mr. McBrearty to be the harassing party based on a hostile work environment concern he raised.¹⁵³ The statement relied on information that Ms. Henderson provided in her complaint and investigation interview.¹⁵⁴ Not only did the findings in the ECP report fail to support Ms. Henderson's claim, but Mr. Slater also failed to interview anyone from the ECP.¹⁵⁵ However, Mr. Slater nevertheless accepted Ms. Henderson's characterization of what the ECP report found.¹⁵⁶

Mr. Slater failed to interview Mr. McBrearty's supervisors, who allegedly had counseled Mr. McBrearty regarding his supposedly "harassing" interactions with Ms. Henderson, yet concluded that Mr. McBrearty had been counseled regarding his behavior but did not stop it.¹⁵⁷

¹⁵² See, e.g., SDMF 37; 39, 40.

¹⁵³ See, e.g., SDMF 34; Attach. 12, Final Slater Report, at 29–30 (ML21043A012) (citing Henderson Complaint at 2, and interviews with Henderson and Shea).

¹⁵⁴ Attach. 12, Final Slater Report, at 18 n.55 (ML21043A012).

¹⁵⁵ SDMF 35.

¹⁵⁶ See Attach. 22, ECP Summary NEC-17-00410, at 13–16 (ML21043A009). Based on another example in Ms. Henderson's complaint of an employee allegedly retaliating against her by raising a chilled work environment concern to the ECP, Mr. Slater inaccurately attributed the concern to Mr. McBrearty, when it was raised by Michelle Conner, who reported to Ms. Henderson. See Attach. 42, OI ROI 2-2018-033, Ex. 13, NEC-16-00638 Findings, at 7–12 (July 2016) (ML21048A396). See also Attach. 12, Final Slater Report, at 17 (ML21043A012) (falsely attributing the ECP concern to Mr. McBrearty); Henderson Complaint, at 3 (ML21042A026).

¹⁵⁷ SDMF 37. Supervisors who counseled McBrearty included his direct supervisors, Al Dodds and, previously, Dennis Dimopoulos, and Anthony Williams, Sequoyah site vice president. See, e.g., Attach. 6, Dodds Dep. Tr., at 21:13 to 23:16 (ML21232A637 (non-public)) (describing as a "teaching moment" an instance when Dodds counseled Mr. McBrearty about others' perceptions, namely Ms. Henderson's, when Mr. McBrearty incorporated his supervisor (Mr. Dodds) in an email chain that already included Ms. Henderson, and noting that Mr. McBrearty was receptive to feedback and

Mr. Slater did not inform Mr. McBrearty or Ms. Wetzel about the true nature of the investigation, contrary to general TVA practice,¹⁵⁸ and he reported the biased findings of the investigation as final conclusions that TVA used as a basis for taking action against McBrearty and Wetzel.¹⁵⁹ Mr. Slater also treated Ms. Wetzel's chilled work environment concerns about Ms. Henderson that Ms. Wetzel had communicated to Mr. Shea—protected activity itself—as examples of misconduct rather than investigate the actual concerns.¹⁶⁰ And Mr. Slater relied on excerpts from what TVA characterizes as Mr. McBrearty's "disparaging" emails and text messages as evidence of misconduct toward Ms. Henderson, but declined to provide Mr. McBrearty any opportunity to explain the regulatory and nuclear safety concerns raised in the communications.¹⁶¹ Indeed, it is unclear that Mr. Slater even reviewed the emails themselves;

"complimentary" and "very respectful of Ms. Henderson"); Attach. 56, Signed Transcript and Errata of the Deposition of Anthony Williams, at 25:6–17, 26:10–12 (ML21232A631 (non-public)) ("Williams Dep. Tr.") (stating he did not expect to be interviewed and described his coaching of Mr. McBrearty as informing him to be professional at all times based on what he heard from Corporate, but that there were no accusations or reports that Mr. McBrearty left Ms. Henderson off emails, which Henderson claimed as harassing behavior in her complaint. See Attach. 8, Henderson Complaint at 4–5 (ML21042A026)).

¹⁵⁸ SDMF 22; SDMF 39. Neither Mr. McBrearty nor Ms. Wetzel knew TVA's actual basis for their interview with Mr. Slater, and neither thought the interview indicated that they were under investigation. Mr. McBrearty believed the interview was about a harassment allegation related to concerns he raised in a text exchange with James Polickoski on March 6, 2018, in which Mr. McBrearty discussed licensing issues and expressed some frustration with Ms. Henderson's handling of the issues. Attach. 3, McBrearty Dep. Tr., at 28:4 to 30:5; 249:19–23 (ML21237A471 (non-public)). Ms. Wetzel believed the interview was being conducted to assess whether there was a chilled work environment in Ms. Henderson's organization. Attach. 23, Signed Transcript for the Deposition of Beth Wetzel, at 70:18–20, 71:6–10 (June 16, 2021) (ML21237A473 (non-public)) ("Wetzel Dep. Tr."). Attach. 24, Signed Transcript and Errata of the Deposition of Charles (Wes) Wingo, at 46 (June 30, 2021) (ML21232A632 (non-public)) ("Wingo Dep. Tr.") (testimony from experienced TVA corporate nuclear human resources officer, describing that employees interviewed as part of an investigation into another employee's complaint are generally provided with enough context to understand why they are being interviewed).

¹⁵⁹ TVA's action against Ms. Wetzel also relied on the OGC Supplemental Memo. That memo stated that it relied on the Slater investigation report. SDMF 58. See Attach. 12, OI ROI 2-2019-015, Ex. 14, at 41-43 (Aug. 30, 2018) (ML21043A012) ("OGC Supplemental Memo – Involvement of Beth Wetzel").

¹⁶⁰ SDMF 20; SDMF 23; SDMF 24; Attach. 12, Final Slater Report, at 20–21 n.69 (ML21043A012); see Section II.A.3, *infra* (discussing Wetzel's communication with Shea).

¹⁶¹ SDMF 39.

instead, he simply adopted Ms. Henderson's characterization of them, and assumed that they were negative and inappropriate.¹⁶²

The investigation's reliance on such factual mischaracterizations concerning protected activities of Mr. McBrearty and Ms. Wetzel to find support for Ms. Henderson's complaint demonstrate TVA's efforts to gather evidence to retaliate. In turn, and as explained below, Ms. Henderson's complaint and TVA's biased and retaliatory approach to the investigation resulted in significant, objective reputational harm and adverse employment and career impacts that would discourage a reasonable employee from engaging in protected activity.

(b) TVA's retaliatory investigation had objective adverse effects on Mr. McBrearty and Ms. Wetzel that well might dissuade a reasonable employee from engaging in protected activity

The biased and retaliatory manner in which TVA's investigation was conducted, and the objective, adverse effects it had on both Mr. McBrearty and Ms. Wetzel, demonstrate why TVA's action would dissuade an employee from engaging in protected activity. In this case, Mr. McBrearty endured a prolonged period of uncertainty once the draft investigation report findings were issued, as TVA revoked his plant access and then delayed its final investigation decision for nearly three months until he resigned.¹⁶³ Testimony from Mr. McBrearty and his supervisor, Al Dodds, demonstrates that due to TVA's investigation and accompanying failure to provide him with information about his status, Mr. McBrearty recognized his reputation had been damaged even if TVA were to retain him. Mr. Dodds testified that McBrearty believed he could not return

¹⁶² See, e.g., SDMF 37; Attach. 6, Dodds Dep. Tr., at 21:13 to 23:16 (ML21232A637 (non-public)) (describing how Mr. McBrearty was receptive to Mr. Dodds' advice to be more aware of how others (like Henderson) might perceive an email chain forwarded to a supervisor, but observing that Mr. McBrearty's conduct toward Henderson was complimentary and that he did not observe Mr. McBrearty make any negative comments about Henderson).

¹⁶³ SDMF 32; SDMF 42; Attach. 6, Dodds Dep. Tr., at 25:6–11) (ML21232A637 (non-public)). (describing his mistaken belief that when he put Mr. McBrearty on administrative leave that it would only be for one or two days. Mr. McBrearty was banned from the plant for 83 days before he resigned.).

to TVA because he could never get back his reputation.¹⁶⁴ Additionally, prior to the investigation, Mr. McBrearty was under consideration for a promotion by corporate leadership.¹⁶⁵ But corporate leadership then determined that, in light of the investigation, Mr. McBrearty could not be promoted, and any change in his role would have to represent a lateral change.¹⁶⁶ Ms. Wetzel likewise experienced adverse employment impacts in conjunction with the investigation. Further demonstrating TVA's efforts to gather evidence to retaliate against Ms. Wetzel, TVA lowered her performance rating compared to the past three years despite lacking a justifiable basis for doing so. In fact, statements by Ms. Henderson to Mr. Shea demonstrate her awareness that Ms. Wetzel's performance did not warrant a lower rating.¹⁶⁷ During this same period, Ms. Henderson received positive feedback about Ms. Wetzel's performance in ten leadership competencies from her supervisor at the Nuclear Energy Institute (NEI) where she was on rotation, stating that "Beth has been the ideal loanee for NEI. ... She has been very easy to supervise."¹⁶⁸ The investigation also harmed Ms. Wetzel's career prospects, because TVA prematurely ended her NEI rotation, where she excelled, after only five months into her 18-

¹⁶⁴ SDMF 57; Attach. 6, Dodds Dep. Tr., at 124:10–14 (ML21232A637 (non-public)) (testifying that Mr. McBrearty told him that his reputation had been ruined, and that even if TVA asked him to return, he would never get back his reputation.).

¹⁶⁵ SDMF 46; Attach. 26, ██████████ PEC Tr., at 21, 55 (June 24, 2020) (ML21048A428 (non-public)).

¹⁶⁶ SDMF 46; Attach. 26, ██████████ PEC Tr. at 55 (ML21048A428 (non-public)). See also Attach. 27, Text Message from Joe Shea to David Czufin (Ex. 18 in ██████████ PEC) (June 5, 2018) (ML20182A789 (non-public)). Mr. Shea suggested to Mr. Czufin in the text message that Mr. McBrearty return as assistant director for fleet emergency preparedness because a decision needed to be made whether to terminate or separate Mr. McBrearty and Ms. Henderson, but Mr. Czufin stated that "we can't give him a promotion." *Id.*

¹⁶⁷ SDMF 55; Attach. 28, email from E. Henderson to J. Shea (Aug. 15, 2018) (TVADOC0009126-0001) (Ms. Henderson states: ██████████
██████████). See also Attach. 29, Beth Wetzel Performance Reviews (TVADOC0009371-0001 to TVADOC0009371-0027) (compare page 2, ██████████
TVADOC0009371-0002) with pages 10, 18, and 26 ██████████
██████████) (TVADOC0009371-0010, TVADOC0009371-0018, TVADOC0009371-0026)).

¹⁶⁸ SDMF 54; Attach. 30, email from C. Earls, NEI, to E. Henderson (Aug. 1, 2018) (TVADOC0004575–76).

month assignment.¹⁶⁹ Thus, analogous to what courts applying the anti-retaliation standard have found, the practical adverse effects on Mr. McBrearty and Ms. Wetzel, where they were investigated based on a complaint directly linked to their protected activities, could well dissuade a reasonable employee from engaging in protected activity.

In arguing that TVA's investigation of Ms. Henderson's complaint was not in response to protected activity, TVA quotes from several depositions of Staff witnesses in which TVA counsel asked hypothetical questions about what could constitute protected activity. The full context of these questions reflects that the Staff witnesses appropriately declined to state definitely whether or not hypothetical situations, based on vague or minimal facts presented in counsel's questions, would constitute protected activity.¹⁷⁰ TVA implies that the Staff's answers were inconsistent and states rhetorically that "[i]f the Staff cannot identify protected activity without knowing the facts of the matter, how can it expect any employer to?"¹⁷¹ However, as reflected in the detailed discussion above of the facts of Ms. Henderson's actual complaint and TVA's actual investigation, TVA's attempt to elicit Staff views on a generic disposition of a straw man hypothetical is immaterial to the instant violations, because in this case, the facts (and TVA's actions) demonstrate that the link to protected activity was readily apparent to TVA.

Here, Ms. Henderson's complaint on its face reflects that her chief concern was that her subordinate employees raised safety concerns about TVA's operations that Ms. Henderson supervised, including with the ECP and the NRC.¹⁷² In any event, TVA did not receive a violation simply because Ms. Henderson filed a complaint and TVA investigated it. As described at length above, the violation resulted from Ms. Henderson filing a complaint based upon

¹⁶⁹ SDMF 66; Attach. 34, See Memorandum from Beth Wetzel to Joe Shea and Amanda Poland Re: Employment (Oct. 31, 2018) ("Wetzel Counterproposal") (TVADOC0004451) (requesting that she "be allowed to return to my rotation at NEI through the scheduled end of the rotation (October 31, 2019)").

¹⁷⁰ TVA Motion Regarding Violations 1–3, at 24 & nn.87, 88 (ML21228A261).

¹⁷¹ *Id.*

¹⁷² Attach. 8, Henderson Complaint at 1, 3–4, 7 (ML21042A026).

protected activity, which triggered an investigation, resulting in Mr. McBrearty being put on administrative leave until he ultimately resigned, and Ms. Wetzel was terminated. The Staff witnesses' statements—reflecting that they would want to know the facts of a particular matter before speculating, under oath, on whether or not something is protected activity—are fully in keeping with the general staff practice of carefully reviewing each case on its own merits, and the Commission's acknowledgment that "discrimination cases are, by their nature, peculiarly fact-intensive and dependent on witness credibility."¹⁷³

(c) Numerous other courts, in similar circumstances, have found a retaliatory investigation constitutes a materially adverse action

Multiple courts have found, in similar circumstances, that an investigation may constitute an adverse action under Title VII and similar anti-retaliation regimes. The reasoning and results in those cases support the same conclusion here on the facts of TVA's investigation and its adverse effects on Mr. McBrearty and Ms. Wetzel. For example, in *Velikonja v. Gonzales*, the D.C. Circuit found that a lengthy investigation that prevents promotions during its pendency and harms one's career prospects qualifies as an adverse employment action under the anti-retaliation standard set forth in *Burlington Northern*.¹⁷⁴ In reversing the dismissal of a Title VII anti-retaliation claim by an FBI employee, who claimed that her supervisor filed a complaint alleging she falsified her timesheets so that she would be investigated and denied a promotion, the court explained that "a reasonable jury could find that the prospect of such an investigation could dissuade a reasonable employee from making or supporting a charge of discrimination."¹⁷⁵ Also applying the anti-retaliation standard, in *Billings v. Town of Grafton*, the First Circuit found that "conduct need not relate to the terms or conditions of employment to give

¹⁷³ *Watts Bar*, CLI-04-24, 60 NRC at 189.

¹⁷⁴ *Velikonja v. Gonzales*, 466 F.3d 122, 124 (D.C. Cir. 2006) (internal citation omitted).

¹⁷⁵ *Id.*

rise to a retaliation claim” where an investigation and other actions by their nature deter an employee from complaining of discrimination.¹⁷⁶

In another comparable case, the Tenth Circuit found actionable retaliation where an employer filed false criminal charges for retaliatory purposes against a former employee who complained about discrimination, launching an investigation into the former employee after he exercised his Title VII rights.¹⁷⁷ In *Berry v. Stevinson Chevrolet*, a former employee filed an EEOC complaint against his employers, and, in response, they filed false criminal charges of purported forgery against him that initiated an investigation. Like in *Velikonja*, where the court found that the prospect of an investigation resulting from the employer’s false accusations could discourage protected activity, the *Berry* court held that filing criminal charges constituted an adverse action, in part, because “retaliatory prosecution can have an adverse impact on future employment opportunities.”¹⁷⁸ Even though a prosecutor, not the employer, decides whether to pursue criminal charges, the deterrent on reasonable employees from filing EEOC complaints interferes with their “unfettered access to ... remedial mechanisms.”¹⁷⁹ The court also observed that the process was “necessarily public and therefore [carried] a significant risk of humiliation, damage to reputation, and a concomitant harm to future employment prospects.”¹⁸⁰

Even though the charges and retaliatory investigation against the plaintiff in *Berry* were criminal in nature, its reasoning is instructive. The plaintiff in *Berry* engaged in protected activity under Title VII against his employer, and, in turn, the employer filed criminal charges that led to a retaliatory investigation of the plaintiff. Here, Mr. McBrearty and Ms. Wetzel engaged in

¹⁷⁶ *Billings v. Town of Grafton*, 515 F.3d 39, 54–55 (1st Cir. 2008) (citing *Burlington N.*, 548 U.S. at 69–70 (stating “[a]n employee who knows that ... she risks a formal investigation and reprimand ... might well choose not to proceed with the litigation in the first place.”)).

¹⁷⁷ *Berry v. Stevinson Chevrolet*, 74 F.3d 980, 986 (10th Cir. 1996).

¹⁷⁸ *Id.*

¹⁷⁹ *Burlington N.*, 548 U.S. at 68.

¹⁸⁰ *Berry*, 74 F.3d at 986.

protected activity by expressing concerns regarding the handling of the NCVs in corporate nuclear licensing and the chilled work environment in corporate nuclear licensing; in turn, Ms. Henderson filed a complaint based, in significant part, on that protected activity.¹⁸¹ Her complaint then triggered TVA's retaliatory investigation of Mr. McBrearty and Ms. Wetzel.

Further, the Second Circuit, in *Cox v. Onondaga City Sheriff's Department*, stated that "an employer's investigation may constitute a cognizable retaliatory action if carried out so as to result in ... constructive discharge, or other employment consequences of a negative nature, or if conducted in such an egregious manner as to 'dissuade a reasonable worker from making or supporting a charge of discrimination.'"¹⁸² For example, the U.S. District Court for the Southern District of New York found an investigation to be an adverse action under *Cox* when it considered a Title VII case at the summary judgment stage. There, the plaintiff alleged that his employer launched a procedurally-flawed, retaliatory investigation into his alleged misconduct and subsequently suspended him. The court held that the plaintiff properly alleged a retaliation claim. Distinguished from an employer fact-finding carried out without adverse employee consequences, the court found that, "in circumstances where a plaintiff alleges that he or she suffered actual 'employment consequences' due to an investigation ... an adverse employment action may be found from the investigation itself."¹⁸³ Likewise, under the standard in *Cox*, the facts of this case demonstrate not only the actual employment consequences for Mr. McBrearty and Ms. Wetzel, but that the investigation was conducted in a manner likely to dissuade others at TVA from raising concerns, as reflected by the concerns expressed by other TVA officials that

¹⁸¹ See SDMF 13; SDMF 14; SDMF 15.

¹⁸² *Cox v. Onondaga Cty. Sheriff's Dep't*, 760 F.3d 139, 147 (2d Cir. 2014) (quoting *Burlington N.*, 548 U.S. at 68).

¹⁸³ *Ulrich v. Soft Drink, Brewery Workers, and Delivery Emps.*, 425 F. Supp. 3d 234, 242 (S.D.N.Y. 2019) (internal quotation omitted) (citing *Anemone v. Metro Transp. Auth.*, 410 F. Supp. 2d 255, 266–68 (S.D.N.Y. 2006); *Cox*, 760 F.3d at 147).

the investigation¹⁸⁴ (and reliance on it in the decision to terminate Ms. Wetzel and place Mr. McBrearty on leave) would have just such an effect.¹⁸⁵

Other U.S. District Court decisions have also held that an investigation may qualify as an adverse action. For example, in *Renzi v. Union Pacific Railroad Co.*, the District Court for the Northern District of Illinois applied the Title VII anti-retaliation standard to the Federal Railroad Safety Act when reviewing whether the plaintiff, a signal maintainer for Union Pacific Railroad, properly alleged, as an adverse action, that his supervisor had brought charges against him, that were subsequently investigated, for allegedly violating maintenance and recordkeeping rules.¹⁸⁶ The court held that an investigation could constitute an adverse action because the plaintiff alleged several facts in his favor, including that: (1) no charges were brought against employees who were assigned the same role in the ten weeks prior to his assignment; (2) misleading evidence was introduced and withdrawn at his hearing on the charges; and (3) as a result of the investigation, he was “subjected [] to negative consequences in Union Pacific’s performance tracker that may have subjected him to additional interventions by his supervisors.”¹⁸⁷ The circumstances in *Renzi* are comparable to those here. As discussed above, the Slater investigation is replete with misleading (biased or incomplete) evidence,¹⁸⁸ and Ms. Wetzel was subjected to negative performance consequences when her performance rating was lowered and she was ultimately terminated.¹⁸⁹

¹⁸⁴ See, e.g., SDMF 50; SDMF 51.

¹⁸⁵ See, e.g., SDMF 50; Attach. 6, Dodds Dep. Tr., at 106:20 to 107:7 (ML21232A637 (non-public)) (discussing that he developed safety conscious work environment (SCWE) mitigation plans to be prepared to address chilled work environment concerns related to Mr. McBrearty’s circumstances, and that one of Mr. McBrearty’s employees asked Mr. Dodds what was he allowed to say and who was he allowed to talk to without getting in trouble like Mr. McBrearty).

¹⁸⁶ *Renzi v. Union Pac. R.R. Co.*, No. 16 C 2641, 2018 WL 3970149, at *4 (N.D. Ill. Aug. 20, 2018).

¹⁸⁷ *Id.* at *5.

¹⁸⁸ SDMF 18; SDMF 33; SDMF 34; SDMF 35; SDMF 36; SDMF 37; SDMF 38; SDMF 39; SDMF 40.

¹⁸⁹ SDMF 55; SDMF 68.

(d) The facts show that the retaliatory nature of TVA's investigation constitutes an adverse action, establishing a material dispute for which summary disposition is inappropriate

In sum, to determine whether an investigation represents a materially adverse action, the remedial nature of ERA Section 211 warrants application of the broader anti-retaliation standard. And contrary to the test that TVA seeks to apply, caselaw demonstrates that, in applying this deterrence standard, an employee suffers an adverse action when subject to an investigation that might well dissuade a reasonable employee from engaging in protected activity. The Staff has provided specific evidence showing that Ms. Henderson's complaint was based, in part, on protected activity, and that the resulting investigation mischaracterized the protected activities of Mr. McBrearty and Ms. Wetzel as the basis for TVA's ultimate findings.¹⁹⁰ On these facts, it is objectively apparent why such an investigation could dissuade a reasonable employee from engaging in protected activity, and thus itself constitutes an adverse action against Mr. McBrearty and Ms. Wetzel. Because numerous genuine issues of material fact remain in dispute concerning Violations 1 and 3, summary disposition is inappropriate.

2. Alternatively, the investigation constitutes an adverse action because, under a standard derived from the Whistleblower Protection Act, TVA's investigation was a pretext to retaliate

Under the test for determining a materially adverse action as applied to this case, the facts show that TVA's retaliatory investigation of Ms. Henderson's complaint constituted an adverse action because it would likely have discouraged a reasonable employee from engaging in protected activity. For the reasons explained *supra* in Section I.C.1, meeting this legal standard is itself sufficient to establish the adverse action supporting Violations 1 and 3. Therefore, the Staff has already demonstrated that summary disposition is inappropriate as a matter of law.

Moreover, a body of caselaw that builds on the Whistleblower Protection Act (WPA) provides a separate legal analysis articulating an alternative basis on which an investigation

¹⁹⁰ See SDMF 13; SDMF 14; SDMF 15.

may qualify as an adverse action. This legal analysis as applied to retaliatory investigations under the WPA is separate and distinct from the overarching anti-retaliation standard discussed in Section I.C.1, *supra*. Caselaw interpreting the WPA holds that where an investigation is so closely related to a personnel action that it could be a pretext for gathering evidence to retaliate, the investigation is an adverse action.¹⁹¹ Cases applying this principle look to whether an investigation may qualify as an adverse personnel action if it results in a significant change in duties, responsibilities, or working conditions. The facts in this case demonstrate that TVA's actions would constitute adverse action even when analyzed under this alternative framework.

In *Russell v. Department of Justice*, the Merit Systems Protection Board (MSPB) considered an employee's claim of retaliation by investigation and found that an agency's selective use of investigations to target a whistleblower would contravene the goal of whistleblower protections.¹⁹² TVA contends that a 2020 Federal Circuit decision applying the WPA, *Sistek v. Department of Veterans Affairs*, disturbs this established precedent.¹⁹³ But the facts that are the basis for TVA's violations are readily distinguishable from *Sistek*, such that the principle in *Russell* applies here.¹⁹⁴ Even in *Sistek*, the court held that, although not an adverse action *per se*, "a retaliatory investigation, either on its own or as part of a broader set of circumstances, may qualify as a personnel action if it rises to the level of a "significant change in

¹⁹¹ *Russell*, 76 M.S.P.R. at 324 (stating that where "an investigation is so closely related to the personnel action that it could have been a pretext for gathering evidence to retaliate, and the agency 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 the whistleblowing claim.).

¹⁹² *Id.* at 325 ("an agency's selective use of investigations, i.e., its choice to investigate a whistleblower, because of his or her status as a whistleblower, would contravene this goal.") This principle was supported by Congress when, in deliberating the Whistleblower Protection Enhancement Act of 2012, described *Russell* as "governing law." See S. Rep. No. 112-155, at 21 (2012).

¹⁹³ TVA Motion Regarding Violations 1–3, at 31 (ML21228A261).

¹⁹⁴ Explaining Congress's support for the *Russell* holding as a middle ground approach to ensuring whistleblowers' protection from retaliatory investigations, the Federal Circuit stated that "the [*Russell*] decision [was] expressly left as 'governing law' by the drafters of the [Whistleblower Protection Enhancement Act of 2012] amendments." *Sistek v. Dep't of Veterans Affairs*, 955 F.3d 948, 956 (Fed. Cir. 2020) (quoting S. Rep. No. 112-155, at 21 (2012)).

. . . working conditions.”¹⁹⁵ Further undercutting TVA’s implication that *Russell* has been superseded, an even more recent (though unpublished) Federal Circuit decision, *Doyle v. Department of Veterans Affairs*, held that a retaliatory investigation directly caused a plaintiff’s job reassignment, and reversed an MSPB decision that the investigation did not constitute an adverse personnel action. The court in *Doyle* found that, based on the circumstances of the case, the principle set forth in *Russell* regarding a retaliatory investigation that closely relates to a personnel action applied. Thus, the court held that the MSPB’s conclusion that the retaliatory investigation was not an adverse action was contrary to law.¹⁹⁶

The facts in this case are analogous to *Russell* and *Doyle*, and materially different from those in *Sistek*,¹⁹⁷ because (1) TVA officials knew about Mr. McBrearty and Ms. Wetzel’s protected activities; (2) Ms. Henderson’s complaint was based in substantial part on these activities; and (3) TVA continued with the investigation that resulted in Mr. McBrearty’s prolonged placement on paid leave and Ms. Wetzel’s termination.¹⁹⁸ When put in the context of this broader set of circumstances, these connected facts show that TVA’s investigation was

¹⁹⁵ *Sistek*, 955 F.3d at 955 (quoting 5 U.S.C. § 2302(a)(2)(A)(xii)).

¹⁹⁶ *Doyle v. Dep’t of Veterans Affairs*, 855 F. App’x 753, 759–60 (Fed. Cir. May 14, 2021) (unpublished) (finding that *Russell* applied to the circumstances of the case, which involved a retaliatory investigation based on a complaint filed by a dentist that raised “serious allegations” against the plaintiff, a dental assistant, where the dentist was a subject of the plaintiff’s protected disclosures, and the ensuing investigation was manipulated to “get rid” of the plaintiff. The court explained, quoting *Russell*, that “[t]he [MSPB] will consider evidence regarding the conduct of an agency investigation when the investigation was so closely related to the personnel action that it could have been a pretext for gathering evidence to retaliate against an employee for whistleblowing activity.” *Id.* (quoting *Russell*, 76 M.S.P.R. at 323–24)).

¹⁹⁷ In *Sistek*, the court found the investigation did not represent a significant change to qualify as an adverse action because it only subjected the employee, a Veteran Affairs Department director who had raised several protected disclosures, to a single interview and a letter of reprimand and because the official who initiated the investigation did not have knowledge of the employee’s protected disclosures. *Sistek*, 955 F.3d at 956–57.

¹⁹⁸ TVA officials, including Mr. Shea, Mr. Czufin, and Ms. Henderson, knew about McBrearty and Wetzel’s protected activities that were listed in Ms. Henderson’s complaint, as well as raised previously in ECP concerns and condition reports. Their protected activities were also discussed by these and other TVA officials in their communications with Mr. McBrearty and Ms. Wetzel over chilled work environment concerns and regulatory issues, and in recommendations from ECP about preventing a chilled work environment based on concerns raised by Mr. McBrearty and Michelle Conner.

indeed a pretext to retaliate against Mr. McBrearty and Ms. Wetzel, and, therefore, constitutes an adverse action under the WPA standard.

(a) TVA selectively used its investigation to target Mr. McBrearty and Ms. Wetzel, demonstrating that it was a pretext to retaliate

The facts show that TVA officials initiated a complaint and carried out a “selective use” of investigations to target Mr. McBrearty and Ms. Wetzel as a pretext to gather evidence to retaliate against the employees for their protected activities.¹⁹⁹ One example of evidence supporting a conclusion that Ms. Henderson’s complaint and TVA’s resulting investigation were a pretext to retaliate is the TVA investigator’s failure to make basic efforts to verify the validity of Ms. Henderson’s statements in her complaint. For instance, Mr. Slater reported that TVA settled Michelle Conner’s Department of Labor complaint to help Ms. Henderson “alleviate some of the challenges” related to Mr. McBrearty.²⁰⁰ But any concern related to Mr. McBrearty was separate from Ms. Conner’s settlement, and Ms. Henderson was not even informed about the bases of TVA’s settlement with Ms. Conner.²⁰¹

The Slater report also accepted and relied heavily on Ms. Henderson’s characterization of the counseling that Mr. McBrearty had allegedly received from his supervisors that failed, according to the report.²⁰² But, as discussed above, Mr. Slater did not interview anyone in Mr. McBrearty’s line of supervision (Site Vice President Tony Williams, and Mr. McBrearty’s two most recent direct supervisors, Al Dodds and Dennis Dimopoulous), who had actually spoken to

¹⁹⁹ *Russell*, 76 M.S.P.R. at 325.

²⁰⁰ See SDMF 18 (Slater not interviewing M. Conner, but still somehow arriving at a conclusion as to why TVA settled with M. Conner); Attach. 12, Final Slater Report, at 29–30 (ML21043A012) (citing Henderson Complaint at 2, and interviews with Henderson and Shea.)

²⁰¹ SDMF 41; Attach. 31, Signed Transcript and Errata of the Deposition of Joseph Shea, at 12:20 to 13:4 (ML21232A644 (non-public)) (testifying that Ms. Conner’s DOL settlement was only discussed with Ms. Henderson to inform her that Ms. Conner was transferring from Ms. Henderson’s organization to another department).

²⁰² Attach. 12, Final Slater Report at 29 (ML21043A012); Attach. 8, Henderson Complaint at 4 (ML21042A026).

Mr. McBrearty about his conduct to inform his investigation.²⁰³ In their testimonies, Mr. McBrearty's supervisors said positive things about his conduct toward Ms. Henderson, a view that does not appear in the Slater report.²⁰⁴ These examples of Mr. Slater's heavy reliance on uncorroborated statements by Ms. Henderson (and declining to confirm or consult readily apparent sources of information to the contrary) are indicative of a retaliatory investigation that qualifies as an adverse action under the standard set forth in *Russell*.

(b) TVA's failure to investigate Ms. Wetzel's chilled work environment concerns exhibits retaliatory bias

A second example of the investigation's pretextual and retaliatory nature is that, in contrast to the considerable attention it devoted to Ms. Henderson's complaint, TVA failed to investigate Ms. Wetzel's repeated chilled work environment concerns related to Ms. Henderson that she raised in her interview with Mr. Slater, in emails to Mr. Shea, and in a letter to Mr. Shea and Amanda Poland, the HR director, shortly before her termination.²⁰⁵ Instead, the investigation report used Ms. Wetzel's emails, and similar concerns she expressed in an interview with Mr. Slater, to find that Ms. Wetzel demonstrated "disrespectful conduct."²⁰⁶ Relying on the Slater report, a supplemental OGC memo recommended her termination, finding that Ms. Wetzel contributed to a "sustained campaign of disrespectful conduct [toward Ms. Henderson] over a lengthy period of time," even though the conduct was primarily, if not exclusively, based on Ms. Wetzel's protected activity of communicating her retaliation

²⁰³ SDMF 37.

²⁰⁴ *Id.* The record reflects that contrary to the Slater report, the direct supervisors who counseled Mr. McBrearty found that he was professional, responsive to feedback, and respectful of Ms. Henderson. See, e.g., Attach. 6. Dodds Dep. Tr., at 21:13 to 23:16 (ML21232A637 (non-public)) (observing that Mr. McBrearty was receptive to feedback and "complimentary" and "very respectful" of Ms. Henderson).

²⁰⁵ SDMF 20. See Attach. 12, Final Slater Report at 20–21 and n.69 (ML21043A012); Attach. 32, OI ROI 2-2019-015, Ex. 11, Emails between B. Wetzel, J. Shea, and E. Henderson concerning Ms. Wetzel's 2018 NEI loanee agreement, at 1, 13–16 (Mar. 29, 2018; May 6, 7, 14, 2018) (ML21044A069) ("Wetzel NEI Loanee Agreement Emails"); Attach. 33, OI ROI 2-2019-015, Ex. 12, Emails from B. Wetzel to J. Shea, Re: Travel, at 1 (June 9, 2018) ("Wetzel Travel Expenses Emails") (ML21044A069); Attach. 34, Wetzel Counterproposal (TVADOC0004451).

²⁰⁶ SDMF 31; Attach. 12, Final Slater Report at 20–21, n.69 (ML21043A012).

concerns.²⁰⁷ The investigation's overall treatment of Ms. Wetzel's chilled work environment and related concerns, which are protected activities (see Section II.A, *infra*), directly led to her termination. This again supports the conclusion that, similar to the investigation of the plaintiff in *Doyle*, this investigation was a pretext to retaliate, constituting an adverse action.²⁰⁸

(c) *TVA conducted the investigation in a retaliatory manner*

A third example showing that the investigation was a pretext to retaliate is evidenced by the retaliatory manner in which it was conducted. TVA used an atypical and unorthodox approach, instead of following a standard procedure, for investigating Ms. Henderson's complaint. Despite the HR department's greater familiarity with conducting investigations into employee harassment complaints compared to TVA OGC,²⁰⁹ TVA had an OGC attorney, John Slater, lead the investigation. Indeed, Mr. Slater testified that he had never conducted such an investigation before.²¹⁰ He conducted interviews with TVA employees, including Mr. McBrearty and Ms. Wetzel, without informing them that the interview was part of an investigation into Henderson's complaint of harassment.²¹¹ This approach conflicted with TVA's general practice

²⁰⁷ SDMF 58; SDMF 59; Attach. 12, OGC Supplemental Memo – Involvement of Beth Wetzel, at 40-42 (ML21043A012).

²⁰⁸ Similar to Ms. Wetzel's circumstances, the plaintiff in *Doyle*, a dental assistant, was subject to an investigation resulting in an undesirable job reassignment in retaliation for submitting concerns about a dentist, and the court reversed a lower ruling, and held that it was contrary to law to find the investigation was not an adverse action. *Doyle*, 855 F. App'x at 753–54, 760.

²⁰⁹ TVA corporate nuclear human resources (HR) conducts investigations into harassment complaints multiple times a year, whereas, according to the former corporate nuclear HR manager, TVA OGC did not produce any reports of investigations into such complaints in recent memory, prior to the Slater report. See Attach. 24, Wingo Dep. Tr., at 49:1–6 (ML21232A632 (non-public)).

²¹⁰ SDMF 17; Attach. 35, OI ROI 2-2019-015, Ex. 39, Slater OI Tr., at 9:21 to 10:3 (Nov. 20, 2019) (ML21043A269) (“Slater OI Tr.”) (explaining he had past experience with employment labor and whistleblower complaints, but that this was his first time investigating a harassment complaint). *Id.* at 8:7–19, 10:1–3.

²¹¹ SDMF 21; 22; 39; Ms. Wetzel believed the interview was being conducted to assess whether there was a chilled work environment in her group. Attach. 23, Wetzel Dep. Tr., at 70:18–20, 71:6–10 (ML21237A473 (non-public)). Mr. McBrearty believed the interview was about a harassment allegation related to concerns he raised in a text exchange with James Polickoski on March 6, 2018, in which Mr. McBrearty discussed licensing issues and expressed some frustration with Ms. Henderson's handling of the issues. But he did not believe that he was being investigated. Attach. 3, McBrearty Dep. Tr, at 28:4 to 30:5; 249:19–23 (ML21237A471 (non-public)). See Attach. 36, OI ROI

to make employees aware of the context of an investigatory interview.²¹² Despite the employee policy to provide truthful and complete answers to an investigator, TVA used Ms. Wetzel's truthful, honest comments to Mr. Slater against her to find that she carried out a campaign of disrespectful conduct. This highly unusual investigatory approach raises genuine issues of material fact regarding its retaliatory nature.

Based on instruction from Mr. Shea, a corporate nuclear vice president and Ms. Henderson's supervisor, Mr. Slater did not interview Michelle Conner,²¹³ even though Ms. Conner was one of the five people named in Ms. Henderson's complaint as contributing to a hostile work environment.²¹⁴ Ms. Conner had also expressed chilled work environment concerns, among other complaints, regarding Ms. Henderson. Mr. Slater also took the extra step of pulling all employee email records.²¹⁵ Additionally, despite Mr. Dodds' repeated requests to review the underlying documentary evidence used to support the report's findings on Mr. McBrearty, TVA refused to allow Mr. Dodds, Mr. McBrearty's direct supervisor, to review it. Nor was Mr. Dodds allowed to discuss the investigation findings with Mr. Slater, despite being responsible under TVA policy to impose discipline on Mr. McBrearty. Although Mr. Dodds was permitted to see, although not keep for himself, a version of the draft Slater Report on the same

2-2018-033, Ex. 9, M. McBrearty Text Message to J. Polickoski, [at 1–14](#) (Mar. 6, 2018) ([ML21048A3960](#)).

²¹² SDMF 22; SDMF 39; Attach. 24, Wingo Dep. Tr., at 45, 46 ([ML21232A632](#) (non-public)) (describing that employees interviewed as part of an investigation into another employee's complaint are generally provided with enough context to understand why they are being interviewed. Mr. Wingo conducted several investigations of employee complaints as a human resources generalist in TVA corporate nuclear since he began his job in TVA HR in 2008).

²¹³ SDMF 18. See Attach. 37, Shea PEC Tr., [at 119](#) (June 25, 2020) ([ML21069A102](#)) (explaining that he "caution[ed]" Mr. Slater against interviewing Ms. Conner for the investigation because of TVA's recent settlement of her DOL complaint that resulted in Ms. Conner changing jobs in corporate nuclear so that she no longer reported to Ms. Henderson).

²¹⁴ Attach. 8, Henderson Complaint [at 1](#) ([ML21042A026](#)). Not interviewing Ms. Conner was an anomaly, as Mr. Slater interviewed 17 TVA employees for the report, including the four other employees identified as contributors in the complaint. Attach. 12, Final Slater Report [at 4](#) ([ML21043A012](#)).

²¹⁵ SDMF 19; Attach. 38, Email from Jennifer Grace to Amanda Poland, Joseph Shea, and David Czufin (Apr. 3, 2018) (TVADOC0010895–96).

day he put Mr. McBrearty on paid administrative leave, TVA never showed him the evidence that it claims backs up its findings.²¹⁶ And according to a former TVA corporate nuclear human resources manager, TVA's refusal to discuss the findings and provide a copy of the report to Mr. Dodds contradicts standard TVA practice to provide supervisors with investigation reports of their employees and to discuss the findings with the investigator.²¹⁷

Thus, TVA's abnormal approach to conducting the Slater investigation of a complaint based in substantial part on protected activities raises material disputes over the investigation's retaliatory intent. The facts showing TVA's inaction regarding retaliation concerns raised by Ms. Wetzel, Mr. Slater's reliance on Ms. Henderson's mischaracterizations without verifying their accuracy, and TVA management's refusal to disclose evidence that supports the investigation's findings to the person responsible for disciplining Mr. McBrearty, support a conclusion that TVA's investigation of Mr. McBrearty and Ms. Wetzel was a pretext to gather evidence to retaliate such that it constitutes an adverse action. Therefore, summary disposition is inappropriate for Violations 1 and 3.

3. TVA's arguments challenging the Staff's deposition testimony fail to demonstrate a lack of material dispute

TVA's assertion that Staff witnesses did not provide specific examples of the evidence for how the investigation was pretextual is both irrelevant and immaterial. As discussed above, a preponderance of the evidence supports that the investigation was used as a pretext to retaliate, and to claim that the "undisputed evidence" shows it was not a pretext is simply false. TVA attempts to do this by showing that Mr. George Wilson, the former Director of the NRC's Office of Enforcement (OE), was unable at deposition to articulate the specific pieces of

²¹⁶ SDMF 45. Attach. 6, Dodds Dep. Tr., at 23:23 to 24:25; 36:11 to 38:24 (ML21232A637 (non-public)) (discussing his review of the report and immediate concern that its conclusions were based on ECP concerns, and explaining that "I was and remain baffled" by repeatedly being denied access to any explanatory evidence of Mr. McBrearty's misconduct or information about what the evidence was and what it related to, other than it was "bad."). Mr. Dodds also first believed that Mr. McBrearty would only be on administrative leave for one or two days, not 83. *Id.* at 25:6-8.

²¹⁷ Attach. 24, Wingo Dep. Tr., at 50:17 to 51:5 (ML21232A632 (non-public)).

evidence that demonstrate the pretextual nature of the investigation.²¹⁸ However, Mr. Wilson correctly stated that the evidence was contained in the various NRC documents, and that, while he would have known it at the time the Enforcement Panel made the decision to move forward with the case in March 2020, some sixteen months later, in a deposition under oath, he was unable to recall with specificity what that information was.²¹⁹ Mr. Wilson oversaw approximately 100 enforcement panels a year, and he left the agency to start a new job approximately 4 months prior to his deposition. The fact that he did not recall specific facts at his deposition is both unremarkable and inconsequential to the material facts in dispute outlined above.

TVA's references to the testimony of other NRC Staff members similarly identify no genuine dispute with the actual evidence supporting the Staff's Order. For example, Mr. Ian Gifford explained that one way the complaint and resulting investigation is pretextual is that Ms. Henderson's complaint itself identified protected activity as a basis for her assertion that she was being harassed. While TVA attempts to dismiss this as "circular," it is in fact evidence of pretext. While Ms. Henderson's complaint is labeled a "harassment" complaint, it is more accurately understood as a complaint that her employees have engaged in protected activity, and she in fact called out the protected activity as harassing of her. Similarly, TVA's assertion that Mr. Gifford and Mr. Solorio struggled to explain the concept of pretext in a deposition is both irrelevant and unremarkable.²²⁰ Pretext is a legal term. Neither Mr. Solorio nor Mr. Gifford is an attorney. Depositions are to uncover facts, not to understand legal theories.²²¹ TVA's contention that, under repeated aggressive questioning by TVA attorneys, non-lawyer staff were not able to

²¹⁸ TVA Motion Regarding Violations 1–3, at 32 (ML21228A261).

²¹⁹ See Attach. 39, Signed Transcript of the Deposition of George Wilson, at 126:17 to 127:5 (June 25, 2021) (ML21236A324 (non-public)) ("Wilson Dep. Tr.").

²²⁰ TVA Motion Regarding Violations 1–3 at 34 (ML21228A261).

²²¹ *United States v. Ancient Coin Collectors Guild*, 899 F.3d 295, 324 (4th Cir. 2018) (holding that information regarding the government's legal position was "beyond the scope of a proper Rule 30(b)(6) deposition"); *JPMorgan Chase Bank v. Liberty Mut. Ins. Co.*, 209 F.R.D. 361, 362 (S.D.N.Y. 2002).

give a generic definition of pretext is simply not a probative dispute with the factual evidence demonstrating that the Henderson complaint and resulting investigation resulted, in part, from the protected activities of Mr. McBrearty and Ms. Wetzel, and it certainly does not demonstrate any deficiency in the Staff's evidence that would justify summary disposition.

In another claim that actually demonstrates the existence of a factual dispute, TVA describes Ms. Henderson's 2016 complaint that initiated an HR "ethics" investigation into a falsely purported inappropriate personal relationship between Mr. McBrearty and Michelle Conner as "nuclear safety protected activity."²²² On its face, this 2016 complaint and HR investigation involved a personnel matter based on an unfounded conflict of interest that had no actual bearing on plant safety or safety culture matters.²²³ TVA did not substantiate that an inappropriate relationship existed between Mr. McBrearty and Ms. Conner.²²⁴ In any event, TVA's assertion is ultimately not relevant to the genuine dispute before the Board: whether Ms. Henderson's 2018 complaint triggered a retaliatory investigation into Mr. McBrearty and Ms. Wetzel represented materially adverse actions.

TVA falsely asserts that Mr. Wilson "acknowledged that Ms. Henderson's 2016 complaint itself was nuclear safety protected activity."²²⁵ Mr. Wilson unequivocally stated in his deposition that it would be a violation for a manager to file a complaint based on her employee raising nuclear safety concerns.²²⁶ When TVA directly asked Mr. Wilson whether Ms. Henderson's 2016 "ethics" allegation was protected activity, his testimony was as follows: "It could be. I would have to have a little bit information of what's there and consult with OGC. That looks like

²²² TVA Motion Regarding Violations 1–3, at 22 ([ML21228A261](#)).

²²³ Attach. 40, See OI ROI 2-2018-033, Ex. 12, Tennessee Valley Authority Investigation Final Report, at 1–3 (July 17, 2016) ([ML21048A396](#)) ("TVA 2016 Investigation Report") (The report references ethics or ethical concerns several times without any mention of safety).

²²⁴ *Id.* at 3.

²²⁵ TVA Motion Regarding Violations 1–3, at 22 ([ML21228A261](#)).

²²⁶ Attach. 39, Wilson Dep. Tr., at 155 ([ML21236A324](#) (non-public)).

directly it's a potential against the company policy but just because someone has a work relationship as I'm reading it, it says it may impact. I would have to evaluate that and do an investigation. I think raising the concern, yes, that should be protected, and then you have to follow up on the concern. But I'd also see—I'd like to see a little bit more on what the impact would be."²²⁷ TVA's assertion that Mr. Wilson agreed with their post-hoc rationalization that Ms. Henderson had engaged in protected activity is simply misstating his testimony.²²⁸ Mr. Wilson appropriately testified that in order to make that determination, he would need more information and would need to consult with other experts at the NRC. This statement by Mr. Wilson does not support TVA's position that Ms. Henderson had definitely engaged in nuclear safety protected activity in 2016.

For the reasons already discussed, summary disposition is inappropriate for Violations 1 and 3. Contrary to TVA's assertions, an investigation may qualify as an adverse action under the ERA where it well might dissuade a reasonable employee from engaging in protected activity. In the alternative, based on circumstances like those present in this case, where a complaint triggers an investigation that is so closely related to a personnel action that it could have been a pretext to gather evidence to retaliate, the investigation itself is an adverse action. The Staff provides persuasive evidence showing that Ms. Henderson's complaint and the resulting investigation qualify as an adverse action. As such, TVA has failed to acknowledge numerous genuine issues of material fact, and the Board should deny TVA's summary disposition motion concerning Violations 1 and 3.

²²⁷ *Id.* at 112–13. Mr. Wilson was reading from the 2016 TVA investigation report ([ML21048A396](#)), which TVA counsel had presented as an exhibit in the deposition.

²²⁸ TVA Motion Regarding Violations 1–3, at 22 ([ML21228A261](#)).

II. Material facts are in dispute concerning Violation 4, and TVA fails to meet its burden for summary disposition

Violation 4 against TVA is based on the evidence that several protected activities were contributing factors in TVA's decision to terminate Beth Wetzel: her "alleged contact with the NRC regarding concerns of a chilled work environment, statements to the former Vice President of Regulatory Affairs regarding concerns of retaliation by the former Director of CNL, and statements made to a TVA attorney during an investigation about the work environment."²²⁹ It also concludes that TVA's representations that it terminated Ms. Wetzel for reasons attributable to non-protected activity are not supported by clear and convincing evidence.

TVA states that it is entitled to summary disposition of Violation 4 "as a matter of law and undisputed fact." To succeed in a motion for summary disposition of Violation 4, TVA must meet two criteria: "first, [TVA] must show that there is no genuine issue as to any material fact. ... [s]econd, [TVA] must establish that its legal position is correct."²³⁰ As detailed below, TVA fails on both criteria because there are numerous material facts in dispute, including significant issues of evidentiary weight and witness credibility for the Board to consider. TVA's assertion that there are no genuine issues of material fact is belied by the fact that its Motion is constructed of a series of inferences drawn from evidence that is decontextualized or in conflict with other information in the record. As described below, considering the available evidence in its proper context demonstrates that summary disposition is inappropriate and, therefore, the Board should deny TVA's Motion.

²²⁹ Order Appendix at 4 (ML20297A552). This Board's Notice of Hearing provides that this enforcement proceeding "arises from an Enforcement Order (Order) issued against [TVA] on November 4, 2020." This Order imposes a civil penalty on TVA and references the Order Appendix. 85 Fed. Reg. 70,203, 70,203-04 (Nov. 4, 2020).

²³⁰ *Levy County*, LBP-10-20, 72 NRC at 579.

A. The protected activities underlying Violation 4 are rooted in Ms. Wetzel's ongoing concerns about a chilled work environment and are, therefore, nuclear safety related

Contrary to TVA's assertions, Ms. Wetzel's activities cited in Violation 4 are related to her concerns about a chilled work environment and retaliation in CNL at TVA and are, therefore, "definitively and specifically" related to nuclear safety.²³¹ The Staff agrees that under the ERA, "general inquiries regarding safety" or "superficial suggestion[s] that somehow, in some way, may possibly implicate a safety concern" do not constitute protected activity; however, Ms. Wetzel's activities are far more concrete and specific than what has been found sufficient to meet the low bar that courts have observed is set by this statute.²³² Ms. Wetzel came to the NRC as an allogger²³³ and submitted a complaint that Ms. Henderson was creating a chilled work environment in CNL at TVA, which prompted the NRC to investigate whether CNL members were chilled in their willingness to raise safety concerns.²³⁴ Subsequently she participated in an investigation conducted by TVA OGC that she had reason to believe was related to the chilled work environment she had alleged.²³⁵ She made statements during the interview with this investigator explaining why she believed there was a chilled work environment in CNL due to Ms. Henderson's management and that she feared retaliation.²³⁶ Finally, she made statements

²³¹ The NRC recognizes that retaliation against individuals for raising safety concerns can generate a chilling effect that may discourage others from raising concerns and, therefore, be detrimental to nuclear safety. See Policy Statement; Freedom of Employees in the Nuclear Industry To Raise Safety Concerns Without Fear of Retaliation, 61 Fed. Reg. 24,336 (May 14, 1996).

²³² *Am. Nuclear Res., Inc. v. U.S. Dep't of Labor*, 134 F.3d 1292, 1295 (6th Cir. 1998).

²³³ SDMF 10. Submitting an allegation of a safety concern to the NRC is a protected activity, and discrimination against such employees is prohibited under 10 C.F.R. § 50.7(a)(1)(i).

²³⁴ SDMF 11; Attach. 7, Response to Concern, Allegation Report RII-2017-A-00114, at pdf 9–10 (ML21048A379).

²³⁵ SDMF 20; SDMF 23; SDMF 24; Attach. 23, Wetzel Dep. Tr., at 70:16–72:7 (ML21237A473 (non-public)).

²³⁶ SDMF 23. See *id.*; see also Attach. 11, Wetzel OI Tr. at 38–41 (ML21048A390).

to Mr. Shea, a superior to both Ms. Wetzel and Ms. Henderson, expressing that she feared that Ms. Henderson was trying to retaliate against her and had done so to others.²³⁷

To achieve the remedial purpose of protecting employees from retaliation when they report safety concerns, an employee's internal complaint about retaliation or fear of retaliation should not be read so narrowly as to elide a reasonably attributable nexus to safety.²³⁸ This is particularly so when context indicates that the retaliation concern relates back to a safety concern. Ms. Wetzel's protected activities cited in Violation 4 are interrelated. They build on each other and should be considered in their proper context—as a series of linked complaints addressing Ms. Wetzel's persistent concerns about a chilled work environment at TVA that ultimately led to TVA taking a retaliatory adverse action against her. TVA presents Ms. Wetzel's protected activities as individually siloed occurrences. This self-serving depiction is at odds with the available evidence and the simple fact that none of the activities in question occurred in a vacuum, but rather involved many of the same people and interrelated concerns of a chilled workplace influenced by fear of retaliation. In other words, when properly considered together, all of the cited protected activities in Violation 4 definitively and specifically relate to nuclear safety.

1. Ms. Wetzel's complaint to the NRC

TVA does not appear to contest that Ms. Wetzel's submission of an allegation to the NRC regarding chilled work environment concerns constitutes protected activity. Instead, TVA argues that, irrespective of whether her complaint to the NRC was a protected activity, it "played no role in TVA's decision to take an adverse action in this case, and the Staff has identified no

²³⁷ SDMF 24. See Attach. 12, Final Slater Report, at 20–21, n.69 (ML21043A012); Attach. 32, Wetzel NEI Loanee Agreement Emails, at 14–15 (ML21044A069) Attach. 33 Wetzel Travel Expenses Emails (ML21044A069).

²³⁸ See *Dodd v. Polysar Latex*, 88-SWD-4, 1994 WL 897252 at *3, Secretary's Decision (Dep't of Labor Sept. 22, 1994).

evidence demonstrating that it did.”²³⁹ However, record evidence strongly supports a conclusion that Ms. Wetzel’s complaint to the NRC was among the protected activities that contributed to her termination. Moreover, her chilled work environment allegation to the NRC—known to TVA—establishes the context for Ms. Wetzel’s subsequent protected activities.

Ms. Henderson’s March 9, 2018, harassment complaint itself provides a clear basis for inferring that Ms. Wetzel’s chilled work environment allegations to the NRC contributed to Ms. Wetzel’s termination. In the opening paragraph, Ms. Henderson framed the reason for her complaint, focusing on five individuals, including Ms. Wetzel, who Ms. Henderson said “are complicit in workplace bullying and creating a hostile work environment for me.”²⁴⁰ One of the examples she provides is that “repeated investigations and an NRC inspection where the accusations were determined to be unsubstantiated” occurred.²⁴¹ Later in the complaint, she states more specifically that she received feedback on September 11, 2017, from one of her supervisees at SQN that “he thought they (Mike and Beth) are the reason for the NRC SCWE inspection in my organization.”²⁴²

This evidence establishes that 1) Ms. Henderson viewed employees filing complaints with the NRC as harassment of her, and 2) Ms. Henderson found the SQN employee’s statement about Ms. Wetzel’s involvement²⁴³ in the NRC initiating a SCWE investigation of her

²³⁹ TVA Motion Regarding Violation 4 at 26 (ML21228A260).

²⁴⁰ SDMF 15; Attach. 8, Henderson Complaint at 1 (ML21042A026).

²⁴¹ *Id.*

²⁴² SDMF 14; Attach. 8, Henderson Complaint at 7. Erin Henderson also provided another example of Ms. Wetzel’s conduct that implicates the protected activity of involvement with a TVA employee’s report to the NRC. Ms. Henderson cited a complaint filed with DOJ and the NRC that included a statement from Ms. Wetzel to Ms. Conner, which Ms. Henderson viewed as harassment and included as an example in her own complaint. Ms. Henderson stated that the complaint to the NRC and DOJ “asserted that when Michelle had discussed her PIP with Beth Wetzel she ‘exclaimed’ that Michelle was being retaliated against.” *Id.*

²⁴³ Ms. Henderson denies that she was aware of Ms. Wetzel’s complaint to the NRC at the time she filed her harassment complaint, and she says that she “did not, and do not believe that the Sequoyah employee was correct regarding the origin of the NRC inspection.” See Attach. 58, Henderson PEC Tr., at 60–61 (June 23, 2020) (ML21069A107). Especially considering her own complaint’s references

organization to be credible enough to include in her formal complaint accusing Ms. Wetzel of harassment. Ms. Henderson’s complaint was, in turn, the basis for Mr. Shea to request that TVA OGC initiate an investigation of Ms. Wetzel, and thus it is clear that Mr. Shea was familiar with the content of Ms. Henderson’s complaint. Mr. Shea was also heavily involved in the process to terminate Ms. Wetzel, including the preparation of documentation to present to the Executive Review Board (ERB)—Mr. Shea’s evaluation was what was presented to the ERB as the basis for decision.²⁴⁴ While TVA asserts that “the undisputed facts show that the ERB was unaware that Ms. Wetzel had allegedly contacted the NRC,” as discussed above, this is not an undisputed fact.²⁴⁵ Whether Ms. Wetzel’s protected activity contributed to her termination involves weighing evidence, assessing witness credibility, and ultimately, deciding on legitimate inferences to draw from that evidence.

2. Ms. Wetzel’s participation in the TVA OGC investigation

Ms. Wetzel also engaged in a protected activity when she participated in an interview with Mr. Slater, the TVA OGC attorney assigned to conduct the investigation requested by Mr. Shea into Ms. Henderson’s complaint. Ms. Wetzel believed that OGC was investigating her complaints about the chilled work environment in CNL, an issue specifically related to nuclear safety as described above.²⁴⁶ The TVA OGC investigator cultivated this understanding by telling Ms. Wetzel that he was conducting a work environment investigation.²⁴⁷ Ms. Wetzel truthfully answered the questions asked of her by Mr. Slater about both the work environment at TVA and about Ms. Henderson in particular, which included providing her views on Ms. Henderson and

to NRC activities, these self-serving statements after the fact raise credibility questions and, therefore, present a genuine dispute of fact.

²⁴⁴ SDMF 60.

²⁴⁵ TVA Motion Regarding Violation 4 at 29 (ML21228A260).

²⁴⁶ SDMF 21; SDMF 23; SDMF 24.

²⁴⁷ SDMF 21; Attach. 11, Wetzel OI Tr. at 38–40, 42 (ML21048A390).

disclosing her fears that Ms. Henderson would retaliate against her.²⁴⁸ The statements that Ms. Wetzel made in this interview were subsequently cited by TVA a number of times as bases for adverse action. Mr. Shea called Ms. Wetzel to his office and read her performance review to her, stating that the things she told the investigator and the email she sent about her concerns about Ms. Henderson created a hostile work environment for Ms. Henderson.²⁴⁹ More blatantly, the termination notice signed by Mr. Shea and issued to Ms. Wetzel refers to how she “pursued allegations...even during the course of the investigation,”²⁵⁰ and the ERB²⁵¹ and TVA OGC²⁵² referred to her “making assertions to the attorney investigator” as a factual basis for her termination.

While TVA asserts that Ms. Wetzel’s communications during her interview for the TVA OGC investigation were not protected activity, a different view was expressed by Mr. Joselito Calle, the Chairman of TVA’s Nuclear Safety Culture Monitoring Panel. During his interview with NRC Senior Special Agent Scott Luiña, Mr. Calle was asked whether he considered Ms. Wetzel’s participation in the TVA OGC investigation to be protected activity. He responded, “[o]h yes. . . . I mean, just her role as a manager in nuclear regulatory affairs, I mean, almost everything she does is protected activity realistically.”²⁵³ Thus, contrary to TVA’s argument, there is much information in dispute regarding these protected activities—over the materiality of facts, witness credibility, the weight attributable to evidence, and inferences to be drawn from evidence—that makes summary disposition inappropriate.

²⁴⁸ SDMF 24; Attach. 11, Wetzel OI Tr. at 38–41.

²⁴⁹ SDMF 65; Attach. 11, Wetzel OI Tr. at 49.

²⁵⁰ Attach. 13, OI ROI 2-2019-015, Ex. 18, Letter from TVA to B. Wetzel, Notice of Termination, at 10–11 (Jan. 14, 2019) (ML21048A391).

²⁵¹ Attach. 25, Wetzel ERB Package at 22-23 (ML21048A391).

²⁵² Attach. 12, OI ROI 2-2019-015, Ex. 14, at 42 (Aug. 30, 2018) (ML21043A012) (“OGC Supplemental Memo - Involvement of Beth Wetzel”).

²⁵³ Attach. 41, OI ROI 2-2019-015, Ex. 29, at 33–34 (Nov. 14, 2019) (ML21043A062) (“Calle OI Tr.”).

3. Ms. Wetzel's expressed concerns about retaliation

As previously noted, all of Ms. Wetzel's protected activities cited in Violation 4 should be understood as linked. The through line connecting them is that each relates to Ms. Wetzel's concern about Ms. Henderson creating a chilled work environment by taking retaliatory measures in a nuclear workplace. Thus, this Board should disregard TVA's attempts to decontextualize the communications that Ms. Wetzel made to Mr. Shea expressing fears of Ms. Henderson retaliating against her. Given that Ms. Henderson already suspected that Ms. Wetzel submitted a chilled work environment complaint about her to the NRC, which Mr. Shea knew about given his familiarity with the complaint, the facts support the conclusion that TVA decisionmakers recognized that the basis for Ms. Wetzel's expressed fears of retaliation related back to a foundation of a nuclear safety concern. Fear of retaliation based on expressing safety concerns is at the heart of chilled work environment issues and associated discrimination protections. Thus, when Ms. Wetzel expressed these retaliation concerns, she was engaging in a protected activity concretely, definitively, and specifically linked to the nuclear safety issue of retaliation in a chilled work environment.

Ms. Wetzel's account is in accord with this conclusion. When asked by TVA in deposition to elaborate on some of her communications, Ms. Wetzel stated that Ms. Henderson used "fear and intimidation" in her management and was punitive and retaliatory "if you don't agree with her technically."²⁵⁴ Ms. Wetzel also stated that "I believe we had a chilled work environment and people were afraid to speak honestly and share honest information, and that's not good in nuclear power."²⁵⁵ This belief was "based on, in part, my own fear for my job."²⁵⁶ And she also noted specific examples of Ms. Henderson using TVA processes to retaliate

²⁵⁴ Attach. 23, Wetzel Dep. Tr., at 146:6–14 (ML21237A473 (non-public)).

²⁵⁵ *Id.* at 71:6–9.

²⁵⁶ *Id.* at 71:11–12.

against colleagues, including for reasons relating to technical disagreements.²⁵⁷ For his part, Mr. Shea stated during his OI interview that he “knew for the issues that she was referring—I knew those to not be true,” though he did not detail how he came to this conclusion.²⁵⁸ In any event, the credibility of witnesses is at issue with regard to the veracity of Ms. Henderson’s history of retaliatory activity against employees in CNL, Ms. Wetzel’s associated legitimate fear that Ms. Henderson was seeking to retaliate against her based on engaging in protected activity, and Mr. Shea’s assertions that he knew of the issues Ms. Wetzel was referencing and knew them not to be true. These disputes of fact and credibility make summary disposition inappropriate.

4. The Violation 4 Motion’s discussion of TVA deposition questions for the NRC Staff is immaterial

Referencing Mr. Wilson’s deposition testimony, TVA selectively quotes him to suggest that he did not believe that Ms. Wetzel had raised any nuclear safety concerns in her emails to Mr. Shea.²⁵⁹ To the contrary, Mr. Wilson stated that Ms. Wetzel was “raising concerns about Mrs. Henderson’s behavior and that would have been part—in my recollection this would have been part that we would have used where Ms. Wetzel was using the open door policy and talking to her supervisor about potential issues, yes.”²⁶⁰ Indeed, Mr. Wilson stated that “they could have the potential of nuclear safety... in this case, this email here has potential to have an impact on safety.”²⁶¹ Mr. Wilson did agree that the single email that was the subject of counsel’s question did not specifically call out a nuclear safety concern, but correctly explained that viewed in context it was raising a nuclear safety concern. In short, TVA’s attempt to assert that

²⁵⁷ See *e.g.*, *id.* at 142–46.

²⁵⁸ Attach. 10, Shea OI Tr., at 30 (ML21043A062).

²⁵⁹ TVA Motion Regarding Violation 4, at 17 (ML21228A260).

²⁶⁰ Attach. 39, Wilson Dep. Tr. 150:24–151:5 (ML21236A324 (non-public)).

²⁶¹ *Id.* at 151:8–14.

Mr. Wilson agreed with TVA's view that Ms. Wetzel had not raised a nuclear safety concern is simply false.

Similarly, TVA focuses on various Staff members' deposition statements, suggesting that they did not see protected activity clearly and specifically delineated in an email from Ms. Wetzel to Mr. Shea dated March 29, 2018. However, this is not an email that the OI report identifies as Ms. Wetzel's protected activity. As discussed above, Ms. Wetzel raised concerns about a chilled work environment on multiple occasions. While the March 29, 2018, email²⁶² provides some useful background regarding Ms. Wetzel's concerns about Ms. Henderson, the NRC has never held it out as a stand-alone example of protected activity. Thus, the fact that NRC Staff witnesses were unable to identify, when shown the March 29, 2018 email, specific ways in which this single email is expressing concerns of a chilled work environment, is immaterial, and provides no support for TVA's motion for summary disposition. As explained further below, TVA's characterization of other aspects of Staff depositions are equally misleading and immaterial.

TVA also attempts to use Mr. Nicholas Hilton's deposition statements about what protected activity he did or did not see in isolated emails as evidence that Ms. Wetzel's activity was not protected. In doing so, TVA ignores both the facts outlined above regarding the multiple bases for Ms. Wetzel's protected activity, as well as Mr. Hilton's role in the case. Namely, at the beginning of his deposition, Mr. Hilton specifically stated that he could not "testify to the facts, the evidence supporting the facts," but rather his role "was to take the facts... as presented... and guide, from a historical perspective and from a policy application perspective, the application of the enforcement policy."²⁶³ Mr. Hilton specifically stated that he only knew the protected activities generally, and would not be able to confirm specific protected activities with

²⁶² TVA Motion Regarding Violation 4, at Attachment 14 (ML21228A260).

²⁶³ Attach 20, Hilton Dep. Tr., at 16:18–24 (ML21236A331 (non-public)).

any certainty.²⁶⁴ Thus, for the reasons Mr. Hilton explained, TVA's efforts to challenge his observations about isolated emails during the deposition are likewise inconsequential to the determination of whether Ms. Wetzel in fact engaged in protected activity.

Furthermore, TVA selectively cites selective portions of Mr. Hilton's deposition in a misleading attempt to portray his testimony as a concession that Ms. Wetzel did not raise chilled work environment concerns. However, Mr. Hilton also testified that while saying "I don't like my boss,' on its face, simplistically, would not be protected activity. Obviously there are—there's a reason that statement is made, and the reason could become protected activity."²⁶⁵ With respect to the March 29, 2018 email, Mr. Hilton testified "I don't know that there is any protected activity in this email alone as it stands."²⁶⁶ With respect to the May 7, 2018 email,²⁶⁷ Mr. Hilton testified that "again, this is one email out of the story, and not the complete investigation, so there's other-- at least conceivable and likely possible moving parts in terms of, this may not be the entire story."²⁶⁸ Then, Mr. Hilton states that he does not see any nuclear safety concerns in a May 6 email, which TVA in its motion misleadingly extrapolates to his views on an entire May 6-May 7 email thread.²⁶⁹ While the May 6 email states Ms. Wetzel's concern that the details of her travel expenses aren't documented, the May 7 email states Ms. Wetzel's concerns of retaliation on the part of Ms. Henderson.²⁷⁰ Thus, the full context of Mr. Hilton's deposition remarks both contradicts TVA's characterization of them and undermines the proposition for which TVA cites them.

²⁶⁴ *Id.* at 18.

²⁶⁵ *Id.* at 61.

²⁶⁶ *Id.* at 88.

²⁶⁷ Attach. 32, Wetzel NEI Loanee Agreement Emails, at 14–15 (ML21044A069).

²⁶⁸ Attach. 20, Hilton Dep. Tr., at 91:11–15 (ML21236A331 (non-public)).

²⁶⁹ *Id.* at 98.

²⁷⁰ See Attach. 32, Wetzel NEI Loanee Agreement Emails, at 13–16 (ML21044A069).

Similarly, TVA alleges that Mr. Luiña was unable to point to specific nuclear safety concerns in Ms. Wetzel's emails. However, Mr. Luiña's testimony was that Ms. Wetzel was raising "concerns that Ms. Henderson's creating a retaliatory type of environment, which could lead to a chilled work environment."²⁷¹ When asked if there was a tie to nuclear safety, Mr. Luiña stated that "a retaliatory type of environment could lead to a chilled work environment, where people don't feel safe to raise nuclear safety concerns, for fear of being retaliated against."²⁷² Mr. Luiña then agreed that there wasn't a 'specific, like, technical concern if that's what you are referring to.'²⁷³ TVA's misquoting of Mr. Luiña's testimony does not serve to demonstrate that Mr. Luiña agrees with TVA's argument that there is no nuclear safety concern, and indeed his testimony states the opposite.

TVA similarly misstates Mr. Luiña's testimony regarding emails from June 8–9, 2018. Mr. Luiña testified that "again, it's the amalgamation of all of these emails together, but it's again, just showing the—the bringing up again that she mentions words like 'I'm afraid' and 'no action has been taken to my knowledge yet.' She's again just raising concerns about a retaliatory type of environment which could lead to a chilled work environment which is a protected activity."²⁷⁴ Similarly, Alejandro Echavarria began his response to TVA's question regarding the June 8–9 emails with "this is an example or information that Ms. Wetzel provided us in her assertion that Ms. Henderson would use travel, travel vouchers, in TVA process as punitive and retaliation for protected activity."²⁷⁵ TVA omits these statements in misleadingly implying that the NRC Staff investigators agree with their position when they did not.

²⁷¹ Attach. 43, Signed Transcript of the Deposition of Scott Luina, at 156 (June 21, 2021) (ML21236A327 (non-public)).

²⁷² *Id.* at 157.

²⁷³ *Id.*

²⁷⁴ *Id.* at 159:18–160:1.

²⁷⁵ Attach. 44, Signed Transcript of the Deposition of Alejandro Echavarria, at 141:11–15 (June 23, 2021) (ML21236A330 (non-public)).

With respect to Mr. Dave Solorio's testimony, TVA even misstates the question Mr. Solorio was asked. The question was not whether the May 7, 2018, email reflected protected activity on the part of Ms. Wetzel, but rather "is the submission of travel vouchers a protected activity."²⁷⁶ Mr. Solorio states that submitting travel vouchers would not be a protected activity, but in the very next line observes that Ms. Wetzel is raising a concern how "Henderson is creating an environment that seems retaliatory towards people. So it is kind of like information related to a chilling environment."²⁷⁷ Thus, TVA's representation that Mr. Solorio stated that the email was not protected activity is simply false.

In sum, TVA's incomplete or misleading references to the Staff's deposition testimony provide no basis for summary disposition. To the extent the statements of Staff witnesses could be considered germane to determining the existence of a factual dispute, it is plain that selective misquoting of staff testimony does not establish an absence of a genuine dispute of fact.

B. TVA's assertion that Ms. Wetzel's statements in Violation 4 were not protected activity because they were inappropriate and disrespectful indicates a genuine dispute of material fact

TVA's argument that Ms. Wetzel's statements referenced in Violation 4 are "inappropriate and disrespectful" relates to whether TVA has proffered clear and convincing evidence that Ms. Wetzel's termination was based on a legitimate non-discriminatory reason.²⁷⁸ It begs the very factual question at issue—TVA assumes the conclusion that the examples it cites of "a sustained pattern of disrespectful conduct" on the part of Ms. Wetzel constitute the clear and convincing evidence that TVA must provide. But "inappropriate" and "disrespectful" are not magic words that, by their invocation, necessarily establish a legitimate non-discriminatory basis for termination. In the context of employee discrimination, the case law emphasizes that

²⁷⁶ Attach. 45, Signed Transcript of the Deposition of David Solorio, at 116:15–16 (July 2, 2021) (ML21236A326 (non-public)).

²⁷⁷ *Id.* at 116:22–25.

²⁷⁸ See 10 C.F.R. § 50.7(d).

specific facts and circumstances of the case matter, and that principle applies in considering whether particular conduct is a pretextual basis for termination or a legitimate non-discriminatory one.²⁷⁹ As explained here, the evidence relied on by the Staff contradicts TVA's conclusory assertions regarding the nature of Ms. Wetzel's conduct. Consideration of this issue involves the weighing of evidence, assessing the credibility of witnesses, and accordingly, drawing legitimate inferences—it fundamentally involves resolving genuine disputes of material fact.

1. TVA's assertion that Ms. Wetzel's conduct was disrespectful as a matter of law is incorrect, and TVA's cited cases are inapposite

TVA cites several cases in support of its argument that TVA was justified as a matter of law in terminating Ms. Wetzel based on her "disrespectful" conduct. The facts and circumstances of those cases are dramatically different than those in question here. As such, they fail to support TVA's assertion that it has presented clear and convincing evidence that its termination of Ms. Wetzel was premised on non-discriminatory reasons rather than pretextual ones. Insubordination and disrespect are case-specific issues that involve careful parsing of evidence to make appropriate inferences and assessing the credibility of witnesses who are unlikely to admit to engaging in retaliatory termination.

TVA's asserted bases for Ms. Wetzel's misconduct are that she raised concerns about Ms. Henderson on several occasions to Mr. Shea directly, and that she raised concerns about Ms. Henderson in response to questions asked of her by Mr. Slater in the TVA OGC investigation.²⁸⁰ Her termination letter also includes as a basis for termination that she was late in submitting travel vouchers.²⁸¹ Her alleged misconduct, which the Staff contends is protected activity and not misconduct at all, is of an objectively altogether different type and gravity than that addressed in any of the cases on which TVA relies.

²⁷⁹ See *Burlington N.*, 548 U.S. at 69.

²⁸⁰ SDMF 24; SDMF 29.

²⁸¹ SDMF 68.

For example, in *American Nuclear Resources, Inc. v. U.S. Department of Labor*, the court reviewed the findings of the DOL following an evidentiary hearing.²⁸² The court noted specific instances of alleged misconduct consisted of interpersonal problems that began immediately upon him being hired (only two weeks before he was fired), yelling at his supervisor, and screaming at other employees for an hour.²⁸³ In *Kahn v. U.S. Secretary of Labor*, following an evidentiary administrative hearing, the reviewing court cataloged a long list of serious misconduct in concluding that the employer's termination decision was not pretextual: the employee displayed loud and abusive demeanor toward another coworker, the employee made suggestive comments and unwanted sexual advances toward a third coworker, the employee used an abrasive and aggressive manner with other workers, the employee conducted less-than-thorough investigations as part of his work as auditor, the employee used unauthorized overtime, and the employee directed foul language at his supervisor and poked him twice in the chest.²⁸⁴ In *Dunham v. Brock*, following an evidentiary administrative hearing, the reviewing court found that repeated abusive and profane language directed at others (including to his supervisor), responding to employee counseling by defiantly stating that he refused to change, and daring his supervisor to fire him constituted insubordination that justified his termination.²⁸⁵ Finally, in *Ma v. American Electric Power, Inc.*, following an evidentiary district court trial, the court held, despite receiving employee counseling several times, the evidence showed that the employee maintained an aggressive and confrontational attitude that caused colleagues to avoid going to Ma (plaintiff-appellant) with concerns.²⁸⁶ Thus, the court

²⁸² *Am. Nuclear Res., Inc. vs. U.S Dep't. of Labor*, 134 F.3d 1292, 1293 (6th Cir. 1998).

²⁸³ *See Id.* at 1293–94, 1296.

²⁸⁴ *See Kahn v. U.S. Sec'y of Labor*, 64 F.3d 271, 279–80 (7th Cir. 1995), as modified (Sept. 7, 1995).

²⁸⁵ *See Dunham v. Brock*, 794 F.2d 1037, 1038–39 (5th Cir. 1986).

²⁸⁶ *See Ma v. Am. Elec. Power, Inc.*, 647 F. App'x 641, 642–44 (6th Cir. 2016) (unpublished).

agreed with the district court's conclusion that Ma's inability to talk, collaborate, or otherwise work with peers caused her termination.²⁸⁷

As is evident, each of these cases TVA presented as an example relates to misconduct that is conspicuously abusive, persistently defiant of employee counseling, or related to job performance deficiencies. Ms. Wetzel was never accused of any conduct resembling that in these cases. As the evidence will show herein and at hearing, TVA's examples of Ms. Wetzel's alleged disrespectful and inappropriate behavior "were nothing more than the result and manifestation of [her] protected activity"—TVA's inversion of her legitimate fear based on a pattern of retaliation in a chilled work environment into a pretextual accusation of insubordination to support termination. Moreover, none of the cases TVA cites involve examples of courts dispensing with an evidentiary trial to review the facts and circumstances of the conduct at issue, as TVA is requesting here. These considerations underscore that summary disposition is inappropriate in this case.

2. Circumstances surrounding TVA's investigative and disciplinary process for Ms. Wetzel raise genuine issues of material fact as to whether TVA's termination decision was pretextual

TVA deviated from its standard practices and procedures in several ways that raise genuine issues regarding its basis for terminating Ms. Wetzel. First, as described above at pages 11 and 43–44, Mr. Slater, the TVA OGC investigating attorney, drafted an investigation report that relied on Ms. Wetzel's protected activity to support its conclusions.²⁸⁸ Mr. Slater also selectively avoided referencing portions of TVA ECP reports that concluded that Ms. Henderson's conduct may give rise to chilled work environment concerns.²⁸⁹ These choices demonstrate a lack of objectivity in a supposedly independent investigation and call into question the reliability of its findings and rationale for them. The Senior Manager for the TVA

²⁸⁷ See *id.*

²⁸⁸ See, e.g., SDMF 36.

²⁸⁹ SDMF 8; SDMF 35.

ECP, Ms. Hagins-Dyer, also doubted the soundness of the TVA OGC report; she related to NRC/OI that she “read that and I just didn’t get the connection between her termination and any inappropriate behavior on her part that warranted termination.”²⁹⁰ Ms. Hagins-Dyer also stated that she asked what Ms. Wetzel did that warrants termination: “[a]nd I remember the answer was, well, she, Beth, had made statements that Erin was harassing Mr. McBrearty”—an evident inconsistency with what TVA articulated were the reasons in its termination letter to Ms. Wetzel.²⁹¹

Other TVA employees also noted irregularities in the investigation and disciplinary review. Deanna Fults, a TVA ECP specialist, stated in her OI interview, regarding TVA’s reference to Ms. Wetzel submitting late travel vouchers as a basis for termination, “I was surprised that something that was so common place was leading to someone being terminated.”²⁹² She also noted that Mr. Shea acknowledged that he did not believe Ms. Wetzel was “given an opportunity to explain why she continued to say or continued to think Erin was harassing her” and stated that Ms. Wetzel was “probably not even properly on notice.”²⁹³ Ms. Fults, discussing early drafts of ERB forms for Ms. Wetzel, also generally called into question the ERB’s pattern of candor in addressing whether “to their knowledge . . . has she raised any concerns, has she contacted HR, contacted legal, contacted the NRC, DOL or other external regulatory agency. They always [say] no so they can say we didn’t know this person had alleged something.”²⁹⁴ Ultimately Ms. Fults said that in a later draft, the ERB checked “yes” in response to the question of whether Ms. Wetzel had previously engaged in protected activity,

²⁹⁰ Attach. 46, OI ROI 2-2019-015, Ex. 21, at 61:13–16 (May 21, 2019) (ML21043A049) (“Hagins-Dyer OI Tr.”).

²⁹¹ SDMF 61; Attach. 46, Hagins-Dyer OI Tr. at 63:2–5 (ML21043A049).

²⁹² Attach. 47, OI ROI 2-2019-015, Ex. 24, at 64:6–8 (May 23, 2019) (ML21043A053) (“Fults OI Tr.”).

²⁹³ *Id.* at 64:9–20; 67:10–12. Indeed, Ms. Wetzel testified to NRC/OI that Shea had never counseled Wetzel regarding her treatment of Ms. Henderson, her attitude, or her behavior. Attach. 11, Wetzel OI Tr., at 53 (ML21048A390).

²⁹⁴ Attach. 47, Fults OI Tr., at 66:4–16 (ML21043A053).

but Mr. Ryan Dreke, the TVA OGC representative on the ERB, refused to allow Ms. Wetzel's involvement in the TVA OGC investigation to be included in this section.²⁹⁵ Ms. Fults said that Mr. Dreke stated that this was "because it's in bad faith and therefore not protected activity." The ERB relied on this, despite the fact that, as the Commission has found, "[whistleblowers' are] protected under Section 211 [of the Energy Reorganization Act] and 10 C.F.R. § 50.7, regardless of the accuracy of their allegations."²⁹⁶ The independence of the ERB process is also called into question by the OI interview testimony of Mr. Calle (who sits on corporate ERBs and nearly all site ERBs), who noted that in all of the ERB adverse action proposal decisions he had been involved with "we have not had a dissenting opinion."²⁹⁷

Ultimately, there is significant conflicting information as to what was the basis for Ms. Wetzel's termination, whether it was in fact pretextual, and the assessment of credibility of witness testimony. Summary disposition is, therefore, inappropriate.

C. TVA's claim of a "reasonable belief" that Ms. Wetzel did not engage in protected activity is no basis for summary disposition

TVA's insistence that it is entitled to summary disposition even if Ms. Wetzel engaged in protected activity because of TVA's "reasonable belief" that Ms. Wetzel did not engage in protected activity is both legally and factually unfounded. Even if TVA were correct about the applicable legal standard, it would not apply at the stage of summary disposition because, as discussed above, material facts and credibility are in significant dispute regarding TVA's posited clear and convincing evidence of a legitimate non-discriminatory reason for terminating Ms. Wetzel. Moreover, as discussed above, the activities of Ms. Wetzel cited in Violation 4 all relate to concerns of chilled work environment and a pattern of retaliation in the working environment for raising concerns—such as when Ms. Henderson referenced "repeated assertions that I have

²⁹⁵ SDMF 62; *see id.* at 69.

²⁹⁶ *Five Star Prods., Inc. and Constr. Prods. Research, Inc.*, CLI-93-23, 38 NRC 169, 181 n.6 (1993).

²⁹⁷ SDMF 63; Attach. 41, Calle OI Tr., at 30:10–17 (ML21043A062).

created a chilled work environment” as an example of harassment and indicated that she believed that Ms. Wetzel and Mr. McBrearty were behind NRC conducting an inspection of her organization.²⁹⁸

Additionally, TVA points to “good faith determinations by TVA’s OGC and the ERB.”²⁹⁹ The decision and basis to terminate Ms. Wetzel was based on the fact-finding and advice of TVA OGC in the investigation, which was also the source of the information relied on by the ERB. However, as described above, the TVA OGC investigation was fundamentally flawed in its reliance on demonstrably protected activity as a basis for termination and in its disregard of available information (known to the decisionmakers) that contradicted TVA’s rationale for terminating Ms. Wetzel. Reliance on the advice of counsel is not a defense to retaliation.³⁰⁰

Furthermore, TVA’s selective misquoting of Staff statements in depositions fails to support TVA’s assertion that there are no genuine disputes of fact. As outlined above, there are numerous disputed material facts regarding both the Slater investigation and the ERB process. Specifically, with respect to Staff deponent statements, TVA points out that Mr. Wilson and others were unwilling to accuse TVA employees of acting in bad faith. However, that simply does not amount to TVA providing evidence of non-discriminatory conduct under the clear and convincing standard required by Commission caselaw. Indeed, the Staff has explained in detail above why the TVA investigation and the ERB process do not demonstrate under the clear and convincing standard that TVA would have terminated Ms. Wetzel absent her protected activity. TVA attempted to suggest to Staff witnesses that in order to find the ERB and TVA OGC investigation unpersuasive (and show that TVA did not retaliate against Ms. Wetzel), the NRC must prove that those processes were conducted in “bad faith.” But that is simply not the

²⁹⁸ Attach. 8, Henderson Complaint, at 3, 7 (ML21042A026).

²⁹⁹ TVA Motion Regarding Violation 4, at 24 (ML21228A260).

³⁰⁰ See *Weissman v. Dawn Joy Fashions, Inc.*, 214 F.3d 224, 234 n.4 (2d Cir. 2000) (holding, in the context of alleged discrimination under the Americans with Disabilities Act, that consultation with counsel is not a defense to retaliation).

burden of proof. Indeed, once the Staff has shown that Ms. Wetzel's protected activity was a contributing factor in her termination, in *any* degree, however small, it is TVA's burden to show, through clear and convincing evidence, that it would have taken the same action against Ms. Wetzel regardless of her protected activity. TVA may certainly attempt to do so through producing the ERB records and the OGC recommendation. However, the Staff has demonstrated that documentation alone does not meet a clear and convincing standard. Accordingly, it is legally unnecessary to determine whether TVA acted in "bad faith" in order to find that TVA has not demonstrated evidence under a clear and convincing standard that Ms. Wetzel would have been terminated in the absence of her protected activity.

D. Conclusion

For the reasons discussed above, summary disposition is inappropriate for Violation 4. There are numerous genuine issues of material fact that TVA either misstates or fails to acknowledge. To resolve these disputed issues and address issues of evidentiary weight, witness credibility, and appropriate inferences to draw from evidence, an evidentiary hearing is necessary. Accordingly, TVA's Violation 4 Motion should be denied.

III. TVA misconstrues the role of the Staff in an enforcement hearing

The central issue in this case, as in any enforcement proceeding, is whether the violations set forth in the Notice of Violation occurred, and whether, on the basis of such violations, the order imposing the civil penalty should be sustained.³⁰¹ In an enforcement hearing, the Staff's role is akin to the role of a prosecutor; the presiding officer, not the enforcement staff, is the ultimate fact-finder.³⁰² The Staff must prove its case at an impartial hearing.³⁰³

³⁰¹ See *Watts Bar*, CLI-04-24, 60 NRC at 203.

³⁰² See, e.g., *Radiation Tech., Inc.* (Rockaway, N.J.), ALAB-567, 10 NRC 533, 537 (1979).

³⁰³ *Id.*

As described in multiple examples above, TVA's characterizations of the Staff's deposition testimony are incomplete or misleading. On that basis alone, TVA's reliance on this testimony fails to provide any legal or factual basis to justify summary disposition. However, TVA's references to this testimony indicate more broadly that TVA's arguments are not directed to the relevant issue of whether the facts of this case establish that the violations occurred, but rather to challenging the Staff's mental thought processes or Staff responses to hypothetical questions. To the extent TVA disputes the existence or significance of the facts underlying the violation, the remedy is not to challenge the Staff's deliberative processes, but to require the Staff to prove those facts at hearing.³⁰⁴

Similarly, TVA complains that it was not able to extract 'legal theories' from staff witnesses. But it is well established that the purpose of a deposition is to discover facts, not legal theories. Indeed, seeking the government's legal theories in deposition is improper.³⁰⁵ In any event, the Staff articulated the regulatory foundation for its position in the NOV and in the Appendix to the Imposition Order. Material facts underlying each of the violations are contained in the Office of Investigations Report and Exhibits, which were also provided to TVA in February as part of the Staff's initial document disclosures. In this proceeding, TVA's efforts to elicit the views of Staff deponents, who were not eyewitnesses to the events underlying the violations, about legal theories and hypothetical scenarios, or about their deliberations in writing the NOV, are ultimately not probative in determining the existence of the material facts supporting the violations. Accordingly, even if TVA had accurately described the Staff's deposition testimony, TVA's criticism of the Staff's responses misapprehends the Staff role in this proceeding and, in turn, fails to provide a basis for TVA's summary disposition motion.

³⁰⁴ See *id.* at 533.

³⁰⁵ See, e.g., *Ancient Coin Collectors Guild*, 899 F.3d at 324 ("The guild primarily seeks information concerning the government's legal positions, which is generally beyond the scope of a proper Rule 30(b)(6) deposition.").

IV. TVA failed to comply with the 10 C.F.R. § 2.710(a) requirement to provide a short statement of material facts

Pursuant to 10 C.F.R. § 2.710(a), a party moving for summary disposition must attach a “short and concise statement of material facts to which the moving party contends there is no genuine issue to be heard.” This is not merely a “procedural technicality, but it is of substantive significance. This statement is necessary in order to impose upon other parties a duty to file a statement of material facts as to which it is contended there exists a genuine issue to be heard under penalty of having uncontroverted material facts deemed to be admitted.”³⁰⁶ Similarly “[i]t is necessary for the Board to have this information in readily available form in order to evaluate the merits of a motion for summary disposition,” because a lengthy argumentative motion “wholly fails to comply” with the procedural requirements.³⁰⁷ Much like the applicant in *Stanislaus*, TVA fails to concisely present a set of material facts at issue, instead relying on lengthy arguments in its motion.

In the instant case, rather than attaching a statement of material facts upon which TVA relies in its motion, it attached a list of seemingly unobjectionable, but either irrelevant or partial facts. In contrast, its motion contains numerous additional, contested facts, on which it relies to argue that summary disposition is warranted. The purpose of the statement of material facts is for the party opposing the summary disposition motion (here, the Staff) and the Board to be able to readily ascertain whether or not there are material facts in dispute.³⁰⁸ Here, TVA leaves it to the Staff and the Board to sift through its motion to determine which facts it is indeed relying on and oppose them in order to show that a genuine dispute exists. A sampling of examples illustrates this point.

³⁰⁶ *Pac. Gas and Elec. Co.* (Stanislaus Nuclear Project, Unit No. 1), LBP-77-45, 6 NRC 159, 163 (1977).

³⁰⁷ *Id.*

³⁰⁸ See *id.* (“It is necessary for the Board to have this information in a readily available form in order to evaluate the merits of a motion for summary disposition.”)

For example, and as discussed above, TVA rests heavily upon the concept that “one employee alleging wrongdoing by another employee” is not management action.³⁰⁹ In doing so, TVA falsely asserts as fact that the Henderson complaint was the action of one employee complaining about another employee. The facts demonstrate that Ms. Henderson was a senior manager complaining of conduct by her subordinates.³¹⁰

Similarly, TVA asserts that “Ms. Henderson’s 2016 concern was a nuclear safety protected activity under the ERA” and alleges that Mr. Wilson agreed that this was true.³¹¹ Neither of those statements are true and neither are contained in the statement of material facts that TVA appended to its motion. The disputes regarding these facts are discussed in Section I.C.3, *supra*.

As described throughout the Staff answer above, TVA relies on numerous statements from staff depositions to support its summary disposition motions. As discussed above, these statements largely consist of misquoting staff testimony or taking it out of context. In any event, while TVA’s extensive use of these citations in its motion suggests that it considers these statements to be material (though for the reasons discussed above, the Staff does not), none is identified in TVA’s statement of material facts.

³⁰⁹ TVA Motion Regarding Violations 1–3, at 18–19 (ML21228A261).

³¹⁰ Ms. Henderson asserted that Mike McBrearty, Michelle Conner, Beth Wetzel, Ed Schrull, and Alesia Justice were creating a hostile work environment for her. Attach. 8, Henderson Complaint at 1 (ML21042A026). At the time Ms. Henderson filed her complaint, she was the Director, Corporate Nuclear Licensing. Attach. 48, ROI 2-2018-033, Ex 34, at 10–11 (June 12, 2019) (ML21042A035) (“Henderson OI Tr.”). Mike McBrearty was the Site Licensing Manager at Sequoyah and did not report to Ms. Henderson, but Ms. Henderson was at a higher level of the organization than Mr. McBrearty. Attach. 4, McBrearty OI Tr., at 38–39 (ML21048A396). Michelle Conner was the Corporate Functional Area Manager and reported directly to Ms. Henderson until she was moved out of the CNL organization as part of a settlement agreement of her whistleblower retaliation case before the Department of Labor. Attach. 49, Signed Transcript and Errata of the Deposition of Michelle Conner, at 15 (June 25, 2021) (ML21245A060 (non-public)). Beth Wetzel was the Manager, Emerging Regulatory Issues, reporting directly to Erin Henderson. Attach. 11, Wetzel OI Tr., at 8–9 (ML21048A390). Ed Schrull was the Manager, Fleet Licensing, reporting directly to Erin Henderson. Attach. 50, OI ROI 2-2019-015, Ex. 32, at 5, 8 (May 23, 2019) (ML21043A076) (“Schrull OI Tr.”). Alesia Justice reported to Beth Wetzel, and Erin Henderson was her second line supervisor. Attach. 51, OI ROI 2-2019-015, Ex. 35, at 8–9 (Aug. 28, 2019) (ML21043A088) (“Justice OI Tr.”).

³¹¹ TVA Motion Regarding Violations 1–3, at 22, n.82 (ML21228A261).

As another example of TVA's deficient statement of material facts, TVA alleges that Ms. Wetzel was let go from TVA for "a sustained campaign of disrespectful conduct," that included "repeated insinuations by Ms. Wetzel that her supervisor [Ms. Henderson] had initiated inappropriate investigations of TVA employees for vindictive motives, despite Ms. Wetzel having no reasonable basis or specific knowledge to support those insinuations."³¹² TVA did not include these statements regarding Ms. Wetzel's termination in its statement of uncontested material facts. As discussed in detail in section I.C.2.b and section II.B, *supra*, this statement is not true, and is thus certainly disputed by the Staff. Similarly, TVA alleges that it is an "undisputed fact" that "Ms. Wetzel's alleged contact with the NRC did not contribute to the adverse action here." Although TVA did not include this broad and significant 'fact' in its statement of material facts, it is likewise strongly disputed by the Staff, as discussed *supra* in section II.B.

As a final substantive example of a significant material issue underlying TVA's arguments that it failed to acknowledge in its statement of material facts, TVA relies on the 'fact' that "the entire staff of Ms. Henderson [including Ms. Wetzel] . . . do not fear raising issues and concerns," and it asserts that Ms. Wetzel herself had denied the existence of such a chilled work environment.³¹³ However, after Mr. Slater completed his draft report, TVA's ECP conducted a pulsing survey of corporate and site nuclear licensing employees and found that "half of the survey participants feel that they cannot question decision making made by NRASS without fear of retaliation."³¹⁴ Ms. Wetzel testified that Mr. Slater never asked her about a chilled work environment. Numerous other witnesses questioned during the investigation testified that

³¹² TVA Motion Regarding Violation 4, at 3 (ML21228A260).

³¹³ *Id.* at 21.

³¹⁴ Attach. 52, TVA Special Pulsing Summary, Enclosure, at unnumbered attachment p. 5-6 (July 12, 2018) (ML21045A127). NRASS stands for Nuclear Regulatory Affairs and Support Services. At the time this survey was conducted, Joe Shea was VP of NRASS, which is more commonly referred to as corporate nuclear licensing (CNL).

Mr. Slater simply asked general work environment questions.³¹⁵ Indeed, determining what was actually said to Mr. Slater will be a matter of weighing the credibility of various witnesses, and is not something that can support a motion for summary disposition.

In sum, because TVA's motion fails to adequately identify to the Board and parties the undisputed facts upon which it actually relies, TVA has failed to comply with the procedural requirements of 10 C.F.R. § 2.710. TVA's motions should be denied.

CONCLUSION

For the reasons stated above, this Board should deny TVA's motions for summary disposition.

/Signed (electronically) by/

Joe I. Gillespie
Counsel for NRC Staff
Mail Stop: O-14-A44
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Telephone: (301) 287-9184
E-mail: Joe.Gillespie@nrc.gov

Executed in Accord with 10 CFR 2.304(d)

Sara Brock Kirkwood
Counsel for NRC Staff
Mail Stop: O-14-A44
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Telephone: (301) 287-9187
E-mail: Sara.Kirkwood@nrc.gov

³¹⁵ See, e.g., Attach. 53, OI ROI 2-2019-015, Ex. 34, at 27–28 (May 21, 2019) (ML21043A088) (“Hess OI Tr.”) (testifying that [Mr. Hess’s] interview with Mr. Slater “wasn’t specific” and more of a generic organizational work environment interview. Hess shared his concerns about Henderson, and that he did not feel like he could trust anyone above his direct manager, Ed Schrull.) *Id.* at 27, 29 (ML21043A088). Attach. 55, ROI 2-2019-015, Ex. 4, Wetzel OI Interview 2, at 11 (Nov. 13, 2019) (ML21043A008) (describing Mr. Slater’s questions as more about relationships and what people thought of Erin Henderson.). Attach. 54, OI ROI 2-2019-015, Ex. 33, at 1 (Aug. 27, 2019) (ML21043A076) (“Schrull Interview Report”) (“interview questions and his answers revolved around Erin Henderson and Schrull’s impression of her.”).

Executed in Accord with 10 CFR 2.304(d)

Kevin C. Roach
Counsel for NRC Staff
Mail Stop: O-14-A44
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Telephone: (201) 521-2078
E-mail: Kevin.Roach@nrc.gov

Executed in Accord with 10 CFR 2.304(d)

Thomas S. Steinfeldt
Counsel for NRC Staff
Mail Stop: O-14-A44
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Telephone: (301) 415-0034
E-mail: Thomas.Steinfeldt@nrc.gov

Executed in Accord with 10 CFR 2.304(d)

Joseph D. McManus
Counsel for NRC Staff
Mail Stop: O-14-A44
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Telephone: (301) 415-5356
E-mail: Joseph.McManus@nrc.gov

Dated in Rockville, MD
this 15th day of September 2021

NRC Staff's List of Attachments in Support of its Consolidated Response in Opposition to TVA's Motions for Summary Disposition

Attach. No.	Attachment Title	ADAMS Accession No./TVADOC Bates No.	Document Classification
1	Statement of Disputed Material Facts	N/A	Publicly Available
2	OI ROI Case 2-2018-033, Ex. 17, Draft Slater Report	ML21042A026	Publicly Available
3	Excerpts from the Deposition of Michael McBrearty	ML21237A471	Non-public
4	OI ROI Case 2-2018-033, Excerpts from the McBrearty OI Transcript	ML21048A396	Publicly Available
5	OI ROI Case 2-2018-033, Ex. 22, Excerpts from the Dodds OI Transcript	ML21042A025	Publicly Available
6	Excerpts from the Deposition of Ralph "Al" Dodds	ML21232A637	Non-public
7	Allegation Report RII-2017-A-0114	ML21048A379	Publicly Available
8	OI ROI Case 2-2018-033, Ex. 16, Formal Complaint of Erin Henderson	ML21042A026	Publicly Available
9	Email from Henderson to Poland/Shea formally submitting Henderson Complaint	TVADOC0004176	Non-public
10	OI ROI Case 2-2019-015, Ex. 30, Excerpts from the Shea OI Transcript	ML21043A062	Publicly Available
11	OI ROI Case 2-2019-015, Ex. 3, Excerpts from the Wetzel OI Transcript	ML21048A390	Publicly Available
12	OI ROI Case 2-2019-015, Ex. 14, Final Slater Report	ML21043A012	Publicly Available
13	OI ROI Case 2-2019-015, Ex. 18, Notice of Termination to Wetzel	ML21048A391	Publicly Available
14	Email from McBrearty (Feb. 8, 2017)	TVADOC0002742-43	Non-public
15	Emails between McBrearty and Hagins-Dyer (June 30, 2017)	TVADOC0003437-47	Non-public
16	OI ROI Case 2-2018-033, Ex. 2, NRC Allegation Review Board (ARB) Records	ML21048A396	Publicly Available
17	Resignation Letter of Michael McBrearty to Al Dodds (Aug. 16, 2018)	TVADOC0009127-0001	Non-public Confidential
18	Email from Al Dodds to Anthony Williams (July 30, 2018)	TVADOC0004309-10	Non-public
19	Email from Dodds to Williams/Shahan (July 22, 2018)	TVADOC0009050-0001	Non-public Confidential

Attach. No.	Attachment Title	ADAMS Accession No./TVADOC Bates No.	Document Classification
20	Excerpts from the Deposition of Nicholas Hilton	ML21236A331	Non-public
21	Email from Chandler to Grace (July 5, 2018)	TVADOC0011153	Non-public
22	ECP Summary NEC-17-00410	ML21043A009	Publicly Available
23	Excerpts from the Deposition of Beth Wetzel	ML21237A473	Non-public
24	Excerpts from the Deposition of Charles "Wes" Wingo	ML21232A632	Non-public
25	Wetzel ERB Package	ML21048A391	Publicly Available
26	Excerpts from the transcript of the ██████ Pre-Enforcement Conference (PEC) (June 24, 2020)	ML21048A428	Non-public Confidential
27	██████ PEC, Ex. 18, Text message from Shea to Czufin (June 5, 2018)	ML20182A789	Non-public Confidential
28	Email from Henderson to Shea (Aug. 15, 2018)	TVADOC0009126-0001	Non-public Confidential
29	Beth Wetzel Performance Reviews	TVADOC0009371-0001 to 0027	Non-public Confidential
30	Email from Earls to Henderson (Aug. 1, 2018)	TVADOC0004575-76	Non-public
31	Excerpts from the Deposition of Joseph Shea	ML21232A644	Non-public
32	OI ROI Case 2-2019-015, Ex. 11, March, May 2018 emails regarding NEI Loanee Agreement	ML21044A069	Publicly available
33	OI ROI Case 2-2019-015, Ex. 12, Emails from Wetzel to Shea, regarding Travel (June 9, 2018)	ML21044A069	Publicly available
34	Counteroffer Memo. from Wetzel to Shea and Poland (Oct. 31, 2018)	TVADOC0004451	Non-public
35	OI ROI Case 2-2019-015, Ex. 39, Excerpts from the Slater OI Transcript	ML21043A269	Publicly available
36	OI ROI Case 2-2018-033, Ex. 9, McBrearty text message to Polickoski	ML21048A3960	Publicly available
37	Excerpts from the transcript of the Shea PEC (June 25, 2020)	ML21069A102	Publicly available
38	Email from Grace to Poland, Shea, and Czufin	TVADOC0010895	Non-public
39	Excerpts from the Deposition of George Wilson	ML21236A324	Non-public

Attach. No.	Attachment Title	ADAMS Accession No./TVADOC Bates No.	Document Classification
40	OI ROI Case 2-2018-033, Ex. 12, TVA's Investigation of McBrearty and Conner	ML21048A396	Publicly available
41	OI ROI Case 2-2019-015, Ex. 29, Excerpts from the Calle OI Transcript	ML21043A062	Publicly available
42	ECP NEC-16-00638 Findings (Concern submitted by Conner)	ML21048A396	Publicly available
43	Excerpts from the Deposition of Scott Luiña	ML21236A327	Non-public
44	Excerpts from the Deposition of Alejandro Echavarria	ML21236A330	Non-public
45	Excerpts from the Deposition of David Solorio	ML21236A326	Non-public
46	OI ROI Case 2-2019-015, Ex. 21, Excerpts from the Hagins-Dyer OI Transcript	ML21043A049	Publicly available
47	OI ROI Case 2-2019-015, Ex. 24, Excerpts from the Fults OI Transcript	ML21043A053	Publicly available
48	OI ROI Case 2-2018-033, Ex. 34, Excerpts from the Henderson OI Transcript	ML21042A035	Publicly available
49	Excerpts from the Deposition of Michelle Conner	ML21245A060	Non-public
50	OI ROI Case 2-2019-015, Ex. 32, Excerpts from the Schrull OI Transcript	ML21043A076	Publicly available
51	OI ROI Case 2-2019-015, Ex. 35, Excerpts from the Justice OI Transcript	ML21043A088	Publicly available
52	TVA Special ECP Pulsing Summary (July 12, 2018)	ML21045A127	Publicly available
53	OI ROI Case 2-2019-015, Ex. 34, Excerpts from the Hess OI Transcript	ML21043A088	Publicly available
54	OI ROI Case 2-2019-015, Ex. 33, Schrull Interview Report	ML21043A076	Publicly available
55	OI ROI Case 2-2019-015, Ex. 4, Excerpts from the Wetzel OI Transcript, Part 2	ML21043A008	Publicly available
56	Excerpts from the Deposition of Anthony Williams	ML21232A631	Non-public
57	Email from J. Slater to J. Grace regarding Wetzel footnote	TVADOC0011144-47	Non-public
58	Excerpts from Henderson PEC Transcript (June 23, 2020)	ML21069A107	Publicly available
59	McBrearty Supplemental OI Interview Summary	ML21042A035	Publicly available

Attachment 1

Statement of Disputed Material Facts

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

TENNESSEE VALLEY AUTHORITY

(Enforcement Action)

Docket Nos. EA-20-006
EA-20-007

STATEMENT OF DISPUTED MATERIAL FACTS

The Nuclear Regulatory Commission (NRC) Staff submits this statement of disputed material facts in dispute of TVA's Motion for Summary Disposition of Violations 1, 2, and 3 (Lack of Adverse Employment Action), and Motion for Summary Disposition of Violation 4 (Lack of Nuclear Safety-Related Protected Activity). The Staff has identified numerous implicit and explicit assertions of fact that are contained in (and presumably relied on by) TVA's motions but were not included in TVA's associated statement of material facts. Since TVA did not call out these facts as required by 10 C.F.R. § 2.710(a) in its statement of material facts, the Staff will not specifically controvert each of them. However, the Staff generally disputes those facts identified in TVA's brief, but not specifically called out in its statement of material facts. Furthermore, the statement of disputed material facts relates to the basis for which TVA moved for Summary Disposition. There are additional facts, supporting the NOV, that will be provided at the evidentiary hearing.

The relevant material facts in dispute in this case are the following¹:

1. On July 31, 2015, the NRC completed a two-week onsite inspection at Sequoyah Nuclear

¹ It is possible that some of these facts will be ultimately stipulated to before trial. However, given that they are facts that were 1) not included in TVA's motion; 2) support the Staff's position that the violations occurred and 3) no agreement has been reached regarding stipulations, the Staff includes them on this list of disputed facts.

Plant, focusing on TVA's evaluations of changes, tests, and experiments and permanent plant modifications.²

2. The NRC provided its inspection report to TVA on September 14, 2015, which documented five non-cited violations.³
3. Two of the five non-cited violations (the "Kirk-Key" violations) involved TVA's decision to remove mechanical kirk-key interlocks from the from the crosstie breaker for the Sequoyah shared Unit 1A and Unit 2A Essential Raw Water Cooling motor control centers.⁴
4. A third violation (the "Service Life" violation), focused on the decision by TVA that certain Class 1E molded case circuit breakers did not need to be assigned a service life.⁵
5. TVA did not formally accept or deny the two Kirk-Key violations or the Service Life violation.⁶
6. Over the course of two years, Michael McBrearty raised concerns with TVA's handling of the Service Life and Kirk-Key violations and compliance with the NRC requirements in meetings, emails, the corrective action program, and the employee concerns program

² Letter from Jonathan H. Bartley, Chief, Engineering Branch 1, Division of Reactor Safety, US NRC, to Joseph W. Shea, Vice President, Nuclear Licensing, TVA, at 1 (Sept. 14, 2015) ([ADAMS Accession No. ML15257A435](#)).

³ *Id.*, Enclosure at unnumbered pp. 2.

⁴ *Id.*

⁵ *Id.*

⁶ On January 8, 2016, TVA provided "observations on the basis for the [kirk-key] NCVs," and on March 9, 2018, TVA submitted a license amendment request to "complete the implementation of the design change." Letter from J.W. Shea, Vice President, TVA, to U.S. NRC (Jan. 8, 2016) ([ML16012A480](#)); Letter from J.W. Shea, Vice President, TVA, to U.S. NRC (Mar. 9, 2018) ([ML18071A349](#)). The NRC issued the requested license amendments on May 7, 2019. Letter from Andrew Hon, Project Manager, U.S. NRC, to Joseph W. Shea, Vice President, TVA (May 7, 2019) ([ML19058A029](#)). TVA provided no formal response to the Service Life NCVs until December 21, 2017. Letter from J.W. Shea, Vice President, TVA, to U.S. NRC (Dec. 21, 2017) ([ML17355A493](#)). The NRC withdrew the NCV on June 1, 2018. Letter from Mark S. Miller, Deputy Director, U.S. NRC, to Joseph W. Shea, Vice President, TVA (June 1, 2018) ([ML18152A748](#)).

(ECP).⁷

7. After unsatisfactory TVA responses to his corrective action reports, Mr. McBrearty raised concerns to responsible individuals and the employee concerns program about the unwillingness of TVA Corporate Nuclear Licensing to enter and address items in the corrective action program.⁸
8. In the summary report NEC-17-00410, dated June 13, 2017, the ECP did not determine that Mr. McBrearty harassed Ms. Henderson.⁹
9. On July 24, 2017, NRC Region II received three allegations from Ms. Wetzel.¹⁰
10. Of the three concerns received by NRC Region II on July 24, 2017, one alleged that “[t]he Licensing Manager [Erin Henderson] has created a chilled work environment in the Corporate Nuclear Licensing (CNL) department.”¹¹
11. In response to Ms. Wetzel’s allegation received on July 24, 2017, the NRC conducted a safety conscious work environment (SCWE) inspection during the week of September 18, 2017 by interviewing 22 individuals from various TVA corporate nuclear groups.¹²
12. On November 1, 2017, the NRC staff informed Ms. Wetzel that it was unable to substantiate Ms. Wetzel’s concern of a chilled work environment at TVA’s CNL

⁷ Attach. 4, Office of Investigations (OI) Record of Investigation (ROI) 2-2018-033, Ex. 3, at 16–67 (Sept. 4, 2018) ([ML21048A396](#)) (“McBrearty OI Tr.”); Attach. 3, Signed Transcript and Errata for the Deposition of Michael McBrearty, at 161–71 (June 29, 2021) ([ML21237A471](#) (non-public)) (“McBrearty Dep. Tr.”); Attach. 8, OI ROI 2-2018-033, Ex. 16, Erin Henderson’s Formal Complaint, at 3 (Mar. 9, 2018) ([ML21042A026](#)) (“Henderson Complaint”) (“7/14/17: Mike contacted ECP regarding a new concern on a CR that I closed.”).

⁸ Attach. 4, McBrearty OI Tr., at 16–67 ([ML21048A396](#)); Attach. 3, McBrearty Dep. Tr. at 161–71 ([ML21237A471](#) (non-public)); Attach. 8, Henderson Complaint, at 3 ([ML21042A026](#)) (“7/14/17: Mike contacted ECP regarding a new concern on a CR that I closed.”).

⁹ Attach. 22, OI 2-2019-015, Ex. 7, Employee Concerns Summary NEC-17-00410, at 13–16 (June 13, 2017) ([ML21043A009](#)) (“ECP Summary NEC-17-00410”).

¹⁰ Attach. 7, Allegation Report RII-2017-A-0114, at pdf 9–10 (“AR RII-2017-A-0114”) ([ML21048A379](#)).

¹¹ *Id.* at pdf 95.

¹² *Id.*

department.¹³

13. Ms. Henderson’s March 9, 2018, complaint named Mr. McBrearty as a person who filed “[s]everal complaints . . . as a means of retaliation/intimidation after addressing individual performance issues or behaviors.”¹⁴ Specifically, Ms. Henderson’s complaint alleged that, on April 21, 2017, Mr. McBrearty participated in the employee concerns program (ECP) by filing a complaint that she was creating a hostile work environment.¹⁵ Ms. Henderson’s complaint also named Mr. McBrearty as a person who again contacted ECP on July 14, 2017 “regarding a new concern on a [condition report] that” she closed.¹⁶

14. Ms. Henderson’s March 9, 2018, complaint named Ms. Wetzel as a person who contacted the NRC alleging a chilled work environment. Specifically, Ms. Henderson wrote that, on September 11, 2017, she became aware from one of her employees that Mr. McBrearty and Ms. Wetzel were the reason for the NRC conducting a chilled work environment investigation within her department.¹⁷

15. Ms. Henderson’s March 9, 2018, complaint alleged that she had been subjected to repeated investigations and an NRC inspection, as a result of concerns and complaints filed by her employees, and she alleged that those complaints were filed “as a means of

¹³ *Id.*

¹⁴ Attach. 8, Henderson Complaint, at 1–8 (ML21042A026).

¹⁵ *Id.* at 3.

¹⁶ *Id.*

¹⁷ *Id.* at 6: “There are some indications that other individuals (Michelle Conner, *Beth Wetzel*, Ed Schroll, and Alesia Justice) may potentially be contributing to this environment or colluding with each other to facilitate creating a hostile work environment as described below.” (emphasis added); *id.* at 7: “9/11/17: Received feedback form a direct related to a discussion with a SQN employee, during which the SQN employee (a direct report to Mike [McBrearty]) had noticed that there has been a drastic increase in the amount of communications’ between Beth [Wetzel] and Mike in the past couple of months. (Note, Beth has the least interface with Site Managers of all of my corporate managers. Her [individual development plan] for 2018 includes a developmental area to go to the sites more often.) The SQN employee said he thought they (Mike and Beth) are the reason for the NRC SCWE inspection in my organization.”

retaliation/intimidation after addressing individual performance issues or behaviors.”¹⁸

16. After Ms. Henderson submitted her complaint to Mr. Shea and TVA Human Resources,¹⁹ Mr. Shea requested an investigation into Ms. Henderson’s March 9, 2018, complaint that was taken up by TVA’s Office of the General Counsel (OGC).²⁰
17. The investigation was assigned to John Slater. Mr. Slater had never conducted such an investigation before.²¹
18. Mr. Shea instructed Mr. Slater not to interview Michelle Conner for Mr. Slater’s investigation into Ms. Henderson’s complaint.²²
19. Mr. Slater had all emails from the “individuals involved” in Ms. Henderson’s complaint pulled for his review as part of his investigation.²³
20. In approximately late April of 2018, Ms. Wetzel was interviewed by Mr. Slater, who she believed was conducting an investigation into complaints of the chilled work environment at CNL.²⁴
21. In late April 2018, during the TVA OGC internal investigation interview with Ms. Wetzel, Mr. Slater only told Ms. Wetzel that he was conducting a work environment investigation, which Ms. Wetzel perceived as confirming her belief about the nature of the

¹⁸ *Id.* at 3–4.

¹⁹ Attach. 9, email from E. Henderson to A. Poland and J. Shea submitting Henderson Complaint (Mar. 9, 2018) (TVADOC0004176).

²⁰ Attach. 10, OI ROI 2-2019-015, Ex. 30, at 26 (June 12, 2019) (ML21043A062) (“Shea OI Tr.”) (“I sought an investigation which was ultimately taken up by investigators from the Office of General Counsel.”)

²¹ Attach. 35, OI ROI 2-2019-015, Ex. 39, at 10:21 to 11:3 (Nov. 20, 2019) (ML21043A269) (“Slater OI Tr.”) (explaining he had past experience with employment labor and whistleblower complaints, but that this was the first time investigating a harassment complaint). *Id.* at 9:7–19, 11:1–3.

²² Attach. 37, Pre-Decisional Enforcement Conference Transcript of Joseph Shea, at 119 (June 25, 2020) (ML21069A102) (“Shea PEC Tr.”).

²³ Attach. 38, email thread containing information from Ms. Grace that Mr. Slater needed to pull the emails of the individuals involved with the Henderson Complaint to review as part of the investigation (Apr. 3, 2018) (TVADOC0010895–96).

²⁴ Attach. 11, OI ROI 2-2019-015, Ex. 3, at 38–39 (May 9, 2019) (ML21048A390) (“Wetzel OI Tr.”).

investigation.²⁵

22. TVA's general practice was to make employees aware of the context of an investigatory interview.²⁶

23. During the TVA OGC internal investigation of Ms. Henderson's complaint, Mr. Slater received direct information from Ms. Wetzel via interview that described Ms. Henderson's behaviors as those that contributed to a chilled work environment at CNL.²⁷

24. Ms. Wetzel truthfully answered the questions asked of her by Mr. Slater about TVA's work environment and about Ms. Henderson in particular, and she provided her views on Ms. Henderson and disclosed her fears that Ms. Henderson would retaliate against her.²⁸

25. On or around April 27, 2018, Ms. Wetzel went to work at the nuclear industry group Nuclear Energy Institute (NEI) on a loan program with TVA to be a senior project manager in Washington, D.C.²⁹

26. Ms. Wetzel said she requested this assignment, in part, to escape CNL's toxic environment, created by Ms. Henderson.³⁰

27. Ms. Wetzel needed to submit her travel vouchers through Ms. Henderson for

²⁵ *Id.* at 39; Attach. 35, Slater OI Tr. at 39:2–4 (ML21043A269).

²⁶ Attach. 24, Signed Transcript and Errata of the Deposition of Charles (Wes) Wingo, at 46 (June 30, 2021) (ML21232A632 (non-public)) ("Wingo Dep. Tr.") (describing that employees interviewed as part of an investigation into another employee's complaint are generally provided with enough context to understand why they are being interviewed). Mr. Wingo conducted several investigations of employee complaints as a human resources generalist in TVA corporate nuclear since he began his job in TVA HR in 2008. *Id.* at 45:13–20.

²⁷ Attach. 35, Slater OI Tr. at 39–44 (ML21043A269); Attach. 2, OI ROI 2-2018-033, Ex. 17, Report of Investigation of Erin Henderson's Allegations of Harassment and Hostile Work Environment, at 19 (May 25, 2018) (ML21042A026) ("Draft Slater Report"); Attach. 12, OI ROI 2-2019-033, Ex. 14, Report of Investigation of Erin Henderson's Allegations of Harassment and Hostile Work Environment, at 20 (Aug. 10, 2018) (ML21043A012) ("Final Slater Report").

²⁸ Attach. 11, Wetzel OI Tr. at 38–41 (ML21048A390); see Attach. 35, Slater OI Tr. at 39–44 (ML21043A269).

²⁹ Attach. 11, Wetzel OI Tr. at 29, 36 (ML21048A390).

³⁰ *Id.* at 29–30.

reimbursement for her expenses while on detail at NEI.³¹

28. Ms. Wetzel was fearful that Ms. Henderson would have the opportunity to use her travel voucher reimbursements against her for disciplinary reasons, in retaliation for Ms.

Wetzel contacting the NRC about the chilled work environment claim at CNL.³²

29. On May 7, 2018, Ms. Wetzel expressed concerns to Mr. Shea via email about how Ms.

Henderson may use the travel vouchers to use as an “investigative tool.”³³ She also

alleged that Ms. Henderson was behaving in such a way that contributed to a chilled work environment.³⁴

30. Mr. Shea responded to Ms. Wetzel’s May 7, 2018 email and let Ms. Wetzel know that her

allegations were serious and that he had forwarded them to an independent review party.³⁵

31. Mr. Shea provided Ms. Wetzel’s May 7, 2018 concerns to the OGC, who did not

investigate Ms. Wetzel’s concerns, but simply used the email to support the position that Ms. Wetzel was harassing Ms. Henderson.³⁶

32. On May 25, 2018, TVA placed Mr. McBrearty on paid administrative leave for an

indefinite time period because of the findings in the May 2018 Draft Slater Report.³⁷

³¹ See *id.* at 41–44; see Attach. 23, Signed Transcript for the Deposition of Beth Wetzel, at 28 (June 16, 2021) (ML21237A473 (non-public)) (“Wetzel Dep. Tr.”).

³² Attach. 11, Wetzel OI Tr. at 41 (ML21048A390) (“I know the easiest way to fire someone is if they mess up on travel.”); Attach. 23, Wetzel Dep. Tr., at 146–47 (ML21237A473 (non-public)).

³³ Attach. 11, Wetzel OI Tr. at 42–43 (ML21048A390); Attach. 32, OI ROI 2-2019-015, Ex. 11, Emails between B. Wetzel, J. Shea, and E. Henderson concerning Ms. Wetzel’s 2018 NEI loanee agreement, at 13–14 (ML21044A069) (“Wetzel NEI Loanee Agreement Emails”); see Attach. 23, Wetzel Dep. Tr., at 146–47 (ML21237A473 (non-public)).

³⁴ Attach. 33, OI ROI 2-2019-015, Ex. 12, Emails from B. Wetzel to J. Shea, Re: Travel, at 1 (June 9, 2018) (“Wetzel Travel Expenses Emails”) (ML21044A069).

³⁵ Attach. 32, Wetzel NEI Loanee Agreement Emails, at 13–14 (ML21044A069); see Attach. 10, Shea OI Tr. at 37–38 (ML21043A062).

³⁶ See Attach. 57, emails between Ms. Grace, Mr. Slater, and Mr. Shea, (May 31, 2018 to June 1, 2018) (TVADOC0011144–47).

³⁷ Attach. 6, Signed Transcript of the Deposition of Ralph Dodds, at 29 (July 20, 2021) (ML21232A637 (non-public)) (“Dodds Dep. Tr.”).

33. The May 2018 Draft Slater Report specifically cited to Mr. McBrearty's having (1) filed a concern with ECP in July 2016 alleging that Ms. Henderson had harassed members of her staff and created a chilled work environment;³⁸ (2) filed a second concern with ECP in April 2017, alleging that Ms. Henderson was creating a hostile work environment;³⁹ (3) filed a third concern with ECP in July 2017, alleging that Ms. Henderson retaliated against him in a meeting;⁴⁰ (4) sending text messages to a direct report of Ms. Henderson's asserting that her employees are afraid of her and will not raise issues and that there is a SCWE problem in TVA CNL;⁴¹ and classified these activities as harassment of Ms. Henderson.⁴²
34. The May 2018 Draft Slater Report asserted that the ECP had found that Mr. McBrearty had harassed Ms. Henderson in ECP No. NEC-17-00410, but no such finding is contained in the ECP document.⁴³
35. Mr. Slater did not interview anyone from the ECP as part of his investigation.⁴⁴
36. The May 2018 Draft Slater Report concluded that Mr. McBrearty had been counseled on his conduct and behavior numerous times by Sequoyah management. As the basis for this claim, the Report cited interviews with Mr. Shea and Ms. Henderson, as well as Ms. Henderson's complaint.⁴⁵
37. Mr. Slater did not interview any of Mr. McBrearty's management at Sequoyah. His management included his direct supervisors, Al Dodds, and, previously, Dennis

³⁸ Attach. 2, Draft Slater Report, at 8 (ML21042A026).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 9.

⁴² *Id.* at 31.

⁴³ *Id.* at 8. *Contra* Attach. 22, ECP Summary NEC-17-00410, at 13–16 (ML21043A009).

⁴⁴ Attach. 2, Draft Slater Report, at 3 (ML21042A026).

⁴⁵ *Id.* at 21–22.

Dimopoulos, and Anthony Williams, Sequoyah Site Vice President. Mr. Dodds described an instance as a “teaching moment” when he counseled Mr. McBrearty about others’ perceptions, namely Ms. Henderson’s, when Mr. McBrearty incorporated his supervisor (Mr. Dodds) in an email chain that already included Ms. Henderson; Mr. Dodds noted that Mr. McBrearty was receptive to feedback and “complimentary” and “very respectful of Ms. Henderson.”⁴⁶

38. The May 2018 Draft Slater Report alleges that Mr. McBrearty sent emails and text messages to others calling into question Ms. Henderson’s performance, and the Report also alleges that the ECP has documented that Mr. McBrearty deletes Ms. Henderson from email chains. However, the ECP summary for NEC-17-00410, cited by Slater, contains no such statement.⁴⁷

39. In his investigation, Mr. Slater did not show Mr. McBrearty any emails or text messages, nor provide him an opportunity to explain the statements he made or his justification for including (or not including) Ms. Henderson on various emails.⁴⁸

40. The May 2018 Draft Slater report alleges that Ms. Conner’s Department of Labor (DOL) complaint was settled to alleviate some of the challenges related to Mr. McBrearty, and it attributes this statement to Ms. Henderson.⁴⁹

41. Ms. Henderson was not responsible for settling Ms. Conner’s DOL complaint, and Mr. Shea testified that the only discussions he had with Ms. Henderson regarding the settlement of Ms. Conner’s DOL complaint was to tell Ms. Henderson that Ms. Conner

⁴⁶ See Attach. 6, Dodds Dep. Tr., at 21:13 to 23:16 (ML21232A637 (non-public)).

⁴⁷ Attach. 2, Draft Slater Report, at 20 (ML21042A026). *Contra* Attach. 22, ECP Summary NEC-17-00410, at 13–16 (ML21043A009).

⁴⁸ Attach. 59, OI ROI 2-2018-033, Ex. 37, Interview Report with Michael W. McBrearty, at 1 (Aug. 30, 2019) (ML21042A035) (“McBrearty OI Supplemental Interview Summary”).

⁴⁹ Attach. 2, Draft Slater Report, at 28–29 (ML21042A026).

was being transferred to a new department.⁵⁰

42. While Mr. McBrearty was on paid administrative leave for 83 days, TVA gave him no explanation other than that an investigation had been conducted, and that he had harassed Ms. Henderson.⁵¹

43. Mr. McBrearty's supervisor, Mr. Dodds, did not solicit Mr. McBrearty's version of the facts at the time or before he placed Mr. McBrearty on administrative leave, believing that doing so might interfere with the OGC investigation.⁵²

44. Mr. Slater did not further investigate Mr. McBrearty and Ms. Wetzel after he issued the May 2018 Draft Slater Report.⁵³

45. Mr. Dodds was only allowed to read the May 2018 Draft Slater report. He was not allowed to retain a copy, have access to the underlying evidence, or speak with Mr. Slater, the investigator, despite being responsible for imposing discipline on Mr. McBrearty.⁵⁴ This contradicted standard TVA practice of providing supervisors with investigation reports and allowing them to discuss the findings with the investigator.⁵⁵

⁵⁰ Attach. 31, Signed Transcript and Errata of the Deposition of Joseph Shea, at 12:20 to 13:4. (July 8, 2021) (ML21232A644 (non-public)) ("Shea Dep. Tr.")

⁵¹ Attach. 3, McBrearty Dep. Tr., at 243–46 (ML21237A471 (non-public)); see Attach. 56, Signed Transcript and Errata of the Deposition of Anthony Williams, at 71 (June 28, 2021) (ML21232A631 (non-public)) ("Williams Dep. Tr.").

⁵² Attach. 6, Dodds Dep. Tr., at 29 (ML21232A637 (non-public)).

⁵³ Attach. 35, Slater OI Tr. at 103–05 (ML21043A291); (*id.* at 105: Slater: "I didn't go back and do anything else ... I didn't go back and re-interview anybody ... I didn't go back and try to find additional documents. I didn't reach out to try to find additional witnesses. If there were changes then they were minor changes ... maybe reordering things ... no, the bottom line is that I didn't—whatever is contained in this report was the method of how I went about doing the investigation, and who I talked to was there when I submitted the report, whether it was May or June ... and so I didn't go back and reinvestigate anything.").

⁵⁴ Attach. 6, Dodds Dep. Tr., at 23:23 to 24:25; 36:11 to 38:24 (ML21232A637 (non-public)) (discussing his review of the report and immediate concern that its conclusions were based on ECP concerns, and explaining that "I was and remain baffled" by repeatedly being denied access to any explanatory evidence of Mr. McBrearty's misconduct or information about what the evidence was and what it related to, other than it was "bad."). Mr. Dodds also first believed that Mr. McBrearty would only be on administrative leave for one or two days, not 83. *Id.* at 25:6–8.

⁵⁵ Attach. 24, Wingo Dep. Tr., at 50:17 to 51:5 (ML21232A632 (non-public)) (Mr. Wingo remains a TVA employee, having transitioned to its labor relations department in 2020.). *Id.* at 12:3–12.

46. Mr. McBrearty had previously been considered to be in the succession planning line to become the Director of Emergency Preparedness. However, as a result of the investigation, TVA senior management determined that he could not be promoted.⁵⁶
47. While Mr. McBrearty was on paid administrative leave there were multiple phone calls between the site, Corporate Management, HR, and OGC regarding appropriate disciplinary action for Mr. McBrearty. OGC and others stated that Mr. McBrearty must be terminated because they viewed Mr. McBrearty's protected activity as harassment of Ms. Henderson.⁵⁷
48. Mr. Slater revised his report to delete references to the ECP concerns, but maintained the TVA OGC position that Mr. McBrearty should be terminated.⁵⁸
49. Mr. McBrearty contacted Mr. Dodds a few times during his administrative leave to try and ascertain his status, but Mr. Dodds could provide no concrete information or a timeline for a decision.⁵⁹
50. While Mr. McBrearty was on administrative leave, another TVA employee asked Mr. Dodds "What are we not allowed to talk about if we don't want to get in trouble?" and "Who are we not allowed to talk with", in connection with Mr. McBrearty's extended administrative leave.⁶⁰

⁵⁶ Attach. 26, Pre-Decisional Enforcement Conference Regarding ██████████ at 21, 55 (June 24, 2020) (ML21048A428 (non-public)) ("████████ PEC Tr."). See also Attach. 27, ██████████ PEC, Ex. 18 (text Message from Joe Shea to David Czufin) (June 5, 2018) (ML20182A789 (non-public)). Mr. Shea suggested to Mr. Czufin in the text message that Mr. McBrearty return as assistant director for fleet emergency preparedness because a decision needed to be made whether to terminate or separate Mr. McBrearty and Ms. Henderson, but Mr. Czufin stated that "we can't give him a promotion." *Id.*

⁵⁷ Attach. 5, OI ROI 2-2018-033, Ex. 22, at 24–26 (May 16, 2019) (ML21042A025) ("Dodds OI Tr.").

⁵⁸ See, e.g., Attach. 21, email from C. Chandler, TVA OGC, to J. Grace, TVA OGC, editing report to reduce reliance on ECP complaints (TVADOC0011153); Attach. 19, Email from R. Dodds to A. Williams and J. Shahan (TVADOC0009050-0001) (R. Dodds referring to original investigation as a "failed prior attempt to base discipline on his use of ECP").

⁵⁹ See Attach. 4, McBrearty OI Tr., at 135–37 (ML21048A396).

⁶⁰ Attach. 19, Email from R. Dodds to A. Williams and J. Shahan (July 22, 2018) (TVADOC0009050-0001).

51. On July 19, 2018, Ms. Inza Hagins-Dyer, Senior Manager, ECP, expressed concern to Al Dodds in a telephone call that a significant adverse action had been created with respect to Mr. McBrearty's lengthy administrative leave given that his site access was suspended.⁶¹
52. Mr. Slater recorded in the August 2018, Final Investigation Report that Ms. Wetzel "does not trust" Ms. Henderson, that she viewed Ms. Henderson as "vindictive,"⁶² that Ms. Henderson was too young and inexperienced to be in her current role, and that TVA's CNL group was "toxic."⁶³
53. Between the May 2018 Draft Slater Report and August 2018 Final Report, citations to Mr. McBrearty's participation in the ECP as reasons for harassment were removed.⁶⁴
54. On August 1, 2018, in response to a request from Ms. Henderson, Chris Earls, a Nuclear Energy Institute employee who supervised Ms. Wetzel during her NEI detail that began in late April 2018, provided positive feedback about Ms. Wetzel's performance across ten leadership competencies.⁶⁵
55. Ms. Wetzel's performance appraisal was lowered, despite the fact that Ms. Henderson acknowledged in internal TVA communications that she lacked a basis to lower it.⁶⁶
56. Mr. McBrearty submitted a two-week notice on August 16, 2018, and his resignation

⁶¹ *Id.*

⁶² Attach. 12, Final Slater Report, at 20–21 (ML21043A012).

⁶³ *Id.* at 20.

⁶⁴ Compare Attach. 2, Draft Slater Report, at 8–9, 31 (ML21042A026), with Attach. 12, Final Slater Report, at 9–16, 36–39 (ML21043A012).

⁶⁵ Attach. 30, email from C. Earls, NEI, to E. Henderson (Aug. 1, 2018) (stating that "Beth has been the ideal loanee for NEI. . . . She has been very easy to supervise." (TVADOC0004575–76).

⁶⁶ Attach. 29, Wetzel Performance Reviews (TVADOC0009371) (*compare* page 2, showing an overall rating of "2" for FY2018 *with* pages 10, 18, and 26 showing overall rating of "3-solid performance" for FY2017, FY2016, FY2015). See *also* Attach. 28, email from E. Henderson to J. Shea (Aug.15, 2018 12:38:02) (TVADOC0009126) (Erin Henderson writes: "The challenge is that there's not a basis to say [Wetzel] didn't meet the majority of her overall performance goals. . . . Let me know if you want me to put in a manual override it to a 2."

became effective on August 30, 2018.⁶⁷

57. Mr. McBrearty's position and role, as a site licensing manager, involved frequent communication with colleagues, subordinates, and representatives from the NRC. He viewed the abrupt lengthy administrative leave with no resolution in sight as impacting his professional reputation and credibility with other employees and the NRC. He stated that this situation drove his resignation from TVA.⁶⁸
58. On August 30, 2018, TVA OGC Attorneys Mr. Christopher Chandler published a supplemental report specific to Ms. Wetzel based on the internal TVA investigation conducted by Mr. Slater.⁶⁹
59. The August 30, 2018 Supplemental Report recommended that TVA terminate Ms. Wetzel, partly because she made "assertions to the attorney investigator."⁷⁰ The Report also cited Ms. Wetzel's emails to Mr. Shea to support its finding that Ms. Wetzel demonstrated a so-called "sustained campaign of disrespectful conduct" toward Henderson and its associated justification to terminate Ms. Wetzel's employment.⁷¹
60. On September 19, 2018, Mr. Shea presented the case to fire Ms. Wetzel to a TVA Executive Review Board, where Mr. Shea stated that the reason for her dismissal, in part, was that she made "assertions to the attorney investigator."⁷²
61. Ms. Hagins-Dyer reviewed the ERB documents for Ms. Wetzel and did not see any

⁶⁷ Attach. 3, McBrearty Dep. Tr., at 260–62 (ML21237A471 (non-public)); Attach. 6, Dodds Dep. Tr., at 124 (ML21232A637 (non-public)); Attach. 56, Williams Dep. Tr., at 71–72 (ML21232A631 (non-public)); Attach. 17, Mr. McBrearty's resignation letter, effective Aug. 30, 2018 (Aug. 16, 2018) (TVADOC0009127-0001).

⁶⁸ Attach. 5, Dodds OI Tr. at 37 (ML21042A025).

⁶⁹ Attach. 12, OI ROI 2-2019-015, Ex. 14, at 40–42 (Aug. 30, 2018) (ML21043A012).

⁷⁰ *Id.*

⁷¹ *Id.* at 42.

⁷² Attach. 25, OI ROI 2-2019-015, Ex. 16, Executive Review Board Package for Wetzel, at 6 (ML21048A391) ("Wetzel ERB Package").

inappropriate behavior on the part of Ms. Wetzel that warranted termination.⁷³

62. Ms. Deanna Fults, Senior Program Manager, ECP, raised concerns that Ms. Wetzel was never given an opportunity to explain why she thought Ms. Henderson was harassing her. Ms. Fults further testified that TVA OGC attorney Ryan Dreke refused to allow the ERB to consider Ms. Wetzel's protected activity, asserting that Ms. Wetzel's involvement in the OGC investigation was 'done in bad faith and therefore not protected activity.'⁷⁴

63. Mr. Joselito O. Calle, TVA Director of Organizational Effectiveness Programs, who sits on nearly all ERBs for TVA, stated that there had never been a dissenting opinion in a TVA ERB.⁷⁵

64. In October 2018, at Mr. Shea's request, Ms. Wetzel traveled to meet with Mr. Shea in person for her performance review.⁷⁶

65. On October 15, 2018, Ms. Wetzel met with Mr. Shea and HR Director Amanda Poland in his office and Mr. Shea read Ms. Wetzel's performance review out loud.⁷⁷ Mr. Shea stated that Ms. Wetzel's testimony regarding Ms. Henderson to Mr. Slater during his investigation had created a hostile work environment for Ms. Henderson.⁷⁸ Mr. Shea informed her at that meeting that although termination was warranted in her case, TVA was willing to offer a no-fault separation in exchange for her resignation.⁷⁹

66. Ms. Wetzel sent a memo to Mr. Shea and Ms. Poland on October 31, 2018, again alleging that she was being retaliated against for raising concerns of a chilled work

⁷³ Attach. 46, OI ROI 2-2019-015, Ex. 21, at 61:13–16 (May 21, 2019) (ML21043A049) (“Hagins-Dyer OI Tr.”).

⁷⁴ Attach. 47, OI ROI 2-2019-015, Ex. 24, at 64–9 (May 23, 2019) (ML21043A053) (“Fults OI Tr.”).

⁷⁵ Attach. 41, OI ROI 2-2019-015, Ex. 29, at 30:10–17 (Nov. 14, 2019) (ML21043A062) (“Calle OI Tr.”).

⁷⁶ Attach. 11, Wetzel OI Tr. at 48–49 (ML21048A390).

⁷⁷ *Id.* at 49.

⁷⁸ *Id.* at 49–50.

⁷⁹ *Id.* at 55–56; Attach. 10, Shea OI Tr. at 53 (ML21043A062).

environment. TVA did not investigate this allegation.⁸⁰

67. After initially signing TVA's offer of no-fault separation, Ms. Wetzel timely rescinded the agreement pursuant to the terms of the no-fault separation agreement.⁸¹

68. Ms. Wetzel's employment with TVA was terminated on January 14, 2019.⁸²

⁸⁰ Attach. 34, Memorandum from Beth Wetzel to Joe Shea and Amanda Poland Re: Employment (Oct. 31, 2018) ("Wetzel Counterproposal") (TVADOC0004451)

⁸¹ Attach. 11, Wetzel OI Tr. at 60–61 (ML21048A390); Attach. 10, Shea OI Tr. at 55–56 (ML21043A062).

⁸² Attach. 13, OI ROI 2-2019-015, Ex. 18, Letter from TVA to B. Wetzel, Notice of Termination, at 10–11 (Jan. 14, 2019) (ML21048A391).

**NRC Staff's Response to TVA's Statement of Material Facts in
TVA's Motion Regarding Violations 1–3**

The NRC Staff hereby submits this statement regarding TVA's list of material facts in response to TVA's Motion for Summary Disposition of Violations 1, 2, and 3 (Lack of Adverse Employment Action). TVA frames its list of "material" facts as unobjectionable as possible to create an illusion that there is no remaining dispute in this case. However, the meaning behind many of these facts are in dispute. The Staff's statement of material facts for which there is a dispute demonstrates the many remaining factual disputes in this case.

1. *Ms. Henderson filed her formal complaint on March 9, 2018.*

Admitted. However, the "facts" cited in the formal complaint are in dispute.

2. *Mr. McBrearty and Ms. Wetzel were interviewed by Mr. John Slater as part of a TVA Office of General Counsel ("OGC") investigation into Ms. Henderson's complaint.*

Admitted. what was said during their interviews remains in dispute.

3. *At the time of their interviews, Mr. McBrearty and Ms. Wetzel were not aware they were subjects of TVA OGC's investigation.*

Admitted.

4. *TVA placed Mr. McBrearty on paid administrative leave on May 25, 2018.*

Admitted.

5. *On August 16, 2018, TVA management learned that Mr. McBrearty was resigning from his position with TVA.*

Admitted.

6. *TVA terminated Ms. Wetzel's employment on January 14, 2019.*

Admitted.

7. *The NRC issued Violations 1, 2, and 3 to TVA on August 24, 2020, and issued an Order imposing a Civil Penalty based on those violations on October 29, 2020.*

Admitted.

8. *Ms. Henderson was not Mr. McBrearty's supervisor.*

Admitted. However, Ms. Henderson was at a higher position in the TVA organization than Mr. McBrearty.

9. *Ms. Henderson was not the decisionmaker who placed Mr. McBrearty or Ms. Wetzel on paid administrative leave.*

Disputed. Ms. Henderson may not have been the sole decision maker, however she played a direct role in the events at issue, including filing her complaint. The nature of her role is in dispute.

10. *Ms. Henderson was not the decisionmaker who terminated Ms. Wetzel.*

Disputed. Ms. Henderson may not have been the sole decision maker, however, she played a direct role in the events at issue, including filing her complaint. The nature of her role is in dispute.

**NRC Staff's Response to TVA's Statement of Material Facts in
TVA's Motion Regarding Violation 4**

The NRC Staff hereby submits this statement regarding TVA's list of material facts in support of its Opposition to TVA's Motion for Summary Disposition of Violations 4 (Lack of Nuclear Safety-Related Protected Activity). Although TVA frames its list of "material" facts as unobjectionable as possible to create an illusion that there is no remaining dispute, the meaning behind many of these facts is remains in dispute.

1. *Ms. Henderson filed her formal complaint on March 9, 2018.*

Admitted. However, the "facts" cited in the formal complaint are in dispute.

2. *On May 25, 2018, Mr. Slater's initial investigation report did not recommend that TVA take any action with respect to Ms. Wetzel.*

Disputed in that Mr. Slater's initial investigation report did not "recommend" that any action be taken with respect to anyone and the writing of this fact implies that the report had other recommendations for action.

3. *On March 29, May 7, and June 9, 2018, Ms. Wetzel sent statements about Ms. Henderson to Mr. Shea via e-mail.*

Admitted in that the emails were sent. Disputed in that the intent and meaning of the emails is disputed.

4. *Ms. Wetzel made additional statements to Mr. Shea about Ms. Henderson in text messages in late June or early July 2018, and during a phone call on July 2, 2018.*

Disputed with respect to the phone call on July 2, 2018. Disputed in that the intent and meaning of the text message is disputed.

5. *On August 10, 2018, Mr. Slater's final investigation report determined that Ms. Wetzel's repetition of certain allegations to Mr. Shea about Ms. Henderson rose to the level of*

disrespectful conduct.

Disputed. The dispute is both with respect to the statement that “Mr. Slater’s final investigation report determined” since the evidence will show that the language for this footnote was worked out between Ms. Grace and Mr. Shea⁸³ and the evidence will show that the footnote was simply added to the report with no investigation of Ms. Wetzel’s allegations.

6. *On August 30, 2018, based on Ms. Wetzel’s multiple communications to Mr. Shea, TVA OGC issued a recommendation that Ms. Wetzel’s “employment with TVA be terminated as a result of her involvement in a pattern of harassment and retaliation directed at Erin Henderson.”*

Disputed: While the OGC recommendation may include those words, for the reasons described in the motion and in the statement of disputed facts the Staff disputes that the recommendation was indeed based on a ‘pattern of harassment and retaliation’ but was rather based on Ms. Wetzel’s protected activity.

7. *An Executive Review Board for Ms. Wetzel was held on September 19, 2018, and concluded that the proposed termination of Ms. Wetzel’s employment was “based on legitimate, non-retaliatory reasons” and “compliant with TVA policies, procedures, and/or past practices.”*

Disputed. The words above appear in the boilerplate ERB form. There is testimony from 1) Inza Hagins-Dyer; 2) Deanna Fults; and 3) Joselito Calle calling into question what was decided at this ERB, as discussed in the Staff motion response and in the statement of disputed facts above.

⁸³ See Attach. 57, emails between Ms. Grace, Mr. Slater, and Mr. Shea, (May 31, 2018 to June 1, 2018) (TVADOC0011144–47).

8. *TVA placed Ms. Wetzel on paid administrative leave on October 15, 2018.*

Denied. The date in which this happened is somewhat unclear. Ms. Wetzel's memorandum references an October 25, 2018 meeting.⁸⁴ TVA appears to be using Mr. Shea's statements at the PEC for the truth of the date. The Staff admits that Ms. Wetzel was placed on leave sometime in October, 2018.

9. *Ms. Wetzel signed a negotiated No Fault Separation Agreement on December 5 but rescinded her signature on December 11, 2018.*

Admitted. The Staff notes that the rescission was specifically allowed by the terms of the no fault separation agreement, and during this time Ms. Wetzel had sent correspondence from her attorney.

10. *A subsequent Executive Review Board for Ms. Wetzel was held on December 18, 2018, and did not change its prior conclusion.*

Disputed in that it is not clear what was put before the December 18, 2018 ERB, specifically the notes from that Executive Review Board states: "CHANGES TO Fact Finding Notes: Form TVA 41656: None."⁸⁵ It did not appear to have considered the October 30, 2018 memo sent by Ms. Wetzel, and it is not clear what if anything was discussed at Dec 18, 2018 ERB.

11. *TVA terminated Ms. Wetzel's employment on January 14, 2019.*

Admitted.

12. *The NRC issued Violation 4 to TVA on August 24, 2020, and issued an order imposing a Civil Penalty based on those violations on October 29, 2020.*

Admitted.

⁸⁴ Attach. 34, Wetzel Counterproposal (TVADOC0004451).

⁸⁵ Attach. 25, Wetzel ERB Package, at 25 (Dec. 18, 2018) ([ML21048A391](#)) ("ERB Update").

Respectfully Submitted,

/Signed (electronically) by/

Joe I. Gillespie
Counsel for NRC Staff
Mail Stop: O-14-A44
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Telephone: (301) 287-9184
E-mail: Joe.Gillespie@nrc.gov

Executed in Accord with 10 CFR 2.304(d)

Sara Brock Kirkwood
Counsel for NRC Staff
Mail Stop: O-14-A44
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Telephone: (301) 287-9184
E-mail: Joe.Gillespie@nrc.gov

Executed in Accord with 10 CFR 2.304(d)

Kevin C. Roach
Counsel for NRC Staff
Mail Stop: O-14-A44
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Telephone: (201) 521-2078
E-mail: Kevin.Roach@nrc.gov

Executed in Accord with 10 CFR 2.304(d)

Thomas S. Steinfeldt
Counsel for NRC Staff
Mail Stop: O-14-A44
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Telephone: (301) 415-0034
E-mail: Thomas.Steinfeldt@nrc.gov

Executed in Accord with 10 CFR 2.304(d)

Joseph D. McManus
Counsel for NRC Staff
Mail Stop: O-14-A44
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Telephone: (301) 415-5356
E-mail: Joseph.McManus@nrc.gov

Dated in Rockville, Maryland
this 15th Day of September 2021

Attachment 2

Exhibit 17

Exhibit 17

2-2018-033

IN RE THE COMPLAINT OF)
ERIN HENDERSON)
REPORT BY THE TENNESSEE) Misc. No. _____
VALLEY AUTHORITY)
)
)

**REPORT OF INVESTIGATION OF ERIN HENDERSON'S ALLEGATIONS
OF HARASSMENT AND HOSTILE WORK ENVIRONMENT**

On March 9, 2018, Erin Henderson, Director, Nuclear Regulatory Affairs, submitted a formal complaint to Joseph W. Shea, Vice President, Nuclear Regulatory Affairs & Support Services, and Amanda Elizabeth Poland, Director, Human Resources, alleging that she has been, and continues to be, retaliated against and/or harassed and subjected to a hostile work environment of multiple years. Ms. Henderson reports to Mr. Shea.

Ms. Henderson states (1) that several (ccc)employees "are complicit in workplace bullying and creating a hostile work environment"; 2) that these employees "either directly or indirectly acted in an attempt to intimidate and undermine [her] in her role as a senior regulatory leader"; and 3) that these employees' conduct is "both repetitive and pervasive."¹ Ms. Henderson's position is in TVA's Corporate Nuclear Licensing and she is responsible, primarily, for formulating and executing fleet governance and oversight strategies and programs to achieve and sustain excellence in all of TVA's operating fleet nuclear regulatory matters, serves as Nuclear Power's expert and final authority in

¹ Complaint at 1.

nuclear regulatory issues, and provides strategic guidance to senior corporate and site leaders on range of nuclear regulatory issues.²

Ms. Henderson alleges that five employees—Michael McBrearty, Manager, Site Licensing (SQN); Terri Michelle Conner, Senior Manager, SMR Ops & Training; Beth A. Wetzel, Manager, Regulatory Programs; Ed Schrull, Manager, Fleet Licensing; and Alesia Cox Justice, Management Analyst—contributed to the hostile work environment.³ Except for Mr. McBrearty, the aforementioned employees work or worked in Corporate Licensing and either reported directly to Ms. Henderson or reported to one of her direct reports.⁴ Ms. Connor was a direct report of Ms. Henderson until November 2017 before she assumed her current position of Senior Manager, SMR Ops & Training, that came about as part of a settlement of a Department of Labor complaint that Ms. Connor filed in December 2016.⁵ Ms. Connor now reports to Daniel P. Stout, Senior Manager, SMR Technology.⁶ Ms. Wetzel reported to Ms. Henderson until April 27, 2018; starting April 30, 2018, she has been on loan to the Nuclear Energy Institute (NEI) for 18 months.⁷

² Henderson PD.

³ Complaint at 1.

⁴ See April 5, 2018, Organizational Chart for Corporate Licensing (Org Chart). Ms. Cox is not a direct report of Ms. Henderson's. She reports to Ms. Wetzel who reports to Ms. Henderson.

⁵ Complaint at 2. Ms. Henderson hired Ms. Conner in February 2016 as the "new CFAM" or Corporate Functional Area Manager. Complaint at 2.

⁶ Org Chart; Interviews of Henderson and Shea.

⁷ Interviews of Wetzel, Henderson, and Edmondson.

Confidential—Attorney Client Privileged

As part of the investigation, the undersigned interviewed Ms. Henderson (three times) and her entire staff, consisting of her direct reports—James Polickoski, Manager, Regulatory Compliance, Mr. Schrull, Manager, Fleet Licensing, and Ms. Wetzel and their direct reports--Peggy R. Rescheske, Senior Program Manager, Corporate Nuclear Licensing; Russell Thompson, Senior Program Manager, Corporate Nuclear Licensing; Christopher T. Riedl, Senior Program Manager, Corporate Nuclear Licensing; Gordon Williams, Senior Program Manager, Fleet Licensing; Russell D. Wells, Senior Program Manager, Fleet Licensing; Thomas Hess, Program Manager, Fleet Licensing; Teddy J. Bradshaw, Program Manager, NSRB ; and Alesia Cox Justice, Management Analyst. The undersigned also interviewed Mr. Shea, Vice President, Nuclear Regulatory Affairs & Support Services, and his Management Assistant, Carla Edmondson, as well as the three Site Licensing Managers--Jamie Paul (BFN), Kimberly D. Hulvey (WBN), and Mr. McBrearty (SQN). At the insistence of management, the undersigned did not interview Ms. Conner, Senior Manager, SMR Ops & Training. In addition, the undersigned reviewed emails, text messages, Employee Concerns Program (ECP) reports and related documents, and a Report of Investigation prepared by Human Resources.

Based on the interviews and the review of the documents, the undersigned finds that Ms. Henderson's allegations are substantiated and further finds that she has been, and continues to be, retaliated against in violation of two Federal statutes and three TVA policies, as explained further in this Report.

Senior Manager, Nuclear Regulatory Affairs

In September 2015, Ms. Henderson was selected to fill the position of Senior Manager, Corporate Nuclear Licensing. Ms. Henderson's selection was not met with acceptance by a number of her subordinates. As Ms. Henderson states in the complaint and confirmed by Mr. Shea, when Ms. Henderson was hired as Senior Manager, the Corporate Licensing staff was viewed as low performing and she was asked to focus on performance management in that there were known performance gaps that had not been addressed for the past few years.⁸ To begin evaluating and addressing these concerns, as well as the Corporate Licensing overall organizational health and nuclear safety culture, Ms. Henderson reviewed the organization's survey results/scores in these areas and held one-on-one sessions with the entire staff "to better understand the results and develop a department improvement plan to improve the organization," and "[b]ased on the feedback and [her] review, [Ms. Henderson] concluded that there was a significant need to establish clearer roles and responsibilities, improve communications and take action on individual performance (both recognition and critical performance feedback)."⁹ To this end, Ms. Henderson sponsored Pulsing Surveys which were conducted by ECP in January 2016, May 2016, and February 2017, which show rapid and marked improvement in the areas of communications, holding employees accountable for their performance (by recognizing and reinforcing positive

⁸ Complaint at 1; Interviews of Henderson and Shea. I did not independently review the respective performance reviews of the Corporate Licensing staff for the years prior to Ms. Henderson assuming the role of Senior Manager

⁹ Complaint at 1.

behaviors and by corrective negative behaviors), involvement of management in observing and coaching employees, confidence in management's decisions, and management taking timely and appropriate corrective actions regarding concerns brought to their attention.¹⁰

Some of Ms. Henderson's staff questioned the wisdom of her selection as Senior Manager, Corporate Nuclear Licensing. For example, there were comments that Ms. Henderson was "too young"; that she was "too inexperienced"; that she "did not have enough nuclear experience"; and/or that she did not have "enough licensing experience."¹¹ It should be noted that, except for Mr. Schrull, these staffers did not apply for the position of Manager, Corporate Nuclear Licensing.¹² Despite these criticisms, Ms. Rescheske stated that she "prejudged" Ms. Henderson; that Ms. Henderson "requested a lot of feedback to make herself a better manager"; that Ms. Henderson has "put in the time and effort" and she "works very hard" to make Corporate Licensing work better; and that Ms. Henderson "has earned her position and the respect, even if not given, of the group."¹³ Mr. Riedl echoed these sentiments, stating that initially he had concerns but "reserved judgment" as to Ms. Henderson's ability to manage the group and describing her as "driven" and as "the most methodical

¹⁰ Nuclear Licensing ECP Pulsing Survey Results (February 2017).

¹¹ E.g., Interviews of Thompson, Rescheske, Wetzel, Schrull, and Riedl.

¹² Interviews of Shea, Schrull, and McBrearty.

¹³ Interview of Rescheske.

and organized person" with "excellent structured organizational skills."¹⁴ Furthermore, Mr. Riedl stated Ms. Henderson "may intimidate some but does not do so intentionally" and he "gives Joe Shea credit for hiring" her.¹⁵ Similarly, Mr. Thompson describes Ms. Henderson as "smart," "ambitious," "a quick learner," "up to performing her job" and is a "person who can go through large volumes of information and digest it."¹⁶ The others who were critical of the hiring of Ms. Henderson as Senior Manager, Corporate Nuclear Licensing, also agreed that Ms. Henderson was a good manager.¹⁷

The Site Licensing organizations likewise had reservations about the hiring of Ms. Henderson as Senior Manager, Corporate Nuclear Licensing. Mr. McBrearty stated that "all three sites had reservations" about the hire because, in their view, Ms. Henderson "lacked experience."¹⁸ Mr. McBrearty further stated that the other interviewees, including Gordon Arent, Gene Cobey, and Mr. Schrull, had far more experience than Ms. Henderson.¹⁹ Similarly, Mr. Paul stated that he was "surprised" that Ms. Henderson was selected, given that "other candidates had more regulatory experience"; that she was "lean" on experience; and that Ms. Henderson did not have,

¹⁴ Interview of Riedl. Similarly, Mr. Lewis noted that, "[a]t first, [he] didn't know what to expect" but she is "professional," "smart," "ambitious," "young," "reasonable," "a good listener and can do the job." Interview of Lewis.

¹⁵ Interview of Riedl.

¹⁶ Interview of Thompson.

¹⁷ Interviews of Thompson, Wetzel, and Schrull.

¹⁸ Interview of McBrearty.

¹⁹ Interview of McBrearty.

in his view, "the depth of regulatory experience."²⁰ It should be noted that Ms. Hulvey--the current WBN Licensing Manager--was not the WBN Licensing Manager at the time of the selection. Both the WBN and BFN Licensing Managers (Ms. Hulvey and Mr. Paul) informed the undersigned that they have healthy, professional working relationships with Ms. Henderson.²¹ However, as discussed further below, the SQN Licensing Manager--Mr. McBrearty--does not have a healthy, professional working relationship with Ms. Henderson.²²

Director, Nuclear Regulatory Affairs

In January 2018, because of additional, substantial duties and responsibilities, Ms. Henderson's Senior Manager position was upgraded to Director, Nuclear Regulatory Affairs.²³ There does not appear to be significant criticism from Ms. Henderson's staff or from the sites with regard to the upgrade of her position. Indeed, since signing authority with regard to many regulatory products was delegated down from Mr. Shea to Ms. Henderson as part of the upgrade, the upgrade is seen as a plus because it peeled

²⁰ Interview of Paul.

²¹ Interviews of Hulvey and Paul. It should be noted, however, that the BFN Licensing Manager observed that "[i]n the past, Corporate was better at partnering with the sites," and that Corporate has "a desire to be right" and "likes to argue" and he feels as though Corporate "bulldozes over Site Licensing." Interview of Paul.

²² Interviews of McBrearty, Polickoski, and Henderson.

²³ Henderson PD; Interviews of Shea and Henderson.

off at least one layer of review.²⁴ Other than the additional signing authority, staff did not see much of a change in the operation of the group.²⁵

Chilled Work Environment

In July 2016, Mr. McBrearty filed a concern with ECP, alleging that Ms. Henderson had harassed members of her staff and created a chilled work environment in Corporate Licensing.²⁶ However, ECP investigated the concern and the concern was not substantiated.²⁷ Similarly, after Mr. Shea and Ms. Henderson engaged site and corporate leadership with regard to Mr. McBrearty's behavior, Mr. McBrearty filed a second concern with ECP in April 2017, alleging that Ms. Henderson was creating a hostile work environment.²⁸ As ECP confirms, this concern also was not substantiated; rather, ECP informed Ms. Henderson that it had determined that it was Mr. McBrearty who was the harassing party.²⁹ In July 2017, Mr. McBrearty filed a third concern with ECP, alleging that Ms. Henderson retaliated against him when in a meeting with her direct reports she informed them of the closure of a previous concern (raised by Mr. McBrearty) as part of SCWE mitigation.³⁰ ECP investigated, but "could

²⁴ Interview of Paul.

²⁵ E.g., Interview of Hess; Complaint at 3.

²⁶ Complaint at 3.

²⁷ Complaint at 3.

²⁸ Complaint at 3.

²⁹ Complaint at 3; June 13, 2017 Executive Summary (ECP No. NEC-17-00410) at 3; Interview of Henderson. It should be noted that the transmittal memo to Joe Shea from ECP is dated June 12, 2017

³⁰ Complaint at 3; Final Investigation Report (ECP No. NEC-17-00683) at 1

find no intent on the part of [Ms. Henderson] to retaliate against [Mr. McBrearty] and believes that [Ms. Henderson] intended to share this information to ensure that employees were aware that she was not found to have created a harassing work environment in the prior concerns.”³¹

In addition to the three ECP concerns, in March 2018, Mr. McBrearty engaged in an exchange of text messages with one of Ms. Henderson's direct reports, asserting that her subordinates are afraid of her and will not raise issues and that there is a SCWE problem in Ms. Henderson's organization.³² However, the undersigned interviewed the entire staff of Ms. Henderson on April 23 and 24 and May 3, 2018, and found that they do not fear raising issues or concerns and, in fact, that it is their job to do so and also they are encouraged to do so.³³

Similarly, back in September 2017, the NRC conducted an assessment of “the TVA Nuclear corporate safety-conscious work environment (SCWE) by conducting safety culture interviews of individuals from the engineering, licensing, and operations groups. Inspectors interviewed a total of 22 individuals to determine if indications of a chilled work environment exist, employees are reluctant to raise safety and regulatory issues, and employees are being discouraged from raising safety or regulatory issues. Information gathered during the interviews was used in aggregate to assess the work

³¹ Final Investigation Report (ECP No. NEC-17-00683) at 1.

³² Complaint at 4; Text Messages. As a result of these text messages, ECP has sent out a Pulsing Survey that yet again seeks to gauge whether there is a chilled work environment in Corporate Licensing, despite the facts there have been five findings (including in this Report) to the contrary.

³³ See TVA Standard Programs and Processes (TVA-SPP)-11.8.4 (12-03-2014, rev. 0008).

environment at TVA Nuclear corporate.³⁴ All members of Ms. Henderson's staff were interviewed.³⁵ "Based on the interviews conducted, the inspectors determined that licensee management emphasized the need for all employees to identify and report problems using the appropriate methods established within the administrative programs, including the CAP and Employee Concerns Program. These methods were readily accessible to all employees. Based on the discussions conducted with a sample of employees from various departments, the inspectors determined that employees felt free to raise safety and regulatory issues, and that management encouraged employees to place issues into the CAP for resolution. The inspectors did not identify any reluctance on the part of the licensee staff to report safety concerns."³⁶

There have been five instances, within the last two years, wherein the issue of whether a chilled work environment exists in Corporate Licensing has been investigated. Consistent with each successive investigation, there was a finding of no chilled work environment. However, the undersigned did find evidence that Mr. McBrearty has made repeated unfounded allegations against Ms. Henderson of harassment and the creation of a hostile work environment.

³⁴ November 22, 2017, NRC Integrated Inspection Report, Nos. 05000390/2017003, 05000391/2017003 (NRC Inspection Report), at 22. The result of the NRC's SCWE assessment of the chilled work environment allegation regarding Corporate Licensing is included in the WBN Inspection Report.

³⁵ Complaint at 3-4.

³⁶ NRC Inspection Report at 22.

Sites' Working Relationship With Corporate

As one staffer describes the relationship, "the sites have a lack of respect for Corporate" and it is referred to as "NRC South."³⁷ The undersigned agrees with ECP's assessment that "[s]ome of that was a general bias that sites might have about Corporate oversight."³⁸ However, there is a palpable feel that there is a deep and wide distrust between Corporate and Site Licensing that goes well beyond "general bias" because of Corporate's oversight role and this distrust, in my view, has fostered an environment for the conduct and behavior of Mr. McBrearty to thrive.

Staff Animosity

Ms. Henderson identified four of her staff—Ms. Conner, Ms. Wetzel, Ms. Justice, and Mr. Schrull—as contributors to the hostile work environment.³⁹ As to Ms. Conner, she was a direct report of Ms. Henderson until November 2017 when she assumed her current position of Senior Manager, SMR Ops & Training, which came about as part of a settlement of a DOL complaint that Ms. Connor filed in December 2016.⁴⁰ Prior to the filing of the DOL complaint, Ms. Henderson was performance managing Ms. Conner due to Ms. Conner not coming to work and not performing when she came to work.⁴¹ Even though Ms. Conner was not interviewed, other interviewees provided insight into

³⁷ Interview of Hess.

³⁸ June 13, 2017, Executive Summary (ECP No. NEC-17-00410) at 2.

³⁹ Complaint at 1.

⁴⁰ Complaint at 2.

⁴¹ Interview of Henderson.

the relationship between Ms. Henderson and Ms. Conner. Mr. Wells noticed that there was "friction" between Ms. Conner and Ms. Henderson and he believed that it was because of Ms. Conner's performance.⁴² Mr. Wells also informed the undersigned that Ms. Conner had an "abrasive personality."⁴³ Similarly, Ms. Wetzel indicated that Ms. Henderson had a problem with Ms. Conner's performance and had Ms. Conner (and Mr. McBrearty) investigated.⁴⁴

As to Ms. Wetzel, she had a problem with Ms. Henderson from the time Ms. Henderson was selected because, in her view, Ms. Henderson was "too young," "too inexperienced," and "did not have enough nuclear experience."⁴⁵ Ms. Wetzel also stated that her working relationship with Ms. Henderson was strained; in fact, she had been placed on a Performance Improvement Plan (PIP).⁴⁶ Ms. Wetzel further noted that she "does not trust" Ms. Henderson and that, in her view, Ms. Henderson is "vindictive," and Ms. Wetzel does not understand what motivates a person to pull people's gate records and have them investigated.⁴⁷ Moreover, Ms. Wetzel describes Corporate Licensing as "toxic" and will "only work better if [Ms. Henderson] is moved out."⁴⁸

⁴² Interview of Wells.

⁴³ Interview of Wells.

⁴⁴ Interview of Wetzel.

⁴⁵ Interview of Wetzel.

⁴⁶ Interview of Wetzel.

⁴⁷ Interview of Wetzel.

⁴⁸ Interview of Wetzel.

Finally, Ms. Wetzel said that she took the NEI loan assignment to get away from Ms. Henderson.⁴⁹

It is evident Ms. Wetzel and Mr. McBrearty talk about Ms. Henderson. For example, Ms. Wetzel stated during her interview that Mr. McBrearty told her that Ms. Henderson "is harmful to TVA's regulatory relationship."⁵⁰ Moreover, Ms. Wetzel stated during her interview that she does not know what motivates Ms. Henderson to investigate someone and to pull someone's gate records.⁵¹ That is information that Ms. Wetzel only could have gotten from McBrearty because, as discussed further below, he was investigated by HR, including review of his gate records, for having an inappropriate relationship with Ms. Conner.⁵²

As to Ms. Justice, while she is "buddies" with Ms. Conner and Ms. Wetzel,⁵³ she does not appear to harbor any animosity toward Ms. Henderson. Ms. Justice stated that she does not interact much with Ms. Henderson; instead, most of her interactions are with her supervisor.⁵⁴ Nevertheless, Ms. Justice described Ms. Henderson as "a good manager."⁵⁵ Ms. Justice states that she and Ms. Wetzel do not talk much about

⁴⁹ Interview of Wetzel.

⁵⁰ Interview of Wetzel.

⁵¹ Interview of Wetzel.

⁵² Interview of McBrearty.

⁵³ Interview of Edmondson.

⁵⁴ Interview of Justice.

⁵⁵ Interview of Justice.

work.⁵⁶ Ms. Justice did state, however, that Ms. Wetzel complained to her about her performance review as well as about her view that Ms. Henderson was not qualified for the Senior Manager position.⁵⁷

Moreover, Ms. Justice made an observation about Ms. Wetzel's and Ms. Conner's working relationship with Ms. Henderson. Ms. Justice opined that "women are their own worst enemies" and there "may have been some "jealousy" when it came to Ms. Wetzel's and Ms. Conner's opinions and views of Ms. Henderson."⁵⁸

As to Mr. Schull, like Ms. Wetzel, he had a problem with Ms. Henderson from the time Ms. Henderson was selected because, in his view, Ms. Henderson was "too young," "too inexperienced," and "did not have enough nuclear experience."⁵⁹ Mr. Schull also applied for the Senior Manager position and felt that he was far more qualified than Ms. Henderson.⁶⁰ Moreover, Mr. Schull's working relationship with Ms. Henderson was strained because he is being performance managed by Ms. Henderson.⁶¹ Mr. Schull further believes that he is being marginalized by Ms. Henderson and she is not utilizing his experience.⁶² Mr. Schull describes himself

⁵⁶ Interview of Justice.

⁵⁷ Interview of Justice.

⁵⁸ Interview of Justice.

⁵⁹ Interview of Schull.

⁶⁰ Interview of Schull.

⁶¹ Interview of Schull.

⁶² Interview of Schull.

as being frustrated, using the adage "bring me a rock," but whatever rock he brings "is not the right rock."⁶³

It is evident from the interviews of Mr. Schrull, Mr. McBrearty, and Ms. Wetzel that they talk about Ms. Henderson. For example, Mr. McBrearty discussed in his interview that Mr. Schrull "has expressed a lot of frustration with [Ms. Henderson]."⁶⁴ Similarly, Ms. Wetzel noted that she has discussed with Mr. Schrull "his issues" that he has with Ms. Henderson and that Mr. Schrull told her that he may be leaving sometime later this year because of his difficulties with Ms. Henderson.⁶⁵

Mr. McBrearty's Relationship With Ms. Henderson

Mr. McBrearty does not mince words about his working relationship with Ms. Henderson, stating emphatically that it "is not a good relationship" and referring to Ms. Henderson as "punitive."⁶⁶ In fact, Mr. McBrearty has filed three ECP concerns, alleging that Ms. Henderson has harassed him and that her actions foster a chilled work environment.⁶⁷ However, none of the ECP concerns has been substantiated.⁶⁸ In fact, as to the concern that Mr. McBrearty raised in April 2017, ECP found that the "motivat[ion] of Mr. McBrearty's filing of this concern "seems to have [been] animosity

⁶³ Interview of Schrull.

⁶⁴ Interview of McBrearty.

⁶⁵ Interview of Wetzel.

⁶⁶ Interview of McBrearty.

⁶⁷ Complaint at 3-4.

⁶⁸ Complaint at 3-4.

toward [Ms. Henderson]" due to her interactions with Ms. Conner and thus it was Mr. McBrearty who was harassing Ms. Henderson."⁶⁹

Moreover, Mr. McBrearty stated "[Ms. Henderson] had me investigated" and "had his gate records pulled."⁷⁰ Mr. McBrearty is correct that there was an investigation. Specifically, in April 2016, based on a concern raised by Ms. Henderson, HR began an investigation into whether Mr. McBrearty and Ms. Conner were involved in a personal relationship outside of work that might impact the work environment and the possibility of impropriety and conflict of interest due to Ms. Conner's serving in an oversight role with direct responsibility for the SQN Licensing function.⁷¹ (Specifically, Ms. Conner served as Corporate Functional Area Manager (CFAM) and provided corporate governance and oversight of the site regulatory performance improvement and governance including providing focused leadership to the site regulatory organizations and regulatory leadership to the broader site leadership teams by representing corporate regulatory affairs.) After interviewing Ms. Henderson, Mr. McBrearty, and Ms. Conner,⁷² HR concluded "[i]t is apparent that the parties have a very close personal relationship but it is not clear as to whether the personal relationship is inappropriate or creates

⁶⁹ June 13, 2017, Executive Summary (ECP No. NEC-17-00410) at 2.

⁷⁰ Interview of McBrearty.

⁷¹ HR Investigation Report at 1; Complaint at 1.

⁷² The inaccuracy of Mr. McBrearty's allegation that Ms. Henderson "had his gate records pulled" is discussed below.

a conflict of interest. However, if the perception is that it interferes, management needs to take appropriate action to address the concerns."⁷³

HR's investigation of this concern was not as robust as it could have been. For example, travel records show that Ms. Conner traveled to Florida on TVA business to attend the Significance Determination Process (SDP) Seminar presented by Curtiss-Wright in Clearwater Beach, Florida.⁷⁴ Although Mr. McBrearty "made a big deal that he was going to California [during this period of time] to visit his sons," Ms. Conner's car rental agreement shows that Ms. Conner and Mr. McBrearty traveled together in Florida.⁷⁵ Moreover, HR did not interview any of Mr. McBrearty's direct reports⁷⁶ who informed one of Ms. Henderson's direct reports--Mr. Polickoski--that it is "common knowledge that there is a relationship" between Mr. McBrearty and Ms. Conner.⁷⁷ Similarly, with regard to the investigation of Mr. McBrearty's April 2017 concern alleging harassment on the part of Ms. Henderson, ECP interviewed some of Mr. McBrearty's staff and found that "there have long been rumors of an inappropriate relationship between [Mr. McBrearty] and the former Licensing employee [Ms. Conner] who is his friend."⁷⁸ Moreover, [i]nterviews further confirmed the belief that [Mr. McBrearty] has not

⁷³ HR Investigation Report at 3, emphasis added).

⁷⁴ April 29, 2016, Rental Agreement (Enterprise Rent A Car).

⁷⁵ April 29, 2016, Rental Agreement (Enterprise Rent A Car).

⁷⁶ HR Investigation Report at 1.

⁷⁷ Interview of Polickoski.

⁷⁸ June 13, 2017, Executive Summary (ECP No NEC-17-00410) at 3.

been able to move past actions that occurred to his friend [Ms. Conner] as the result of the friend's conflict with [Ms. Henderson] and "those interviewed indicated the belief that [Mr. McBrearty's] animosity toward [Ms. Henderson] is because of his personal friendship with the former Licensing employee [Ms. Conner]."⁷⁹ In short, with some additional investigation, HR could have gleaned that Ms. Conner and Mr. McBrearty appear to be more than just "close" friends and that Mr. McBrearty harbored ill feelings toward Ms. Henderson because of a conflict between Ms. Henderson and his "close" friend, Ms. Conner.⁸⁰

This additional information, coupled with the admission of Ms. Conner and Mr. McBrearty "that they are very close friends outside of work," reflects that there was more than a mere appearance of a conflict. As Ms. Henderson states in the complaint, she hired Ms. Conner in February 2016 as the "new CFAM" and "[i]n that capacity, [Ms. Conner] assumed the responsibility for providing unbiased oversight of the site regulatory organizations."⁸¹ Given the nature of Ms. Conner's and McBrearty's "very close friends[hip]," Ms. Conner's ability to provide independent, "unbiased oversight" of SQN Licensing, in my view, was compromised.⁸²

⁷⁹ June 13, 2017, Executive Summary (ECP No. NEC-17-00410) at 3. Absent the animus of Mr. McBrearty, Ms. Henderson states that she and Mr. McBrearty "don't disagree much on the regulatory issues." Interview of Henderson.

⁸⁰ June 13, 2017, Executive Summary (ECP No. NEC-17-00410) at 3.

⁸¹ Complaint at 2.

⁸² HR Investigation Report at 1.

Mr. McBrearty incorrectly believes Ms. Henderson “had his gate records pulled.”⁸³ To the contrary, HR, not Ms. Henderson, decided to pull his, as well as Ms. Conner’s, gate records as part of its investigation of the concern raised by Ms. Henderson.⁸⁴ As one of Ms. Henderson’s direct reports stated during his interview, the pulling of “gate records pushed [Mr. McBrearty] over the edge”⁸⁵ and he blames Ms. Henderson⁸⁶ and has asserted to others that Ms. Henderson had his gate records pulled.⁸⁷

Moreover, one of Ms. Henderson’s direct reports—Mr. Polickoski—confirms a number of other allegations in Ms. Henderson’s complaint. For example, Mr. McBrearty “is open about his hostility toward [Ms. Henderson]” and that Mr. Polickoski “counseled him about it”; that Mr. McBrearty “says some pretty awful things about [Ms. Henderson]” and “that if he is that open with [Mr. Polickoski], he can’t imagine what [Mr. McBrearty] says about [Ms. Henderson] to other people”; that Mr. McBrearty discusses with him “frequently” that he thought Ms. Conner was “done wrong” by Ms. Henderson and she has “ruined” Ms. Conner’s “career and life”; and that Mr. McBrearty speaks negatively to Ms. Henderson’s direct reports.⁸⁸

⁸³ Interview of McBrearty.

⁸⁴ HR Investigation Report at 1

⁸⁵ Interview of Polickoski.

⁸⁶ Interview of McBrearty.

⁸⁷ Interview of Wetzel.

⁸⁸ Complaint at 4-5; Interview of Polickoski.

ECP also documented that Mr. McBrearty has a habit of "delet[ing] [Ms. Henderson] from email chains on which [she had] originally been included."⁸⁹ Mr. Polickoski further confirms that Mr. McBrearty sends emails and text messages to others, including Ms. Henderson's direct reports, calling into question Ms. Henderson's performance.⁹⁰ Mr. McBrearty also leaves Ms. Henderson off of some emails on which she, at least, should be copied and he forwards some of her emails without her knowledge, only for Ms. Henderson to learn from a direct report or her supervisor about the forwarding of the emails.⁹¹ Mr. Polickoski has "had discussions with [Mr. McBrearty] to cut out the high school bullshit."⁹² There is no indication that Mr. McBrearty intends to stop such conduct. In any event, this conduct impacts Ms. Henderson's ability to have open and frank email communication directly with Mr. McBrearty and/or others, on which Mr. McBrearty is copied, for fear of Mr. McBrearty forwarding such emails to others (with disparaging commentary) without Ms. Henderson's knowledge.

Management's Response

Although it appears that management took three concrete steps to address Mr. McBrearty's conduct, those steps were ultimately unsuccessful. First, after the issuance of the HR Investigation Final Report in June 2016, management limited Ms. Henderson's "time spent at SQN and direct engagement with the peer team—the

⁸⁹ June 13, 2017, Executive Summary (ECP No. NEC-17-00410) at 3.

⁹⁰ Interview of Polickoski.

⁹¹ Interview of Polickoski.

⁹² Interview of Polickoski.

site Licensing Managers.”⁹³ This step was unsuccessful and ineffective as Mr. McBrearty’s conduct and behavior continued.⁹⁴ Moreover, this attempt to stem Mr. McBrearty’s conduct and behavior effectively has removed a significant piece of Ms. Henderson’s duties and responsibilities in that she “[d]irects the governance, oversight, and direction of the Nuclear Power Group (NPG) Corporate and Site Licensing functions in support of the operation of [all] TVA nuclear plants” and “[s]erves as the expert and single point-of-contact for NRC headquarters, interface for licensing issues for [all of] the TVA sites”⁹⁵ (emphasis added).

In addition to being ineffective, step 1 appears punitive. Ms. Henderson stated in her interview that she “just wants to come to work and do my job” but that it is difficult to accomplish when she “cannot adequately challenge the SQN staff.”⁹⁶

Second, approximately from April to June 2017, Ms. Henderson’s manager—Mr. Shea—and Ms. Henderson engaged SQN management about Mr. McBrearty’s conduct and behavior in an effort to bring an end to Mr. McBrearty’s conduct and

⁹³ Complaint at 3; Interviews of Henderson and Shea. Ms. Henderson states in the Complaint that she “agreed” to this limitation of her duties. Complaint at 3.

⁹⁴ Complaint at 1, 3, 8; Interviews of Henderson and Shea.

⁹⁵ Henderson PD.

⁹⁶ Interview of Henderson

behavior.⁹⁷ This step also failed, as Mr. McBrearty's conduct and behavior continued and, in my view, escalated.⁹⁸

The third step was to settle and resolve Ms. Conner's DOL complaint, by acceding to Ms. Conner's request to be removed from Ms. Henderson's supervision and placing her in the new position of Senior Program Manager, SMR Ops & Training under the supervision of Daniel P. Stout, Senior Manager, SMR Technology.⁹⁹ Settling with [Ms. Conner] was done, in part, to alleviate some of the challenges [Ms. Henderson] faced with both [Ms. Conner] and [Mr. McBrearty].¹⁰⁰ This step too did not stop Mr. McBrearty's conduct and behavior.¹⁰¹

It does not appear that management attempted any other measures to stop the offending conduct. Instead, the conduct and behavior have now continued for two years and counting.

Analysis

Ms. Henderson alleges that she has been, and continues to be, harassed or retaliated against by Mr. McBrearty, SQN Licensing Manager, and such harassment is repetitive and pervasive, resulting in a hostile work environment. Complaint at *passim*.

⁹⁷ Interviews of Shea and Henderson; Complaint at 3. They engaged Gregory A. Boersig, Vice President, Nuclear Oversight, Anthony Lawrence Williams IV, Site Vice President, SQN, and Dennis G. Dimopoulos, Director, Plant Operations.

⁹⁸ Interviews of Shea and Henderson; Complaint at 3.

⁹⁹ Complaint at 2; Org Chart; Interviews of Henderson and Shea.

¹⁰⁰ Complaint at 2; Interviews of Henderson and Shea.

¹⁰¹ Complaint at 3; Interviews of Henderson and Shea.

"Harassment is any action or behavior toward a person that has the effect or perceived effect of causing the person to be uncomfortable or afraid of working in the employment environment." *NRC Allegation Manual* (Apr. 23, 2015, rev. 1) at 243. "Harassment covers a wide range of offensive intentional behaviors intended to be disruptive, and is characteristically repetitive, often contributing to a hostile work environment." *Id.*

"Harassment that progresses to the point of establishing a hostile work environment is a form of discrimination." *Id.* Harassment is illegal and prohibited under a number of Federal statutes and regulations. See Part A Below. An employer is automatically liable for harassment by a supervisor that results in an adverse employment action and if the supervisor's harassment results in a hostile work environment, the employer can avoid liability only if it can prove (1) it reasonably tried to prevent and promptly correct the harassing behavior, and (2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer. *Burlington Indus. Inc. v. Ellerth*, 524 U.S. 742, 765 (1998); *Faragher v. Boca Raton*, 524 U.S. 775, 778 (1998). Similarly, harassment is prohibited under TVA policy. *E.g.*, TVA-SPP-11.8.4 (at 5).

However, petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of actionable harassment. *Burlington N. and Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006). To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people. *Thomton v. Federal Express*, 530 F.3d 451, 455 (6th Cir. 2008); *Hafford v. Seidner*, 183 F.3d 506, 512 (6th Cir. 1999). Offensive conduct may include, among other things,

actions that result in the interference with work performance. *Thornton*, 530 F.3d at 455; *Hafford*, 183 F.3d at 512.

The conduct alleged in this case also gives rise to a claim of retaliation.

Retaliation is an action taken against an employee because he or she has engaged in protected activity. *EEOC v. New Breed Logistics*, 783 F.3d 1057, 1066 (6th Cir. 2015). Retaliation is illegal and prohibited under a number of federal statutes and regulations. See Part A below. Likewise, retaliation is prohibited under TVA policy. *E.g.*, TVA-SPP-11.8.4 (at 5).

A. Discrimination

A federal employee may not be discriminated (nor retaliated) against or harassed with respect to the terms, conditions, or privileges of employment on the basis of race, color, religion, sex, national origins, age or disability. See Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16 (2012); The Age Discrimination in Employment Act of 1973, 29 U.S.C. § 633a (2012); The Rehabilitation Act of 1973, 29 U.S.C. §§ 791, 794 (2012). In her interview, Ms. Henderson informed the undersigned that she does not assert that she is (or was) being discriminated or retaliated against or harassed on any of the bases in the above statutes.

B. Retaliation/Harassment (Whistleblower)

The Whistleblower Protection Act, 5 U.S.C. § 2302 (2012), does apply. A Federal employee may not take a personnel action against an employee because of protected whistleblowing. 5 U.S.C. § 2302(b)(8) (2012). Protected whistleblowing is defined, under 5 U.S.C. § 2302(b)(8), as disclosing information which the discloser reasonably believes evidences (1) a violation of law, rule, or regulation; (2) gross

mismanagement; (3) gross waste of funds; (4) an abuse of authority; or (5) a substantial and specific danger to public health or safety. Personnel action includes, *inter alia*, "any significant change in duties, responsibilities, or working conditions." 5 U.S.C. § 2302(a)(2)(xii) (2012).

Ms. Henderson is a whistleblower. In April 2016, Ms. Henderson raised a concern to HR as to whether Ms. Conner could provide independent and unbiased oversight of the SQN Licensing group due to the nature of the personal relationship between Ms. Conner and Mr. McBrearty. As a general matter, under applicable Federal regulations, Ms. Conner's employment "is a public trust," requiring her to "to place loyalty to," among other things, "ethical standards above private" matters; to "put forth honest effort in the performance of [her] duties"; and to "avoid any actions creating the appearance" that she is "violating" applicable "ethical standards." 5 C.F.R. § 2635.101(b)(1), (5), and (14) (2017). Moreover, under the *TVA Code of Conduct*, "TVA management will act impartially and avoid situations in which an employee or contractor within their scope of supervision or oversight reasonably could be perceived as receiving an unfair advantage, such as because of a romantic, financial, or other personal relationship." *TVA Code of Conduct* at 5 (emphasis added). Of equal significance, "TVA management will ensure that employees understand their affirmative duty to report actual or suspected violations of laws or ethics requirements and the procedures and mechanisms available to them for reporting." *TVA Code of Conduct* at 5 (emphasis added). Ms. Henderson thus had an obligation, and was duty-bound, to raise this concern.

Confidential—Attorney Client Privileged

Given the nature of the relationship, Ms. Henderson reasonably believed that Ms. Conner could not exercise independent and unbiased oversight as CFAM over the SQN Licensing organization and the performance of oversight under these circumstances would violate federal and TVA ethical standards as well as pose a substantial and specific danger to public health or safety. Mr. Paul explained that Site Licensing is "the conscious of the station"; "ensures that the site complies with all regulatory requirements, as well as with all the "commitments" it makes and undertakes; serves as "the backstop for Operations"; and determines "what events are reportable or not."¹⁰² Compromised oversight of Site Licensing upsets this dynamic and is a nuclear safety concern. This disclosure is thus protected activity under the WPA.

In order to prove a *prima facie* case for retaliation for whistleblowing activities, the employee must establish by a preponderance of the evidence that he or she made a disclosure within the meaning of 5 U.S.C. § 2302(b)(8) and that the disclosure was a contributing factor in the personnel action at issue. *Chambers v. Dep't of the Interior*, 116 M.S.P.R. 17, 25 ¶ 12 (2011). "Further, evidence of retaliatory motive, and of the agency officials' knowledge of whistleblowing and the timing of the prohibited personnel action, may properly be considered in deciding both the second and third steps of a whistleblower analysis." *Caddell v. Dep't of Justice*, 61 M.S.P.R. 670, 681 (1994), citing *Marano v. Dep't of Justice*, 2 F.3d 1137, 1141–42 (Fed. Cir. 1993); *Clark v. Dep't of the Army*, 997 F.2d 1466, 1472 (Fed. Cir. 1993).

¹⁰² Interview of Paul.

Mr. McBrearty was aware of Ms. Henderson's disclosure to HR. In fact, Mr. McBrearty declared in the interview that Ms. Henderson "had me investigated" and "had my gate records pulled."¹⁰³ Both Mr. McBrearty and Ms. Conner, as well as Ms. Henderson, were interviewed by HR in 2016 and Site Security informed Mr. McBrearty that his gate records were being "pulled."¹⁰⁴ HR noted, in its June 2016 Investigation Report, that "[t]he individuals were inappropriately made aware that their gate records were pulled so there was a heightened level of sensitivity during the investigation."¹⁰⁵ This shows that there is no dispute that Mr. McBrearty was/is aware of the concern that Ms. Henderson raised to HR.¹⁰⁶ As a direct result of Mr. McBrearty's conduct and behavior, the evidence shows that Ms. Henderson's management "limit[ed] both [her] time spent at SQN and [her] direct engagement with the peer team (site licensing managers) even though there was a significant need to engage in that forum to improve performance."¹⁰⁷ This restriction severely impacts Ms. Henderson's responsibility "for formulating and executing fleet governance and oversight strategies and programs to achieve and sustain excellence in all of TVA's operating fleet nuclear regulatory matters" and "providing "strategic guidance to senior corporate and site leaders on range of nuclear regulatory issues." Henderson PD (emphasis added). This

¹⁰³ Interview of McBrearty.

¹⁰⁴ HR Investigation Report at 1.

¹⁰⁵ HR Investigation Report at 1.

¹⁰⁶ Moreover, Mr. McBrearty told Ms. Wetzel about the investigation and that his gate records were pulled. Interview of Wetzel.

¹⁰⁷ Complaint at 3.

limitation is a "significant change in duties, responsibilities, or working conditions."

5 U.S.C. § 2302(a)(2)(xii).

The evidence supports a retaliatory motive. Mr. McBrearty remains ticked that Ms. Henderson "had [him] investigated" and "had [his] gate records pulled." He told Ms. Wetzel that Ms. Henderson had him investigated and pulled his gate records. The statement to Ms. Wetzel persuaded her that Ms. Henderson is not a person who can be trusted and she just does not "understand what motivates a person to pull gate records and have people investigated."¹⁰⁸ Some members on his own staff have recognized "that [Mr. McBrearty] has not been able to move past actions that occurred to his friend [Ms. Conner] as the result of the friend's conflict with [Ms. Henderson]."¹⁰⁹ In my view, the grudge Mr. McBrearty has against Ms. Henderson is still alive and well. His conduct and behavior rise to the level of retaliation/harassment under the WPA.

Ms. Henderson also is a whistleblower under Section 211 of the Energy Reorganization Act, 42 U.S.C. § 5851 (2012). Her disclosure/concern reported to HR is protected activity in that, as described above, it involved a nuclear safety-related issue. In addition, Mr. McBrearty was aware of the disclosure/concern and the same retaliatory motive exists as it does in regard to the WPA.

C. Retaliation/Harassment (TVA Policies)

Mr. McBrearty's conduct and behavior fall under and violate three TVA policies. The *TVA Code of Conduct* cannot be any clearer: "TVA management will maintain a

¹⁰⁸ Interview of Wetzel.

¹⁰⁹ June 13, 2017, Executive Summary (ECP No. NEC-17-00410) at 3.

Confidential—Attorney Client Privileged

workplace environment that prevents retaliation or reprisals against an employee who in good faith reports actual or suspected violations of laws or ethics requirements. Retaliation against employees who report perceived violation, or who participate in investigations as witnesses or in other capacities, violates the law and TVA policy.¹¹⁰ Such retaliation is prohibited and will not be tolerated." *TVA Code of Conduct* at 5.

Mr. McBrearty was/is aware of Ms. Henderson's report to HR and has engaged in retaliatory conduct and behavior that is motivated by the fact that he and Ms. Conner were investigated and had their gate records pulled to determine whether Ms. Conner could perform independent and unbiased oversight of SQN Licensing given Mr. McBrearty's and Ms. Conner's close personal relationship outside of work.

Ms. Henderson's report to HR was made in good faith and, indeed, mandated by the *TVA Code of Conduct* (at 5). Mr. McBrearty's conduct "is prohibited" and TVA policy requires it "not be tolerated." *Id.*

TVA's *No Fear Executive Policy* also is plain, clear, and unambiguous. It states that "TVA personnel at every level have the right to work in an atmosphere that is free from harassment or illegal discrimination. Accordingly, retaliation against an employee or applicant who exercised his or her rights under any of the federal antidiscrimination or whistleblower protection laws is prohibited." Under the *No Fear Executive Policy*, TVA informs all employees that "TVA encourages employees, applicants, and contractors to raise concerns without fear of retaliation" and that TVA maintains a zero tolerance policy that prohibits retaliation against any employee for reporting matters

¹¹⁰ In his Appointment Affidavit, Mr. McBrearty subscribed and certified that he understood that his "appointment and subsequent changes in status are subject to the terms and conditions described in this document, and those existing laws and TVA agreements and policies." Appointment Affidavit at 4.

under this policy or procedure." *No Fear Executive Policy* at 1. Mr. McBrearty's conduct and behavior against Ms. Henderson for raising a concern to HR as to whether Ms. Conner could perform independent and unbiased oversight of SQN Licensing, given Mr. McBrearty's and Ms. Conner's close personal relationship outside of work, violates the *No Fear Executive Policy* for the reasons previously outlined above.

TVA Standard Programs and Processes (TVA-SPP)-11.8.4, *Expressing Concerns and Differing Views*, also comes into play in this matter. TVA-SPP-11.8.4 states (at 4) "TVA encourages the voluntary expression of concerns and differing views" and that employees may do so "without fear of reprisal" and "[t]he ability to freely express differing views and opinions will enhance employee productivity, observance of standards and promote a safety conscious work environment (SCWE)".

Mr. McBrearty's retaliatory conduct and behavior toward Ms. Henderson for raising a concern to HR as to whether Ms. Conner could perform independent and unbiased oversight of SQN Licensing given Mr. McBrearty's and Ms. Conner's close personal relationship outside of work violates TVA-SPP-11.8.4 (at 5) for the reasons previously outlined above.

"Every supervisor [including Mr. McBrearty] has the responsibility to create an environment in which employees can raise concerns without fear of retaliation. Harassment, intimidation, retaliation, or discrimination will not be tolerated. Any person found guilty of such acts will be subject to disciplinary action, up to and including termination." TVA-SPP-11.8.4 (at 5). Similarly, "[c]oncerns should be raised in good faith, *i.e.*, with the belief that the concern raised based on information that is accurate and truthful to the best of the concerned individual's knowledge. Disciplinary action, up to and

including termination, may be taken if it is determined that an issue is raised by one who intentionally provides false information, or with malicious intent to harm the company or another employee.” Given that Mr. McBrearty has filed three ECP concerns, with a fourth pending relating matter,¹¹¹ alleging harassment and a chilled work environment, and none of those concerns has been substantiated; and with five separate findings in the last two years that there is not a chilled work environment in Corporate Licensing, there is serious doubt that good faith motivates Mr. McBrearty’s repetitive filing of concerns.

It also should be noted that TVA policy obligates TVA management to maintain a workplace environment free of retaliation or reprisals against an employee who in good faith reports actual or suspected violations of laws or ethics requirements as well as for those employees who express differing views and concerns. *TVA Code of Conduct* at 5; TVA-SPP-11.8.4 (at 4-5). TVA management failed to do so here; instead, it allowed harassing and retaliatory conduct and behavior to fester and to continue practically unabated for two years and counting. Just like retaliation itself, the allowance of retaliation—either through inaction or the failure to taken prompt, effective, and adequate corrective action to stop such retaliation—is just as prohibited and must not be tolerated.

¹¹¹ This fourth pending matter is a result of Mr. McBrearty’s March 2018 text messages asserting that Ms. Henderson’s subordinates are afraid of her and will not raise issues and that there is a SCWE problem in Ms. Henderson’s organization. The evidence does not support Mr. McBrearty’s assertion, as there have been five findings, including this Report, that there is not a SCWE problem in Ms. Henderson’s organization and the employees therein do not believe that their ability to raise issues and concerns is chilled. In light of this evidence, Mr. McBrearty’s latest effort does not appear to be motivated by good faith.

Confidential—Attorney Client Privileged

C. Conclusion

Based on the foregoing, Ms. Henderson's allegation of harassment and retaliation is substantiated, and Mr. McBrearty's conduct and behavior violated two Federal statutes, a Federal regulation, and three TVA policies.

/s/ John E. Slater
John E. Slater
Senior Attorney
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902-1401
Telephone No. (865) 632-7878
jeslater@tva.gov

Date: May 25, 2018

66515021

Attachment 3



Deposition of:
Michael McBrearty

June 29, 2021

In the Matter of:

**In the Matter of Tennessee Valley
Authority**

Veritext Legal Solutions

800-734-5292 | calendar-dmv@veritext.com |

1 a report -- a one-page report drafted and signed
2 by Scott Luina reflecting an interview he had
3 with you telephonically on August 30, 2019?

4 A. Yes.

5 Q. Now that you've seen this document, is
6 your memory refreshed about when you may have had
7 a conversation with Agent Luina?

8 A. Yes. I didn't recall -- I don't recall
9 the specific date. I see it written here.

10 Q. Mm-hmm.

11 A. But I do now recall that he -- he did
12 contact me.

13 Q. And what was he asking you about, at
14 least according to this report, if you can
15 remember?

16 A. Yeah. So I would actually have to
17 refer to this report.

18 Q. Okay.

19 A. So --

20 Q. But do you -- well, I'm going to read a
21 little bit of it out loud and let's see if you
22 remember any of this stuff.

23 According to the third full paragraph,
24 you stated that -- the question was whether the
25 person from TVA's Office of General Counsel had

1 interviewed you, and, if so -- and I think the
2 answer to that is yes -- what did the attorney
3 for OGC ask you about.

4 And according to this, it was that the
5 OGC person, I believe, is Mr. John Slater, asked
6 you -- or you were asked what Mr. Slater told
7 you was the purpose of this interview. And it
8 appears that what you were told was that he was
9 in -- he was investigating a harassment
10 allegation.

11 Do you recall?

12 A. Yes. My recollection is that is what
13 he told me.

14 Q. And what was the harassment agency you
15 understood him to be investigating?

16 A. I don't recall him telling me any
17 specifics of what the harassment allegation was.
18 It's kind of --

19 Q. Go ahead. I'm sorry to interrupt.

20 A. Yeah. As I read that paragraph, I do
21 recall I assumed I knew what it was about, and
22 I -- I -- I assumed it was about a text message
23 that I had sent, and that they were -- he was
24 interviewing me about harassment of myself.

25 Q. What do you mean, harassment of

1 yourself?

2 A. That may have been not the best words.

3 I thought that because I had -- I
4 had -- earlier in the year, I think it was about
5 March, --

6 Q. Of what year?

7 A. 20 -- 2018.

8 Q. Mm-hmm.

9 A. -- Ms. Inza Hagins-Dyer, who was the
10 TVA Employee Concerns Program manager, I had
11 spoken with her and she had indicated that she
12 was in possession of a text message that I had
13 sent to Mr. James Polickoski. And she said -- I
14 recall her saying, there's going to be a
15 follow-up and that ECP was treating it as a
16 safety concern. I think -- I'm not sure if
17 they're the exact words she used. They were
18 going to be doing an investigation.

19 Q. What was in the -- what was in the text
20 message to Mr. Polickoski?

21 A. I don't recall specifically. I did
22 tell Mr. Polickoski that I thought that there
23 were issues that were occurring that corporate
24 licensing wasn't addressing, including my
25 concerns with two violations that were received

1 at Sequoyah. There were some -- there were -- I
2 recall at the time there was some discussion, not
3 just with Sequoyah, but some of the other sites,
4 about corporate licensing following some of their
5 own procedures.

6 Q. So why were you writing this to
7 Mr. Polickoski?

8 A. Mr. -- Mr. Polickoski at the time was
9 the CFAM, which I believe is the Cognizant
10 Functional Area Manager. It's for licensing.
11 And he and I were friends. We tended to have
12 some open, candid discussions.

13 Q. They were more than -- they were more
14 than open and candid discussions, wouldn't you
15 agree, Mr. McBrearty?

16 A. They're -- that's how you -- that's
17 your --

18 Q. No, well -- well, I mean, you raised
19 your voice.

20 A. Excuse me?

21 Q. With Mr. Polickoski, you did not have
22 the best relationships towards the end. You
23 first were friends, right?

24 A. Yes.

25 Q. But on occasion you raised your voice

1 at him in connection with something about what
2 which you disagreed with Mr. Polickoski; isn't
3 that correct?

4 A. That, I do not recall.

5 Q. You don't recall having a series of
6 texts -- angry text exchanges with
7 Mr. Polickoski?

8 A. I recall having many text messages with
9 Mr. Polickoski.

10 Q. Right. But I'm talking about the ones
11 where you are angry.

12 A. Again, angry, that's your --

13 Q. Well, we have the texts. Anybody who
14 would read them would understand that you are
15 angry.

16 MR. STEINFELDT: Objection to form.

17 BY MS. BROWN:

18 Q. You can answer the question, Mr.
19 McBrearty.

20 A. Again, that's your description. I
21 would -- I would describe them more as he and I
22 had a very open, candid relationship about issues
23 that were occurring within the licensing area.

24 Q. Well, those included Erin Henderson,
25 correct?

1 Q. Mm-hmm.

2 A. And we were going to share with them
3 anything the response team put together.

4 Q. Okay.

5 A. So they gave us some time to get that
6 response together, provide it to them, and then
7 they reviewed it to determine what level of
8 violation should it be and how significant is it.

9 Q. And what did the NRC determine about
10 that particular issue?

11 A. I believe on that one --

12 MR. STEINFELDT: Objection. Vague.

13 BY MS. BROWN:

14 Q. You can answer.

15 A. Can -- can you --

16 Q. Sure. I'll repeat the question.

17 You said that the NRC came for an
18 inspection, knew you had a team together about
19 that particular matter, and they had to decide
20 whether there was a violation and, if so, at
21 what level. I'm asking you what did the NRC
22 ultimately determine about that particular issue?

23 A. Yeah. So I --

24 MR. STEINFELDT: Objection. Vague.

25 BY MS. BROWN:

1 Q. You can answer.

2 A. I -- I don't know that -- I -- I can't
3 recall if they did a specific inspection for it.
4 They reviewed our corrective action document, the
5 analysis we put together. And my recollection --
6 I haven't looked at that in quite some time, my
7 recollection was it ended up being a green, which
8 is low safety significance, non-cited violation.

9 Q. Thank you.

10 Did you work on the service life in the
11 Kirk Key issues?

12 A. Yes.

13 Q. These issues -- well, first of all, can
14 you describe -- let's start with service life.
15 What was the concern there? What was the issue?

16 A. The issue was how we were qualifying
17 certain pieces of equipment in the plant.

18 Q. And Kirk Key?

19 A. The Kirk Key had to do with some -- I
20 forget all the terms now -- some electrical, some
21 break -- some electrical interlocks that we had
22 replaced. And the issue there was whether we
23 should have gotten NRC preapproval before we
24 implemented the modification.

25 Q. Is that both Kirk Key and service life?

1 Maybe you can expand a little bit about the
2 service life issue.

3 A. They -- so before I returned to
4 Sequoyah, the NRC had conducted an inspection
5 there.

6 Q. Okay.

7 A. And I think it was a -- it was an every
8 two- or every three-year inspection.

9 Q. Mm-hmm.

10 A. And so both of those violations were
11 identified during that inspection.

12 Q. Okay.

13 A. At that time -- I believe Erin
14 Henderson was the site license manager --

15 Q. Mm-hmm.

16 A. -- at the time of the inspection, she
17 subsequently went to corporate. And Jon Johnson,
18 who was acting for her until they replaced her
19 position --

20 Q. Mm-hmm.

21 A. -- he had managed how we were going to
22 respond to those -- how we were going to address
23 those violations.

24 Q. But before the NRC came in and did that
25 every two- or three-year inspection, the issues

1 on service life and Kirk Key were -- were -- were
2 known within NRC as issues that needed to be
3 addressed; is that correct?

4 A. Well, they were identified during our
5 inspection. So the NRC issued an inspection
6 report, and, again, the report came out before I
7 returned to Site Licensing as a manager.

8 Q. But you're saying that the NRC
9 inspection, it came out of the blue only after
10 what NRC saw about Kirk Key and service life?

11 A. No. No. No.

12 Q. Okay.

13 A. This is the inspection where they
14 identified those two violations.

15 Q. Right. But internally at TVA people
16 were aware of those issues before the NRC came to
17 do an inspection and you were formulating a plan?

18 A. No. We -- I don't think anyone at TVA
19 thought there was any problem. They -- again, I
20 wasn't there for the inspection.

21 Q. Oh, so you don't really know?

22 A. Right.

23 Q. Okay. Ultimately, though, I think
24 when -- where were you when corporate was dealing
25 with Kirk Key and service life? Were you at

1 Sequoyah or were you back at corporate?

2 A. So after -- after the NRC issued their
3 inspection report, --

4 Q. Mm-hmm.

5 A. -- I was back at Sequoyah as the
6 emergency preparedness manager.

7 Q. I see.

8 A. Jon Johnson was the acting site
9 licensing manager.

10 So you get the inspection report and
11 the NRC in the report says, if you -- if you
12 disagree with anything -- any of the violations
13 in the report --

14 Q. Mm-hmm.

15 A. -- respond in 30 days.

16 So I wasn't there for the
17 conversations, but I understood that Sequoyah had
18 elected -- had decided that for those two NCVs,
19 they were going to deny them.

20 Q. Mm-hmm.

21 A. And they asked the NRC for an extension
22 of time to actually officially tell the NRC they
23 were going to deny them and submit a denial
24 letter.

25 Q. But -- but you don't know this

1 firsthand. Somebody just said, "I learned from
2 somebody at Sequoyah" or "I learned that Sequoyah
3 had asked for an extension of time beyond the 30
4 days"?

5 A. Jon Johnson informed me.

6 Q. Mm-hmm.

7 A. There was documentation. I'm not sure
8 if it was in e-mail or something else.

9 Q. Did you see it?

10 A. I -- I'm -- I'm not sure.

11 Q. Okay. But there -- so you -- so Erin
12 Henderson was at Sequoyah at this point and you
13 were in corporate?

14 A. Right. She -- she was at Sequoyah. I
15 can't recall exactly when she --

16 Q. Mm-hmm.

17 A. -- physically moved to corporate.

18 Q. Okay.

19 A. She was -- I know she was there for the
20 inspection, she moved to corporate and then Jon
21 Johnson was the acting --

22 Q. I see. Okay. Okay. Before you went
23 back?

24 A. Right. I was back at Sequoyah as the
25 emergency preparedness manager.

1 Q. Got it. Got it.

2 One moment, please.

3 Okay. I understand that you had a
4 disagreement about the length of time it took to
5 respond to the NRC. Is that a fair
6 characterization?

7 A. Yes.

8 Q. And were you involved in that
9 decision-making process about the length of time
10 it was taking to respond to the NRC?

11 A. I'm not sure I understand your
12 question.

13 Q. I'll put it more bluntly. Were you
14 complaining about how long it was taking to get
15 this response back to NRC?

16 A. Yes. I raised concerns about the
17 timeliness of -- first, the timeliness, and then
18 how we were going to respond.

19 Q. And what was your concern about the
20 timeliness?

21 A. We had -- before I got there, Jon
22 Johnson, who eventually worked for me, he had
23 informed -- he told me he had informed the
24 regional branch chief that we were considering
25 denying and we wanted extra time to respond, and

1 that was given.

2 Q. Anything wrong with that?

3 A. No. No. That's not unusual.

4 Q. All right.

5 A. And then -- I'll continue a little
6 bit, --

7 Q. Please do.

8 A. -- after I got back, John
9 Johnson -- after I became the Sequoyah site
10 licensing manager again, --

11 Q. Mm-hmm.

12 A. -- I became aware that Mr. Shea and
13 Ms. Henderson had had some meeting with the NRC
14 and that they were developing a different
15 approach to address the violations.

16 Q. How did you hear about that?

17 A. I don't recall. I can't recall if it
18 was an e-mail from somebody or -- or a phone
19 call.

20 Q. Did anybody at NRC reach out to you
21 about that?

22 A. I -- what I recall was that after I got
23 back to -- after I became the site licensing
24 manager again, I believe it was Mr. Shea, he
25 wanted me to call the NRC Region II, the Atlanta

1 office branch chief --

2 Q. Mm-hmm.

3 A. -- Jonathan -- his last name was
4 Barclay [phonetic], Jonathan Barclay --

5 Q. Mm-hmm.

6 A. -- and tell him that we were going
7 to -- we weren't going to -- we don't accept the
8 violation. And I don't recall exactly how it was
9 put, but we were going to -- we were going to
10 provide some informational letter instead of
11 what's normally done in the NRC process.

12 Q. Was there anything wrong with providing
13 an informational letter instead of what you
14 understand to have been the normal process?

15 A. The NRC didn't -- they don't -- they
16 don't recognize a process for submitting
17 additional information. Their inspection -- I
18 think their enforcement process, you know, allows
19 for you deny it, and then you're in their process
20 for handling the denial. Otherwise, you've
21 accepted it, you don't have to respond, and you
22 must correct it.

23 And that was -- you know, I was telling
24 that you Joe Shea asked me to call Jonathan
25 Barclay --

1 Q. Mm-hmm.

2 A. -- and explain it to him. And -- and
3 Mr. Barclay, I recall he told me, "Mike, we
4 don't -- we don't have any process for that.
5 You're out of process."

6 Q. Okay. Ultimately, that was resolved,
7 though, correct?

8 A. It -- it took quite some time.

9 Q. And that's what bothered you, was how
10 long it was taking?

11 A. Well, it was the time that it was
12 taking, and I wasn't getting -- the site was
13 responsible for preparing the response and the
14 informational --

15 Q. Mm-hmm.

16 A. -- and the informational --

17 Q. Mm-hmm.

18 A. And it would go to corporate and just
19 sort of disappear, and then nothing was
20 happening.

21 Q. And that frustrated you?

22 A. It frustrated me, and it also -- in my
23 opinion, it created a regulatory compliance
24 issue, because you still haven't fixed the
25 problem, --

1 Q. Right.

2 A. -- you don't have a corrective action
3 document to fix it, and you haven't denied it.

4 Q. Right. But NRC knew about it?

5 A. I wasn't part of -- I -- I don't know
6 what -- I don't know what the NRC knew.

7 Q. I thought you told me -- I thought you
8 told me that somebody had reached out to NRC in
9 saying, "We're going to do a different type of
10 letter."

11 A. I was told that Joe Shea and Erin
12 Henderson had met with the NRC. But then when I
13 spoke with the branch chief after that meeting
14 took place, he said he doesn't know anything
15 about it. And, you know, I think the way he put
16 it to me was, "You can submit whatever you want,
17 but, you know, you're out of process."

18 Q. Okay. What does "out of process" mean?

19 A. You're not -- like I said, the NRC
20 inspection enforcement process, as I understand
21 it, is they issue -- at NRC, they issue an
22 inspection report, they may identify findings and
23 violations and, in the report, they tell you, if
24 you disagree with this, respond to us within 30
25 days.

1 Q. So, in other words, in your view, TVA
2 was tardy in responding to this and thus out of
3 process?

4 A. My concern was we were unresponsive --

5 Q. I see.

6 A. -- because we -- we weren't taking any
7 action to fix the violations, --

8 Q. Okay.

9 A. -- but we weren't taking any action to
10 deny the violations.

11 Q. All right. Thank you for that.

12 A. Sure.

13 Q. Bear with me for one second. I -- I
14 think I can skip ahead because I've already asked
15 a few questions. Give me just a moment, please.

16 Mr. McBrearty, thank you for your
17 indulgence there. I'd like to talk -- we talked
18 before the lunch break about your ECP complaint,
19 and I believe we mentioned it was really, kind
20 of, three things, one of which was you being
21 interviewed by Human Resources about your
22 relationship with Ms. Conner. Correct me if I'm
23 wrong, you met alone with somebody in HR to
24 discuss this. Am I remembering that correctly?

25 A. That's correct.

1 Q. And what kind of questions were raised?

2 A. Again, I don't recall the specific
3 questions, --

4 Q. Mm-hmm.

5 A. -- what they were, if they were
6 about my relationship with her or whether our
7 relationship was like outside of work.

8 Q. Mm-hmm.

9 A. I don't recall the specifics.

10 Q. And you explained to them what your
11 relationship was outside of work?

12 A. Yes.

13 Q. What did you tell them?

14 A. I told them we were good friends. I
15 don't recall everything. I think I explained
16 that I was close with a lot of her family
17 members.

18 Q. Did you mention that you had gone on a
19 date with her sister?

20 A. No.

21 Q. Did you mention the trip to Clearwater?

22 A. I don't believe I did.

23 Q. Did you mention the rental car?

24 A. No.

25 Q. Where did you stay when you were in

1 Q. Right. And so that's how you first
2 came in contact with Mr. Dodds, when he said
3 there was a bad INPO report?

4 A. We received a bad INPO report, and they
5 started -- they -- TVA management started
6 bringing in some external experts to help us
7 improve.

8 Q. Okay.

9 A. They were looking for experts that had
10 been through what's called an INPO recovery
11 program, and my understanding was Mr. Dodds had
12 that expertise.

13 Q. And so at some point when you went
14 back to Sequoyah, Mr. Dodds, I think we've
15 established, was your direct-line supervisor?

16 A. Yeah. At some point. I think it -- I
17 don't think he assumed that position 'til --

18 Q. Until 2018?

19 A. -- 2018.

20 Q. Yeah. So do you recall having a
21 discussion with Mr. Dodds in May of 2018 about
22 either your interactions with Ms. Henderson or
23 interactions with Corporate Nuclear Licensing?

24 A. I recall -- I don't recall the specific
25 date, but I do recall speaking with Mr. Dodds. I

1 believe that is where he gave me some advice
2 to don't use "reply all." Similar to what
3 Mr. Williams had told me, he reemphasized that I
4 work for the site, not for corporate, and any
5 issues escalate up through him.

6 Q. Did you understand that to relate to
7 your interactions with Ms. Henderson?

8 A. I can't recall if there was that
9 specific discussion, but I took it that either
10 Mr. Shea or Ms. Henderson had raised a complaint.

11 Q. Well, there came a point in time when
12 Mr. Dodds told you you were going to be placed on
13 administrative leave, correct?

14 A. Correct.

15 Q. What did he tell you about that?

16 A. My recollection is that he told me
17 there was an investigation that was done. I
18 believe he alluded to a text message I had sent,
19 and he said that the investigation had determined
20 that I had harassed -- I believe, harassed
21 Ms. Henderson.

22 Q. Well, were you interviewed by attorneys
23 from the Office of General Counsel?

24 A. I was interviewed by one attorney from
25 the General Counsel.

1 Q. Mr. Slater?

2 A. Yes.

3 Q. And one of the questions he asked you
4 about was harassment of Ms. Henderson, correct?

5 A. I met with him for a long time. I
6 don't -- I don't -- I don't recall whether he
7 asked me that specific --

8 Q. Well, I think you told us earlier
9 today that he told you it was a harassment
10 investigation?

11 A. Right.

12 Q. And he asked you questions about your
13 interactions with Ms. Henderson, --

14 A. Yes.

15 Q. -- correct?

16 And Mr. Dodds then spoke to you about
17 those interactions right before he placed you on
18 administrative leave.

19 A. I don't recall when I had the
20 discussion with Mr. Dodds where had indicated
21 escalate everything through him. I don't recall
22 the specific time frame, other than it was after
23 he became my direct manager.

24 Q. If you could, please, pull up TVA 14.

25 A. Okay.

1 Q. Let me know when you have a chance to
2 look at it.

3 (TVA Exhibit No. 14, a document
4 Bates Numbered TVADOC0008688-001 through
5 TVADOC0008688-002, was introduced
6 electronically.)

7 BY MS. BROWN:

8 Q. Let me know when you have that in front
9 of you, sir.

10 A. I have that in front of me.

11 Q. And that appears to be an e-mail from
12 Tony Williams to David Czufin, who was the CNO at
13 the time, correct?

14 A. I think Mr. Czufin was a senior vice
15 president over --

16 Q. Oh, I stand corrected. I stand
17 corrected.

18 It was from your direct line
19 supervisor, Mr. Dodds?

20 A. That's correct.

21 Q. And it's dated May 25th, 2018. Does
22 that refresh your recollection about when you had
23 a conversation with Mr. Dodds?

24 A. Well, I recall this -- I recall
25 Mr. Dodds, you know, meeting with him and him

1 putting me on suspension. But I -- what I was
2 referring to before was, prior to that, --

3 Q. Mm-hmm.

4 A. -- he had indicated -- you know, that's
5 when he indicated that they had received a
6 complaint from corporate. He advised me to
7 minimize contact, don't use "reply all," any
8 issues that came up, escalate through him.

9 Q. Can you read Mr. Williams' e-mail
10 to Mr. Dodds -- excuse me, Mr. Dodds's
11 e-mails -- e-mail to Mr. William where it says,
12 Point Number 1.

13 A. Okay. Point Number 1: "I met with
14 Mike in the Training Center. My talking points
15 were: We have received a complaint of harassment
16 by you towards another employee. The facts if
17 that complaint have been substantiated by
18 independent investigation."

19 "According to TVA Policy you are
20 being placed on paid leave status pending the
21 determination of next steps. During this paid
22 leave period you must refrain from company
23 business. I will handle communications with your
24 department, who will be told simply that you are
25 offsite dealing with a personal matter and that

1 further details will be shared when they become
2 available."

3 "I will call you next week to discuss
4 next steps. In the meanwhile, you need to decide
5 what you desire for the future and what steps you
6 will take if you're allowed to return to work."

7 Q. Does that comport with your
8 recollection of your conversation with Mr. Dodds
9 in May of 2018?

10 A. I -- that -- that is consistent with my
11 discussion with him. I recall him also telling
12 me that I should work on a -- an individual
13 corrective action plan.

14 Q. Did he tell you that or did you
15 volunteer to do that?

16 A. He told me that.

17 Q. Why don't you read two.

18 A. Okay. Two: "Mike knew what this
19 was about without prompting. He said he was
20 surprised that an investigation had occurred and
21 that the company concluded that his actions
22 constituted harassment. He did not offer a
23 defense other than saying he did not realize he
24 had crossed a line and was sorry if he had done
25 so. I told him there was no 'if' in my mind or

1 by the independent investigation."

2 Q. So this was about Ms. Henderson,
3 correct?

4 A. I believe so.

5 Q. And also, at some point in time, you
6 came directly to Mr. Williams and told him that
7 you had raised your voice and shouted to Erin
8 Henderson on the phone and that you regretted it
9 and wanted to let him know about it; is that
10 correct?

11 A. I -- I don't recall that.

12 Q. Does it ring any bells at all?

13 A. That -- it does not ring a bell.

14 Q. Do you recall raising your voice and
15 shouting at Ms. Henderson on a conference call?

16 MR. STEINFELDT: Objection. Facts not
17 in evidence.

18 BY MS. BROWN:

19 Q. You can answer.

20 A. I don't recall that.

21 Q. If you could read -- he said, "Mike
22 knew what this was about without prompting."
23 That's because it was about Erin Henderson,
24 correct?

25 A. I had assumed it was about -- so what

1 -- what occurred -- it wasn't -- I wouldn't say I
2 knew what it was about Erin Henderson. What I
3 recall was Mr. Czufin came to the site and he was
4 in a closed-door meeting with Mr. Dodds, and it
5 was a holiday weekend. I was getting ready to
6 leave the site, but I wanted to, kind of, turn
7 over with Mr. Dodds what was happening at the
8 plant that day before I left. It was getting
9 late. I left. And as I got to the gate exit of
10 the site, Mr. Dodds called me on my cell phone.
11 And as I was talking with him on the phone,
12 Mr. Czufin walked by me. And that's when
13 Mr. Dodds -- I said, "Al, do you want me to come
14 back in the site?" I recall he said, "No. Meet
15 me at the Training Center." And that call --

16 Q. And what was the significance of
17 Mr. Czufin walking by?

18 A. It was the fact that Mr. Czufin's
19 the -- Mr. Shea's boss. He was the senior vice
20 president. And the timing, that he's walking by
21 as Mr. Dodds called me, told me not to come back
22 in the gatehouse, not to come back into the
23 protected area, and --

24 Q. And what conclusion did you draw from
25 that, Mr. McBrearty, by seeing Mr. Czufin walk

1 by?

2 A. What I drew from Mr. Czufin walking
3 by and receiving that phone call was that
4 something bad was going to happen.

5 Q. Did Mr. Dodds tell you of Mr. Czufin 's
6 involvement, if any?

7 A. No.

8 Q. Did Mr. Czufin tell about you his
9 involvement, if any?

10 A. No.

11 Q. If you could read Number 3 -- back to
12 the document.

13 A. "Mike asked how serious this is and I
14 told him it is very serious. He asked if he was
15 going to be terminated and I told him that is on
16 the table. He said he would like a chance to
17 'make it right' and that he will do whatever is
18 necessary to 'restore my reputation. I promise I
19 can fix this if you will give me another
20 chance.' "

21 Q. How did you plan to fix this?

22 A. You know, my recollection at that
23 time is I was extremely upset and extremely
24 emotional. It happened fairly quickly. So I
25 don't recall, at that point, what I was going to

1 do to fix anything.

2 Q. How did your emotional state manifest
3 itself physically?

4 A. I don't know. I'm assuming it was
5 obvious that I was upset as he was telling me I
6 was going to be suspended.

7 Q. Did you cry?

8 A. I don't recall crying.

9 Q. And you said you were upset. How did
10 that physically manifest itself?

11 A. I'm sure I was probably shaking.

12 Q. Mm-hmm.

13 A. I'm guessing I was probably sweating.

14 Q. Did you raise your voice?

15 A. I don't recall raising my voice to
16 Mr. Dodds.

17 Q. Do you recall anything else about your
18 reaction to what Mr. Dodds told you?

19 A. It was -- I was surprised, because I
20 was under the impression that the investigation
21 that was being done wasn't investigating me, that
22 it was investigating the concerns I had expressed
23 in the text message.

24 Q. The text message to whom?

25 A. Well, the text message to

1 Mr. Polickoski from earlier in that year.

2 Q. Can you refresh my recollection of what
3 time this conversation took place, that e-mail?

4 A. The text message to Mr. Polickoski
5 would have been in February/March time frame. I
6 don't remember specifically when it was.

7 Q. Thank you.

8 Could you read Number 4, please?

9 A. Number 4: "I told him that we are
10 still in process as far as deciding next steps
11 and that he will have a chance to provide any
12 information he thinks is relevant."

13 Q. Could you read Number 5, please?

14 A. Number 5: "As we were leaving he said,
15 'Please don't fire me. I think I let my ego get
16 out of control and will not do that again. I
17 will create a corrective action contract this
18 weekend.' He was pretty choked up at this
19 point."

20 Q. Is that accurate?

21 A. It was accurate. That's accurate,
22 other than I hadn't -- I hadn't -- it was
23 Mr. -- Mr. Dodds suggested -- he suggested I
24 develop a corrective action plan and be prepared
25 to present it as soon as possible.

1 15th, 2018, and I returned to the site a week or
2 two after his funeral.

3 Q. That must have been pretty darn
4 difficult.

5 A. Rough time.

6 Q. Yeah.

7 Around the time of your interview -- so
8 it was after your dad's passing you came back to
9 be interviewed, or did that interview take place
10 before your dad's passing?

11 A. It took place after my father's
12 passing.

13 Q. Okay. Before you were interviewed by
14 Mr. Slater, did you have discussions with anybody
15 else at TVA or the NRC about this investigation
16 being conducted by the Office of General Counsel?

17 A. I don't recall having such discussions.
18 And I -- my recollection is I didn't know it was
19 going to be OGC doing the investigation.

20 Q. Right. But once OGC came to interview
21 you, obviously, you knew OGC was working on it at
22 that point, what conversations, if any, did you
23 have with other TVA employees; for example,
24 Ms. Conner, Ms. Wetzell, Mr. Polickoski?

25 A. Other than I -- my recollection is I

1 had told them that I had been scheduled for an
2 interview. I got a meeting invite from, I think
3 it was, Joe Shea's administrative assistant.

4 Q. Carla Edmondson?

5 A. Carla Edmondson.

6 Q. But once you were aware of being
7 interviewed, did other people let you know that
8 they were going to be interviewed or had been
9 interviewed?

10 A. I don't recall.

11 Q. After you were interviewed by
12 Mr. Slater, did you share the contents of your
13 meeting with Mr. Slater with anybody within TVA?

14 A. I don't recall if I shared it with
15 anybody.

16 Q. Outside TVA?

17 A. My sister.

18 Q. The NRC?

19 A. After I was suspended, I probably
20 shared that with NRC.

21 Q. OSHA? Occupational Safety -- OSHA?

22 A. I think in my -- in my complaint to
23 OSHA I described that in there. That's my
24 recollection.

25 Q. You were placed on administrative leave

1 after Mr. Slater's report was complete. Is that
2 your recollection?

3 A. That's what I thought at the time.
4 But, subsequently, Mr. Dodds informed me that the
5 report was not complete and that they -- he --
6 Mr. Dodds and I had periodic communications and
7 he was communicating to me that there was going
8 to be more investigation.

9 Q. Did he tell you what that investigation
10 -- that additional investigation included?

11 A. No. We -- we had -- we had some
12 communications about meetings that were happening
13 at the site. And when I -- they had -- they
14 originally came up with a return date for me to
15 come back to the site.

16 Q. Mm-hmm.

17 A. And then shortly before I was scheduled
18 to return, Mr. Dodds let me know that they had
19 not approved my returning to the site and there
20 was additional investigation being done.

21 Q. When did you start applying for new
22 jobs?

23 A. I had started looking for new jobs
24 probably earlier in 2018.

25 Q. Before Mr. Slater interviewed you?

1 A. Yeah. I was -- I had become -- I was
2 getting pretty uncomfortable working at TVA.

3 Q. How so?

4 A. Just it was -- there was a lot of
5 tension between Corporate Licensing and the site.
6 It was becoming unpleasant to -- I felt like I
7 could -- I could find a job that would -- I could
8 be more content at.

9 Q. What did you do to -- excuse me. What
10 did you do to alleviative those tensions? What
11 steps did you take?

12 A. I was looking for a new position.

13 Q. But within TVA, what did you do? What
14 steps did you take to alleviative the tension
15 between the site and corporate?

16 A. I don't recall any specific actions.

17 Q. You took the job at UAE. When did you
18 resign from that job?

19 A. I submitted my resignation in December
20 of 2020, and then my final day there was January
21 7th of 2021.

22 Q. Why did you leave that job?

23 A. They had actually given me a very big
24 promotion, and the big promotion coincided with
25 the COVID pandemic.

1 Q. Mm-hmm.

2 A. So I got a big promotion, and it
3 was accompanied with a reduction in pay and
4 reduction in benefits. So I discussed it with
5 my supervisor and gave them time to fix that
6 situation. But it didn't look like they were
7 going to fix it, so I left.

8 Q. Hence, the job in Lisbon?

9 A. No job. I'm going to be living in
10 Lisbon.

11 Q. Oh, you're going to retire. I forgot
12 about that. Yeah. Okay.

13 So was this job that you had in UAE the
14 last employment you had in the nuclear industry?

15 A. Yes, it is.

16 Q. Right. Do you intend to go back at any
17 point in time or are you going to be an ex-pat?

18 A. My intent right now is to be an ex-pat
19 and retire.

20 MS. BROWN: Mm-hmm. Okay.

21 I think I'm done with you, sir, but if
22 you could just give me a moment to consult with
23 my colleagues, I'll be back shortly.

24 Do you want to take a five-minute
25 break?

Attachment 4

Exhibit 3

2-2018-033

Exhibit 3

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION
OFFICIAL USE ONLY
OI INVESTIGATION INFORMATION

Title: Interview of Michael William McBrearty

Docket Number: 2-2018-033

Location: Santa Cruz, California

Date: 09-04-18

Work Order No.: NRC-3890

Pages 1-150

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

OFFICIAL USE ONLY-OI INVESTIGATION INFORMATION 15

1 MR. MCBREARTY: And challenge us on it.

2 SR. SPECIAL AGENT LUINA: All right.

3 MR. MCBREARTY: Something like a license
4 amendment request that would go through Site
5 Concurrence, but then it had to be approved by
6 Corporate Licensing, by the Vice President of, it's
7 now called Regulatory Affairs. It, it --

8 SR. SPECIAL AGENT LUINA: And there's a --

9 MR. MCBREARTY: -- used to be Corporate
10 Licensing.

11 SR. SPECIAL AGENT LUINA: Is there a TVA
12 policy, or procedure, on that, like, what --

13 MR. MCBREARTY: Yes.

14 SR. SPECIAL AGENT LUINA: -- what has to
15 go through there and what doesn't, so it probably
16 wasn't everything, I guess, but certain things had to
17 go through Corporate, okay. All right. All right,
18 well I, I'll let you, kind of, like I said, just walk
19 me through your concern here --

20 MR. MCBREARTY: Okay.

21 SR. SPECIAL AGENT LUINA: -- with what,
22 what occurred out there. I don't know, if you want to
23 start with that NRC inspection that resulted in the --

24 MR. MCBREARTY: Yes.

25 SR. SPECIAL AGENT LUINA: -- NCVs, is

OFFICIAL USE ONLY-OI INVESTIGATION INFORMATION

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS

1 probably a good --

2 MR. MCBREARTY: It's probably a good place
3 to start.

4 SR. SPECIAL AGENT LUINA: Okay.

5 MR. MCBREARTY: So when I came back to
6 Sequoyah, after being downtown, I was actually -- I --
7 and then, for an interim period of time, I was the
8 Emergency Preparedness Manager.

9 SR. SPECIAL AGENT LUINA: Okay.

10 MR. MCBREARTY: Just for a few months.
11 When I came back that, that 2015 inspection was in
12 progress. So I --

13 SR. SPECIAL AGENT LUINA: (Indiscernible.)

14 MR. MCBREARTY: -- I wasn't the State
15 Licensing Manager, at that time.

16 (Simultaneous speaking.)

17 SR. SPECIAL AGENT LUINA: Okay. And that
18 was, like, July of 2015?

19 MR. MCBREARTY: Correct.

20 SR. SPECIAL AGENT LUINA: The inspection's
21 going on?

22 MR. MCBREARTY: Like, my Site Vice
23 President, at that time, John Carwin (phonetic) asked
24 me to, sort of, follow it --

25 SR. SPECIAL AGENT LUINA: All right.

1 MR. MCBREARTY: -- because he, I think, he
2 respected my regulatory knowledge and the advice I
3 gave him.

4 SR. SPECIAL AGENT LUINA: Okay.

5 MR. MCBREARTY: When the, when the
6 inspection report got issued, I, I knew there was
7 already some disagreements, with the NRC, on two of
8 the violations and the two I described in here. One
9 had to do with, we replaced some molded case circuit
10 breakers in our NRCW System.

11 SR. SPECIAL AGENT LUINA: Yes, that's
12 molded, M-O-L, M-O-L-D-E-D, (indiscernible) --

13 MR. MCBREARTY: Correct.

14 SR. SPECIAL AGENT LUINA: -- circuit
15 breaker, yes. Sorry, go ahead.

16 (Simultaneous speaking.)

17 MR. MCBREARTY: And they, they are often
18 referred to, as MCCBs.

19 SR. SPECIAL AGENT LUINA: Yes that's okay.

20 MR. MCBREARTY: And then the --

21 SR. SPECIAL AGENT LUINA: Yes.

22 MR. MCBREARTY: -- the challenge that got
23 raised, during the inspection, was, you know, should
24 we have specified a duration that one molded case
25 circuit breaker could be in the plant.

OFFICIAL USE ONLY-OI INVESTIGATION INFORMATION 18

1 SR. SPECIAL AGENT LUINA: Okay.

2 MR. MCBREARTY: And it became known, known
3 as the service life. The report, the inspection
4 report never identified, I don't think it ever used,
5 it may have used the term service life, I'm not
6 positive it did. But it was a, basically, a, an
7 industry issue that had started to get some visibility
8 from the NRC, back in 2011, at our Region III plant.

9 SR. SPECIAL AGENT LUINA: Okay.

10 MR. MCBREARTY: And there were, there were
11 some URIs in Region III, and there was, also, at
12 least, one NCV in Region III.

13 SR. SPECIAL AGENT LUINA: Another, the --
14 yes, the Unresolved Inspection Items?

15 MR. MCBREARTY: Right.

16 SR. SPECIAL AGENT LUINA: And the NCVs,
17 the Non-cited Violations.

18 MR. MCBREARTY: Non-cited Violation and --

19 SR. SPECIAL AGENT LUINA: Okay.

20 MR. MCBREARTY: -- unresolved issue.

21 SR. SPECIAL AGENT LUINA: Okay, so there
22 was that issue, then there was -- the other one was
23 the, the removal of the Kirk Key interlocks, right?

24 MR. MCBREARTY: Right. So it was also on
25 the ERCW System and the Kirk Key is a mechanical

OFFICIAL USE ONLY-OI INVESTIGATION INFORMATION

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS

1 interlock that prevents you from, basically,
2 paralleling the wrong sources. And we had removed
3 this interlock using 10 C.F.R. 5059. And the
4 inspector objected to that, he felt that it, it
5 required a license amendment.

6 SR. SPECIAL AGENT LUINA: And that was in
7 the -- I got that the letter, the Inspection Report
8 came out in, on September 14th, 2015.

9 MR. MCBREARTY: Correct.

10 SR. SPECIAL AGENT LUINA: And it's
11 Inspection Report 2015 007.

12 MR. MCBREARTY: Right.

13 SR. SPECIAL AGENT LUINA: Okay. So then,
14 what happened after that?

15 MR. MCBREARTY: So from there, TVA has a
16 process called DONA, it's a regulatory analysis. I
17 can't remember their procedure number. But I got
18 approached, myself, and at that time, John Johnson was
19 the Acting Site Licensing Manager.

20 SR. SPECIAL AGENT LUINA: Okay.

21 MR. MCBREARTY: They had recently moved
22 the Licensing Manager, Erin Henderson, had moved
23 downtown to Corporate Licensing.

24 SR. SPECIAL AGENT LUINA: Okay.

25 MR. MCBREARTY: So we had a meeting with

1 our Director of Plant support, at that time, I
2 believe, it was a guy named Mark Giacini (phonetic),
3 who has since left TVA.

4 SR. SPECIAL AGENT LUINA: Okay.

5 MR. MCBREARTY: I think he's with Entergy
6 now. But they had a meeting, because, for this
7 Regulatory Analysis, they sequester a team to, kind of
8 -- and it, basically, goes through, you know, what are
9 the facts, what are, what's required by the
10 Regulations, did we, or did we not, meet the
11 Regulatory requirements, and then it makes a
12 recommendation.

13 So there's a question of, do we want
14 myself part of that regulatory analysis team, or do we
15 want John Johnson, the Acting Licensing Manager, to be
16 part of it, and I would act, as Licensing Manager,
17 while he was there. So John ended up being on that
18 team.

19 SR. SPECIAL AGENT LUINA: Okay.

20 MR. MCBREARTY: They brought in some
21 external people, as well, from MPR, some technical
22 experts. And they came to a conclusion that we should
23 deny both violations, both the, of the non-cited
24 violations.

25 And they actually drafted, I can't

1 remember, if it was a combined denial letter, for both
2 violations, or if they had two separate ones. I think
3 it was all in one letter when they, the first time
4 they drafted it.

5 SR. SPECIAL AGENT LUINA: Okay.

6 MR. MCBREARTY: So --

7 SR. SPECIAL AGENT LUINA: So that, so that
8 team drafted the letter from this?

9 MR. MCBREARTY: Right. So they were --
10 the site was going down the path of denying those
11 violations. Sometime in early November, it was like
12 November 3rd, or November 4th, two of our Corporate
13 Regulatory Affairs Manager, Joe Shea, who's the Vice
14 President of Regulatory Affairs --

15 SR. SPECIAL AGENT LUINA: And that's
16 S-H-E-A?

17 MR. MCBREARTY: Correct.

18 SR. SPECIAL AGENT LUINA: Okay, go ahead,
19 and?

20 MR. MCBREARTY: And Erin Henderson, who's,
21 her title at that time, I think, was Senior Manager of
22 Licensing.

23 SR. SPECIAL AGENT LUINA: And that's Erin,
24 E-R-I-N?

25 MR. MCBREARTY: Correct.

1 SR. SPECIAL AGENT LUINA: Yes. Sorry, go
2 ahead. Yes (indiscernible).

3 MR. MCBREARTY: So they, they had a
4 periodic drop-in with Region II management. And, when
5 they came back, they said that, I don't know, at what
6 point they had the discussion, but they said they had
7 a discussion with NRC, and letting them know that we
8 were thinking about denying the two violations.

9 And what they told me was that, based on
10 that discussion, they decided it, we should not deny
11 them. That, we're going to send NRC, rather than deny
12 it, we're going to send them a clarification letter.

13 SR. SPECIAL AGENT LUINA: Is that what the
14 NRC told them to do, or --

15 MR. MCBREARTY: According -- I, I'm not
16 sure what actually took place, whether it was during
17 the drop-in meeting, or if it was a sidebar
18 conversation. Joe Shea hasn't -- he -- what he's told
19 me was that that was Tony Goddy's (phonetic)
20 recommendation.

21 SR. SPECIAL AGENT LUINA: Okay.

22 MR. MCBREARTY: So when that, when that
23 came up there was some internal discussion of, you
24 know, during an NRC drop-in, you can't, you can't
25 discuss pre-decisional, so how did this, how did this

1 end up being discussed?

2 SR. SPECIAL AGENT LUINA: Yes.

3 MR. MCBREARTY: And, I never understood
4 how it was discussed, or the exact feedback they got,
5 but they were give, the direction I was given was,
6 change these letters into what they called a
7 clarification letter, and they pointed to a letter
8 that the Surry plant, I think it was, had drafted and
9 submitted.

10 So there was, there was a lot of anxiety
11 at the site, especially, in Sequoyah Licensing.
12 Because, like myself, John Johnson is a former NRC
13 Resident Inspector and he spent some time with NRC.

14 And he pointed out to me, you know, right
15 away, one, how did they end up discussing this at a
16 drop-in meeting; and two, there is no such thing as a
17 process for a clarification letter.

18 That, when we get a non-cited violation,
19 or any kind of violation, be it an inspection report,
20 or some other correspondence, the NRC will say, if you
21 disagree with this, let us know within 30 days,
22 respond in writing.

23 And it's always, in my experience in
24 nuclear, which has been almost 30 years, I've always
25 understood that to mean, if you don't respond that

1 means you implicitly accept it and you have to correct
2 it, and that's been my experience, if we didn't deny
3 it, we corrected it.

4 So we got direction to write one
5 clarification letter for the Kirk Key issue, and one
6 clarification for the service life issue. I was also,
7 Joe Shea also asked me to get in touch with Region II.

8 Because, when we first got the inspection
9 report, we knew we would not be able to submit a
10 denial within 30 days, we needed more time. So John
11 Johnson, who was acting, at that time, contacted
12 Jonathan Bartley --

13 SR. SPECIAL AGENT LUINA: Bartley, yes.

14 MR. MCBREARTY: -- and asked for a 30-day
15 extension, which he got.

16 SR. SPECIAL AGENT LUINA: Okay.

17 MR. MCBREARTY: So when the new direction
18 was given to write a clarification letter, Joe Shea
19 asked me to get in touch with Jonathan to ask for
20 additional time to submit the clarification letters.

21 And, I knew Jonathan, pretty well, from
22 his groups. He was, he was actually our DRP Branch
23 Chief, at one point --

24 SR. SPECIAL AGENT LUINA: Okay.

25 MR. MCBREARTY: -- when I was the Site

1 Licensing Manager. And then he was a, a DR, Ref
2 Branch Chief and he oversaw that engineering
3 inspection and identified the violation, so.

4 So I talked to Jonathan, he, who was
5 pretty candid with me, he said, Mike, you know the
6 process, you're ex-NRC. We don't have a process for
7 clarification letters.

8 You can submit one of them, anytime, and
9 you don't need my approval to extend it. And he said,
10 but you're out of process, we don't have a process for
11 it.

12 And he said, whatever you submit, we'll
13 review. But, it's going to get low priority, because
14 by process, we're required to do certain things. So
15 this will be, after we're done, everything we're
16 required to do, we'll look at that.

17 The Kirk Key issue, it got a couple of, it
18 got some feedback from our Corporate Office, and then
19 that one was, finally, issued. And I think it was in
20 January of 2016?

21 SR. SPECIAL AGENT LUINA: Yes that's what
22 I have.

23 MR. MCBREARTY: I didn't have the exact
24 date on that one.

25 SR. SPECIAL AGENT LUINA: Yes.

1 MR. MCBREARTY: And --

2 SR. SPECIAL AGENT LUINA: I got January
3 8th. I think I grabbed it from some document.

4 MR. MCBREARTY: That sounds about right.

5 SR. SPECIAL AGENT LUINA: Yes, CR, or
6 something like that, mentioned it, it came out in
7 (indiscernible).

8 MR. MCBREARTY: And I -- so we, we
9 submitted that. I did a follow-up with Jonathan
10 Bartley, just to make sure he had received it. And
11 he, again, reiterated, Mike, we've got it, but it's
12 going to be low priority.

13 And he said, what I'm going to do is I'm
14 going to get somebody from his group with some
15 technical expertise that was not involved in the
16 inspection to independently review the information we
17 sent in, against the violation.

18 He reminded me, he said, Mike, you know,
19 you sent us this clarification letter and, in the
20 cover letter it says, we do not deny the violation.
21 And then, your attachment lays out the groundwork for
22 a denial. He said, you all have to be following
23 process. And I communicated that back to, to Joe Shea
24 and Erin Henderson --

25 SR. SPECIAL AGENT LUINA: And what did

1 they say?

2 MR. MCBREARTY: -- and -- I didn't, I
3 didn't -- there wasn't much debate in it, they just
4 said, it's submitted, you know, check up with them on
5 status, when do they think they'll be done, and I told
6 him, Jonathan has told me, because I've talked to
7 Jonathan several times, throughout that, the following
8 year, that it's low priority, we'll get to it when we
9 can get to it.

10 SR. SPECIAL AGENT LUINA: So why not just
11 submit a denial letter? Does that put some --

12 MR. MCBREARTY: Here's what they told me
13 --

14 SR. SPECIAL AGENT LUINA: And who's they?

15 MR. MCBREARTY: They being Joe Shea --

16 SR. SPECIAL AGENT LUINA: Okay.

17 MR. MCBREARTY: -- and Erin Henderson.
18 And, I can't remember exactly when they told me. I
19 might be able to find some dates. But, it was months
20 after there was this back and forth between the site
21 and Corporate, as to why we're doing this, why don't
22 we just deny it?

23 And they said, at the time, Sequoyah had
24 just tripped one of our ROPPIs and that was for
25 unplanned scrams (phonetic), so we're going to get an

1 I5001 inspection.

2 They felt that, because of us being in the
3 Reactor Oversight Process, ROP Column 2, that we
4 weren't in a good position to deny a violation, so
5 they opted to go with this other path.

6 SR. SPECIAL AGENT LUINA: Did -- but the
7 NRC wouldn't accept it, or something, maybe, or it
8 just would look bad to deny a violation?

9 MR. MCBREARTY: They --

10 SR. SPECIAL AGENT LUINA: I don't --

11 MR. MCBREARTY: I'm not quite sure. I, I
12 really --

13 SR. SPECIAL AGENT LUINA: Okay
14 (indiscernible) assignment. All right.

15 (Simultaneous speaking.)

16 MR. MCBREARTY: You know, I kept telling
17 them, there's no process for it.

18 SR. SPECIAL AGENT LUINA: Yes.

19 MR. MCBREARTY: And, you know, we, our own
20 Corrective Action Program says, you only have so much
21 time to fix something. And, I don't, I don't know if
22 they fully-appreciated the burden it put on the site,
23 by not denying it.

24 SR. SPECIAL AGENT LUINA: That's a good
25 point. In September of, or July of 2015, when this

OFFICIAL USE ONLY-OI INVESTIGATION INFORMATION 29

1 was identified, was it put in the TVA Corrective
2 Action Program?

3 MR. MCBREARTY: It was.

4 SR. SPECIAL AGENT LUINA: Okay. Both
5 issues were?

6 MR. MCBREARTY: Both issues were.

7 SR. SPECIAL AGENT LUINA: Okay. But
8 nothing -- were there any --

9 MR. MCBREARTY: There's probably multiple
10 (indiscernible) --

11 SR. SPECIAL AGENT LUINA: -- any
12 corrective actions being done, though?

13 (Simultaneous speaking.)

14 MR. MCBREARTY: And, and that's --

15 SR. SPECIAL AGENT LUINA: It's in the
16 program.

17 (Simultaneous speaking.)

18 MR. MCBREARTY: And that's what, kind of,
19 led to -- I'll, you know, in --

20 SR. SPECIAL AGENT LUINA: Yes.

21 MR. MCBREARTY: -- in the end of 2017 --

22 SR. SPECIAL AGENT LUINA: Yes.

23 MR. MCBREARTY: -- our resident inspectors
24 for the service life, you know, they came up to me, it
25 was Wesley DeShane (phonetic) and, I had a very good

OFFICIAL USE ONLY-OI INVESTIGATION INFORMATION

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS

1 working relationship with our, with our inspectors.

2 And I, I did communicate with them,
3 periodically, of my own frustration, in dealing with
4 these issues this way. Wesley said, Mike, I'm going
5 to, I'm going to look at what you did in CAP,
6 Corrective Action Program, for the service life issue,
7 just as my quarterly sample for his resident inspector
8 baseline inspections.

9 And so he asked a lot of questions, we
10 gave him a lot of information that he was pointing out
11 that, you guys put this in, as what we would call
12 Level 2 Cause Evaluation.

13 You really didn't do a cause evaluation,
14 like, what, what's documented really just says we
15 don't agree with the NRC. And then it kept getting
16 extended.

17 SR. SPECIAL AGENT LUINA: For two years?

18 MR. MCBREARTY: For two years.

19 SR. SPECIAL AGENT LUINA: Yes. Okay.

20 MR. MCBREARTY: That's for the service
21 life.

22 SR. SPECIAL AGENT LUINA: Service life,
23 okay.

24 MR. MCBREARTY: Kirk Key was the same.
25 Kirk Key could at least say, we gave the NRC

1 something.

2 SR. SPECIAL AGENT LUINA: Was, was that --

3 MR. MCBREARTY: Was that, was that a
4 process, it was a clarification letter.

5 SR. SPECIAL AGENT LUINA: Okay.

6 MR. MCBREARTY: But in, and I, I've
7 skipped a lot of specific --

8 SR. SPECIAL AGENT LUINA: I know, I'm
9 sorry.

10 MR. MCBREARTY: -- information here.

11 SR. SPECIAL AGENT LUINA: Yes.

12 MR. MCBREARTY: That's okay.

13 SR. SPECIAL AGENT LUINA: But go --

14 MR. MCBREARTY: But --

15 SR. SPECIAL AGENT LUINA: I guess, we were
16 talking about the talking about the clarification
17 letter for the Kirk Key. That gets submitted. You
18 have that discussion with, with Bartley, again, right,
19 he's saying, we'll look at this when we can,
20 basically, it's not, you're not denying it, you're not
21 accepting it, you're --

22 MR. MCBREARTY: Right.

23 SR. SPECIAL AGENT LUINA: -- submits the
24 clarification letter, okay. It said, during that time
25 -- let's see what I have.

1 (Off the record comments.)

2 SR. SPECIAL AGENT LUINA: That, that,
3 that's the Kirk Key one. Was there ever, ever an
4 informational letter sent for the service life issue
5 --

6 MR. MCBREARTY: No.

7 SR. SPECIAL AGENT LUINA: -- or was it not
8 needed, because of that --

9 MR. MCBREARTY: Well --

10 SR. SPECIAL AGENT LUINA: -- regulatory
11 issues summary that came out?

12 (Simultaneous speaking.)

13 MR. MCBREARTY: So here's -- this is,
14 again, where it got -- it caused --

15 SR. SPECIAL AGENT LUINA: Or am I going a
16 different path then?

17 MR. MCBREARTY: I, I can go however you
18 want, I can --

19 SR. SPECIAL AGENT LUINA: Okay.

20 MR. MCBREARTY: -- give the whole story on
21 Kirk Key and then service life, or --

22 SR. SPECIAL AGENT LUINA: Yes.

23 MR. MCBREARTY: So, so Kirk Key, I'll,
24 I'll just try and finish that up --

25 SR. SPECIAL AGENT LUINA: Okay, finish

1 that up, yes.

2 (Simultaneous speaking.)

3 MR. MCBREARTY: You know, the NRC had that
4 information. I would, periodically, touch base with
5 Jonathan and it, kind of, became almost a running joke
6 that TVA has now become known as the non-denial/denial
7 plan.

8 SR. SPECIAL AGENT LUINA: Okay.

9 MR. MCBREARTY: For that letter. But he,
10 he said his guy was starting to work on it. That was
11 probably about the middle of the year.

12 SR. SPECIAL AGENT LUINA: Okay.

13 MR. MCBREARTY: And then he also indicated
14 that they were going to send the letter to NRR, the
15 Office of Nuclear Reactor Regulation, and have their
16 technical branch look at it, as well.

17 SR. SPECIAL AGENT LUINA: That's right.
18 Okay. And I got that in (indiscernible) in March of
19 '17, he tells you that review's done, the Kirk Key?

20 MR. MCBREARTY: Right. He gave me, he
21 gave me a phone call and said, you know, my guy's
22 done, NRR also looked at it, nothing in your
23 informational letter changed our, our position and,
24 therefore, the violation will stand.

25 SR. SPECIAL AGENT LUINA: Okay. And then,

1 what's to say that that point to do?

2 MR. MCBREARTY: So I communicated that
3 back to Joe Shea and Erin Henderson. And I told them,
4 you know, in my career in nuclear, it's not the first
5 time I've been a situation where NRC takes one
6 position on a 5059, the utility disagrees, but --

7 SR. SPECIAL AGENT LUINA: Yes.

8 MR. MCBREARTY: -- the NRC's the
9 regulator, they get the final say. And I said, let's,
10 let's submit a license amendment request and get
11 approval for the change we did, after the fact. And
12 there was push back from Corporate. And, at that
13 point, I said, well why don't -- I want, I want to
14 consult with some external independent experts.

15 SR. SPECIAL AGENT LUINA: Push back was
16 from Shea and Henderson, I guess, or --

17 MR. MCBREARTY: Yes. So Joe, it was
18 mostly Joe --

19 SR. SPECIAL AGENT LUINA: Okay.

20 MR. MCBREARTY: -- on the push back. And
21 he kept challenging me, like, well how come you don't,
22 how come you no longer support your 5059? And I said,
23 Joe, I do, but, you know, we're, we've given the NRC
24 all the information we can possibly give them and we
25 did not, we were not persuasive that it should change.

1 We did not compel a compelling argument
2 that their violation was wrong. So I think this is
3 the cleanest way to get through it, without, with the
4 -- if, at that point, we write another letter, or we
5 deny it.

6 We're going to, we're going to deny it,
7 based on the same information the NRC's already told
8 us wasn't adequate. And they're, you're -- in, in my
9 opinion, they're you're poking the NRC in the eye and
10 you're hurting your regulatory standing and
11 relationship with them.

12 And so he agreed with my recommendation to
13 go external. And I, I talked to Ellis Murshaw
14 (phonetic), who's an ex-NRC Regional Administrator,
15 and he was in Region IV, when -- actually, I think,
16 he, he was retired, when my, when San Onofre got in
17 trouble.

18 SR. SPECIAL AGENT LUINA: Yes.

19 MR. MCBREARTY: But I knew him, I'd met
20 Ellis, many times, when I was working at San Onofre,
21 when he was the Regional Administrator. And then,
22 after he retired and, and San Onofre got into some
23 regulatory issues with safety culture, we brought him
24 as, in as a consultant, to get recommendations from
25 him.

1 So I had a working relationship with Ellis
2 and I'd also, I'd also brought him in shortly after I
3 got to Sequoyah for a white finding that they had in
4 security and he helped us with that.

5 SR. SPECIAL AGENT LUINA: Okay.

6 MR. MCBREARTY: So I called Ellis and I,
7 actually, said, you know, we're, we're looking for
8 someone to write a contract with and here's the issue.

9 SR. SPECIAL AGENT LUINA: Yes.

10 MR. MCBREARTY: And he said, Mike, you
11 know, I'd be happy to do it, but you're wasting your
12 money. He said, write a, write the license amendment.

13 SR. SPECIAL AGENT LUINA: Oh he did --

14 MR. MCBREARTY: There's, there's nothing
15 difficult here.

16 SR. SPECIAL AGENT LUINA: Okay.

17 MR. MCBREARTY: He said, so, I think Ellis
18 is probably \$300 to \$400 an hour.

19 SR. SPECIAL AGENT LUINA: Yes.

20 MR. MCBREARTY: He said there's, there's
21 nothing -- that's, that's what I'm going to recommend
22 you do.

23 SR. SPECIAL AGENT LUINA: Okay.

24 MR. MCBREARTY: And so I went back to Joe
25 Shea and said, I talked to Ellis and he agrees, we

1 should write a license amendment.

2 SR. SPECIAL AGENT LUINA: Yes.

3 MR. MCBREARTY: And it's still, like, I,
4 I wasn't able to get much response from our Corporate
5 Licensing. And there was frustrating at our site
6 engineering, because they, they had actually made this
7 modification to part of one train of ERCW, but then we
8 got the violation and they hadn't -- the, the trains
9 looked different.

10 SR. SPECIAL AGENT LUINA: Yes.

11 MR. MCBREARTY: One had the mechanical
12 interlock, we moved the one den.

13 SR. SPECIAL AGENT LUINA: Yes.

14 MR. MCBREARTY: It could, you know, it
15 wasn't the best position to be in, for operations,
16 when things aren't the same all the time, and so they
17 were pushing, one, we got, we got these Corrective
18 Action Program documents that we want to get closed
19 and we want to get the plant consistent.

20 So they were, they were in support of the
21 license amendment, they didn't, they still disagreed,
22 they thought they did a good 5059, but they would
23 support the license amendment.

24 I was having trouble getting Corporate
25 Licensing, who owns the license amendment process, to

1 get anything going. And it was about the same time,
2 you know, when I got that call from Jonathan Bartley
3 that we were getting close to our biannual problem
4 identification and resolution inspection, from the NRC
5 Region II Office.

6 Now, a large part of the scope of that
7 inspection is, you take all the NCVs, Non-cited
8 Violations, you got in the last two years and you
9 actually go and look to say, did they correct it?
10 That was one of the big changes, when the NRC
11 introduced the, the current reactor oversight process,
12 back in 2000.

13 So you no longer had to write a response
14 to each NCV, you correct it and then, every two years,
15 they -- so they were coming in and that got some
16 concern in Corporate that we have exposure. That NRC
17 is going to, you know, they're going to come and look
18 at your corrective actions and ask you what you did.

19 So for the Kirk Key, during the
20 inspection, one of the inspectors asked me about it.
21 I think it was Ryan Taylor (phonetic).

22 SR. SPECIAL AGENT LUINA: Was this is '17
23 -- oh no. Here it is. Yes, 2017 PIR, right?

24 MR. MCBREARTY: Right.

25 SR. SPECIAL AGENT LUINA: Okay.

1 MR. MCBREARTY: Right.

2 SR. SPECIAL AGENT LUINA: Yes.

3 MR. MCBREARTY: I can't remember --

4 SR. SPECIAL AGENT LUINA: Ryan Taylor,
5 okay.

6 MR. MCBREARTY: I think it was Ryan Taylor
7 that was -- I hadn't, I'd only met him once before, I
8 wasn't real familiar with him.

9 SR. SPECIAL AGENT LUINA: Okay.

10 MR. MCBREARTY: And I said, we're going
11 to, we're going to submit OR, and we had a CR to do
12 the OR. And, I talked to our Corporate Licensing
13 Office.

14 I didn't talk to Joe Shea, or Erin
15 Henderson, I talked to a manager that reports to Joe
16 Shea, Ed Schrull, and his crew owns the license
17 amendment process.

18 SR. SPECIAL AGENT LUINA: Ed who?

19 MR. MCBREARTY: Schrull, S-C-H-R-U-L-L.

20 SR. SPECIAL AGENT LUINA: Okay. Go ahead.

21 MR. MCBREARTY: And I talked to him and a
22 guy named Tom Hess (phonetic), who was the, the
23 assigned Program Manager. Tom worked for Ed, at the
24 time, for, for Sequoyah. So if there was a license
25 amendment to be written, Tom would be the guy to do

1 it.

2 SR. SPECIAL AGENT LUINA: Okay.

3 MR. MCBREARTY: And they told me, they
4 could -- I said, what's your schedule, if we start
5 today, to get a license amendment done, and Tom told
6 me, the end of August of 2017. So I said, I'm, I'm
7 going to give you an extra month, because things never
8 go smoothly --

9 SR. SPECIAL AGENT LUINA: Right.

10 MR. MCBREARTY: -- when you're writing
11 licenses and so forth. We told, I told Ryan Taylor,
12 I think his name was, end of September, and we had a,
13 we had a CR tracking that action. That didn't get
14 done.

15 There were some personnel changes in our
16 Corporate Licensing Office. One of the guys had left,
17 I think, it was, and so that kept getting extended.
18 And then they had some higher priority work.

19 And so it wasn't until sometime in 2018,
20 February, or March, of 2018, when that license
21 amendment finally --

22 SR. SPECIAL AGENT LUINA: Yes.

23 MR. MCBREARTY: -- got submitted.

24 SR. SPECIAL AGENT LUINA: Okay, well --

25 MR. MCBREARTY: And even, even then, you

1 know, up until I finally got Joe Shea's approval on
2 it, he was still challenging me on, how come you're
3 not supporting that 5059?

4 And he kept going, he kept going back and
5 forth. I said, Joe, you know, we've had this
6 discussion so many times, we, he can't go indefinitely
7 in non-compliance.

8 SR. SPECIAL AGENT LUINA: Do you know if
9 that law's been approved, yet, by the NRC?

10 MR. MCBREARTY: I'm not sure.

11 SR. SPECIAL AGENT LUINA: Okay. Because,
12 it wasn't when you were, by the end of August, at
13 least, right?

14 MR. MCBREARTY: It wasn't -- I wasn't
15 aware that it had been approved by them, but I had
16 been out of the office for three months, by then.

17 SR. SPECIAL AGENT LUINA: Okay.

18 MR. MCBREARTY: I know we had a
19 pre-submittal meeting with the NRC, it's a conference
20 call, actually, with the Office of Nuclear Reactor
21 Regulation, Andy Haan (phonetic) was our, our Program
22 Manager. And then, he had the Technical Specification
23 Review Branch on it and one of the technical experts
24 from Division of Engineering. And they, what they
25 conveyed to us is it seems like a fairly routine

1 change --

2 SR. SPECIAL AGENT LUINA: Okay.

3 MR. MCBREARTY: -- it didn't seem
4 complicated. Typically, you know, yes, it's usually
5 -- typically, when you submit a license amendment
6 request, unless you ask for some, you know, emergency,
7 or --

8 SR. SPECIAL AGENT LUINA: Yes.

9 MR. MCBREARTY: -- it takes about a year
10 --

11 SR. SPECIAL AGENT LUINA: Oh.

12 MR. MCBREARTY: - to get the, the
13 approval.

14 SR. SPECIAL AGENT LUINA: Okay. Okay.
15 And then what?

16 MR. MCBREARTY: And so that was the, the
17 story of the Kirk Key.

18 SR. SPECIAL AGENT LUINA: Of the Kirk Key,
19 yes.

20 MR. MCBREARTY: And, going back to the
21 service life issue. So that one, we got direction,
22 like the Kirk Key, to draft this clarification letter.
23 And John Johnson was the guy from my -- at that point,
24 I was back, as Site Licensing Manager, John was now
25 working for me. He was the one that was on the

1 Regulatory Analysis Team that developed the original
2 denial. And I instructed him to work with
3 Engineering, to turn this into a clarification letter.

4 Over the next three to four months, we
5 probably rewrote that clarification letter four times.
6 And, every time, it would go through all of the site
7 concurrence, you know, Engineering Director, myself,
8 it would get concurred on by the Site Vice President,
9 and then it would go downtown.

10 And, each time, sometimes I got some
11 editorial comments back from some of the individual
12 contributors in Corporate Licensing, but it, when it
13 got to Joe Shea, it never got signed. And each time
14 --

15 SR. SPECIAL AGENT LUINA: Okay, I think --

16 MR. MCBREARTY: -- I would talk with Joe
17 and Erin, Erin Henderson, and Joe would, he kept
18 telling me, Mike, I don't think it's sufficiently
19 persuasive.

20 And, by the last time, I said, Joe, and
21 this, this is probably March of 2016, I said, Joe, I
22 can't keep going back to the site, you know, this has
23 got all the concurrences on it.

24 I don't know what to tell him. I think it
25 is sufficient persuasive. I don't know what changes

1 to make. I need you to give me editorial comments and
2 tell me where exactly we need to change it. And he,
3 he opted not to do that.

4 I think, at one point, it got handed to
5 Beth Wetzel's (phonetic) group. Beth is a Corporate
6 Licensing Manager that reports to Erin Henderson.
7 She's currently on a rotational assignment at NEI, but
8 I think the direction was given to her group, to try
9 and improve this persuasiveness of this letter.

10 SR. SPECIAL AGENT LUINA: Okay.

11 MR. MCBREARTY: Suddenly, we just kept --
12 we stopped hearing about it. I don't know if it was
13 overcome by other events, but it probably, probably,
14 the last time I heard about it, or talked to Joe about
15 it, was somewhere around the middle, or late March, or
16 early April, 2016.

17 SR. SPECIAL AGENT LUINA: 2016, oh okay.
18 That's it?

19 MR. MCBREARTY: And then --

20 SR. SPECIAL AGENT LUINA: It's just --

21 MR. MCBREARTY: So then, you know,
22 Corporate Licensing has a position called, I think,
23 it's Cognizant Functional, or no, Corporate Functional
24 Area Manager, a CFAM.

25 SR. SPECIAL AGENT LUINA: Yes, a CFAM.

1 MR. MCBREARTY: And they had, in early
2 2016, they had hired someone in February of 2016,
3 Terri Michelle Connor, as the CFAM. So we have a
4 weekly, what we call, a peer team call, and that's all
5 three Site Licensing Managers, and then Corporate
6 Licensing CFAM and, typically, others from Corporate
7 might call in, Joe Shea, Erin Henderson, and then,
8 once a month, we meet.

9 So throughout 2016, we kept, we, me, kept
10 asking Corporate Licensing, including Terri Michelle
11 Connor, you know, what's the status of this? And, I'm
12 friends with Michelle. She would go and query Joe and
13 Erin and never got any feedback.

14 And then, somewhere in, I think, it was
15 about September time frame of 2016, Michelle Connor,
16 there was an announcement that she was going to be put
17 on a special project to help operator training at
18 Watts Bar.

19 Michelle, she was a Senior Reactor
20 Operator. She managed our improved tech spec project,
21 at Sequoyah, and was very knowledgeable at tech specs.
22 And so they designated a new Corporate Licensing CFAM,
23 an individual named Jim Polickoski, who was also, he
24 got hired in, I think, it was in the 2015 time frame,
25 or late 2014, from NRC Region II. So he, he had a

1 strong regulatory background, as well.

2 SR. SPECIAL AGENT LUINA: And that's
3 P-O-L-I-C-K-O-S-K-I --

4 MR. MCBREARTY: I believe that's it.

5 SR. SPECIAL AGENT LUINA: Polickoski.

6 MR. MCBREARTY: Yes.

7 SR. SPECIAL AGENT LUINA: Okay, so you
8 brought him in.

9 MR. MCBREARTY: And he had been a
10 Corporate Licensing employee for, probably, almost two
11 years, at that point, maybe, a year. And he, he, kind
12 of, he, kind of, became, he was, kind of, the guy they
13 would send to put out fires.

14 SR. SPECIAL AGENT LUINA: Okay.

15 MR. MCBREARTY: He's a very knowledgeable
16 guy and he's got good project management skills. So
17 he became the active CFAM. And I started talking to
18 Jim about it, saying, Jim, we've had these
19 non-compliances for two years now and, you know, for
20 the Kirk Key, we submitted something, it wasn't in
21 process.

22 I said, service life, we haven't done
23 anything. And there was a, because of the issues that
24 had been raised in Region III that I might refer to,
25 the unresolved issues.

1 And then, Monticello plant had actually
2 got an non-cited violation that they had submitted a
3 denial for and hadn't heard back. This service life
4 issue it's called, became an, it became in industry
5 issue.

6 SR. SPECIAL AGENT LUINA: Okay.

7 MR. MCBREARTY: And the NRC was developing
8 a RIS, Regulatory Issue Summary, which the industry
9 was looking to, to establish an NRC positional service
10 life and resolve the issue for the industry.

11 SR. SPECIAL AGENT LUINA: Okay.

12 MR. MCBREARTY: You know, one thing I told
13 our, Joe Shea and Erin Henderson is, even if the RIS
14 comes out, like, they refer to it, as a RIS, R-I-S, I
15 said, that doesn't alleviate the compliance issue.

16 We, we actually have a non-cited violation
17 on the books, it's not a URI, so I don't know if,
18 based on a RIS, the NRC would withdraw an NCV. We
19 still have a legal obligation to, either, deny it, or
20 correct it.

21 SR. SPECIAL AGENT LUINA: Okay.

22 MR. MCBREARTY: That RIS went back and
23 forth, morphed, it evolved several times, as NEI had
24 a working group that would weigh in on it. I had, I
25 wasn't following it all that closely, through 2016.

1 SR. SPECIAL AGENT LUINA: Okay.

2 MR. MCBREARTY: But we did refer to it in,
3 at least, one of our Corrective Action Program
4 documents that we're following the industry resolution
5 and, and the, the issuance of this Regulatory Issue
6 Summary. So I digressed a little bit. So Jim --

7 SR. SPECIAL AGENT LUINA: Yes.

8 MR. MCBREARTY: -- Polickoski became CFAM,
9 and I said, Jim --

10 SR. SPECIAL AGENT LUINA: Yes.

11 MR. MCBREARTY: -- and Jim and I, I
12 thought we were, we had pretty good friends and we
13 could speak pretty openly about each other and, and
14 both had what I would consider strong regulatory
15 backgrounds and understood NRC process.

16 And so Jim started asking his boss, Erin
17 Henderson and Joe Shea, what's the status of this,
18 this clarification letter we wrote for the service
19 life?

20 And, at least, through the end of 2016,
21 he, he wasn't getting any information back on what the
22 status was, what they're going to do with it. Then,
23 somewhere, in early 2017, and it was during a peer
24 team call, or a face-to-face meeting, I don't know
25 exactly which one, or the exact date, I was told by

1 Joe Shea that, we decided not to submit the
2 clarification letter, because we're going to wait to
3 see what happens with this RIS.

4 SR. SPECIAL AGENT LUINA: With the RIS,
5 okay. And that's early of '17, okay.

6 MR. MCBREARTY: Correct.

7 SR. SPECIAL AGENT LUINA: And that was it.

8 MR. MCBREARTY: And that was it, until --

9 SR. SPECIAL AGENT LUINA: Until that
10 (indiscernible).

11 MR. MCBREARTY: -- now we, you know, when,
12 when Jonathan Bartley called me about the Kirk Key,
13 which was in March of 2017 --

14 SR. SPECIAL AGENT LUINA: About the
15 clarification letter?

16 MR. MCBREARTY: The clarification letter
17 --

18 SR. SPECIAL AGENT LUINA: Okay.

19 MR. MCBREARTY: -- and the fact that the
20 NRC was --

21 SR. SPECIAL AGENT LUINA: Oh, they were
22 going to deny it, okay.

23 MR. MCBREARTY: -- it didn't change
24 anything.

25 SR. SPECIAL AGENT LUINA: That's right,

1 yes. Okay, cool. Yes.

2 MR. MCBREARTY: That was, also, you know,
3 when we got that phone call, there was some discussion
4 on, hey, we have a BINR biannual inspection --

5 SR. SPECIAL AGENT LUINA: Okay
6 (indiscernible) --

7 MR. MCBREARTY: -- coming up in June and
8 this --

9 SR. SPECIAL AGENT LUINA: --
10 (indiscernible).

11 MR. MCBREARTY: -- they go, oh well could,
12 they, we expect the NRC to look at both issues.

13 SR. SPECIAL AGENT LUINA: Yes.

14 MR. MCBREARTY: And so at that point,
15 Corporate Licensing gave direction -- there was, there
16 was some discussion on, is it too late to deny it, the
17 service life issue, because (indiscernible) the
18 inspection report says 30 days, we asked for an
19 extension, and we're well-beyond all of that.

20 And, someone in Corporate Licensing, I
21 think it was Erin Henderson, pointed out, well, the
22 inspection report says you should deny it, within 30
23 days, so it's not a shallow statement.

24 SR. SPECIAL AGENT LUINA: (Indiscernible.)

25 MR. MCBREARTY: So we decided to put

1 together a denial letter, which we fully, I
2 fully-expected the NRC to say, you've, you've not met
3 the timeliness requirements. So we decided to make it
4 a combined denial, assuming the NRC disagreed with our
5 denial, we would ask for a backfit review.

6 SR. SPECIAL AGENT LUINA: Okay, yes, I
7 remember, he talked about this, yes. Okay.

8 MR. MCBREARTY: So that's, that's a
9 process the NRC has that says, you know, a utility
10 come in and say, hey, you're imposing a new regulatory
11 requirement that's outside of our licensing basis and
12 there's a process the NRC has to go through to justify
13 it.

14 It's usually, almost, like a cost benefit
15 to safety. So that letter first got drafted, I think,
16 it was April 2017. And again, I mean, we had, we had
17 our OGC, our lawyers involved, we had a dedicated
18 lawyer for it.

19 They signed off on it. All, all of our
20 site signed off on it, our Site Vice President, and
21 we, we went through four or five Site Vice Presidents
22 in a fairly short period of time.

23 I, I do think that didn't help this thing
24 getting more attention. But our Site Vice, the new
25 Site Vice President signed off on it. And he,

1 actually, he and I had a conversation one day and I,
2 I told him the history. And I have a good
3 relationship with him. That's Tony Williams.

4 SR. SPECIAL AGENT LUINA: Williams that's
5 right.

6 MR. MCBREARTY: Tony Williams.

7 SR. SPECIAL AGENT LUINA: Yes.

8 MR. MCBREARTY: And he came from the
9 Palisades Plant and, I think he started, he started at
10 Sequoyah around March of 2017, shortly before our
11 refueling outage.

12 But, I said, Tony, and Palisades was one
13 of the Region III plants that had a unresolved issue
14 on this same issue, so Tony was familiar with the
15 issue. He said, Mike, if Corporate, if Joe won't sign
16 it, I'll sign it.

17 SR. SPECIAL AGENT LUINA: Okay.

18 MR. MCBREARTY: We're going to submit.
19 And, again, we, we gave the signed letter to Corporate
20 and weren't hearing anything back. And, at that
21 point, I told Corporate, I can't remember who I told,
22 but I said, hey, we're going to have a, I was doing a
23 peer team goal, I said we're going to have a corporate
24 or our Site Vice President sign it.

25 And I went through the procedure with

1 them, their, you know, the things that require the
2 (indiscernible) site approval and the things that
3 require corporate approval.

4 And for violations, it was escalated
5 violations, require the Corporate Site Vice, the
6 Corporate Vice President. I said, this isn't
7 escalated, it's a green SCV.

8 And, when I got back from Joe Shea and
9 Erin Henderson was, well, the, the procedure's a
10 little confusing, but it requires Corporate Vice
11 President approval.

12 And they said the word precedence for it,
13 I don't know if it was the Browns Ferry Plant, or the
14 privy issue, but they said, Tony can't sign it, he
15 can't, he can't approve it.

16 So we continued to go through -- shortly
17 after that, Joe Shea had told me, it was probably May,
18 May 2017 time frame, that he wanted to have an
19 external expert review it.

20 And, first, we talked about, it was a
21 lawyer, it's actually an ex-NRC lawyer, Dirony Reddick
22 (phonetic). I always, I never know if names, Dirony,
23 or Darony (phonetic).

24 But she, she works for Excelon now, as a,
25 as a lawyer. And she had successfully helped Excelon

1 a year, or two, earlier, with a, a backfit claim. And
2 I had met her at an industry working group and I, Joe
3 said, I want Dirony Reddick to approve it, or review
4 it. I said, okay. I, I know her, I work with her, I
5 trust her, we'll get her.

6 And then, somewhere down the line,
7 somewhere in the, in the subsequent Marty said, no, I
8 want this guy Marty Murphy (phonetic), who is with
9 NextEra Energy, I think it is, or no, Xcel. I think
10 he's with Xcel Energy. He's out at Monticello. He's
11 also ex-NRC.

12 And I had not met Marty. But, Joe started
13 asking me and John Johnson to start providing all of
14 our supporting information, electronically, to Joe's
15 secretary, who would then give it to this Mary Murphy.

16 SR. SPECIAL AGENT LUINA: Marty Murphy,
17 okay.

18 MR. MCBREARTY: And, somewhere in June of
19 2017, I had, I had gone out for a week to California,
20 for my niece's college graduation. When I got back,
21 Joe said, Mike, Marty Murphy got back with me and he
22 gave me his comments. So I said, okay, I'll, I'll
23 come down and meet with you.

24 So I went downtown and meet with Joe and
25 he said, you know, I didn't write down all his

1 comments and he didn't send them to me electronically,
2 why don't you follow up with him?

3 SR. SPECIAL AGENT LUINA: Okay.

4 MR. MCBREARTY: It -- yes, it was very --
5 so I followed up with Marty. It took a couple weeks
6 before we actually talked and he said he would try and
7 find his, electronic editorials.

8 SR. SPECIAL AGENT LUINA: Okay.

9 MR. MCBREARTY: But he, basically, gave me
10 some. He said, Mike, it's, just seems like a tough
11 read and you need to be, you need to make sure that
12 you're addressing the specific violation in this
13 letter.

14 And Marty seemed like a nice guy to work
15 with. And then, I think, it was in September of 2017,
16 I actually got to meet him at a, it was an industry
17 working, not industry work group, it was an NRC public
18 meeting on the, that regulatory summary issue I told
19 you about.

20 So that was with the NRC Committee to
21 Review Generic Requirements, CRGR. And the industry,
22 myself included, made a presentation about, here's
23 what we think needs to get fixed in the RIS, or
24 actually, we were recommending they not even issue it,
25 at that time, because it was very, somewhat confusing.

1 SR. SPECIAL AGENT LUINA: Okay.

2 MR. MCBREARTY: But they asked me to, they
3 asked three industry representatives, Marty, there was
4 a guy from Wolf Creek, and myself, to speak about our
5 specific violations and/or URIs. So I, I got to speak
6 for about five minutes on the Sequoyah issue.

7 SR. SPECIAL AGENT LUINA: On the, on those
8 two NCVs, or on, on the service life?

9 MR. MCBREARTY: Just, just on service
10 life.

11 SR. SPECIAL AGENT LUINA: Service life,
12 okay.

13 MR. MCBREARTY: Yes. And, basically, just
14 to give them, this is, this is what the issue is --

15 SR. SPECIAL AGENT LUINA: Yes.

16 MR. MCBREARTY: -- this is what our
17 violation was for, this is why we think we're okay.

18 SR. SPECIAL AGENT LUINA: Yes.

19 MR. MCBREARTY: And also talk about, you
20 know, it, it would be easy, if we could just say okay
21 that one molded case circuit breaker --

22 SR. SPECIAL AGENT LUINA: Yes.

23 MR. MCBREARTY: -- we can do something
24 different, but it's part of a whole program for
25 safety-related electrical equipment. They refer it to

1 as safety-related electrical equipment in non-harsh
2 environments.

3 SR. SPECIAL AGENT LUINA: Okay.

4 MR. MCBREARTY: So it's not seeing severe
5 temperatures, or radiation.

6 SR. SPECIAL AGENT LUINA: Yes.

7 MR. MCBREARTY: And, typically, the
8 industry follows the same sort of process and they,
9 they don't specify any service life, they test it and
10 inspect it --

11 SR. SPECIAL AGENT LUINA: Okay.

12 MR. MCBREARTY: -- and then, to make sure
13 it's working properly. But, so if --

14 SR. SPECIAL AGENT LUINA: (Indiscernible.)

15 MR. MCBREARTY: -- what I told CRGR was,
16 and it was in our submittal to the NRC, when we
17 finally did send it to denial, was that, for us to
18 correct it, our estimate, just for Sequoyah, was \$220
19 Million dollars.

20 SR. SPECIAL AGENT LUINA: (Indiscernible.)

21 MR. MCBREARTY: Because it, there was such
22 a large population of other electrical equipment, you
23 know, that we're one, we call 1E, safety-related 1E
24 electrical equipment in a non-harsh environment, we'd
25 have to treat them all the same and then that would,

1 also, then get extended to our other plants.

2 And, at that CRGR meeting, the other two
3 plants that were there, Marty representing Monticello,
4 and I can't remember the gentleman, it was Director of
5 Engineering from Wolf Creek said, you know, we, the
6 cost would be similar for us, if we had to implement
7 this new program.

8 Any case, to make a long story short,
9 about a month after that public meeting, CRGR
10 recommended that the NRC issue the RIS, the Regulatory
11 Issue Summary. And I don't believe the NRC ever did
12 issue that RIS. It --

13 SR. SPECIAL AGENT LUINA: (Indiscernible.)

14 MR. MCBREARTY: -- it still left us with
15 the dilemma of --

16 SR. SPECIAL AGENT LUINA: Yes. How you --

17 MR. MCBREARTY: -- how do you --

18 SR. SPECIAL AGENT LUINA: --
19 (indiscernible) do, yes.

20 (Simultaneous speaking.)

21 MR. MCBREARTY: And so we're, we're, I was
22 still trying to get Corporate to sign off on our
23 denial backfit claim.

24 SR. SPECIAL AGENT LUINA: In, like, 2018,
25 in May of 2018?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. MCBREARTY: It's 2017.

SR. SPECIAL AGENT LUINA: Okay that's 2017

MR. MCBREARTY: Yes.

SR. SPECIAL AGENT LUINA: -- yes, yes, okay, so (indiscernible) yes.

MR. MCBREARTY: So at that point, after, after the meeting with the CRGR, it was probably September/October of 2017, was when Wesley DeShane, our Resident Inspector, first said, Mike, you know, I'm going to pick this, as our sample.

I'm going to start looking at your Corrective Action Program documents. And we provided Wesley with all the, with a lot of information, all the information he wanted. He talked to some people.

And then, in early December of 2017 --

SR. SPECIAL AGENT LUINA: '17, yes.

MR. MCBREARTY: -- we had gotten a new Branch Chief, Anthony Masters (phonetic). It was one of his, one of his first times on site, I believe. He may have been there at an earlier visit.

But, I was meeting with him and Wesley and they said, hey, you know, we looked at your Corrective Action Program documents, you didn't follow them. You didn't follow your own process. You never corrected

1 this. You've extended it a number of times.

2 And I said, Wes, you know, I, I've been
3 very up-front with you on, I felt we should've denied
4 it, we never did, and we got this denial backfit
5 that's gone through this review process. And they
6 said, well when, when's it going to be done, when are
7 you going to submit it?

8 And I, I expressed some frustration that,
9 well it's, I got to get our Corporate people to sign
10 off on it. And, at that point, Wesley told me, he
11 said, well here's what we plan to do. You guys, it's
12 been over two years now, you have never corrected it.

13 In our Fourth Quarter Resident Report, we
14 plan to reissue that same violation, as a new Severity
15 Level 4 cited violation and that would require a
16 response by you. And he said, the wording of the
17 violation will be exactly verbatim from the 2015
18 violation.

19 SR. SPECIAL AGENT LUINA: That's just,
20 this is just for the service life one?

21 MR. MCBREARTY: Just service life.

22 SR. SPECIAL AGENT LUINA: The Kirk Key, at
23 that time, was being worked, okay. This is Kirk Key,
24 all right.

25 MR. MCBREARTY: That time we did have,

1 have a CR to develop the LAR for the Kirk Key.

2 SR. SPECIAL AGENT LUINA: That's right,
3 okay. Sorry.

4 MR. MCBREARTY: So we were --

5 SR. SPECIAL AGENT LUINA: So what -- he
6 told you that, then what?

7 MR. MCBREARTY: So it, at that point, I
8 communicated that to our Corporate Office, Jim
9 Polickoski, Erin Henderson, and Joe Shea. And I told
10 them, I said, you know, I believe, if we, if you guys
11 sign this thing off and we submit it, before the end
12 of the Fourth Quarter, it might mitigate that cited
13 violation.

14 SR. SPECIAL AGENT LUINA: Now that's the
15 denial backfit letter?

16 MR. MCBREARTY: Correct.

17 SR. SPECIAL AGENT LUINA: Okay.

18 MR. MCBREARTY: If we have something on
19 the books, --

20 SR. SPECIAL AGENT LUINA: Yes.

21 MR. MCBREARTY: -- you know, we're, we're
22 very, very late in submitting it, but get something
23 out there.

24 SR. SPECIAL AGENT LUINA: The core date,
25 yes, okay.

1 MR. MCBREARTY: And --

2 SR. SPECIAL AGENT LUINA: And then what
3 did they say?

4 MR. MCBREARTY: And, they agreed.

5 SR. SPECIAL AGENT LUINA: Okay.

6 MR. MCBREARTY: And so finally, I think,
7 it was December 21st, when Joe Shea did finally sign
8 that off.

9 SR. SPECIAL AGENT LUINA: Yes, I got that
10 in here, yes.

11 MR. MCBREARTY: And I remember that date,
12 because I was on vacation and I was taking my group
13 from Sequoyah out to lunch and we were at a restaurant
14 near the Corporate Office.

15 And my Site Vice President was asking me,
16 he told me that morning, he said, Joe Shea promised me
17 he would sign it in the morning. He said, can you
18 check to see if it was signed? And this was probably
19 1 o'clock in the afternoon.

20 SR. SPECIAL AGENT LUINA: Yes.

21 MR. MCBREARTY: And I called his secretary
22 and said, she said no he hasn't had time to look at
23 it, yet. So after lunch I went to the Corporate
24 Office --

25 SR. SPECIAL AGENT LUINA: Yes.

1 MR. MCBREARTY: -- and I just -- I know
2 Joe, I, he used to work at the NRC when I worked
3 there.

4 SR. SPECIAL AGENT LUINA: Yes.

5 MR. MCBREARTY: And I sat outside his
6 office with his secretary and I said, I'm going to be
7 here, just in case he's got any last minute questions,
8 or changes.

9 And so after about an hour, or two, he
10 came out and he said, he asked me a question, or two,
11 and said, okay I'm good with it. He had a couple of
12 fairly minor editorials.

13 And then I worked with his secretary to
14 make sure, you know, the final document reflected his
15 editorials. And then I left and, sometime before he
16 left, he signed it.

17 SR. SPECIAL AGENT LUINA: Okay.

18 MR. MCBREARTY: And at that point, the NRC
19 told us that, rather than issue us a cited violation,
20 they're going to, because we now have something on the
21 records denying it, they'll make it an unresolved
22 issue in the Fourth Quarter Report.

23 And they told us that, they being Wesley,
24 that if the NRC agrees with our denial, the URI will
25 get closed and nothing, the unresolved issue. If they

1 disagree with it, it'll get closed to some level of
2 violation. And then, about a week after I got
3 suspended, the NRC withdrew the violation. They
4 agreed with our denial letter. Yes that --

5 SR. SPECIAL AGENT LUINA: The
6 (indiscernible) that was in May of '18, probably,
7 something --

8 MR. MCBREARTY: Yes. May, or early June
9 was, I actually brought the letter with me.

10 SR. SPECIAL AGENT LUINA: Yes, you're
11 right --

12 MR. MCBREARTY: I, I got in touch --

13 SR. SPECIAL AGENT LUINA: -- June, June of
14 2018, you're right.

15 (Simultaneous speaking.)

16 MR. MCBREARTY: John Johnson got in touch
17 with me, right away. He said, hey, I see they
18 actually just withdraw the violation. Yes, June, June
19 1st.

20 SR. SPECIAL AGENT LUINA: Okay.

21 MR. MCBREARTY: Which, yes, in my mind, it
22 was, you know, we were just saying, this is going to
23 cost us \$220 Million dollars.

24 SR. SPECIAL AGENT LUINA: Yes.

25 MR. MCBREARTY: I had to fight tooth and

1 nail with Corporate to get them to finally sign it and
2 I've been suspended. And that's -- I, I still think
3 that those two issues were the key issues that caused
4 tension and frustration between my, myself and my, my
5 group, at Sequoyah, and Corporate Licensing, Joe Shea
6 and Erin Henderson.

7 SR. SPECIAL AGENT LUINA: Those two NCVs?

8 MR. MCBREARTY: Yes.

9 SR. SPECIAL AGENT LUINA: Okay.

10 MR. MCBREARTY: Because I --

11 SR. SPECIAL AGENT LUINA: Fighting those
12 for two years, you're saying.

13 MR. MCBREARTY: So pushing them and then,
14 I was also in -- after Jonathan Bartley called and
15 said we, we've done the review of that clarification
16 for the Kirk Key --

17 SR. SPECIAL AGENT LUINA: Kirk Key, yes.

18 MR. MCBREARTY: -- and it didn't change
19 anything, I, I told Joe Shea and Erin Henderson, and
20 this was on a peer team call, I said, we need a
21 condition report, Corrective Action Program document,
22 to go back and look at the decision making that got us
23 here.

24 SR. SPECIAL AGENT LUINA: Sure,

25 MR. MCBREARTY: And they didn't want to

1 hear it. I, I told them, I think you guys should
2 write it, it's your issue. And then, they wouldn't,
3 so I drafted it. I send it out, for review, over
4 several days. I got some comments from Corporate.

5 They, Jim Polickoski finally said, go
6 ahead and we end up writing two different CRs. I
7 generated them, they got assigned to Corporate, and
8 then, the one where I said, you need to go look at,
9 you know, lessons learned, what, how did we get here,
10 what do we need to change?

11 A couple of months later it got, it got
12 closed to nothing.

13 SR. SPECIAL AGENT LUINA: Yes. And we'll
14 talk about that, let's --

15 MR. MCBREARTY: Yes.

16 SR. SPECIAL AGENT LUINA: -- let's go back
17 through a couple of things. I --

18 MR. MCBREARTY: Okay.

19 SR. SPECIAL AGENT LUINA: -- I think you
20 walked me through all that. The -- you mentioned in
21 your letter -- or I'll just go back through some of my
22 stuff that I wanted to ask you about, if that's all
23 right with you?

24 MR. MCBREARTY: Sure.

25 SR. SPECIAL AGENT LUINA: In April of

1 2016, you mentioned that you were accused, by Erin
2 Henderson, of having an inappropriate relationship
3 with one of her employees, you remember this?

4 MR. MCBREARTY: Yes.

5 SR. SPECIAL AGENT LUINA: And then, an
6 unsubstantiated investigation, which I -- and then,
7 TVA, ECP, maybe, told you that, Connor, Terri Michelle
8 Connor, you mentioned earlier, was the target of
9 Henderson's accusations.

10 MR. MCBREARTY: Right.

11 SR. SPECIAL AGENT LUINA: And you're a
12 casualty of all that, do you want to explain more of
13 what happened there, I guess?

14 MR. MCBREARTY: Yes. So --

15 SR. SPECIAL AGENT LUINA: Just for
16 context, I guess, really is what that --

17 MR. MCBREARTY: I, I was at, I believe, it
18 was in, what we call our Nuclear Safety Review Board,
19 NSRB meeting. In that time frame, April/May time
20 frame of 2016, and our HR, Human Resources Manager,
21 came up to me, after the meeting, and said, Mike, are
22 you in tomorrow, and I said yes. And she said, I need
23 you to stop by our office, we need to talk to you
24 about something.

25 SR. SPECIAL AGENT LUINA: Who's that, her

1 name?

2 MR. MCBREARTY: Jessie Shahan (phonetic).

3 SR. SPECIAL AGENT LUINA: Okay.

4 MR. MCBREARTY: And so I went down there
5 and Jessie didn't meet with me, she had one of the
6 other HR people that would meet with me. And she
7 said, listen, you have been, there's been a concern
8 that you and Terri Michelle Conner are having an
9 inappropriate relationship, and she asked me a bunch
10 of questions about it.

11 And, at some point, over the next month,
12 I got called down, called down, again, and asked more
13 questions. And I said, so what's, what's the status
14 of this thing?

15 And, site, our Sequoyah Site Human
16 Resources said, well, it's a Corporate HR issue where
17 it got raised, we're helping them with the
18 investigation, it's still ongoing, they're still
19 collecting information.

20 And, for me, it, I, they didn't give me a
21 final status, until like the following spring that it
22 was closed and nothing was found. Although, I, I
23 later told, this was when I was talking to our Senior
24 Program Manager for Corporate ECP, the Employee
25 Concerns Program, Inza Hagins-Dyer.

1 MR. MCBREARTY: He said it was Corporate
2 executives.

3 SR. SPECIAL AGENT LUINA: Corporate
4 executives.

5 MR. MCBREARTY: So I'm, I'm sure my Site
6 Vice President would've been involved, probably, from
7 the site, him and Al. HR, maybe.

8 SR. SPECIAL AGENT LUINA: Okay.

9 MR. MCBREARTY: But then, I would've been
10 up, like, the CNO level.

11 SR. SPECIAL AGENT LUINA: Oh, okay.

12 MR. MCBREARTY: And, and then he called
13 me, he, he called, or texted, me on the following day,
14 Thursday, and said, hey, you know, do you want to come
15 back tomorrow? That Friday. And I said, no. I'm, I
16 forfeited vacation time last year, and I'm a little
17 upset right now and I, I want to take a week off and
18 just digest all this, and he said that's fine.

19 And then he called me the following
20 Thursday. And I thought he was calling to say, Mike,
21 here's what you need to do, when you come back in on
22 Monday. And he said, Mike, I'm sorry, he said, I'm
23 not sure what's going on, but I can't let you come
24 back on site, yet. He said, this investigation is
25 taking new turns, it's expanding, it's involving other

1 people, and I don't know, I don't know what the
2 schedule will be, at this point.

3 But then I got, I got a call from him, the
4 following, or a text, from him the following weekend.
5 He said, this was a really good day for Mike
6 McBrearty, and I still got the text.

7 And then, the next day, he said this was
8 another really good day for Mike McBrearty. And he
9 and I talked and he thought, he thought, you know,
10 they were close to a resolution.

11 And, from our discussion and from the
12 text, I thought, I'm going to be completely
13 exonerated, which I felt I should be, I didn't think
14 I did anything wrong.

15 And then, he said he'll get back in touch
16 with me the following Monday. I never heard from him.
17 I got back in touch with him, like, that Wednesday,
18 and he said, you know, it's, we're still in process,
19 Mike.

20 And he said, he told me, he said, you
21 know, I'm, I'm new to TVA, I'm not used to this
22 process and I'm still trying to understand it. And
23 then it just seemed like I would not hear anything for
24 two to three weeks. And then I'd, I'd just say, hey,
25 we haven't forgot about you, it's still in process.

1 And, at that point, I thought, you know,
2 they could call me any day and say you're terminated.
3 And I got bills to pay, so I, I started looking for
4 another job. I mean, I, I had put feelers out, before
5 that, but I got the feeling it was, it was strange to
6 me that they were letting this go for two, over two
7 months.

8 SR. SPECIAL AGENT LUINA: You were on --

9 MR. MCBREARTY: I was on paid suspension.

10 SR. SPECIAL AGENT LUINA: Paid suspension,
11 okay.

12 MR. MCBREARTY: They're paying me to just
13 stay home.

14 SR. SPECIAL AGENT LUINA: Stay at home,
15 yes.

16 MR. MCBREARTY: And I thought, I started
17 thinking to myself that, you know, maybe, they're just
18 trying to wear me down and they're hoping I'll go find
19 another job.

20 SR. SPECIAL AGENT LUINA: Yes.

21 MR. MCBREARTY: And then, so finally I did
22 get another job, so I, I resigned.

23 SR. SPECIAL AGENT LUINA: Resigned.

24 MR. MCBREARTY: And I did get feedback
25 from --

1 SR. SPECIAL AGENT LUINA: Oh yes?

2 MR. MCBREARTY: -- from the site, from Al.
3 And then I talked to Dennis Demopolis and I said,
4 Mike, everyone at this site supported you, we were
5 doing everything we could to bring you back, and it
6 was out of our hands, meaning, the decision was being
7 made at Corporate.

8 SR. SPECIAL AGENT LUINA: And they
9 weren't. So you never got called by OGC for an
10 interview, HR interview --

11 MR. MCBREARTY: Nothing.

12 SR. SPECIAL AGENT LUINA: -- your only
13 contact was with Dodds --

14 MR. MCBREARTY: Dodds.

15 SR. SPECIAL AGENT LUINA: -- the whole
16 time?

17 MR. MCBREARTY: Then I, I got in touch
18 with Dennis, after I resigned. It was actually --

19 SR. SPECIAL AGENT LUINA: Demopolis?

20 MR. MCBREARTY: Right.

21 SR. SPECIAL AGENT LUINA: Okay, go ahead.

22 MR. MCBREARTY: It's actually, after I'd
23 already sold my house and I think I was driving across
24 country. Because, his, his wife, she had cancer that
25 had been in remission that came up, again, so I called

1 to see how he was doing.

2 And he just, he said the same thing. And
3 he said, Mike, there is no alignment within TVA, as to
4 why this happened. And the site was trying to get you
5 back and we couldn't do it.

6 SR. SPECIAL AGENT LUINA: So alluding that
7 Corporate, somehow --

8 MR. MCBREARTY: That's, that's -- I'm 99
9 percent sure.

10 SR. SPECIAL AGENT LUINA: Okay. Did he
11 ever mention anybody, specifically, or --

12 MR. MCBREARTY: No.

13 SR. SPECIAL AGENT LUINA: Okay.

14 MR. MCBREARTY: Well, Al, at one point, it
15 was after, it was when he was texting me saying this
16 was another good day for Mike McBrearty. And he said,
17 the decision, at that point, and this, probably, you
18 know, two weeks after I'd been suspended that the
19 decision was with Steve Bono (phonetic).

20 SR. SPECIAL AGENT LUINA: And you'll have
21 to tell me that --

22 MR. MCBREARTY: Steve Bono's another
23 Senior Vice President.

24 SR. SPECIAL AGENT LUINA: Okay.

25 MR. MCBREARTY: He, he's --

1 SR. SPECIAL AGENT LUINA: I've heard the
2 name, yes.

3 MR. MCBREARTY: He's a peer, he's the same
4 level, as David Czufin.

5 SR. SPECIAL AGENT LUINA: Okay.

6 MR. MCBREARTY: David Czufin has
7 Engineering and, and Support Services, and then Steve
8 Bono has Operations, Plant Operations. And that, that
9 was the last name I heard.

10 SR. SPECIAL AGENT LUINA: Okay.

11 MR. MCBREARTY: That it was with Steve and
12 that, I don't, I don't --

13 SR. SPECIAL AGENT LUINA: Did -- you know,
14 when you mentioned, Mike, he, he said something about
15 it's taking a different turn, or it's out of our
16 hands, or you might get a call from OCG, or HR. I
17 just have to ask you, Mike, is there anything else
18 that's going to come up, when I go talk to TVA, like,
19 oh no, Scott (indiscernible) he didn't know about this
20 and this and this?

21 MR. MCBREARTY: Absolutely not.

22 SR. SPECIAL AGENT LUINA: Okay.

23 MR. MCBREARTY: And, you know, people,
24 people are telling me they, like, my group is livid.

25 SR. SPECIAL AGENT LUINA: Yes.

1 MR. MCBREARTY: Because they respected me
2 and, you know, I, I'm not the most known person in
3 nuclear, but places I've been, I've been respected and
4 people have appreciated the advice I've given them and
5 the regulatory recommendations.

6 Because, I'm, I'm not afraid to tell my
7 management when I think that they're doing something
8 wrong that they need to do something different.

9 SR. SPECIAL AGENT LUINA: Yes.

10 MR. MCBREARTY: And it can be done in a
11 professional way. So -- I mean, somebody, somebody
12 from Watts Bar even told me that our, the Nuclear
13 Safety Review Board, they, they come two, or three,
14 times a year and it's this group of external, usually
15 retired, ex-CNOs, ex-NRC Regional Administrators and
16 they, they're required, by our Quality Assurance Plan,
17 to come in and, and they do a, like, a couple of days
18 of review of, yes, and they make recommendations.

19 But the, the plant support person, they,
20 what someone from Watts Bar told me was that, at their
21 exit meeting, he actually said that, he was talking
22 about Sequoyah, that the safety culture there is now,
23 I forget, fragile.

24 And they said he, he specifically said,
25 because of what's happening, with the Site Licensing

1 Manager, right now, and I was told he said my name.

2 SR. SPECIAL AGENT LUINA: Who, who said
3 this?

4 MR. MCBREARTY: John, the NSRV person is
5 John McCann (phonetic).

6 SR. SPECIAL AGENT LUINA: Okay.

7 MR. MCBREARTY: The person that had been
8 at Watts Bar, he is now transferred, he just recently
9 transferred to Sequoyah, is Gordon Art (phonetic).

10 SR. SPECIAL AGENT LUINA: Yes I
11 (indiscernible) okay. So it, it has, kind of, word
12 has, kind of, spread about what happened to you, I
13 guess, in Sequoyah?

14 MR. MCBREARTY: Yes.

15 SR. SPECIAL AGENT LUINA: Okay.

16 MR. MCBREARTY: I mean, you know, I, after
17 I resigned, I, I started getting a lot of outreach
18 from people that have worked with me, (indiscernible)
19 the people that work for me.

20 Hey, my, my group took me out to lunch,
21 before I left town, and John Johnson, who's now acting
22 for me, he said, Mike, Tony Williams came up to me and
23 said, you know, that's it, I'm, I'm covering Mike's
24 luncheon.

25 SR. SPECIAL AGENT LUINA: Oh, okay, he

Attachment 5

Exhibit 22

Exhibit 22

2-2018-033

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

OFFICIAL USE ONLY
OI INVESTIGATION INFORMATION

Title: Interview of Ralph Dodds

Docket Number: 2-2018-033

Location: Soddy-Daisy, Tennessee

Date: May 16, 2019

Work Order No.: NRC-0356

Pages 1-47

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 the draft report you read?

2 MR. DODDS: Yes.

3 SR. SPECIAL AGENT LUINA: It was? Okay.

4 MR. DODDS: Yeah, it was early in the I
5 think the last paragraph, cannot conclude that he used
6 ECP in good faith. Since three of his -- he made
7 three allegations, and they were all denied. Well,
8 I've been around long enough to know that that's
9 usually what happens with ECP cases. They usually do
10 -- not get denied, but they're not usually confirmed.

11 SR. SPECIAL AGENT LUINA: Okay.

12 MR. DODDS: So at this point, I was
13 worried about -- are we going to screw up our
14 safety-conscious work environment by using
15 participation in SCWE as a basis to discipline
16 somebody?

17 SR. SPECIAL AGENT LUINA: Just real
18 quickly, when you had that conversation with Tony,
19 he'd already been sent home by that point, right?

20 MR. DODDS: McBrearty?

21 SR. SPECIAL AGENT LUINA: McBrearty.

22 MR. DODDS: Yes.

23 SR. SPECIAL AGENT LUINA: Okay. All
24 right. Sorry, go ahead. So then you say in SCWE,
25 you're talking about safety-conscious work

1 environment. It's Sierra, Charlie, Whiskey, Echo.
2 S-C-W-E, yeah.

3 MR. DODDS: Okay.

4 SR. SPECIAL AGENT LUINA: Sorry, go ahead.

5 MR. DODDS: Tony said, yeah, I see where
6 you are coming from.

7 SR. SPECIAL AGENT LUINA: Yeah, Tony --

8 MR. DODDS: He essentially said, I agree
9 and stand your ground on that.

10 SR. SPECIAL AGENT LUINA: Was that the
11 same day?

12 (No audible response.)

13 SR. SPECIAL AGENT LUINA: Okay. All
14 right. Sorry, go ahead.

15 MR. DODDS: Well, then we had several
16 conversations for the next couple weeks. This came up
17 many, many times between me and Tony. I still didn't
18 know what the timeframe was for the remainder of the
19 investigation. I was thinking days. I did sit in on
20 one conference call, and I initiated one conference
21 call between our legal folks and HR, both site HR and
22 corporate HR, just to kind of see if I could figure
23 out, you know, where is everybody on this? What's
24 next?

25 In my mind, Mike was likely to get some

1 disciplinary action but hadn't done anything to rise
2 to the level of termination. And we had I think it
3 was about three conversations over the next month.
4 And it was very clear to me that corporate HR and
5 legal were adamant on termination. And adamant that
6 his use of the Employee Concerns Program was being
7 done in a deliberate attempt to harass Erin, and that
8 that was grounds for termination.

9 SR. SPECIAL AGENT LUINA: Do you remember
10 who from OGC and who from HR was on the phone
11 (inaudible)?

12 MR. DODDS: Chris Chandler was on. Amanda
13 Poland was on. Jessie Sheehan (phonetic), she was our
14 Site HR manager, was on. And there were a couple of
15 others.

16 SR. SPECIAL AGENT LUINA: Okay.

17 MR. DODDS: And these were --

18 SR. SPECIAL AGENT LUINA: I'm sorry was
19 Joe Shea involved in these discussions at all?

20 MR. DODDS: Yes. Yep, he was on. He sure
21 was, thank you.

22 SR. SPECIAL AGENT LUINA: All right.

23 MR. DODDS: And there was a lot of
24 strongly held opinions on both sides. It was all
25 professional, but strongly held opinions. On the

1 other side of the argument was you're not a trained
2 investigator. You don't know what will work in court
3 and won't work. And we would have no problems taking
4 this to court.

5 My response was I'm not even thinking
6 about court. I'm thinking about the impact on the
7 people at Sequoyah. That's what I'm trying to --

8 SR. SPECIAL AGENT LUINA: Or that might
9 cause a chilling effect here or something --

10 MR. DODDS: Right.

11 SR. SPECIAL AGENT LUINA: -- is that what
12 you're thinking of? Okay.

13 MR. DODDS: Yeah, go to ECP and get fired.

14 SR. SPECIAL AGENT LUINA: Okay. That's
15 how it would be --

16 MR. DODDS: Yes.

17 SR. SPECIAL AGENT LUINA: -- seen by these
18 people? Okay. And in -- who -- and you and Tony you
19 had that same view or just --

20 MR. DODDS: Tony was very well-aligned
21 with me, I think. He made the same argument to
22 someone in his food chain. He didn't really say who,
23 but he said he addressed it with his food chain.

24 He told me that, Mike Balduzzi was fully
25 informed of the issue and the varying opinions. Mike

1 was the Chief Nuclear Operator -- Officer.

2 SR. SPECIAL AGENT LUINA: Officer, yeah.
3 That's all right.

4 MR. DODDS: And that -- this is what Tony
5 said, that the camps are far apart. We're going to do
6 a re-investigation. This is a couple weeks later.

7 He told me -- actually David Czufin came
8 and talked to me and said, we're going to do -- we're
9 going to reopen the investigation and get more into
10 the specifics of some of the issues that are described
11 in the report as well as some other things that need
12 investigating or words to that effect.

13 I said, like what things are we talking
14 about?

15 David said, I can't really share the
16 details, but you'll be able to see the report. So at
17 this time -- up until this time I had asked to see
18 what is it in the report that the attorney referred to
19 as -- I forget what the words were. He referred to
20 communications between McBrearty and others and
21 characterized them as unprofessional or demeaning. I
22 forget what the words were.

23 SR. SPECIAL AGENT LUINA: This is a copy
24 of what was provided to me as the draft report dated
25 May 25th, 2018.

1 MR. DODDS: That looks about right.

2 SR. SPECIAL AGENT LUINA: That's the date
3 when he was sent home. If you want to try to help jog
4 your memory (inaudible).

5 MR. DODDS: Okay.

6 SR. SPECIAL AGENT LUINA: I'll let you
7 look through that.

8 MR. DODDS: This is the one.

9 SR. SPECIAL AGENT LUINA: This is the one
10 you remember seeing? I know the highlights were on
11 there when I got it, so I don't know who put those on
12 there or not, but it wasn't me.

13 But this is a few weeks later. He's
14 telling you -- Czufin is -- they were almost going to
15 do a re-investigation.

16 MR. DODDS: Yes.

17 SR. SPECIAL AGENT LUINA: Did he say why?
18 It's probably because the parties that you're too far
19 apart on agreeing.

20 MR. DODDS: I believe -- it's conjecture
21 on my part because now they agreed that we can't go
22 forward with misuse of ECP as a basis for termination.

23 SR. SPECIAL AGENT LUINA: Okay. As in
24 Czufin agreed, or OGC and HR agreed, or somebody did?

25 MR. DODDS: I don't know.

1 Joe was not adamant on termination. Joe
2 and I talked for several hours about what we could do
3 in this situation because clearly -- and I believe
4 there had been some behaviors by Mike that needed to
5 be corrected, and I'm perfectly willing to do that.

6 So, you know, I was trying to understand
7 with Joe how we might calibrate that, assuming that
8 the investigation came back that he had used some bad
9 language as long as it didn't cross the line. You
10 know, where we might calibrate discipline with him.
11 And it was all speculative, so we never really got
12 anywhere. But I got the impression that Joe would be
13 agreeable to some suspension followed by a re-entry
14 plan.

15 Joe seemed to be of the opinion that we
16 could rehabilitate Mike. Others said we could never
17 -- I don't remember who said this, but on the phone
18 call HR said we could never ask Erin to work for the
19 same company as her harasser. So, you know, that's
20 indicative of they're still very far over to one end.

21 And I kind of stopped trying to achieve
22 consensus at that point. So I was waiting for the
23 report to come. I get told one day, hey we should
24 have the report by the end of the week. This is Tony
25 Williams told me that.

1 I said, great, I got to be able to see the
2 underlying material.

3 He said, that's what I understand.

4 And later that day, I got a phone call
5 from Mike McBrearty, said, I can't keep hanging on
6 like this. My reputation is ruined. And even if you
7 guys say, hey, we were right -- we were wrong, and you
8 were right, come on back to the company. This is my
9 reputation with the NRC has been damaged, with my
10 employees has been damaged, with the whole site. So
11 I'm going to take another job.

12 SR. SPECIAL AGENT LUINA: Okay.

13 MR. DODDS: I didn't try to talk him out
14 of it.

15 SR. SPECIAL AGENT LUINA: You didn't tell
16 him, well, hold on, the report's about to come out.
17 They said, you almost got it figured out or --

18 MR. DODDS: Nope, because I wasn't -- that
19 had been told to me in confidence.

20 SR. SPECIAL AGENT LUINA: Okay.

21 MR. DODDS: And he wasn't presenting it as
22 I'm thinking about doing this, why don't you try and
23 talk me out of this. He said, I took a job. I'm
24 going to go work the United Arab Emirates. To be
25 honest with you, it's going to be a good move for me.

1 So no, I didn't try to talk him out of it.

2 SR. SPECIAL AGENT LUINA: Okay. And then
3 what you do with that information?

4 MR. DODDS: Told him -- told my boss.

5 SR. SPECIAL AGENT LUINA: Yeah. I
6 understand you're about to have a meeting about the
7 report weren't all of you, on the same day this
8 happened?

9 MR. DODDS: Yeah, I think we were. I
10 don't know if I was going to be invited to that
11 meeting or not. I don't recall.

12 SR. SPECIAL AGENT LUINA: Oh, okay.

13 MR. DODDS: Yep, so at that point, I
14 figured, okay, well, problem solved. Unfortunately,
15 Mike turned in his resignation. So I recognized I
16 needed to do some damage control with the Department
17 because at this point, you know, a couple of the guys
18 who worked in licensing, you know, they'd do this, you
19 know, when they'd see me just let me know that there,
20 you know, has been two months now --

21 SR. SPECIAL AGENT LUINA: With Mike being
22 out the door.

23 MR. DODDS: Yeah, where's our boss? What
24 are you doing about it?

25 SR. SPECIAL AGENT LUINA: I got you.

1 MR. DODDS: So I thought we were done.
2 Then I got told to make a note in Mike's performance
3 appraisal that his behavior had resulted in the need
4 for investigation by OGC based on reports of
5 unprofessional conduct.

6 So what I did --

7 SR. SPECIAL AGENT LUINA: Who told you to
8 add that?

9 MR. DODDS: Tony Williams.

10 SR. SPECIAL AGENT LUINA: Okay.

11 MR. DODDS: Just to kind of put an end to
12 it. So that if down the road, if Mike were to want to
13 come back to the company, that issue would be out
14 there as a report that had been made --

15 SR. SPECIAL AGENT LUINA: Which is true,
16 yeah.

17 MR. DODDS: -- so that we wouldn't go --
18 or our successors wouldn't go into that blindly.
19 Maybe that's kind of --

20 SR. SPECIAL AGENT LUINA: Did you ever see
21 the final report? At that point, you had no need to.

22 MR. DODDS: No, I don't know. If there is
23 one, I've not been told about it.

24 SR. SPECIAL AGENT LUINA: Never saw any
25 more underlying evidence or exhibits --

1 (Simultaneous speaking.)

2 MR. DODDS: No, to this day. I don't know
3 what the bad was -- the bad text.

4 SR. SPECIAL AGENT LUINA: And you never
5 saw that?

6 MR. DODDS: No.

7 SR. SPECIAL AGENT LUINA: Okay. Back in
8 May, when you got the draft report -- oh, so you did
9 have this? So you did --

10 MR. DODDS: Yes.

11 SR. SPECIAL AGENT LUINA: Did you mention
12 that to Mike when you were letting him go that --

13 MR. DODDS: No.

14 SR. SPECIAL AGENT LUINA: -- there's some
15 allegations that, you know, you -- there's an
16 investigation going on, it's dealing with --

17 MR. DODDS: You mean the day that I put
18 him on leave?

19 SR. SPECIAL AGENT LUINA: Yeah.

20 MR. DODDS: Yes, I did say that we've got
21 a third-party doing an investigation. They've got
22 stuff they're still trying to figure out what did and
23 what didn't happen.

24 SR. SPECIAL AGENT LUINA: Okay.

25 MR. DODDS: And he asked me, is this a big

1 deal?

2 I said, yeah, it's a big deal. I wouldn't
3 be sending you home if it weren't.

4 He said, am I going to lose my job?

5 I told him it might be on the table. I
6 don't know where this is going to go, but, yeah, you
7 need to take this very seriously.

8 I also told him don't collude, don't go
9 start organizing witnesses in your amen corner. I
10 said you got to stay completely out of this and not do
11 anything to influence investigations because that will
12 get you fired. And I said, I'll be the one leading
13 the charge if you do that.

14 He said, I got it.

15 SR. SPECIAL AGENT LUINA: Okay. All
16 right, and then you brought another document with you.
17 What is this, do you want to explain that?

18 MR. DODDS: This is a safety-conscious
19 work environment mitigation plan that I just kept kind
20 of -- some this was done after the fact when I
21 realized that this isn't going to be resolved. So I
22 started with May 25th, when I met with --

23 SR. SPECIAL AGENT LUINA: Oh, John
24 Johnson? You met with John.

25 MR. DODDS: Yeah, but there's another --

1 yeah, but it goes back to May 25th when I asked John
2 Johnson to be the Acting Licensing Manager to August
3 20th when -- I'm sorry, August 16th when Mike called
4 me and said he was resigning.

5 SR. SPECIAL AGENT LUINA: Okay. And you
6 developed this because you were just concerned about
7 your own personal Department? You wanted to make sure
8 those guys had a good understanding of the events in
9 (unintelligible) to help mitigate potential like a
10 SCWE issue in your department now after this event had
11 occurred or something like that. Is that what you're
12 trying --

13 MR. DODDS: Right. And by the event, it
14 was really -- all I could share with them -- this was
15 frustrating. I couldn't share with them that you
16 know, it's been alleged that Mike's harassed Erin
17 Henderson. So, yeah, I told him that there was a
18 matter under investigation and I couldn't share it.
19 But most of (unintelligible) communications were in
20 process.

21 We're going as fast as we can, but we've
22 got to get it right and not fast. And I'll let you
23 know just as soon as I can.

24 SR. SPECIAL AGENT LUINA: Can I -- I can
25 keep this, right?

Attachment 6

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Deposition of Ralph Dodds

Docket Number: EA 20-006 and EA 20-007

Location: teleconference

Date: Tuesday, July 20, 2021

Work Order No.: NRC-1593

Pages 1-132

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

+ + +

-----x

IN THE MATTER OF: : Docket Nos.

TENNESSEE VALLEY AUTHORITY : EA 20-006

: EA 20-007

-----x

Tuesday,

July 20, 2021

DEPOSITION OF: RALPH DODDS

called for examination by Counsel for the Nuclear
Regulatory Commission, pursuant to notice of
deposition, via Videoconference, when were present on
behalf of the respective parties:

1 A Yes, well several. I met with him every
2 day really, but at least monthly we'd sit down and do
3 a how's it going boss to subordinate thing. I did
4 keep an eye out for any signs of friction, either
5 frustration by him, or frustration in the rumor mill.
6 I sat in on one of the licensing group's peer calls
7 just to see how they treated each other, and I had no
8 concerns on that. Erin Henderson was very
9 professional, Mike was very professional, there were
10 a couple of things that they didn't see eye to eye on
11 yet, but it was in the territory of that's good, we've
12 got different perspectives, and we're going to come to
13 a consensus on them.

14 I don't recall what those issues were, but
15 I left that meeting that I sat in on feeling pretty
16 comfortable that the site, and corporate were pulling
17 in the same direction now, and people were being
18 treated right.

19 Q Did you ever observe any behavior from Mr.
20 McBrearty that you considered to be unprofessional?

21 A No, I would characterize, if somebody
22 asked me hey, tell me about McBrearty, I would
23 probably say well I think he's a consummate
24 professional. Extremely careful in his language,
25 extremely aware of the difference between fact and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 opinion, and clarifying that that difference, when it
2 existed, so that me, as the recipient, had a good
3 understanding of what was real and what was maybe an
4 opinion.

5 He was very focused on the regs, I really
6 appreciated that when we had a conversation, he would
7 bring a copy of whatever it was, the tech spec, a new
8 reg, whatever it was that we were talking about so
9 that I could see for myself that his opinion was based
10 on, was fact based. I did, and it's in one of my
11 depositions, I don't remember which one, give him some
12 coaching, because all of a sudden one day I know that
13 I got CC'd on an email that must have had nine people
14 on it, and had been going on for quite some time where
15 corporate and the site had a different opinion, and
16 both sides were pretty well convinced that they were
17 right, both corporate and the station.

18 And they weren't really closing the gap,
19 and all of a sudden it showed up in my email. So, I
20 asked Mike, hey, can you explain this to me? What is
21 this issue, and why am I getting it in an email? And
22 he said well, we're just not getting resolution on
23 this, I wanted to bring you in the loop. So, I
24 thought back to what I had heard about him rubbing
25 some folks at corporate the wrong way, and I thought

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 this was a teaching moment, and I said, well, how
2 would you feel if you were Erin or Polickoski or
3 somebody at corporate who's been working hard in good
4 faith, and you guys are docketing your positions and
5 your concerns in a chain of emails, and all of a
6 sudden your boss is included on it? What would you
7 feel at that point?

8 He said, well, that's a good point. He
9 said I'd probably feel like I better go tell my boss,
10 and get him or her in the loop right away so they're
11 not caught by surprise. I said, yeah, so keep that in
12 mind, that's not a -- reply all is a dangerous thing
13 if you don't use it right. So let's talk whenever
14 we've got to talk about something, but watch out for
15 just sudden out of the blue reply alls. And he said
16 okay, that's good, I'll accept that.

17 Q So, you found him receptive to your
18 feedback?

19 A Yes, very. Now, he assured me that he
20 didn't mean anything by it, and I said I don't think
21 he did mean anything by it, I'm just letting you know
22 that from the recipients perspective, it can be a
23 little intimidating, or threatening, like all of a
24 sudden you're elevating it, and now everybody's got to
25 get their bosses involved. And he said got you. So,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I kept an eye on that, I made a note in his file, just
2 hey we had this conversation.

3 My intent was, if I saw no recurrence of
4 that, that it would just be treated as an issue that
5 needed to be addressed, and had been addressed.

6 Q Did you observe, did Mr. McBrearty ever
7 make any negative comments about Ms. Henderson in your
8 presence?

9 A I don't recall any. He was complimentary
10 of her in most of the conversations that I do recall,
11 well, all the conversations that I do recall, he
12 acknowledged that she had a hard job, and he was
13 trying to help her do it better by working better with
14 her. I did watch the way that he treated her at the
15 peer group meeting that I sat in on, and I thought he
16 was very respectful of her.

17 Q When did you first learn of the OGC
18 investigation done by John Slater into Mr. McBrearty's
19 conduct?

20 A I don't recall the exact date, it is in
21 one of my statements that I've made, I can review my
22 notes and get that information, but I don't recall.

23 Q Let's talk about the day that David Czufin
24 came to the site and brought you a copy of the report,
25 the OGC report done by John Slater.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 A Okay. I got a phone call from David, said
2 hey, we need to talk, I said no problem. So, I stayed
3 over, he came to my office and said we've got an issue
4 we need to address, and he handed me the report. So,
5 as I read it, it was obvious to me that there was
6 something very serious being alleged, and action
7 needed to be taken because our nuclear safety culture
8 was just at risk as a result of that document, no
9 matter who was right, wrong, whatever, that we had
10 work to do.

11 So, I read that, I asked him what
12 happened, what did Mike do, or say? And David said I
13 don't have that information. I read it again, I told
14 him look, so the conclusion by this author, I'm
15 paraphrasing, that based on the fact that Mike had
16 made, I think it was three, and gosh, I'm drawing a
17 blank on the word, he had reported three issues to
18 employee concerns, and that none had been
19 substantiated, that that was evidence of bad faith,
20 again, I'm paraphrasing, on Mike's part.

21 And that had to be addressed via the
22 discipline process. So, I said wow, I've got to
23 digest that, because I've never heard of the fact that
24 somebody used employee concerns as the basis for any
25 kind of discipline, I've got to digest that. So, he

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 said the investigation is continuing, that we're going
2 to get that information, but for right now, this is
3 where we stand. And I don't remember who suggested it
4 first, that in the interim we should suspend Mike with
5 pay while the investigation concluded.

6 In my mind, I thought well, this is a one-
7 or two-day affair, and it is not unusual in my
8 experience to do that, if there's a potentially
9 contentious investigation to get the parties involved
10 separated usually by sending someone offsite and
11 continuing their pay. So, that was how that day went.
12 I went and talked to my boss, Tony Williams. He
13 agreed that, yes, that's what we ought to do. So, I
14 met with Mike, I don't remember if it was later that
15 day or early the next morning, and I informed him
16 that, hey, there's an investigation that we need to
17 complete, and until it is, I need you to stay home.
18 We'll pay you, but I need you to stay home. I
19 probably jumped ahead on you.

20 Q That's fine. I just emailed you a
21 document, and I also copied Ms. Rimon on it. It is
22 OI report, and I'm going to ask Kevin to put it on the
23 screen for everybody, 2-2018-033 Exhibit 17
24 ML21042A026. And I would like you to look at that
25 document, read as much of it as you want. My question

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 for you is does this appear to be the document that
2 Mr. Czufin brought you that day?

3 A I don't see any email that I've got in the
4 last 20 minutes.

5 MS. LOOMIS RIMON: I haven't received it
6 either Sara.

7 THE WITNESS: Let me check my spam folder.

8 MS. KIRKWOOD: Let me see if I know how to
9 email, or not. It is slightly possible, it might take
10 a minute. Why don't we move on and we will circle
11 back to that document when either of you get it.

12 THE WITNESS: That's fine.

13 MS. KIRKWOOD: And yeah, if you happen to
14 notice, either of you, mention that you have it, that
15 would be great.

16 THE WITNESS: Okay.

17 MS. KIRKWOOD: Actually, let me go ahead
18 and send you one more document. And this is going to
19 be TVA doc 0008688-001. Let me pull it up, and we'll
20 see if this comes through more quickly, I haven't
21 actually sent it yet. Kevin, if you can pull it up on
22 the screen, I would appreciate it.

23 MR. ROACH: Okay, one minute, I was
24 trying to reduce the size of the other file, let me
25 see if I can stop.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. KIRKWOOD: It's okay, I might be able
2 to do both, because I have it up anyway, to email
3 this. And let's see if I managed to just share the
4 document versus my whole deposition plan, as is my
5 tendency.

6 MR. ROACH: I've got it, Sara, I can pull
7 it up.

8 THE WITNESS: Okay, I've just got it.

9 MS. KIRKWOOD: And which document did you
10 get Mr. Dodds?

11 THE WITNESS: It's an email from me to
12 Tony Williams.

13 MS. KIRKWOOD: Okay, yeah, I think then we
14 are having a size problem with the larger one, and so
15 yeah, let's go ahead, and move on to this document,
16 and I'll let Kevin reduce the size, and we'll circle
17 back on the other one, if that's okay.

18 THE WITNESS: Okay.

19 MS. KIRKWOOD: Laurel, do you see the
20 document?

21 MS. LOOMIS RIMON: Yes, thanks.

22 MS. KIRKWOOD: Okay. I'm going to go
23 ahead and, Mr. Dodds, give you a minute to review this
24 email, and let me know when you're done.

25 THE WITNESS: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. LOOMIS RIMON: Actually Sara, one
2 thing, do you want to mark your exhibits?

3 MS. KIRKWOOD: I was not planning to, we
4 haven't been.

5 MS. LOOMIS RIMON: I think it would be
6 helpful, that allows us to refer to the same
7 documents, and for the transcript to be clear.

8 MS. KIRKWOOD: Okay, that's fine. We can
9 mark this then as Exhibit No. 2.

10 (Whereupon, the above-referred to
11 documents were marked as Exhibit No. 2 for
12 identification.)

13 MS. KIRKWOOD: That probably means that I
14 should include, ask the court reporter, if we're doing
15 that, how do you want to get the documents? Can we go
16 off the record for a minute?

17 (Whereupon, the above-entitled matter went
18 off the record at 11:20 a.m. and resumed at 11:22
19 a.m.)

20 MS. KIRKWOOD: Thanks.

21 BY MS. KIRKWOOD:

22 Q Okay, this email that I just sent you Mr.
23 Dodds, TVA doc 0008688-0001, which we have marked as
24 Exhibit No. 2, this email is relaying your
25 conversation with Mr. McBrearty when you put him on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 leave, is that correct?

2 A Yes.

3 Q I want you to look at bullet number two in
4 this document. When it says Mike knew what this was
5 about without prompting, what did you mean?

6 A His reaction was like, aw, man, I was
7 afraid this was going to blow up like this. And at
8 that time I wasn't wanting to interview him, I wasn't
9 wanting to get his version of the facts, I didn't want
10 to interfere with the investigation, so I didn't
11 really ask him to elaborate, or allow him to
12 elaborate. I told him all right, we've got a process,
13 we're in the process, and let's not get ahead of that.
14 He was very remorseful at that point along the lines
15 of I didn't know what I did was that egregious.

16 Nobody used the word egregious, but that's
17 what he implied, he said man, I did not think this was
18 that big of a deal, but he seemed to know the nut of
19 the issue. I didn't, I still don't.

20 Q In bullet five, when you said he said
21 please don't fire me, I think I let my ego get out of
22 control, what did you understand that statement to
23 mean?

24 A I didn't know. I didn't know if it was
25 some frustration that bubbled up as a result of this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ongoing, never-ending service life issue that we were
2 dealing with, and corporate and the site saw
3 differently, I didn't know.

4 Q In this conversation you had with Mr.
5 McBrearty on, it's dated May 25th, 2018, did you
6 think, in your view did Mr. McBrearty admit wrongdoing
7 to you?

8 A No. He seemed more like he was expressing
9 remorse that the situation maybe got out of hand. I'm
10 completely speculating, but as far as saying something
11 like I shouldn't have done that, this thing I did was
12 wrong, I apologize for it, I didn't get that
13 impression, as much as an impression that I've let
14 this issue, or I let this relationship get out of
15 hand.

16 Q Did you view him as making a confession to
17 you?

18 A A confession, no. What I took it as was
19 that he had internalized the feedback he had gotten
20 over the previous few months. About how you've got to
21 be more mindful of how your actions and your words and
22 your dealings with corporate affect the company and
23 how they affect other people. And I took it as he was
24 looking at past events with maybe a new perspective.
25 Again, I didn't explore that at all, I thought that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the fact that McBrearty had made three allegations
2 essentially, via the employee concerns process, and
3 that none of them had been substantiated, that that
4 was evidence that Mike was using the employee concerns
5 process to retaliate against Ms. Henderson. That was
6 also the last paragraph of this draft report that I'm
7 referring to, so that those conclusions were the same.

8 The language in, on this particular one,
9 Exhibit 17, caught my attention though, because it
10 talks about violating federal statutes and federal
11 regulations, and I did not agree with that by a mile.

12 Q And can you explain your disagreement?

13 A Well, yes. We don't know, I don't know
14 the employee's state of mind, what motivates them to
15 raise an issue, and I can't know that. And it is very
16 difficult for anyone to know that, but the mere fact
17 that three allegations, they weren't NRC allegations,
18 but three employee concerns had not been
19 substantiated, to me was a trifle. I've probably
20 dealt with 50 in my career, employee concerns
21 allegations, I don't believe, maybe one or two were
22 confirmed, they just aren't that sort of thing.

23 That the employee concerns department will
24 go out and say yes, we find that this happened, or
25 that happened. So, that's my experience over 30

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 years, or whatever trying to safeguard our nuclear
2 safety culture wherever I've worked. So, I applied my
3 experience to the conclusion here, and thought that
4 was very difficult for me to agree with. And that's
5 why I asked let me see what we're talking about here,
6 what did he do?

7 Because it must be a doozy, it must really
8 be something horrible that he did that's got our legal
9 and our HR departments so adamant that termination,
10 and only termination, is the remedy for this.

11 Q And were you ever provided with an answer
12 to that question of what did he do?

13 A No. To this day, I usually tell you
14 nobody can keep a secret in nuclear, this has been an
15 extraordinarily well kept secret, I have no idea to
16 this day. The best I can guess is there was a bad
17 text message, I said what did it say? Well, I can't
18 really talk about it. I've tried all kinds of ways to
19 get a sense of it myself, because at that point I
20 thought if this is that bad that this many people are
21 this angry about it, something needs to be done, and
22 I'll do it. So, it was very frustrating to me that
23 all people would tell me is it was really bad, it was
24 bad.

25 MS. KIRKWOOD: Well --

1 THE WITNESS: Go ahead.

2 MS. KIRKWOOD: Go ahead.

3 THE WITNESS: No, I was just rambling.

4 BY MS. KIRKWOOD:

5 Q What did you understand really bad to
6 mean?

7 A I don't know. I thought that, did he use
8 extremely offensive language? Did he make an
9 accusation that impugned somebody's professionalism?
10 I was kind of obsessed about somebody's got to tell me
11 what's going on here, I don't know. The company, I
12 don't still understand this, asked Meshelle Ferguson,
13 the human resources manager at Watts Bar to read the
14 evidence, to look at whatever the bad thing was, and
15 to come out and meet with me and tell me, oh yeah,
16 it's bad.

17 I said, well, what is it? I can't tell
18 you. What does it relate to? I can't tell you. And
19 so you think termination is appropriate? She said, oh
20 yeah.

21 MS. KIRKWOOD: I don't understand why they
22 wouldn't show you the text, what --

23 THE WITNESS: I don't either, I still
24 don't.

25 MS. LOOMIS RIMON: Objection, form.

1 BY MS. KIRKWOOD:

2 Q Were you ever given an explanation for why
3 you couldn't see it?

4 MS. LOOMIS RIMON: Sara, I'd just like to
5 ask you not to testify yourself.

6 BY MS. KIRKWOOD:

7 Q Were you ever given an explanation for why
8 you couldn't see it?

9 THE WITNESS: As to why I could not see
10 it?

11 MS. KIRKWOOD: Yes.

12 THE WITNESS: No. I was assured by David
13 Czufin towards the end of all this that you're going
14 to see it, we're going to show you the underlying
15 evidence, the underlying facts that have led to this
16 conclusion in the investigation, so be patient. The
17 facts are coming, you'll be able to see what we've
18 seen. I thought great, then it was a week, and
19 another week, and another week went by. It got to the
20 point where I believed that I must be under
21 investigation in some shape, or form, or else why
22 would, this is me conjecturing, I get in my head too
23 much maybe, about I've never had something like this
24 kept secret from me. So I was, and remain, baffled.

25 MS. KIRKWOOD: Give me just a minute, I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 going to need to send you another document. It's
2 going to be 008724-001. I'll let you know --
3 actually, maybe I'll email it. But perhaps this would
4 be a good moment for maybe a ten0minute break before
5 we start asking questions about this document. Does
6 that sound good to you, Mr. Dodds?

7 THE WITNESS: Yes, ma'am.

8 MS. KIRKWOOD: Okay, is that okay?

9 MS. LOOMIS RIMON: Sounds good.

10 MS. KIRKWOOD: Okay, I will send this, I
11 will mark it as Exhibit No. 3, and we can take a ten-
12 minute break, we'll go back on at 11:53.

13 (Whereupon, the above-referred to document
14 was marked as Exhibit No. 3 for identification.)

15 (Whereupon, the above-entitled matter went
16 off the record at 11:43 a.m. and resumed at 11:54
17 a.m.)

18 MS. KIRKWOOD: Did you receive, Mr. Dodds
19 and Laurel, TVA doc 0008724-001?

20 THE WITNESS: Yes, I did.

21 MS. LOOMIS RIMON: Yes, thanks.

22 MS. KIRKWOOD: Okay, great. We'll mark
23 this as Exhibit No. 3.

24 BY MS. KIRKWOOD:

25 Q Mr. Dodds, is this document a document you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have to answer ERB, does this proposed disciplinary
2 action, is it consistent with past practice?

3 So to answer your question, I would have
4 written it there.

5 Q I'm sorry, I was actually asking a little
6 bit different of a question which is if you are aware
7 of specific evidence of retaliatory action on behalf
8 of TVA, would you have noted that?

9 A No, not here. Not here because I wouldn't
10 have gone forward. I would never have taken this to
11 ERB if I thought the action we were proposing was
12 retaliatory. That's the point I made several times at
13 the end that I will not make a discipline proposal to
14 ERB based on what I know right now.

15 Q Is it fair to say that you drafted this
16 based on what you knew at the time?

17 A No, I would say it's more accurate to say
18 based on what I assumed would happen, I prepared this
19 so that we'd be ready, so if I found out that oh,
20 gosh, Mike did a terrible thing, McBrearty, we've got
21 to take action, that I would have already laid the
22 ground work for taking this matter to ERB. I never
23 intended for this to go to ERB because I didn't know
24 enough at the time to take that.

25 Q You must have anticipated it was at least

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 likely to go to ERB to put in the effort to prepare
2 this document, no?

3 A Yes, I would agree with what you said.
4 But the way that this is written up, this is when I
5 thought a reasonable outcome would be a two-day
6 suspension and time off for time served, a credit for
7 time served, and that ERB would approve that yes, we
8 gave Mike a two-day suspension. He's got a recovery
9 plan, a behavior recovery plan that Dodds is going to
10 oversee and Mike will come back to work a new man.

11 Q What you're talking about there is the
12 appropriate discipline, right?

13 A Well, that would be one end of the
14 appropriate discipline scale would be a two-day
15 suspension. At this point, I believe I was under the
16 impression that Mike Balduzzi, the CNO, had approved
17 the two-day suspension. That was based on
18 conversations I had overheard. So that was one end of
19 the scale that I thought might go to the ERB.

20 I probably had recoverable -- I probably
21 had two or three flavors of these mitigation plans in
22 various stages of draft so that if we needed them, we
23 wouldn't be starting from ground zero with a work
24 force that was kind of up in arms.

25 I actually had one of Mike's employees ask

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 me in public would you give up -- would you tell us
2 what we're allowed to say and what we're not allowed
3 to say so that we don't get in trouble like Mike? And
4 then he asked me well, who am I allowed to talk to?
5 Who am I not allowed to talk to? That was what I was
6 trying to kind of tamp down by having as much prep
7 work and as much ground work laid as possible.

8 Q That makes sense. What I'm wondering is
9 if you had believed that retaliatory action was about
10 to take place, you're telling me that you would have
11 drafted this ERB document?

12 A No. No. I would have refused to
13 participate. If I was told that hey, we are going to
14 terminate Mike because of his use of the Employee
15 Concerns Program, I would say you're doing it without
16 me. I'm not going to participate in this. We're
17 outside of our procedure. We're outside of the
18 regulations, as I understand them. We're definitely
19 outside of industry best practices. Count me out,
20 had I thought we were going through with that.

21 Now I had extreme confidence in Tony
22 Williams and David Czufin and Joe Shea that once we
23 had a chance to go through all of this together that
24 we'd do the right thing. I wasn't so sure we'd ever
25 get legal and HR on board, but this might be one of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 those -- somebody has got to step up and earn their
2 pay by telling the other camp you lose.

3 Q Well, let's turn to, in the same document,
4 several pages past the one we were looking at, the
5 Executive Review Board proposed adverse action review
6 forms, page 2 of 5. At the top it says name and title
7 of person proposing action and date and it has your
8 name. Do you see that?

9 A No, give me just one minute.

10 Q Yes.

11 MR. ROACH: Can you say what PDF page this
12 is on? Seven?

13 MS. LOOMIS RIMON: Seven.

14 THE WITNESS: Yes.

15 BY MS. LOOMIS RIMON:

16 Q Okay. Under overview, number one says to
17 your knowledge has the individual engaged in any
18 potentially protected activity within the past 12
19 months? And there are some yes boxes checked. Do you
20 see that?

21 A Yes.

22 Q And below that section it says if yes,
23 specify what and when. And then it says Mike has
24 spoken with the NRC on many occasions in the
25 performance of his duties. He has written condition

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Q The subject is titled Letter of
2 Resignation, and it's from Mr. McBrearty.

3 A Yes.

4 Q Do you recall Mr. McBrearty advising you
5 of his resignation on August 16th, 2018, as
6 referenced?

7 A Yes, ma'am. Yes, ma'am.

8 Q Did you know whether Mr. McBrearty was
9 seeking other employment while he was out on paid
10 administrative leave?

11 A I'd heard that he was from one of the guys
12 in his department, that he was interviewing with an
13 overseas nuclear utility. That was probably two weeks
14 before this.

15 Q Okay. Thank you. Did you have any
16 conversations with Mr. McBrearty about him seeking
17 other employment?

18 A No. He probably called me three times in
19 the period between his suspension and his resignation,
20 said, hey, you know, what's going on? Is there
21 anything you can tell me? You know, I had to tell
22 him, stay patient. We've got to get this right. It's
23 more important to get it right than to get it quick.
24 So I promise I'll let you know the minute that I can.

25 And he took that, you know, in pretty good

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 stride. He wasn't pouty or whiny about it. He never
2 mentioned that he was seeking employment. The first
3 I heard that he was taking a job over at United Arab
4 Emirates was on the morning that he wrote me this
5 letter. He -- he called me at home, and he let me
6 know that he was resigning.

7 Q Nothing in the letter states that Mr.
8 McBrearty had a claim that he was being retaliated
9 against for his use of ECP, does it?

10 A No.

11 Q And that makes sense, doesn't it, because
12 TVA had taken no disciplinary action against him at
13 this point in time?

14 A The letter makes sense to me. That's a
15 pretty generic resignation letter. Don't burn your
16 bridges. So his letter makes sense to me.

17 Q TVA did not take any disciplinary action
18 against Mr. McBrearty, did it?

19 A No. No, other than what we would now
20 consider to be an adverse employee action when I
21 suspended him or provided -- put him on administrative
22 leave, whatever term we want to call it. Looking
23 back, I would have a hard time arguing that that was
24 not a form of discipline. We pulled his badge for two
25 months. But technically, no, you're right. It's not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 discipline in accordance with the definition of our
2 policy.

3 Q Well, he wasn't terminated, was he?

4 A No, not until he -- he resigned. He got
5 full pay throughout the -- you know, throughout this
6 whole period.

7 Q You said not until he resigned, but to be
8 clear, he resigned; he was not terminated. Is that
9 right?

10 A Correct. When he and I spoke on the
11 phone, though, what he said was, my reputation is
12 ruined, so I have no choice. Even if you guys tell me
13 to come back today, all is forgiven, I'll never get my
14 reputation back. But --

15 Q So he made the choice to resign.

16 A Yes. That's correct.

17 Q So I'm going to show you the last document
18 I have for you. We'll send it over. It's a longer
19 document, and you're welcome to take as much time as
20 you'd like to look at it. But I'm going to point you
21 to a particular place. Again, it'll take a second to
22 get it off to you, and then you can let us know when
23 you get it.

24 Okay. It's on the way. Just let us know
25 when you get it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 A Okay.

2 Q And we'll put it up, too.

3 (Pause.)

4 A Okay. I have the attachment.

5 Q If you scroll through, this is a -- I
6 don't know how many pages this document is. It's not
7 marked. Forty-three pages? So it's a long document.

8 We're actually trying to -- let me count
9 to the page we're trying to get to. I think it's
10 about page 28 in the PDF. Yep. It follows a couple
11 slide deck pages, and then at the title -- at the top,
12 it says Safety-Conscious Work Environment Mitigation
13 Plan.

14 (Whereupon, the above-referred to document
15 was marked as TVA Exhibit 4 for identification.)

16 THE WITNESS: Chemistry Mitigation Plan?

17 BY MS. LOOMIS RIMON:

18 Q Safety-Conscious Work Environment
19 Mitigation Plan, page 1 of 4. It's a four-page
20 document.

21 A Okay.

22 Q And it's signed by -- or it has your --
23 it's not signed, but it has your name typed in the
24 Prepared and Approved By lines on page 3 of 4.

25 A I'm not smart enough to know what PDF page

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Attachment 7



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II**

245 PEACHTREE CENTER AVENUE NE, SUITE 1200
ATLANTA, GEORGIA 30303-1257

November 1, 2017

Electronic Mail To: [REDACTED]

**SUBJECT: CONCERN YOU RAISED TO THE NRC REGARDING TENNESSEE VALLEY
AUTHORITY NUCLEAR LICENSING - ALLEGATION REPORT RII-2017-A-0114**

Dear Ms. Wetzel:

The NRC has completed its followup in response to the concerns you brought to our attention on July 24, 2017, regarding Tennessee Valley Authority (TVA) Nuclear Licensing. Your Concern 1 was related to a chilled work environment (CWE) at the TVA corporate nuclear licensing office. The Enclosure to this letter restates your Concern 1 and describes the NRC's review and conclusions with regard to that concern. Concerns 2 and 3 were addressed in a previous letter to you dated August 23, 2017.

Allegations are an important source of information in support of the NRC's safety mission. We take our safety responsibility to the public seriously and will continue to do so within the bounds of our lawful authority. We believe that our actions have been responsive to your concerns. If, however, new information is provided that suggests that our conclusions should be altered, we will reevaluate that information to determine if additional evaluation is needed. Should you have any additional questions, or if the NRC can be of further assistance, please call me at the regional office toll-free number 1-800-577-8510, extension 4465, or you may provide information to me in writing at P. O. Box 56274, Atlanta, GA 30343. You may also communicate with me by electronic mail, if you so choose. Please be advised that the NRC cannot protect the information during transmission on the Internet and there is a possibility that someone could read your response while it is in transit. My e-mail address is Anthony.Masters@nrc.gov. When sending an email to NRC, please also include the following email address: R2Allegations@nrc.gov.

Sincerely,

/RA/

Anthony D. Masters, Chief
Reactor Projects Branch 5
Division of Reactor Projects

Enclosure: As stated

TENNESSEE VALLEY AUTHORITY

RESPONSE TO CONCERN

ALLEGATION REPORT RII-2017-A-0114

Concern 1:

The Licensing Manager has created a chilled work environment in the Corporate Licensing Department.

Response to Concern 1:

During the week of September 18, 2017, the NRC conducted safety culture interviews of individuals from corporate TVA Nuclear groups. Inspectors interviewed a total of 22 individuals from the engineering, licensing, and operations groups. Specifically, the inspectors interviewed personnel to determine their willingness to raise nuclear safety concerns. Interviewees were asked a series of questions as follows:

1. In your opinion, what level of emphasis does your management team seem to put on safety (nuclear, radiological, and industrial) / regulatory compliance? Examples?
2. Do you believe that decisions made at TVA prioritize nuclear safety / regulatory compliance? Why or why not? Examples?
3. Are you able to challenge a decision if you disagree with it? What if it's a management decision? Please give examples.
4. How would the individual raise a safety or regulatory issue (e.g., inform supervisor, corrective action program, employee concern program (ECP), NRC)?
5. Do you feel free to approach your supervisor regarding a nuclear safety/regulatory concern? What about your department manager or senior management?
6. Have there been any issues recently that might affect your/coworkers willingness to raise safety/regulatory issues?
7. How do you feel about using the Employee Concerns Program? Is it effective?
8. Is the individual aware of any specific instances in which another employee submitted an issue to the corrective action program or ECP and considered the licensee's response incomplete or unacceptable or was retaliated against for pursuing the issue?
9. Is the individual aware of any events that would discourage employees from raising concerns (e.g., chastisement for submitting issues to corrective action program, ECP, or NRC; supervisors holding up submittal of concerns).
10. Do you believe that if you bring a concern to the ECP it will be kept confidential?
11. Do you think people are treated fairly and with respect by management? Why or why not?
12. Do you believe that your supervisors and managers have trust and confidence in the staff?
13. Do you have trust and confidence in your supervisors and managers?

The majority of interviewees responded positively to all questions; no one indicated they were hesitant to raise concerns. Based on the interview responses, the inspectors determined that licensee management emphasized the need for all employees to identify and report problems.

Enclosure

Additionally, based on discussions conducted with a sample of TVA corporate employees from various departments, the inspectors determined that TVA corporate employees felt free to raise safety and regulatory issues without fear of retaliation.

Conclusion:

Based upon the review described above, the allegation that the Licensing Manager has created a chilled work environment in the Corporate Licensing Department was not substantiated. On the basis of the foregoing, the NRC plans no further action regarding this concern at this time. Please note that the NRC reviews the area of Safety Conscious Work Environment (SCWE) routinely during our baseline inspection program using inspection procedure (IP) 71152. The IP can be located at <http://www.nrc.gov/reading-rm/doc-collections/insp-manual/inspection-procedure>. The latest inspection on this area and the results of the inspection are documented in NRC Inspection Report 05000327/2017009 and 05000328/2017009, located at <https://www.nrc.gov/reactors/operating/oversight/listofrpts-body.html#seq>.

Attachment 8

Exhibit 16

Exhibit 16

2-2018-033

March 9, 2018

Joe Shea, Vice President Nuclear Regulatory Affairs and Support Services
Amanda Poland, Director Human Resources

FORMAL COMPLAINT

This is a formal complaint related employees (including manager level personnel) who are complicit in workplace bullying and creating a hostile work environment for me. Over the course of multiple years, this behavior has been both repetitive and pervasive. Individuals have either directly or indirectly acted in attempt to intimidate and undermine me in my role as a senior regulatory leader. There are indications that several individuals are contributing to this environment including Mike McBrearty, Michelle Conner, Beth Wetzel, Ed Schroll, and Alesia Justice. Mike McBrearty, the primary instigator, has also allowed, if not encouraged, his own employees to engage with me and my staff in a similar manner. This has resulted in, among other things, repeated investigations and an NRC inspection where the accusations were determined to be unsubstantiated.

In addition to the open hostility and repeated accusations being the source of a great deal of personal stress (to the point of expressing my intention to leave the company) and damage to my professional reputation by people who are aware of the repeated investigations, the behavior of these individuals has resulted in my fear to address or challenge individual or site performance due to the potential repercussions. By my having to limit my interactions with one site in particular and/or not being able to performance manage individuals within my own organization, I perceive that my ability to fully perform the responsibilities outlined in my job description has been impacted. Some relevant background information and specific points supporting the claim are provided below.

Background Information:

- June 2014: I was notified by my supervisor at the time (Gary Mauldin) that I was being moved to SQN to be the Site Licensing Manager. I succeeded Mike in that role. Mike insisted that he continue to have responsibility for interfacing on a technical specification conversion project at SQN, lead by Michelle Conner.
- September 2015: I was promoted to Senior Manager, Corporate Nuclear Licensing. I again succeeded Mike in that role. The organization was viewed as low performing and I was asked to focus on performance management as there were known performance gaps that had gone unaddressed for the past several years. When I started in the organization, I reviewed the previous results to assess the overall organizational health and nuclear safety culture. Many of the organizational scores were very low (November 2014 Synergy Survey, July 2015 Gelfond Survey). Corporate Licensing was an outlier with very low scores in many questions. I conducted one on ones with the entire organization (approx. 20 people at that time) to better understand the results and developed a department improvement plan to improve the organization. Based on the feedback and my review, I concluded there was a significant need to establish clearer roles and responsibilities, improve

Joe Shea
Amanda Poland
Page 2
March 9, 2018

communications and take action on individual performance (both recognition and critical performance feedback). There was also feedback about leadership presence because Mike continued to engage on the technical specification conversion while in the corporate senior manager role. ECP pulsings were included in the overall strategy for monitoring effectiveness and included an additional set of questions above the standard ECP template to assess the organizational health questions.

- January 2016: Conducted an ECP pulsing survey (initiated by me as part of a department improvement plan); Results indicated some improvement in communications and performance management; comments indicated a 'wait and see' attitude. Conclusion was that there is no chilled work environment.
- February 2016: I hired a new CFAM, Michelle Conner. In that capacity, Michelle assumed responsibility for providing unbiased oversight of the site regulatory organizations.
- April 2016: an investigation into the nature of the personal relationship between Michelle and Mike was initiated. That investigation concluded in June 2016. Because of ongoing issues with Michelle, I was advised by legal and HR to limit my direct interaction with her. This continued through October 2016.
- May 2016: ECP pulsing survey conducted (initiated by me as part of a department improvement plan); Comments noted overall improvements and conclusion was that there was no chilled work environment.
- October 2016: Michelle was placed on a rotational assignment in another organization and simultaneously placed on a performance improvement plan to be managed by her new manager, Paul DiGiovanna. Jim Polickoski replaced Michelle as the temporary CFAM in the organization and has remained in that capacity since.
- December 2016: Michelle filed a DOJ/NRC complaint which was resolved in November 2017. Michelle then commenced a role in the Small Modular Reactor organization working for Dan Stout and her cubicle is adjacent to (shares a cubicle wall) with individuals in my organization. Settling with Michelle was done, in part, to alleviate some of the challenges I faced with both her and Mike.
- February 2017: At this point in time, I realized that Mike's open hostility toward me was not going to stop and I started to keep notes regarding the various interactions and feedback I was receiving.
- February 2017: Additional ECP pulsing survey conducted which demonstrated improvement in the following areas: the work environment encouraging the voluntary expression of concerns and differing views, perception of CAP, management communications and timely resolution of issues and significant improvement in the

Joe Shea
Amanda Poland
Page 3
March 9, 2018

following areas: communicating basis for decisions, holding individuals accountable or recognizing positive performance, engaging in and coaching related to staff work.

- As a result of the challenges in interfacing with Mike, at various points over the past year my supervisor and I agreed to limit both my time spent at SQN and my direct engagement with the peer team (site licensing managers) even though there was a significant need to engage in that forum to improve performance.
- While I have taken some performance management related actions at various points in time, because of ongoing challenges I have not been able to aggressively resolve all of the performance challenges (Beth Wetzel and Ed Schull). More details can be provided on this.

Specific Examples:

- There have been repeated assertions that I have created a chilled work environment. The assertions have been contrary to independent ECP pulsing survey data, increased Condition Report initiation data since I have been in the organization and a very recent independent SCWE inspection by the Nuclear Regulatory Commission. Several complaints were filed as a means of retaliation/intimidation after addressing individual performance issues or behaviors.
 - 07/16: ECP concern NEC-16-00638 filed asserting harassment and retaliation for protected activity and a chilled work environment within the organization. Report was issued in 09/16 and did not substantiate claims of harassment and retaliation or a chilled work environment within corporate licensing.
 - 12/23/16: received DOJ/NRC complaint related to CFAM; I provided a complete response to each assertion along with documentation (texts, emails, performance noted) as to why the claims were unfounded.
 - 4/21/17: After several months of engaging with site and corporate leadership related to Mike's behaviors, he filed an ECP complaint that I was creating a hostile work environment. I was later briefed that this claim was not substantiated and ECP had found 'the exact opposite' to be true.
 - 7/14/17: Mike contacted ECP regarding a new concern on a CR that I closed.
 - 7/25/17: I was informed of another ECP complaint for retaliation resulting from a meeting with only my direct reports (on 7/21/17), where I discussed the closure of the previous ECP concern as part of SCWE mitigation.
 - 9/18/17- 9/22/18: NRC conducted an inspection at corporate. They conveyed it was part of a follow up to WBN's CWEL and wanted to do a corporate pulsing. During the discussions with inspector and regional

Joe Shea
Amanda Poland
Page 4
March 9, 2018

leadership, they conveyed that it was related to issue follow up. They interviewed 100% of my organization and several individuals in corporate engineering. They concluded that there was not a chilled work environment and management encourages the raising of issues and condition report initiation. The NRC documented this conclusion in WBN inspection report 2017003 dated November 22, 2017. (ML17326A222).

- o 3/6/18: Despite the history described above, in a text exchange with one of my direct reports, Mike again asserted that people are scared of me so they will not raise issues and there is a SCWE problem in my organization.
- There are examples of Mike speaking negatively to my direct reports, leaving me off of emails, including individuals on emails that are not involved with the issue so as to intimidate me, and sending emails regarding my performance to a large population including my direct reports. This behavior is the direct result of me 'interfering' with his potentially unprofessional relationship with another manager (Michelle). This behavior became most evident after Michelle was moved to a new role (October 2016). Mike has repeatedly excused his behavior as being due to the corporate handling of two narrow technical issues that are a couple of years old.
 - o 2/13/17: Mike sent an email requesting feedback on a draft CR. I sent my response which he then forwarded my response to a population of people, removing me and his immediate supervisor. He left my supervisor on the email. He then responded abruptly and forwarded my response and his email to a new group of people including individuals that were not at all involved in the discussion. He again left me off of the emails. I received texts from a direct report and my supervisor to let me know that my email was being forwarded.
 - o 2/14/17: During a conversation with my direct report regarding the evening before. He noted that Mike is obviously being childish in a way that he cannot understand. He also noted that Mike is open about his hostility toward me and he had counseled him about it.
 - o 2/16/17: At our licensing counterpart meeting, I was speaking in a room of all of the regulatory personnel in the fleet including all of my managers and most of my individual contributors. I acknowledged work that was done by several individuals in the room to make a point about us all having extraordinary experiences to share. When I was done talking, Mike stated, 'Erin, Michelle Conner lead the ITS conversion and I think that should be acknowledged and recognized.' After he did that, it was noted by multiple people in the room as

being 'irrelevant' and 'unnecessary'. He had previously done this same thing several other times including once via email when I was acknowledging individuals for a positive behavior and he responded that this behavior was the result of good work by Michelle. An additional time he recognized Michelle on the fleet phone call for work that she was not involved in. That fact was noted when I returned from the fleet phone call and an individual asked why he mentioned her as she was not even involved in the fire header recovery issue at SQN. It was odd behavior for someone who was so concerned about an investigation into his relationship with her and it appeared as though he was attempting to openly antagonize me given that Michelle had recently been moved.

- o 2/16/17: Received feedback from a direct report that Mike speaks very openly about me and says some 'pretty awful things' about me. He commented that if he s that open with him, he 'can't imagine what Mike says about me to other people'.
- o 3/16/17: Received feedback from two directs that Mike was being hostile toward corporate on phone calls. They believed the 'hostility' was directed at me. I asked why and was told that Mike thought 'Michelle Conner was done wrong.' They both agreed and said that he discusses that with them frequently.
- o 4/7/17: Received feedback from a direct that Mike indicated I've ruined 'Michelle Conner's career and her life.' I asked why he thought he is so invested in Michelle Conner's situation and he said its obvious 'they are very close.' The individual further stated that Mike only gets one side of the story from Michelle Conner.
- o 4/25/17: Received feedback from a direct that it appeared Mike was looking to 'publicly poke you in the eye' and is 'on a rampage against you.'
- o 10/4/17: My supervisor noted that Mike was leaving me off of emails again related to security issue.
- o 3/2/18: In an email sent to a broad audience including all of my directs, Mike appeared to assert issues related to my performance. This was noted by one of my directs who forwarded the email to Mike's supervisor and discussed the issues with the supervisor over the weekend. There was a follow up email exchange between Mike and my supervisor (addressing me again), which Mike then proceeded to forward to another one of my direct reports.

- There are some indications that other individuals (Michelle Conner, Beth Wetzel, Ed Schruil, and Alesia Justice) may potentially be contributing to this environment or colluding with each other to facilitate creating a hostile work environment as described below:
 - 04/2016: I challenged Michelle and another one of my directs related to performance at SQN on a specific issue. Michelle had a significant emotional reaction to the challenge related specifically to Mike's performance. Based on follow up discussions with Mike, it became evident quickly that Michelle Conner had very quickly told Mike about the discussion related to his performance.
 - 06/16: After repeatedly prompting and engaging with HR regarding the status of the investigation into the potential ethics violation (nature of Michelle and Mike's relationship), they completed the investigation report. The investigation concluded that it was unclear, although the investigation concluded that they have a very close personal relationship. Michelle was coached regarding managing the perception of the relationship and it's potential effect on impartiality. During the meeting, which included HR, Michelle said she would not change her relationship with Mike for work.
 - 7/25/17: Within a couple of days of having a closed door discussion with only my direct reports (Ed was not present), Mike was informed of this discussion and a new ECP investigation was filed. When I met with ECP on 8/8/17 to discuss the conclusion, ECP noted that she was going to provide feedback to Mike that the information he got from the meeting was 'exaggerated'. It was also evident from the briefing with ECP that one of my direct reports was not honest during her interview where she claimed to have 'coached' me during the meeting on 7/21/17. I had taken notes from the meeting and knew that Beth had not done that in that meeting, as a matter of fact, she indicated she thought the discussion was appropriate. The other attendees also told ECP that they not recall occurring. Nonetheless, she told ECP that had occurred when interviewed. This is indicative that one of my directs passed the information to Mike and was also dishonest during her interview in a way so as to make it appear that she had attempted to intervene during the meeting.
 - 10/2016: Michelle was moved to RMD assignment in different organization based upon her numerous requests. She was also placed on a PIP at this time. I received feedback after the fact that Michelle had been openly complaining about me and her being placed on a PIP with employees. My

- understanding was it included both Beth Wetzel and Alesia Justice and was done in the open office area where other employees were.
- o 12/23/16: DOJ/NRC complaint related to CFAM; The complaint also asserted that when Michelle had discussed her PIP with Beth Wetzel she 'exclaimed' that Michelle was being retaliated against.
 - o 9/11/17: Received feedback from a direct related to a discussion with a SQN employee, during which the SQN employee (a direct report to Mike) had noticed that there has been a drastic increase in the amount of communications' between Beth and Mike in the past couple of months. (Note, Beth has the least interface with the Site Managers of all of my corporate managers. Her IDP for 2018 includes a developmental area to go to the sites more often.) The SQN employee said he thought they (Mike and Beth) are the reason for the NRC SCWE inspection in my organization.
 - o 10/27/18: After a meeting related to seismic submittals, Beth mentioned she had a conflict that would impact her attending the next month's ROP task force meeting. I let Beth know that I would attend in her place as I was actively working to get more involved in industry initiatives. I asked her to forward me the information for that meeting which she said she would. Contrary to that direction to Beth and without any other discussion about it with others, the next day (Saturday morning 10/28) Mike sent an email to both me and my supervisor stating that he understood we needed someone to support the ROPTF meeting and that he would be available to attend, even though his organization had a significant inspection that week. While Beth was not included on the email Mike sent to us, Beth forwarded his email (deleted his forwarding it to her) recommending Mike's attendance at the meeting and that he be our primary for representative and she'd be the back up.
 - o 2/21/18: During meeting with ERI, the briefing package included a change where Michelle was recently added to an industry task force. When Beth had previously raised this several times, Joe provided feedback that we would not have TVA support that industry initiative. After the meeting I talked to Dan Stout (Michelle's new supervisor) who explained Michelle came to him because it would provide info related to SMRs. It was evident that Beth had gone to Michelle again, who then went to her supervisor and got him to agree to it without his realizing the history.
 - o 2/21/18: During a discussion with one of my directs, he noted that he realizes he needs to watch what he says in the office area. He had said something

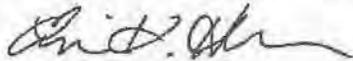
Joe Shea
Amanda Poland
Page 8
March 9, 2018

about me during a conversation with another employee and my direct report received a text message from Mike about it 'within 30 minutes'. (Alesia Justice, Beth Wetzel and Michelle Conner sit on opposite sides of the employee.) He assumed it was Michelle Conner who quickly texted Mike McBrearty related to his comment. I did not ask exactly what he said. I noted that others have told me (and I have observed myself), Beth and Michelle Conner or Michelle Conner and Alesia together often. He also stated that he believed Alesia was 'feeding' information to Mike.

- o 3/6/18: In an email exchange over the weekend with Mike McBrearty and my supervisor, Mike continued to assert performance issues. On 3/6/18, I was informed by one of my directs that Mike had also proceeded to forward that email to one of my other directs (Ed Schull) after they talked on the phone about the email exchange.

In summary, I perceive that there are demonstrating behaviors that are, at the very minimum, inconsistent with TVA competencies and core values in an attempt to continuously undermine, harass and intimidate me. This is resulting in a hostile work environment. I believe that Mike McBrearty has intentionally targeted me because I, as a function of my role and in conjunction with my leadership and HR, initiated an investigation into Michelle Conner's relationship with Mike McBrearty. Michelle, who is married to a SQN Shift Manager, had been in a role requiring oversight of the sites including the work of Mike McBrearty. Despite being a confidential investigation, they were both aware of the investigation from the day it began. After taking action to address Michelle's performance gaps, Mike's tactics primarily escalated. Additionally, Mike has fostered such an environment within his own department making interactions with the SQN Licensing organization extremely challenging. Lastly, additional employees within my organization, whose performance issues I have attempted to address in many cases, have colluded with Mike and Michelle either directly or indirectly, in an attempt to further create a hostile work environment for me and mitigate the potential for me to address their individual gaps.

So as not to create further stress, I would appreciate an expeditious assessment of these issues and timely feedback regarding the timeline to resolve.



Erin Henderson
Director, Nuclear Regulatory Affairs

Attachment 9

To: Poland, Amanda Elizabeth[aepoland@tva.gov]; Shea, Joseph W[jwshea@tva.gov]
From: Henderson, Erin Kathleen
Sent: 2018-03-09T20:43:04Z
Importance: Normal
Subject: Formal complaint
Received: 2018-03-09T20:43:05Z
[formal complaint March 9 2018- signed.pdf](#)

Amanda/Joe,

Please see the attached complaint regarding work environment issues. I respectfully request a timeline for resolution based on the attached. Many of the items are based on verbal discussions. I can retrieve the items that reference emails upon request.

I look forward to discussion on this topic regarding how this can be resolved.

Thanks,
Erin

Erin Henderson
Director, Nuclear Regulatory Affairs
Tennessee Valley Authority
Office: 423.751.7620
Cell: 302.507.1192

Attachment 10

Exhibit 30

Exhibit 30

2-2019-015

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION
OFFICIAL USE ONLY
OI INVESTIGATION INFORMATION

Title: Interview of Joseph Shea

Docket Number: 2-2019-015

Location: Chattanooga, Tennessee

Date: June 12, 2019

Work Order No.: NRC-0406

Pages 1-64

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 SR. SPECIAL AGENT LUINA: Yeah.

2 MR. SHEA: -- travel plans, including --
3 on behalf of both myself and Erin -- was recognizing
4 that Beth's times were getting either untimely or
5 incomplete and was engaging in some dialogue with Beth
6 about keeping that process well -- moving smoothly.

7 SR. SPECIAL AGENT LUINA: Uh-huh.

8 MR. SHEA: And that during the course of
9 that, but also even during the development of the
10 preparation for Beth to go up to NEI, development of
11 the contract; development of the contract with NEI,
12 that Beth had expressed on several occasions that she
13 was not trusting, was concerned that Erin was going to
14 use -- was during the course of Beth's time, her loan
15 period at NEI, was gonna use that as continued
16 opportunity to attempt to undermine or otherwise have
17 Beth undercut.

18 SR. SPECIAL AGENT LUINA: Okay.

19 MR. SHEA: And on several occasions, Beth
20 made reference to Erin having a pattern of -- I think
21 she used the phrase "having people investigated,
22 having gate logs pulled" and there was some other
23 attribute that she -- some other activity that she
24 attributed to Erin, and I knew for the issues that she
25 was referring -- I knew those to not be true; that is,

1 I knew that Erin had not had gate logs pulled, had not
2 initiated investigations against people for the
3 purpose of undercutting -- actually, not initiating
4 investigations, and so to the extent that I -- it
5 bothered me. It seemed problematic that Beth was
6 making assertions about her supervisor without
7 providing detail or that struck me as unbased -- I had
8 asked the investigators to look at those issues as
9 well. I had given Beth, on July 2nd I think it was,
10 an opportunity to amplify, though she said she had
11 nothing further to contribute to those.

12 So the investigation concluded that in
13 that pattern of making un- -- repeated unbased
14 assertions of unethical behavior on Erin's part
15 constituted themselves violations of TVA's ethical --
16 ethics policy and even whistleblower protection
17 statutes under -- the investigation drew that
18 conclusion.

19 SR. SPECIAL AGENT LUINA: How did she
20 raise these allegations or assertions about Henderson?

21 MR. SHEA: You mean, in what form?

22 SR. SPECIAL AGENT LUINA: Yeah. What
23 form?

24 MR. SHEA: There -- one was by text.
25 Another may have been by email.

OFFICIAL USE ONLY-OI INVESTIGATION INFORMATION 31

1 SR. SPECIAL AGENT LUINA: A text to you,
2 I guess?

3 MR. SHEA: Yes.

4 SR. SPECIAL AGENT LUINA: Did you provide
5 that to the NRC?

6 MR. SHEA: I mean, I don't know all of
7 that I provided -- I don't --

8 SR. SPECIAL AGENT LUINA: Is it in there?

9 MR. CHANDLER: I'll have to look.

10 SR. SPECIAL AGENT LUINA: Okay. So text,
11 maybe an email?

12 MR. SHEA: Yes.

13 SR. SPECIAL AGENT LUINA: Is the email the
14 May 2018 email, May the 14th, 2018 and this is your
15 response to her?

16 MR. SHEA: I think she refers to it in her
17 complaint as a bland response. So --

18 SR. SPECIAL AGENT LUINA: As what?

19 MR. SHEA: A bland.

20 SR. SPECIAL AGENT LUINA: Oh, bland
21 response.

22 MR. SHEA: Yeah.

23 SR. SPECIAL AGENT LUINA: Email dated --
24 well, there are several in here. The one you
25 responded was May 14th, 2018. Why don't you look

OFFICIAL USE ONLY-OI INVESTIGATION INFORMATION

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS

OFFICIAL USE ONLY-OI INVESTIGATION INFORMATION 32

1 through that, if that's the one you're talking about,
2 and her initial email is on the next page. Yeah.

3 MR. SHEA: Yeah.

4 SR. SPECIAL AGENT LUINA: Which is on May
5 the -- something --

6 MR. SHEA: So if we start at the first of
7 these emails --

8 SR. SPECIAL AGENT LUINA: Yes, on May 6th,
9 2018.

10 MR. SHEA: Right. So Beth expresses to
11 myself and Erin appreciation for the loaning memo
12 being signed. And then expressing it doesn't have the
13 certain amount of documents detail that she was
14 expecting.

15 SR. SPECIAL AGENT LUINA: Uh-huh.

16 MR. SHEA: And even when I was aware of
17 that on May 6th, I was well aware that Beth, as I
18 would reasonably expect for a complicated travel
19 situation, would have wanted to know how --

20 SR. SPECIAL AGENT LUINA: Yeah.

21 MR. SHEA: -- Federal Travel Regulations
22 applied, what were her obligations for filing
23 documentation, what were the limits of coverages for
24 a variety of things beyond just straightforward
25 lodging, and how would that all work.

OFFICIAL USE ONLY-OI INVESTIGATION INFORMATION

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS

1 And I was aware that Erin had, in part,
2 facilitated -- maybe not participated in at all, but
3 there had been a series of one or more meetings where
4 Beth had sat down with the Cognizant -- I'll call them
5 travel people -- I don't know if they were attorneys
6 or others -- and they had walked through the details
7 of the nature of the loan to sign her up there, the
8 nature of the expenses to which she was eligible to be
9 compensated, and then walked through that in a great
10 amount of detail.

11 SR. SPECIAL AGENT LUINA: Okay.

12 MR. SHEA: And I had expressed, for the
13 benefit of anyone, including Beth, going on such an
14 assignment that one would want all of that stuff
15 nicely and neatly written down.

16 SR. SPECIAL AGENT LUINA: Uh-huh.

17 MR. SHEA: And I -- early on, it's my
18 understanding that after they had those meetings,
19 there had been some efforts to document, you know, all
20 of that in great detail -- which was consistent with
21 what I said we would do.

22 SR. SPECIAL AGENT LUINA: Uh-huh.

23 MR. SHEA: As -- as -- when it was issued
24 and what Beth has responded to is that email -- the
25 memo to her sending her off to NEI did not have that

OFFICIAL USE ONLY-OI INVESTIGATION INFORMATION 34

1 detail included in it. She was expressing concern
2 about that.

3 SR. SPECIAL AGENT LUINA: Okay.

4 MR. SHEA: So Erin responded initially to
5 Beth's May 6th concern and observed Wes -- Wes is Wes
6 Wingo (ph) from the Human Resources Department --
7 interfaced with General Counsel's Office in drafting
8 the memo and suggests that in terms of the detail Beth
9 saw lacking, that she give Wes a call and --

10 SR. SPECIAL AGENT LUINA: Yeah.

11 MR. SHEA: And so her response was fairly
12 vanilla.

13 SR. SPECIAL AGENT LUINA: Right. And then
14 she sent something directly to you; right? I guess on
15 the 8th, I guess --

16 MR. SHEA: Seventh.

17 SR. SPECIAL AGENT LUINA: -- 7th -- May
18 7th.

19 MR. SHEA: Yes.

20 SR. SPECIAL AGENT LUINA: Okay.

21 MR. SHEA: So in her May 7 11:12 a.m. note
22 to me, email to me, she re-expresses the lack of
23 written detail in the memo, expresses that she had
24 typed up the details of that herself, with a variety
25 of people involved in HR --

OFFICIAL USE ONLY-OI INVESTIGATION INFORMATION

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS

1 SR. SPECIAL AGENT LUINA: Uh-huh.

2 MR. SHEA: -- Mike Griffin, Carla's my
3 admin, and that they met a few times. They documented
4 it. She expresses that she appreciates the support
5 and she then expresses that she believes she'll get
6 audited, which is not an unreasonable expectation for
7 a travel of that amount, and then here's where she
8 asserts that she knows that, "Erin has used HR to
9 investigate people, report people to ECP, threatened
10 to have people for-cause drug-tested, pulling badge
11 and gate records, and probably a lot more actions that
12 I'm not aware of." And I don't understand "a lot more
13 actions that you're not aware of."

14 And then (indiscernible) "has a
15 longstanding pattern of TVA using processes as tools."
16 So -- so at this point in May, the investigation into
17 Erin's complaint is ongoing.

18 SR. SPECIAL AGENT LUINA: Yeah.

19 MR. SHEA: So -- in my response to Beth,
20 I guess a week or so later, --

21 SR. SPECIAL AGENT LUINA: May 14th I think
22 -- yeah.

23 MR. SHEA: Okay. I -- I went back through
24 where I guess we kind of -- my interest in
25 understanding for the need to go through all the

1 details. I understand the details and that I had
2 indicated that having it in writing was a good thing.
3 And then I advise that ultimately it had been decided
4 and counsel counseled that the best thing -- the best
5 approach to any complicated travel is to simply refer
6 someone to the Federal Travel Regulations and not on
7 a one-off basis try to repeat them and paraphrase
8 them. And so with the sense that the FTR is what the
9 FTR is and, you know, it's -- so I then expressed to
10 her that while it's different than what we envisioned,
11 I was satisfied in the end with the (indiscernible)
12 memo.

13 SR. SPECIAL AGENT LUINA: Yeah.

14 MR. SHEA: And she had expressed at some
15 point that she was satisfied with the content of the
16 meetings and was confident that all of the parties
17 involved in processing her travel knew what they had.

18 SR. SPECIAL AGENT LUINA: Uh-huh.

19 MR. SHEA: And then I do acknowledge that
20 she had made the assertions about Erin and I make --
21 express to her that I had provided those to an
22 independent party and that that independent party was
23 the ongoing investigation.

24 SR. SPECIAL AGENT LUINA: Okay.

25 MR. SHEA: So I had taken this -- her memo

1 and forwarded it to the investigator.

2 SR. SPECIAL AGENT LUINA: I guess my
3 question would be: Some of the concerns she's
4 raising, why would you provide this to the OGC during
5 that and not provide it maybe to Employee Concerns
6 Program or -- or some other investigative body? Why
7 would you go to the OGC investigators?

8 MR. SHEA: Well, so -- why didn't I go to
9 ECP? ECP, there are multiple avenues for employees to
10 raise a concern. The first one starts with the
11 supervisor. CAP, ECP, NRC, they're all paths that our
12 employees are advised on. The -- the obligation of me
13 as the manager is to have it adequately and thoroughly
14 investigated. It's not an obligation on me to have it
15 investigated in any particular form or fashion by any
16 particular party. So to the extent there was already
17 an ongoing investigation, it made only sense to just
18 have it added to that record since it had her --
19 Beth's complaint had some similarities to the patterns
20 of behavior that Erin was asserting. So it seemed to
21 be just completely reasonable to have it part of that
22 scope and for the investigator to just have it as
23 another fact set to which to sort out their ultimate
24 conclusions.

25 SR. SPECIAL AGENT LUINA: Okay. I guess

1 when I read it, I saw it as she's raising a concern
2 about her supervisor. But then it's given over to the
3 investigator that's investigating Wetzel and McBrearty
4 and Schroll and all these other people. And it seems
5 like that's a totally separate allegation to me,
6 saying she does these things -- do you understand what
7 I'm saying? When I first read that, I was like, Oh,
8 who did you give this to? And I was interested to
9 find out who you had given it to.

10 MR. SHEA: Yeah. I don't know that I
11 would see it that way.

12 SR. SPECIAL AGENT LUINA: Yeah.

13 MR. SHEA: Since likely by that point in
14 time I had already been interviewed, it was, you know,
15 the interviews were ongoing. They were already
16 exploring the same back-and-forth patterns of who was
17 making what assertions against who. And this was just
18 another piece for a single investigator to sort out
19 who's -- who's doing what to who.

20 SR. SPECIAL AGENT LUINA: Okay. Okay.
21 And we were talking about that ERB.

22 MR. SHEA: Sure. So ultimately --

23 SR. SPECIAL AGENT LUINA: And you
24 mentioned that email was part of the justification on
25 -- it was mentioned in the ERB in one of those

1 documents in there. It talks about that May email.

2 MR. SHEA: Okay. So the investigation was
3 concluded in August of 2018 as I -- as I mentioned.
4 It had come to a conclusion that Beth -- her actions
5 had -- had violated TVA's ethics policies and other
6 provisions. And so those conclusions are provided to
7 me.

8 SR. SPECIAL AGENT LUINA: In the OGC
9 report, the August OGC report?

10 MR. SHEA: Yes, sir.

11 SR. SPECIAL AGENT LUINA: Okay.

12 MR. SHEA: And then it's -- you know, it's
13 in -- my role is to take those reports and conclusions
14 and respond to them.

15 SR. SPECIAL AGENT LUINA: Yeah.

16 MR. SHEA: Disposition -- act on them.
17 And, you know, do that in the context of existing
18 procedures and policies, enforcement -- employee
19 discipline --

20 SR. SPECIAL AGENT LUINA: Yeah.

21 MR. SHEA: -- types of processes. And in
22 addition, the adverse action process.

23 SR. SPECIAL AGENT LUINA: Yes.

24 MR. SHEA: So it's my obligation to take
25 that and flow that -- those conclusions into those

1 something you read from maybe or --

2 MR. SHEA: I did have notes.

3 SR. SPECIAL AGENT LUINA: Yeah.

4 MR. SHEA: My recollection would be that
5 I explained to her that a concern had been raised
6 about a pattern of harassing behaviors. An
7 investigation had been done, concluding that in fact
8 a pattern of harassment had been identified and that
9 it had been reviewed against the discipline policy and
10 for, you know, a leader to be conducting -- a leader,
11 manager, leader to be conducting those types of
12 behaviors was -- I'm sure I didn't say "sanctionable,"
13 but sanctionable up to termination, and we were
14 prepared to offer her a no-fault separation with a
15 variety of terms which I laid out to her.

16 SR. SPECIAL AGENT LUINA: Okay. And then
17 what did -- how did she respond?

18 MR. SHEA: It was not expected by -- she
19 did not expect to hear about it that way, so she was
20 surprised --

21 SR. SPECIAL AGENT LUINA: Uh-huh.

22 MR. SHEA: -- and took many notes.
23 Certainly didn't agree to sign it. And we'd
24 encouraged her not to. It's -- the letter gives you
25 seven days I think it is to review it and encourages

1 folks to go seek a variety of counsel. So we
2 absolutely would have made clear that, you know, she
3 had that opportunity to do that.

4 SR. SPECIAL AGENT LUINA: Okay. And then
5 you met with her again?

6 MR. SHEA: Yes. If I can look at the
7 second letter.

8 SR. SPECIAL AGENT LUINA: Okay.

9 MR. SHEA: Yes. The change was in
10 response -- and I don't recall the form in which she
11 asked for something other than what we had initially
12 offered. This would be a second offering to her in
13 which we addressed having her stay on payroll until
14 the effective date of the termination, which was
15 roughly to coincide with her reaching her retirement
16 eligibility date.

17 SR. SPECIAL AGENT LUINA: Okay.

18 MR. SHEA: Which is a point she had made
19 in the first meeting, which was that the termination
20 was shortly before her eligibility to retire.

21 SR. SPECIAL AGENT LUINA: Yeah.

22 MR. SHEA: So this had been -- the second
23 letter had been an attempt to bridge her in a pay
24 status to that point.

25 SR. SPECIAL AGENT LUINA: To that period

1 of time?

2 MR. SHEA: That's right.

3 SR. SPECIAL AGENT LUINA: And then she
4 signed this one. Right?

5 MR. SHEA: She did.

6 SR. SPECIAL AGENT LUINA: On December 5th,
7 and it's my underst- -- then she rescinded that is my
8 understanding.

9 MR. SHEA: Yes.

10 SR. SPECIAL AGENT LUINA: And then did you
11 all go back to another ERB to confirm the results
12 because now you're going to send her the notice of
13 termination. Is that right? Do you recall?

14 MR. SHEA: We -- I'm confident that there
15 were some discussions about the need to go back to an
16 ERB. But to the extent that the ERB approved up front
17 -- if not accept, made clear and signed off --

18 SR. SPECIAL AGENT LUINA: Yeah.

19 MR. SHEA: -- initially that if the no-
20 fault was not accepted, termination would be
21 available.

22 SR. SPECIAL AGENT LUINA: Okay.

23 MR. SHEA: So it was not a process that
24 needed to go -- re-hold an ERB. Certainly I informed
25 representatives of the Cognizant Relations, my

1 managers, OGC, HR, you know, that we were going to
2 have to go with that -- implement this.

3 SR. SPECIAL AGENT LUINA: Okay. All
4 right. And then January 14th, 2019, I've got a letter
5 you signed out to her saying she's been terminated for
6 the reasons that are listed on here about the TVA's
7 credit conduct and the stuff that we'd already talked
8 about.

9 MR. SHEA: Yes, sir.

10 SR. SPECIAL AGENT LUINA: Right?

11 MR. SHEA: Yes.

12 SR. SPECIAL AGENT LUINA: Okay. Is there
13 anything additional about the ERB or the termination
14 and that decision that you'd like to add that you
15 haven't -- that's not captured in here that you think
16 is relevant?

17 MR. CHANDLER: I do have some follow-up
18 questions if you don't mind.

19 SR. SPECIAL AGENT LUINA: Okay. Yeah.

20 MR. CHANDLER: Just a few. Would you mind
21 handing me that email chain, the May 14th and the May
22 7th.

23 SR. SPECIAL AGENT LUINA: Yeah.

24 MR. CHANDLER: Thank you. Just to clarify
25 a couple of things here, in her May 7th, 2018 email to

1 you, she uses the phrase -- oh, where is it -- "I know
2 that Erin has used HR to investigate people, report
3 people to ECP, threatened to have people for-cause
4 drug-tested, pulling badge and gate records, and
5 probably a lot more actions."

6 Do you know -- when she talks about HR
7 investigating people and pulling gate records, do you
8 know what that's a reference to?

9 MR. SHEA: I believe that's a reference to
10 a set of concerns that were raised in the spring of
11 2016 that were raised by a number of employees to Erin
12 and myself with regard to at that time a new employee
13 in the organization, Michelle Connor, about -- who was
14 the Corporate Functional Area Manager for Regulatory
15 Affairs and Licensing, with the Site Licensing Manager
16 at Sequoyah, and the nature of the concerns expressed
17 to us had been that there was an inappropriate
18 relationship such that it might compromise the
19 oversight -- of Connor's over the Site Licensing
20 Manager of Sequoyah.

21 I had received -- some of those concerns
22 had come to me. Some had come to Erin. Erin and I
23 had talked about how to respond to that, and our
24 conclusion would be that we should approach HR and
25 present the concerns to them. HR ultimately concluded

1 that they would conduct an investigation into those.

2 MR. CHANDLER: So if you were aware of
3 the --

4 MR. SHEA: And it's my understanding that
5 as a portion of that investigation, HR would have
6 requested that gate log security access records at
7 Sequoyah be retrieved, presumably looking for patterns
8 of overlap between the two, so that's the reference to
9 the gate badge.

10 MR. CHANDLER: Okay. And so then if you
11 were aware of what that investigation was that she was
12 referring to and if you knew that you and Erin had
13 discussed conducting an investigation, would there be
14 any reason for you to re-investigate her assertion in
15 the email that Erin had had HR investigate people and
16 pull gate records?

17 MR. SHEA: No.

18 MR. CHANDLER: Okay. And -- let me see.
19 Were there other examples that -- we don't have to get
20 into great -- I don't want to get into a lot of
21 detail, but was the May 7th email the only time she
22 made sort of a -- casted aspersions or otherwise made
23 an accusatory or inflammatory remark about Erin
24 Henderson to you, or was that just an example of one?

25 MR. SHEA: No. That was not the only

Attachment 11

Exhibit 3

Exhibit 3

2-2019-015

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

OFFICIAL USE ONLY
OI INVESTIGATION INFORMATION

Title: Interview of Beth Wetzel

Docket Number: 2-2019-015

Location: Chattanooga, Tennessee

Date: Thursday, May 9, 2019

Work Order No.: NRC-0334

Pages 1-73

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 MS. WETZEL: October of 2006, I started in
2 TVA corporate licensing.

3 SR. SPECIAL AGENT LUINA: Oh, okay.

4 MS. WETZEL: And then I'd say it was 2009
5 time frame, I worked at Sequoyah site licensing
6 manager for two years, and then I came back into
7 corporate in the assessment group, plant assessment
8 group, where I led big team assessments.

9 SR. SPECIAL AGENT LUINA: Uh-huh.

10 MS. WETZEL: And then I went back to
11 corporate licensing like in the 2012 time frame and
12 worked in corporate licensing until I was terminated.

13 SR. SPECIAL AGENT LUINA: In that former
14 role, in that position?

15 MS. WETZEL: The title changed a few
16 times. It's just manager -- regulatory manager,
17 manager, emerging regulatory issues.

18 SR. SPECIAL AGENT LUINA: Okay.

19 MS. WETZEL: They reorganize and they
20 change the title.

21 SR. SPECIAL AGENT LUINA: I guess the time
22 frame we're kind of looking at may be 2015, '16, up
23 until 2019. What was your position then? Was it --

24 MS. WETZEL: Manager, emerging regulatory
25 issues.

1 SR. SPECIAL AGENT LUINA: Okay. And who
2 did you report directly to?

3 MS. WETZEL: Erin Henderson.

4 SR. SPECIAL AGENT LUINA: She was your
5 direct supervisor. Okay.

6 MS. WETZEL: Yes.

7 SR. SPECIAL AGENT LUINA: During -- when
8 she started, I guess, she became -- or -- is that when
9 you --

10 MS. WETZEL: In 2015 or '16 time frame,
11 she --

12 SR. SPECIAL AGENT LUINA: Is when she
13 started?

14 MS. WETZEL: -- she -- when she started in
15 corporate.

16 SR. SPECIAL AGENT LUINA: In corporate.

17 MS. WETZEL: She came in as my supervisor.

18 SR. SPECIAL AGENT LUINA: Okay. All
19 right. And did you have any direct reports, people
20 that reported to you?

21 MS. WETZEL: Yes, I did.

22 SR. SPECIAL AGENT LUINA: And who were
23 they or what positions were they, or both actually?

24 MS. WETZEL: Well, I had several. I had
25 about seven, and she reorganized and made my direct

1 reports less and less.

2 SR. SPECIAL AGENT LUINA: Uh-huh.

3 MS. WETZEL: So at the end, I had Russell
4 Thompson and Chris Riedl, R-I-E-D-L, were my direct
5 reports.

6 SR. SPECIAL AGENT LUINA: Okay. R-I-E-D-
7 L?

8 MS. WETZEL: Uh-huh.

9 SR. SPECIAL AGENT LUINA: What were their
10 titles?

11 MS. WETZEL: Senior program managers.

12 SR. SPECIAL AGENT LUINA: Senior program
13 manager. And they actually sat up at corporate with
14 you or they --

15 MS. WETZEL: Yes.

16 SR. SPECIAL AGENT LUINA: -- were on the
17 sites -- okay. I got you. All right. But that whole
18 time, you reported to Erin.

19 MS. WETZEL: Yes.

20 SR. SPECIAL AGENT LUINA: Is that correct?
21 Okay. And it's E-R-I-N Henderson, H-E-N-D-E-R-S-O-N.
22 All right. Well, Ms. Wetzl, I'll let you kind of, if
23 you want to -- it might be best to kind of walk me
24 through chronologically what your concern is and what
25 you -- what your issue is that you want to raise to

1 to NEI. And that letter went to the NRC eventually?

2 MS. WETZEL: Yes.

3 SR. SPECIAL AGENT LUINA: Okay.

4 MS. WETZEL: It went to both the NRC and
5 NEI.

6 SR. SPECIAL AGENT LUINA: Okay. All
7 right. And that's one of the last safety concerns I
8 have. Okay.

9 MS. WETZEL: I went to work at NEI to get
10 away from this very toxic environment, and she kept
11 taking work away from me, and I had less and less work
12 to do. I went and told Joe Shea that I am not getting
13 any satisfaction out of my job, can I get a rotation
14 to NEI.

15 SR. SPECIAL AGENT LUINA: Uh-huh.

16 MS. WETZEL: And NEI wanted me, and Erin
17 didn't want me to go to NEI, but the CNO, Mike
18 Valduzzi, was very supportive of me taking a rotation
19 to NEI, so I would not have identified any other
20 safety issues because I went to NEI in late April.

21 SR. SPECIAL AGENT LUINA: Yes. That's
22 what I got. Like April 2018. Is that right?

23 MS. WETZEL: Yes.

24 SR. SPECIAL AGENT LUINA: Okay. I guess
25 that's one of the questions that's probably going to

1 come up is, did you go -- did you approach Ms.
2 Henderson about you going to NEI, since she was your
3 supervisor.

4 MS. WETZEL: No.

5 SR. SPECIAL AGENT LUINA: Okay. But you
6 decided to go to Shea?

7 MS. WETZEL: I went to Shea.

8 SR. SPECIAL AGENT LUINA: And why is that,
9 I guess?

10 MS. WETZEL: Because Ms. Henderson was
11 creating this environment that I wanted to get away
12 from.

13 SR. SPECIAL AGENT LUINA: Uh-huh. Okay.

14 MS. WETZEL: And Joe said, Have you asked
15 Erin. And I said, No. And he said, Well, I'll talk
16 to Erin.

17 SR. SPECIAL AGENT LUINA: When you talked
18 to him?

19 MS. WETZEL: Yes.

20 SR. SPECIAL AGENT LUINA: Okay. And
21 what --

22 MS. WETZEL: She did not want me to go to
23 NEI. She tried to stop it.

24 SR. SPECIAL AGENT LUINA: Okay. And why
25 didn't she want you to go to NEI?

1 MS. WETZEL: Because she controls people,
2 and I would not have been under her control.

3 SR. SPECIAL AGENT LUINA: Uh-huh. Okay.
4 Now, is there other employees that she treated, or did
5 she single you out?

6 MS. WETZEL: She -- Michelle Connor, she
7 treated terribly, terribly. Michelle's probably the
8 smartest SRO I know, and she hired Michelle and then
9 was abusive to her, and Michelle would be crying in
10 the halls because of how Erin treated her, and then
11 she actually had her physically moved away from her
12 office without her knowledge. It was very public and
13 ugly.

14 SR. SPECIAL AGENT LUINA: Is there any --
15 like when you mention abusive to her, and you
16 mentioned, you know, towards you she was being hostile
17 and stuff, I guess. What specifically does she do?

18 MS. WETZEL: Well, she -- I started out
19 with seven employees reporting to me, and she
20 promptly, within weeks, reorganized so I only had
21 four. Then my best one, my -- retired. She wouldn't
22 let me fill his slot. Instead, she put his slot in
23 somebody else's group.

24 SR. SPECIAL AGENT LUINA: Uh-huh.

25 MS. WETZEL: And then I had another one

1 leave for a promotion, so I only had two left, and she
2 wouldn't let me --

3 SR. SPECIAL AGENT LUINA: Okay.

4 MS. WETZEL: -- fill his slot. She put
5 that slot in another group. She took work away from
6 me. She would -- when I -- she would tell me managers
7 said bad things about me.

8 SR. SPECIAL AGENT LUINA: Right.

9 MS. WETZEL: It was just -- she would tell
10 other managers that I had an issue, that I didn't do
11 a good job on something.

12 SR. SPECIAL AGENT LUINA: Uh-huh.

13 MS. WETZEL: She would -- everybody was
14 afraid when they had to write a document and it was
15 going to be reviewed by her, because they knew that
16 she would just use it to say you were a bad employee
17 and performed poorly.

18 SR. SPECIAL AGENT LUINA: Who can
19 corroborate this? Who else worked there that shared
20 this with you, that, hey, I'm feeling it from her,
21 too, or --

22 MS. WETZEL: Well, Ed Schroll can --

23 SR. SPECIAL AGENT LUINA: Ed Schroll?

24 MS. WETZEL: -- corroborate it, but
25 he's -- he left early, retired early, and signed a

1 nondisclosure agreement, so I don't know.

2 SR. SPECIAL AGENT LUINA: That's S-C-H-R-
3 U-L-L.

4 MS. WETZEL: S-C-H-R-O-L-L.

5 SR. SPECIAL AGENT LUINA: R-O-L-L. Okay.
6 Retired, nondisclosure, you think. Okay. But during
7 the time he was there, he felt like he was being --

8 MS. WETZEL: Oh, yes.

9 SR. SPECIAL AGENT LUINA: -- harassed by
10 her, I guess, or something. Okay.

11 MS. WETZEL: And Mike McBrearty.

12 SR. SPECIAL AGENT LUINA: Mike McBrearty.
13 Yes. That's M, little C, B-R-E-A-R-T-Y. Yes.

14 MS. WETZEL: M-little C-capital B-R-E-A-R-
15 T-Y.

16 SR. SPECIAL AGENT LUINA: Yes.

17 MS. WETZEL: the guys that write
18 submittals, I would say that they would corroborate
19 that they were afraid to when she concurred on
20 anything, that it would be picked apart and they
21 would -- they were afraid for any of their products to
22 be reviewed by her.

23 SR. SPECIAL AGENT LUINA: Okay.

24 MS. WETZEL: Even though -- so there was
25 one product that one of my guys wrote. It was

1 submittal for the whole fleet. We sent it up to Erin,
2 and she just said how terrible it was. And I asked
3 her for specifics, and it was -- one of the things, it
4 was the figure title should go at the top not at the
5 bottom of the figure. I mean, it was very petty,
6 petty things.

7 SR. SPECIAL AGENT LUINA: Okay.

8 MS. WETZEL: And --

9 SR. SPECIAL AGENT LUINA: Yes.

10 MS. WETZEL: But she just would use
11 anything she could to -- I don't know -- mark you down
12 in your performance.

13 SR. SPECIAL AGENT LUINA: Okay.

14 MS. WETZEL: And that -- Chris Riedl can
15 talk about that.

16 SR. SPECIAL AGENT LUINA: How do you spell
17 Riedl?

18 MS. WETZEL: R-I-E-D-L.

19 SR. SPECIAL AGENT LUINA: D-L. Chris?
20 Okay.

21 MS. WETZEL: We were told, Here, use
22 Duke's as an example; they're a much better submittal.
23 And we started poring through Duke's submittal, and it
24 was -- didn't make sense at all. Ours looked better.

25 SR. SPECIAL AGENT LUINA: Uh-huh. Let's

1 talk about the NEI. You talked to Shea about going
2 and talked to Henderson, and then it sounds like you
3 had some issues with that. Then you ran into the CNO.

4 MS. WETZEL: Yes. So going to NEI is a
5 contract between the NEI --

6 SR. SPECIAL AGENT LUINA: And TVA?

7 MS. WETZEL: -- chief nuclear officer and
8 the TVA chief nuclear officer. And I got an example
9 of the last contract for the last person that was on
10 the NEI rotation, sent it to --

11 SR. SPECIAL AGENT LUINA: From TVA.
12 Right?

13 MS. WETZEL: One from TVA and one from
14 another --

15 SR. SPECIAL AGENT LUINA: Another utility
16 or something.

17 MS. WETZEL: -- utility. And so we could
18 copy that, and I asked -- Erin said she was going to
19 take care of it. And I asked to see it, and she said,
20 You don't need to see it; this is a contract between
21 TVA and NEI. I said, I understand, but it's about me;
22 I'd like to see it. And she told me I didn't need to
23 see it.

24 And I -- Joe asked me, how's that going;
25 how's the rotation going. I said, I can't get a copy

1 of the contract. So he got Erin to send me a copy of
2 the contract, and it was written in such a way -- and
3 I don't remember, and I don't have a copy of that
4 first contract. It was written in such a way that no
5 way NEI would have taken me. It was not written the
6 way the other ones were written at all.

7 SR. SPECIAL AGENT LUINA: Okay.

8 MS. WETZEL: And the CNO saw me and said,
9 Beth, how's it going; are we going to get you to NEI;
10 how's everything going. And I told him that the
11 contract -- NEI would never sign that contract, and he
12 said, Why? All it needs to say is we pay you, and we
13 pay your travel and if you're traveling for NEI, they
14 pay your travel. And --

15 SR. SPECIAL AGENT LUINA: This is
16 Valduzzi. Right?

17 MS. WETZEL: This is Valduzzi. And he
18 asked what lawyer I was working with. I said, I don't
19 know the lawyer that's working on it. And by the time
20 I got back to my desk, the lawyer was phoning me and
21 said, Beth, I didn't know you hadn't seen this
22 contract; I thought you were kept in the loop; I'll
23 keep you in the loop; I'm fixing the contract. So
24 Valduzzi fixed it, around Erin.

25 SR. SPECIAL AGENT LUINA: Yes. And did

1 she get upset with that, that you went around -- you
2 went to Valduzzi with this information? You don't
3 know?

4 MS. WETZEL: I don't know. Probably.
5 But, I mean, Valduzzi asked me.

6 SR. SPECIAL AGENT LUINA: Yes, yes.

7 MS. WETZEL: I didn't do it on purpose.

8 SR. SPECIAL AGENT LUINA: I know. Yes.
9 Okay. And then you're at NEI, and like you said,
10 early 2018. No other problems or issues while you
11 were out there at NEI, I assume.

12 MS. WETZEL: I was doing great work at
13 NEI. I loved my rotation at NEI. I went there, I
14 think, April 27. But it was -- my boss would not call
15 me. If she wanted to get ahold of somebody else at
16 NEI, she would call my boss at NEI or someone else at
17 NEI, and that was embarrassing. My boss at NEI would
18 say, Why is Erin calling me; she should be calling
19 you.

20 SR. SPECIAL AGENT LUINA: Uh-huh. She
21 wouldn't call you.

22 MS. WETZEL: No. And normally if you've
23 got a person at NEI, you --

24 SR. SPECIAL AGENT LUINA: That's your
25 contact.

1 MS. WETZEL: -- that's -- you're using
2 that person.

3 SR. SPECIAL AGENT LUINA: Okay. Well,
4 that's true. And then during your time at NEI, is
5 that when you were interviewed by the Office of
6 General Counsel?

7 MS. WETZEL: I was interviewed by --

8 SR. SPECIAL AGENT LUINA: TVA's Office --

9 MS. WETZEL: -- TVA's OGC the week before
10 I left, days before I left for NEI.

11 SR. SPECIAL AGENT LUINA: Oh, for NEI.
12 Before you left for NEI. Okay.

13 MS. WETZEL: Yes.

14 SR. SPECIAL AGENT LUINA: Tell me about
15 that. What happened there?

16 MS. WETZEL: So that was a --

17 SR. SPECIAL AGENT LUINA: Was it Slatter?

18 MS. WETZEL: -- quote/unquote,
19 investigation. It was Slatter.

20 SR. SPECIAL AGENT LUINA: Slatter.

21 MS. WETZEL: I never met him before. And
22 investigations aren't usually done by OGC, but I
23 thought it was an investigation into the very toxic
24 work environment in our group.

25 SR. SPECIAL AGENT LUINA: Oh, he didn't

1 even tell you what was under investigation, what he
2 was there for? Like, We got a complaint from such-
3 and-such, like I did today --

4 MS. WETZEL: No.

5 SR. SPECIAL AGENT LUINA: -- like this is
6 what we're investigating. He just sat down and
7 started asking questions or --

8 MS. WETZEL: I think he said it was the
9 work environment, and interviewing the work
10 environment.

11 SR. SPECIAL AGENT LUINA: Work
12 environment. Okay.

13 MS. WETZEL: So he asked what different
14 managers thought of each other, what I thought about
15 Erin, and I answered his questions --

16 SR. SPECIAL AGENT LUINA: Uh-huh.

17 MS. WETZEL: -- and told him my concerns
18 with the work environment and the way my boss would
19 use HR as a weapon.

20 SR. SPECIAL AGENT LUINA: Uh-huh. Was
21 there anyone else present for the interview?

22 MS. WETZEL: No.

23 SR. SPECIAL AGENT LUINA: Just you and
24 him? Did he like have you sign a -- this identity
25 protection? Did he mention anything to you about,

1 like, hey --

2 MS. WETZEL: No.

3 SR. SPECIAL AGENT LUINA: -- the
4 information you give me might -- is going to be used
5 for blah, blah, blah, this or that?

6 MS. WETZEL: No.

7 SR. SPECIAL AGENT LUINA: That it could be
8 public or it could -- someone else could see it or
9 read it or --

10 MS. WETZEL: No.

11 SR. SPECIAL AGENT LUINA: Did he say it
12 was going to be confidential? Please speak freely
13 and, you know, tell me the truth.

14 MS. WETZEL: I was naive. I thought
15 someone was helping us to fix this work environment.

16 SR. SPECIAL AGENT LUINA: Did you sign any
17 paperwork or any of that kind of stuff with him?

18 MS. WETZEL: No.

19 SR. SPECIAL AGENT LUINA: Okay. I was
20 just asking.

21 MS. WETZEL: Yes. I will never talk to an
22 investigator again without knowing --

23 SR. SPECIAL AGENT LUINA: Yes. You're
24 talking to me.

25 MS. WETZEL: -- how that information's

1 going to be used.

2 SR. SPECIAL AGENT LUINA: Okay. So you
3 told him some of the stuff you told me today about --

4 MS. WETZEL: Yes.

5 SR. SPECIAL AGENT LUINA: -- Ms. Henderson
6 and how --

7 MS. WETZEL: Yes.

8 SR. SPECIAL AGENT LUINA: -- and like you
9 said, okay, how she uses HR and how she's vindictive,
10 I guess, and -- okay. And then you go to NEI.

11 MS. WETZEL: Then I go to NEI.

12 SR. SPECIAL AGENT LUINA: Okay. And then
13 this issue with the travel --

14 MS. WETZEL: Yes.

15 SR. SPECIAL AGENT LUINA: -- when does
16 that -- explain that to me.

17 MS. WETZEL: Before I went to NEI -- I
18 mean, it's a lot of money.

19 SR. SPECIAL AGENT LUINA: Yes.

20 MS. WETZEL: Traveling to D.C. and living
21 there, and I've been a 30-year government employee.
22 I know the easiest way to fire someone is if they mess
23 up on travel.

24 SR. SPECIAL AGENT LUINA: Yes. Sure.

25 MS. WETZEL: I want everything to be

1 right. And Joe said -- this was Joe's idea. He said,
2 Beth, before you go up there, let's get all the travel
3 rules written down, how we're going to do this, so
4 there's no questions while you're up there.

5 SR. SPECIAL AGENT LUINA: Okay.

6 MS. WETZEL: I said, Great; I love stuff
7 in writing. That's a great idea. We'll do that. And
8 I went and started researching. There's federal
9 travel regulations. There's TVA travel regulations.
10 There's TVA cars and all these different rules.
11 There's people that have traveled, done rotations to
12 NPO down in Atlanta, people that have done rotations
13 to NEI.

14 So I talked to them and wrote all this
15 down, and Erin wanted to have meetings in her -- we
16 had like three or four meetings with multiple people
17 in her office to have all these -- understand all the
18 travel stuff. And I had it written down, and I said,
19 Okay. Well, is this what we agreed to? And she said,
20 We don't need that much detail. HR will write it up.

21 SR. SPECIAL AGENT LUINA: Okay.

22 MS. WETZEL: I said, Okay. And before I
23 went, I said, Has HR written up what we agreed to for
24 travel? No, not yet. And I was up there, and I had
25 to put in my travel authorization, and it still wasn't

1 written, and I sent an email to Joe, saying, Hey, I'm
2 concerned; it's not written down, and I'm afraid to
3 put in my travel. And --

4 SR. SPECIAL AGENT LUINA: Do you have that
5 email?

6 MS. WETZEL: I might have that email. I
7 think I -- I have that email. I don't have it with
8 me --

9 SR. SPECIAL AGENT LUINA: Okay.

10 MS. WETZEL: -- but I will send it to you.

11 SR. SPECIAL AGENT LUINA: Yes, because it
12 seems like -- yes. Like from your DOL paper it says,
13 yes, "In May 2018, Ms. Wetzel had to write to Mr. Shea
14 and Ms. Henderson to clarify how the travel expenses
15 would be handled." So I'm assuming that's an email --

16 MS. WETZEL: Yes.

17 SR. SPECIAL AGENT LUINA: -- being written
18 back and forth. And it says, like on May 6, he might
19 have written back.

20 MS. WETZEL: Yes. I've got those emails.

21 SR. SPECIAL AGENT LUINA: Yes. You're on
22 continuous travel status, and all the benefits
23 outlined are available to you. And then you had to
24 respond to Ms. Henderson's latest actions. Yes.

25 MS. WETZEL: Yes. So she just sent an

1 email --

2 SR. SPECIAL AGENT LUINA: Oh, that's what
3 I was going to ask you. Sorry. I didn't mean to cut
4 you off.

5 MS. WETZEL: Okay.

6 SR. SPECIAL AGENT LUINA: But then, yes,
7 you responded that, hey, you know, agreed to it. You
8 were concerned that Ms. Henderson would use travel
9 voucher issues as a basis to retaliate against you.
10 I mean, you actually put that in your email to him?

11 MS. WETZEL: Yes.

12 SR. SPECIAL AGENT LUINA: Okay. And then
13 he responded back on May 14, according to this -- and
14 if you have these emails, it'd be great -- that, you
15 know, the federal travel regulations will cover all
16 your concerns. And then he stated an investigation
17 would be conducted of Ms. -- of your allegations.

18 MS. WETZEL: Right.

19 SR. SPECIAL AGENT LUINA: What -- did that
20 happen? Did that get referred to ECP or something,
21 or --

22 MS. WETZEL: I don't know.

23 SR. SPECIAL AGENT LUINA: You don't know.
24 He -- okay. Yes. I definitely need those emails
25 then. You never -- I mean, I'll ask you obviously.

1 So that happened in May of '18. You were never
2 interviewed or talked to again about that by ECP or --

3 MS. WETZEL: No.

4 SR. SPECIAL AGENT LUINA: -- internal
5 investigators, HR?

6 MS. WETZEL: No.

7 SR. SPECIAL AGENT LUINA: Nobody.

8 MS. WETZEL: That was used as the basis
9 for firing me, part of the basis for firing me.

10 SR. SPECIAL AGENT LUINA: Okay. This
11 email and these comments.

12 MS. WETZEL: Yes.

13 SR. SPECIAL AGENT LUINA: Part of the
14 basis was --

15 MS. WETZEL: Yes.

16 SR. SPECIAL AGENT LUINA: Okay.

17 MS. WETZEL: The fact that I was --

18 SR. SPECIAL AGENT LUINA: And hold on
19 before we do that. I just want to try to stay online.
20 So in August -- so after that, you didn't hear
21 anything back from -- back about that one.

22 MS. WETZEL: I had one phone call from Joe
23 with his admin. He announced his admin in the room,
24 and he asked me, Tell me exactly what your concerns
25 are with your manager. And so he wanted to -- Joe

1 wanted me to talk about my manager in front of an
2 individual contributor.

3 SR. SPECIAL AGENT LUINA: Okay.

4 MS. WETZEL: And I said, I have nothing
5 more to say about that. It was very odd. It was
6 like -- I would not talk about my manager in front of
7 an individual contributor. You don't do that. You
8 talk to your manager or your manager's manager, but
9 you don't talk badly about a manager in front of an
10 individual contributor. And he was trying to get me
11 to do that.

12 SR. SPECIAL AGENT LUINA: Okay.

13 MS. WETZEL: And --

14 SR. SPECIAL AGENT LUINA: You think that's
15 what he was trying to do.

16 MS. WETZEL: Yes. He definitely was.

17 SR. SPECIAL AGENT LUINA: Okay. I see.

18 MS. WETZEL: And that was in June or July.
19 I remember I was at my apartment in D.C. when I took
20 the phone call, and it was very strange.

21 SR. SPECIAL AGENT LUINA: Okay. Because
22 he hadn't called you and talked like that before with,
23 Hey, my admin's in the room; she's taking --

24 MS. WETZEL: Huh-uh.

25 SR. SPECIAL AGENT LUINA: -- notes or --

1 MS. WETZEL: No.

2 SR. SPECIAL AGENT LUINA: -- here to -- or
3 something like that. Okay. It was just kind of
4 weird. All right. And then in August, you got a copy
5 of the email that Chris Earls -- was that your
6 supervisor --

7 MS. WETZEL: That was my supervisor at
8 NEI.

9 SR. SPECIAL AGENT LUINA: Okay. And he
10 provided some feedback, it looks like, on you.

11 MS. WETZEL: On my performance. Very
12 positive feedback.

13 SR. SPECIAL AGENT LUINA: Okay. That's
14 why. I was wondering why. It's because he got an
15 email from Erin, requesting feedback. Okay.

16 MS. WETZEL: Yes. And, of course, Chris
17 shared that with me.

18 SR. SPECIAL AGENT LUINA: That was good,
19 because you didn't get a copy of those emails.

20 MS. WETZEL: No.

21 SR. SPECIAL AGENT LUINA: So he provided
22 those to you, I guess, at some point.

23 MS. WETZEL: Yes.

24 SR. SPECIAL AGENT LUINA: Glad you saved
25 those. Okay.

1 MS. WETZEL: Yes.

2 SR. SPECIAL AGENT LUINA: I've got that.
3 I don't need to go over all that. I can read that,
4 and it's pretty well summarized in the other stuff,
5 too. So then, it seems, after this is when we hit
6 October of 2018, when you get contacted by Mr. Shea --
7 correct? --

8 MS. WETZEL: Yes.

9 SR. SPECIAL AGENT LUINA: -- to come back
10 to TVA corporate from D.C. Right? You're in D.C.

11 MS. WETZEL: From D.C., and I had --

12 SR. SPECIAL AGENT LUINA: And he just
13 says, To get your performance appraisal or something.

14 MS. WETZEL: Yes. To get my performance
15 review, and I tried to get that meeting moved to at
16 least later in the week, because I said, I've got
17 industry meetings that I will miss and a meeting with
18 the NRC that I'm running.

19 SR. SPECIAL AGENT LUINA: Uh-huh.

20 MS. WETZEL: And his admin said, no, this
21 is the only time Joe's available; it has to be now.

22 SR. SPECIAL AGENT LUINA: Okay.

23 MS. WETZEL: So --

24 SR. SPECIAL AGENT LUINA: And you show up
25 for that meeting on October 15 --

1 MS. WETZEL: Yep.

2 SR. SPECIAL AGENT LUINA: -- 2018. And
3 Ms. Poland's there, too. Amanda is.

4 MS. WETZEL: Yes. As soon as I walk into
5 Joe's office and HR's there, I know it's not a normal
6 performance review.

7 SR. SPECIAL AGENT LUINA: Okay.

8 MS. WETZEL: And Joe read my performance
9 review out loud to me, and told me that I created
10 hostile work environment for my boss by how I --
11 things that I said to the investigator, and --

12 SR. SPECIAL AGENT LUINA: He said that,
13 said, things you said to the OGC investigator.

14 MS. WETZEL: During an investigation.

15 SR. SPECIAL AGENT LUINA: During an
16 investigation. Okay.

17 MS. WETZEL: Things I told the
18 investigator and my -- the email I sent about my
19 travel, that created a hostile work environment for my
20 boss.

21 SR. SPECIAL AGENT LUINA: The one we just
22 talked about.

23 MS. WETZEL: Yes. I said, I don't
24 understand -- I said, Joe, I told the investigator the
25 truth, what I believed to be the truth, and I was

1 afraid to put in my travel and the rules weren't
2 written down.

3 SR. SPECIAL AGENT LUINA: Uh-huh.

4 MS. WETZEL: I was afraid that that was
5 going to be used against me. I said, I don't
6 understand, Joe. And I thought management created the
7 work environment for the employees, not the employee
8 creating the hostile work environment for managers.
9 I don't understand how I could do that. And all he
10 would do is read it again.

11 SR. SPECIAL AGENT LUINA: And so did he
12 provide you a copy of it? Do you have that?

13 MS. WETZEL: Yes.

14 SR. SPECIAL AGENT LUINA: This is what he
15 read to you?

16 MS. WETZEL: I have it somewhere.

17 SR. SPECIAL AGENT LUINA: Okay.

18 MS. WETZEL: If I don't have it here --
19 and then I realized that when he called me and tried
20 to get me to say something bad about my boss in front
21 of an individual employee, that could have been
22 interpreted as creating a hostile work environment for
23 her, saying bad things about her in front of someone.

24 SR. SPECIAL AGENT LUINA: Okay.

25 MS. WETZEL: So it was almost like a set-

1 up.

2 SR. SPECIAL AGENT LUINA: Oh, I see. You
3 didn't think about that until later, I guess, so you
4 didn't challenge him about that in that meeting.

5 MS. WETZEL: No. I was shocked.

6 SR. SPECIAL AGENT LUINA: Okay.

7 MS. WETZEL: October 25.

8 SR. SPECIAL AGENT LUINA: October 15?

9 MS. WETZEL: That's my only copy.

10 SR. SPECIAL AGENT LUINA: Okay. I'll just
11 look through it. So this is what he read to you.

12 MS. WETZEL: Yes.

13 SR. SPECIAL AGENT LUINA: (Perusing
14 document.) Oh, no. This is the voluntary separation
15 one. This is the one you refused to sign when he
16 called you back.

17 MS. WETZEL: This --

18 SR. SPECIAL AGENT LUINA: Right?

19 MS. WETZEL: Right.

20 SR. SPECIAL AGENT LUINA: Yes. My
21 understanding is at the October --

22 MS. WETZEL: I have what he read to me.
23 It's not -- this isn't it, but it's some of the same
24 words in here.

25 SR. SPECIAL AGENT LUINA: Yes. At the

1 follow-up meeting on October 25.

2 MS. WETZEL: Yes.

3 SR. SPECIAL AGENT LUINA: That one's the
4 document that he wanted you to sign that agreement.
5 They didn't have a no-fault separation agreement.

6 MS. WETZEL: Yes, they did.

7 SR. SPECIAL AGENT LUINA: Oh, at that
8 October 15 meeting?

9 MS. WETZEL: Yes.

10 SR. SPECIAL AGENT LUINA: Okay. And --

11 MS. WETZEL: They had a no-fault ready for
12 me to sign -- they had a no-fault, and they said, You
13 have time to review those. But they were handing me
14 a no-fault.

15 SR. SPECIAL AGENT LUINA: Okay. So prior
16 to this meeting, has Joe Shea ever sat you down and
17 said, Beth, you know, like the way you're treating
18 Erin, we need to work on it, or your attitude or your
19 behavior --

20 MS. WETZEL: (No audible response.)

21 SR. SPECIAL AGENT LUINA: You're shaking
22 your head, so answer --

23 MS. WETZEL: No. No, never.

24 SR. SPECIAL AGENT LUINA: -- the question.
25 Okay. Any written performance -- you know, a negative

1 performance review or a --

2 MS. WETZEL: No.

3 SR. SPECIAL AGENT LUINA: -- written
4 discipline?

5 MS. WETZEL: No written discipline. No
6 coaching. Not even coaching. Hey, Beth, you're
7 creating an environment -- nothing like that. In
8 fact, Joe knew -- he knew that I was -- why I wanted
9 to leave and go to NEI, and he thought it was a good
10 idea.

11 SR. SPECIAL AGENT LUINA: He knew it --
12 you told him some of the stuff's because of Erin?

13 MS. WETZEL: I told -- yes. I told him I
14 am being marginalized; I'm not satisfied with this
15 job. I've got less and less people working for me.
16 I know I can do good work at NEI.

17 SR. SPECIAL AGENT LUINA: Uh-huh.

18 MS. WETZEL: And he agreed, and he let me
19 go to NEI.

20 SR. SPECIAL AGENT LUINA: Never any
21 mention of, yes, Beth, don't talk -- you know, don't
22 be unprofessional towards Erin, or, you know --

23 MS. WETZEL: No.

24 SR. SPECIAL AGENT LUINA: -- hey, you --
25 like the thing with the CNO thing, you know, even

1 though it was accidental meeting in the hallway and he
2 asked you questions or whatever.

3 MS. WETZEL: I think anybody would be
4 hard-pressed to say that I was unprofessional to Erin.

5 SR. SPECIAL AGENT LUINA: Okay.

6 MS. WETZEL: There wouldn't have been
7 anything for Joe to coach me on, and I take coaching.
8 I want coaching.

9 SR. SPECIAL AGENT LUINA: Yes.

10 MS. WETZEL: In fact, when people were
11 told I was fired -- so the day -- within an hour after
12 Joe called me on January 14 and said I was fired --
13 Joe and Amanda Poland called me and told me I was
14 terminated -- Joe had a meeting with the whole group
15 and said, Beth no longer works here. And everybody
16 was shocked. And he said, Reflect on discussions we
17 had back in October regarding a respectful work
18 environment.

19 SR. SPECIAL AGENT LUINA: Uh-huh.

20 MS. WETZEL: And I had people texting me,
21 saying, What on earth happened; Russell Thompson said,
22 I can think of that respectful work environment maybe
23 applying to Mike McBrearty but not you, Beth. I'm
24 respectful.

25 SR. SPECIAL AGENT LUINA: Uh-huh. Yes.

1 I'd like to see -- is what they laid out to you, is
2 there justification for proposing this? And you don't
3 have to pull it out right now.

4 MS. WETZEL: I know I handed it to --

5 SR. SPECIAL AGENT LUINA: Alan?

6 MS. WETZEL: -- to DOL investigator, and
7 she read it three times and said, I don't understand
8 how -- I still don't understand how you were fired or
9 why you were fired.

10 SR. SPECIAL AGENT LUINA: That's true,
11 because this is trying to get you to separate. And
12 then in January, they just -- so let's talk about
13 that. So October 15 meeting happens. They give you
14 the form. Is it --

15 MS. WETZEL: They terminate me. They
16 said, You --

17 SR. SPECIAL AGENT LUINA: On October 15,
18 I'm saying.

19 MS. WETZEL: Well, you -- they -- that I
20 did things against TVA's code of conduct, creating a
21 hostile work environment for my boss, and it's up to
22 and including termination, and termination is
23 warranted in this case. And they said, Instead of
24 terminating you, we're willing for you to sign this --

25 SR. SPECIAL AGENT LUINA: No-fault --

1 MS. WETZEL: -- no-fault separation. And
2 it wasn't -- it was less than this, what they gave me
3 on the 25th. I said, I have six months to retirement.
4 My retirement is March 23, my minimum retirement date.
5 I have 30 -- I said, I have -- through my tears, I
6 said, I have almost 32 years of federal service.

7 SR. SPECIAL AGENT LUINA: Yes.

8 MS. WETZEL: Are you terminating me? And
9 Amanda said, Yes, we know that. And I said, Is there
10 any way to get to retirement. Well, we don't know.
11 I just left there in tears.

12 SR. SPECIAL AGENT LUINA: Yes. Okay.

13 MS. WETZEL: And it was all planned,
14 because the admin, the administrative assistant, had
15 my computer and had my --

16 SR. SPECIAL AGENT LUINA: They were ready
17 to go?

18 MS. WETZEL: -- bag and brought it into
19 the office and escorted me out and took my badge.

20 SR. SPECIAL AGENT LUINA: Took your badge.
21 Yes.

22 MS. WETZEL: And then I'm standing by
23 the -- by my car with my phone and realized, I don't
24 have the keys to my car. She didn't hand me my purse,
25 so I had to call and --

1 SR. SPECIAL AGENT LUINA: Go get your
2 purse.

3 MS. WETZEL: -- get her to bring my purse
4 out.

5 SR. SPECIAL AGENT LUINA: And then on
6 October 25, you have a follow-up meeting --

7 MS. WETZEL: Yes.

8 SR. SPECIAL AGENT LUINA: -- which is when
9 that letter's handed to you.

10 MS. WETZEL: That's when they offered me
11 a little bit more. They offered a way to get me to my
12 retirement date.

13 SR. SPECIAL AGENT LUINA: Okay.

14 MS. WETZEL: Not to pay me to my
15 retirement date, but to get me to my retirement date.

16 SR. SPECIAL AGENT LUINA: That's trying to
17 get you to resign, separation agreement. And you're
18 at -- yes. Effective March 23. Is that what it would
19 have done?

20 MS. WETZEL: Yes.

21 SR. SPECIAL AGENT LUINA: Okay. I know
22 this is the only copy you have. Can you give me a
23 copy, though, like scan it in and send it to me or
24 whatever?

25 MS. WETZEL: Yes. And I will get you a

1 copy of the October 15 one.

2 SR. SPECIAL AGENT LUINA: Let me read this
3 real quick. (Perusing document.) This doesn't
4 mention anything about the investigation.

5 Did he call you up and ask you to come
6 back to the office on October 25 then?

7 MS. WETZEL: Yes.

8 SR. SPECIAL AGENT LUINA: Oh, so you had
9 21 days to sign it or consider it.

10 MS. WETZEL: Yes.

11 SR. SPECIAL AGENT LUINA: So you took this
12 with you, I'm assuming.

13 MS. WETZEL: The October 15 one, yes.

14 SR. SPECIAL AGENT LUINA: October 25 one.
15 You had 15th and the 25th.

16 MS. WETZEL: Yes.

17 SR. SPECIAL AGENT LUINA: Okay. So
18 then -- okay. And then they told you -- this is when
19 you made your comments to Joe again, This is a
20 wrongful termination, and --

21 MS. WETZEL: Yes.

22 SR. SPECIAL AGENT LUINA: And he didn't --
23 no response from Joe really. He just --

24 MS. WETZEL: No.

25 SR. SPECIAL AGENT LUINA: -- stuck very

1 business -- okay. And then on October 31, you sent
2 them a memorandum. I think I have that one actually.

3 MS. WETZEL: Yes. Yes.

4 SR. SPECIAL AGENT LUINA: That's this one?
5 Yes.

6 MS. WETZEL: Yes.

7 SR. SPECIAL AGENT LUINA: And it's a
8 memorandum to Joe Shea and Amanda Poland. (Perusing
9 document.) So why did you send this memo, I guess?
10 What prompted you to send this one? Is this
11 responding to them about --

12 MS. WETZEL: It's responding to them.

13 SR. SPECIAL AGENT LUINA: Okay.

14 MS. WETZEL: It was at Alan's
15 recommendation.

16 SR. SPECIAL AGENT LUINA: Okay. But you
17 did not -- okay. So you're saying, I don't agree to
18 the terms. I got to that part now. Because they told
19 you to discuss it with a lawyer, so you did.
20 (Perusing document.)

21 Okay. And then they -- no response when
22 you submitted that to them? Oh, no. Here we go. On
23 November 15, Mr. Shea provided with a written no-fault
24 separation agreement, but the only change being that
25 Ms. Wetzel will be paid through March 23.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. WETZEL: Yes.

SR. SPECIAL AGENT LUINA: Yes.

MS. WETZEL: So I was handed three different no-faults.

SR. SPECIAL AGENT LUINA: Okay.

MS. WETZEL: One on October 15.

SR. SPECIAL AGENT LUINA: Yep.

MS. WETZEL: One on October 25, and one on November 15.

SR. SPECIAL AGENT LUINA: November 15.

Okay.

MS. WETZEL: I was sent that one. That one was by phone.

SR. SPECIAL AGENT LUINA: And you didn't respond to that one. Right?

MS. WETZEL: I asked for additional time. I think I had 20 days, and I asked for additional time, because I was working with my lawyer, on whether we were going to file DOL or not.

SR. SPECIAL AGENT LUINA: Uh-huh.

MS. WETZEL: And they didn't give me additional time, so I -- you can sign the no-fault, and then rescind it within --

SR. SPECIAL AGENT LUINA: Twenty days?

MS. WETZEL: -- seven days or so many

1 days. I can't remember how many days. I signed it
2 and rescinded it, to buy a little time.

3 SR. SPECIAL AGENT LUINA: Okay. And then
4 you were contacted in January -- right? -- and told
5 that you were --

6 MS. WETZEL: Yes. They paid me. I was
7 on -- they kept paying me until January 14, and they
8 called me and told me I was terminated.

9 SR. SPECIAL AGENT LUINA: Terminated your
10 employment. Okay.

11 MS. WETZEL: I've got my notes here from
12 the October 15 performance review.

13 SR. SPECIAL AGENT LUINA: So in this whole
14 process, Henderson was not involved.

15 MS. WETZEL: Never saw her. No.

16 SR. SPECIAL AGENT LUINA: Even though
17 she's your direct supervisor technically on paper.

18 MS. WETZEL: Yes.

19 SR. SPECIAL AGENT LUINA: Okay. Did
20 she --

21 MS. WETZEL: Joe signed my performance
22 review. Joe signed all these no-faults. Erin was
23 not --

24 SR. SPECIAL AGENT LUINA: But prior to
25 this, Erin had signed your performance reviews?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. WETZEL: Yes.

SR. SPECIAL AGENT LUINA: In '15, '16,
'17.

MS. WETZEL: Yes.

SR. SPECIAL AGENT LUINA: And, again, in those performance reviews, is there any negative feedback related to performance or behavior?

MS. WETZEL: No. There's critical feedback on what I should do better.

SR. SPECIAL AGENT LUINA: Uh-huh.

MS. WETZEL: But no creating a bad work environment or anything like that.

SR. SPECIAL AGENT LUINA: Uh-huh. Ever --

MS. WETZEL: So here -- if you want me to read some of my notes from the October 15, my performance review. This is when he called me in.

SR. SPECIAL AGENT LUINA: Uh-huh.

MS. WETZEL: I was inconsistent. I had solid and good feedback from NEI, very positive feedback from NEI, but the results of an investigation were factored into my performance review.

SR. SPECIAL AGENT LUINA: Uh-huh.

MS. WETZEL: And the investigation said that I created a hostile work environment for the director of regulatory affairs.

1 SR. SPECIAL AGENT LUINA: Which is
2 Henderson. Right?

3 MS. WETZEL: Henderson.

4 SR. SPECIAL AGENT LUINA: You took these
5 notes while -- during the interview?

6 MS. WETZEL: I took these notes while he
7 was giving me my performance review.

8 SR. SPECIAL AGENT LUINA: Okay.

9 MS. WETZEL: He quoted the TVA code of
10 conduct, that TVA will maintain a workplace, and I was
11 aware of concerns about a corporate employee to
12 provide CFAM over -- so he was telling me that Erin
13 had engaged in a protected activity, and I was aware
14 of that protected activity.

15 And I'm like, What? What protected
16 activity? What does that have to do with me? She
17 supposedly made a complaint about inappropriate
18 relationship between a CFAM and a site regulatory
19 manager. And that was her protected activity.

20 SR. SPECIAL AGENT LUINA: Uh-huh.

21 MS. WETZEL: I said, What does that have
22 to do with me? But she was in a protected activity,
23 and I created a hostile work environment for her.

24 SR. SPECIAL AGENT LUINA: Did you know
25 about that prior to meeting with Joe Shea on that

Attachment 12

Exhibit 14

Exhibit 14

2-2019-015



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1401

Sherry A. Quirk
Executive Vice President and General Counsel

August 10, 2018

Mr. Joseph Shea
VP, Nuclear Regulatory Affairs and Support Services
Tennessee Valley Authority-TVA
LP 3R-C

Dear Mr. Shea:

Enclosed is a final copy of the Investigation Report prepared by the Office of General Counsel into the allegations of harassment raised by Erin Henderson. Please do not distribute or duplicate this report.

Based on the findings in this report, we are prepared to recommend termination for Mr. McBreary. We would like to have a discussion with all interested parties early the week of August 13 to discuss next steps and address any questions. We will be reaching out to your assistant to schedule that teleconference as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "S. A. Quirk", written over a horizontal line.

Sherry A. Quirk

Enclosure

IN RE THE COMPLAINT OF)
ERIN HENDERSON)
REPORT BY THE TENNESSEE) Misc. No. _____
VALLEY AUTHORITY)
)
)

**REPORT OF INVESTIGATION OF ERIN HENDERSON'S ALLEGATIONS
OF HARASSMENT AND HOSTILE WORK ENVIRONMENT**

On March 9, 2018, Erin Henderson, Director, Nuclear Regulatory Affairs, submitted a formal complaint to Joseph W. Shea, Vice President, Nuclear Regulatory Affairs & Support Services, and Amanda Elizabeth Poland, Director, Human Resources, alleging that she has been, and continues to be, retaliated against and/or harassed and subjected to a hostile work environment of multiple years. Ms. Henderson reports to Mr. Shea.

Ms. Henderson states (1) that several employees "are complicit in workplace bullying and creating a hostile work environment"; (2) that these employees "either directly or indirectly acted in an attempt to intimidate and undermine [her] in her role as a senior regulatory leader"; and (3) that these employees' conduct is "both repetitive and pervasive."¹ Ms. Henderson's position is in TVA's Corporate Nuclear Licensing and she is responsible, primarily, for formulating and executing fleet governance and oversight strategies and programs to achieve and sustain excellence in all of TVA's operating fleet nuclear regulatory matters, serves as Nuclear Power's expert and final

¹ Complaint at 1.

Confidential—Attorney Client Privileged

authority in nuclear regulatory issues, and provides strategic guidance to senior corporate and site leaders on range of nuclear regulatory issues.²

Ms. Henderson alleges that five employees--Michael McBrearty, Manager, Site Licensing (SQN); Terri Michelle Conner, Senior Manager, SMR Ops & Training; Beth A. Wetzel, Manager, Regulatory Programs; Ed Schrull, Manager, Fleet Licensing; and Alesia Cox Justice, Management Analyst--contributed to the hostile work environment.³ Except for Mr. McBrearty, the aforementioned employees work or worked in Corporate Licensing and either reported directly to Ms. Henderson or reported to one of her direct reports.⁴ Ms. Connor was a direct report of Ms. Henderson until November 2017 before she assumed her current position of Senior Manager, SMR Ops & Training, that came about as part of a settlement of a Department of Labor complaint that Ms. Connor filed in December 2016.⁵ Ms. Connor now reports to Daniel P. Stout, Senior Manager, SMR Technology.⁶ Ms. Wetzel reported to Ms. Henderson until April 27, 2018; starting April 30, 2018, she has been on loan to the Nuclear Energy Institute (NEI) for 18 months.⁷

² Henderson PD.

³ Complaint at 1.

⁴ See April 5, 2018, Organizational Chart for Corporate Licensing (Org Chart). Ms. Cox is not a direct report of Ms. Henderson's. She reports to Ms. Wetzel who reports to Ms. Henderson.

⁵ Complaint at 2. Ms. Henderson hired Ms. Conner in February 2016 as the "new CFAM" or Corporate Functional Area Manager. Complaint at 2.

⁶ Org Chart; Interviews of Henderson and Shea.

⁷ Interviews of Wetzel, Henderson, and Edmondson.

As part of the investigation, the undersigned interviewed Ms. Henderson (three times) and her entire staff, consisting of her direct reports--James Pollickoski, Manager, Regulatory Compliance, Mr. Schrull, Manager, Fleet Licensing, and Ms. Wetzal and their direct reports--Peggy R. Rescheske, Senior Program Manager, Corporate Nuclear Licensing; Russell Thompson, Senior Program Manager, Corporate Nuclear Licensing; Christopher T. Riedl, Senior Program Manager, Corporate Nuclear Licensing; Gordon Williams, Senior Program Manager, Fleet Licensing; Russell D. Wells, Senior Program Manager, Fleet Licensing; Thomas Hess, Program Manager, Fleet Licensing; Teddy J. Bradshaw, Program Manager, NSRB; and Alesia Cox Justice, Management Analyst. The undersigned also interviewed Mr. Shea, Vice President, Nuclear Regulatory Affairs & Support Services, and his Management Assistant, Carla Edmondson, as well as the three Site Licensing Managers--Jamie Paul (BFN), Kimberly D. Hulvey (WBN), and Mr. McBrearty (SQN). At the insistence of management, the undersigned did not interview Ms. Conner, Senior Manager, SMR Ops & Training. In addition, the undersigned reviewed emails, text messages, Employee Concerns Program (ECP) reports and related documents, and a Report of Investigation prepared by Human Resources.

Based on the interviews and the review of the documents, the undersigned finds that Ms. Henderson's allegations are substantiated and further finds that she has been, and continues to be, retaliated against in violation of two Federal statutes and three TVA policies, as explained further in this Report.

Senior Manager, Nuclear Regulatory Affairs

In September 2015, Ms. Henderson was selected to fill the position of Senior Manager, Corporate Nuclear Licensing. Ms. Henderson's selection was not met with acceptance by a number of her subordinates. As Ms. Henderson states in the complaint and confirmed by Mr. Shea, when Ms. Henderson was hired as Senior Manager, the Corporate Licensing staff was viewed as low performing and she was asked to focus on performance management in that there were known performance gaps that had not been addressed for the past few years.⁸ To begin evaluating and addressing these concerns, as well as the Corporate Licensing overall organizational health and nuclear safety culture, Ms. Henderson reviewed the organization's survey results/scores in these areas and held one-on-one sessions with the entire staff "to better understand the results and develop a department improvement plan to improve the organization," and "[b]ased on the feedback and [her] review, [Ms. Henderson] concluded that there was a significant need to establish clearer roles and responsibilities, improve communications and take action on individual performance (both recognition and critical performance feedback)."⁹ To this end, Ms. Henderson sponsored Pulsing Surveys which were conducted by ECP in January 2016, May 2016, and February 2017, which show rapid and marked improvement in the areas of communications, holding employees accountable for their performance (by recognizing

⁸ Complaint at 1; Interviews of Henderson and Shea. I did not independently review the respective performance reviews of the Corporate Licensing staff for the years prior to Ms. Henderson assuming the role of Senior Manager.

⁹ Complaint at 1.

and reinforcing positive behaviors and by corrective negative behaviors), involvement of management in observing and coaching employees, confidence in management's decisions, and management taking timely and appropriate corrective actions regarding concerns brought to their attention.¹⁰

Some of Ms. Henderson's staff questioned the wisdom of her selection as Senior Manager, Corporate Nuclear Licensing. For example, there were comments that Ms. Henderson was "too young"; that she was "too inexperienced"; that she "did not have enough nuclear experience"; and/or that she did not have "enough licensing experience."¹¹ It should be noted that, except for Mr. Schrull, these staffers did not apply for the position of Manager, Corporate Nuclear Licensing.¹² Despite these criticisms, Ms. Rescheske stated that she "prejudged" Ms. Henderson; that Ms. Henderson "requested a lot of feedback to make herself a better manager"; that Ms. Henderson has "put in the time and effort" and she "works very hard" to make Corporate Licensing work better; and that Ms. Henderson "has earned her position and the respect, even if not given, of the group."¹³ Mr. Riedl echoed these sentiments, stating that initially he had concerns but "reserved judgment" as to Ms. Henderson's ability to manage the group and describing her as "driven" and as "the most methodical

¹⁰ Nuclear Licensing ECP Pulsing Survey Results (February 2017).

¹¹ E.g., Interviews of Thompson, Rescheske, Wetzel, Schrull, and Riedl.

¹² Interviews of Shea, Schrull, and McBrearty.

¹³ Interview of Rescheske.

and organized person" with "excellent structured organizational skills."¹⁴ Furthermore, Mr. Riedl stated Ms. Henderson "may intimidate some but does not do so intentionally" and he "gives Joe Shea credit for hiring" her.¹⁵ Similarly, Mr. Thompson describes Ms. Henderson as "smart," "ambitious," "a quick learner," "up to performing her job" and is a "person who can go through large volumes of information and digest it."¹⁶ The others who were critical of the hiring of Ms. Henderson as Senior Manager, Corporate Nuclear Licensing, also agreed that Ms. Henderson was a good manager.¹⁷

The Site Licensing organizations likewise had reservations about the hiring of Ms. Henderson as Senior Manager, Corporate Nuclear Licensing. Mr. McBrearty stated that "all three sites had reservations" about the hire because, in their view, Ms. Henderson "lacked experience."¹⁸ Mr. McBrearty further stated that the other interviewees, including Gordon Arent, Gene Cobey, and Mr. Schrull, had far more experience than Ms. Henderson.¹⁹ Similarly, Mr. Paul stated that he was "surprised" that Ms. Henderson was selected, given that "other candidates had more regulatory experience"; that she was "lean" on experience; and that Ms. Henderson did not have,

¹⁴ Interview of Riedl. Similarly, Mr. Lewis noted that, "[a]t first, [he] didn't know what to expect" but she is "professional," smart, "ambitious," "young," "reasonable," "a good listener and can do the job." Interview of Lewis.

¹⁵ Interview of Riedl.

¹⁶ Interview of Thompson.

¹⁷ Interviews of Thompson, Wetzel, and Schrull.

¹⁸ Interview of McBrearty.

¹⁹ Interview of McBrearty.

in his view, "the depth of regulatory experience."²⁰ It should be noted that Ms. Hulvey—the current WBN Licensing Manager—was not the WBN Licensing Manager at the time of the selection. Both the WBN and BFN Licensing Managers (Ms. Hulvey and Mr. Paul) informed the undersigned that they have healthy, professional working relationships with Ms. Henderson.²¹ However, as discussed further below, the SQN Licensing Manager—Mr. McBrearty—does not have a healthy, professional working relationship with Ms. Henderson.²²

Director, Nuclear Regulatory Affairs

In January 2018, because of additional, substantial duties and responsibilities, Ms. Henderson's Senior Manager position was upgraded to Director, Nuclear Regulatory Affairs.²³ There does not appear to be significant criticism from Ms. Henderson's staff or from the sites with regard to the upgrade of her position. Indeed, since signing authority with regard to many regulatory products was delegated down from Mr. Shea to Ms. Henderson as part of the upgrade, the upgrade is seen as a

²⁰ Interview of Paul.

²¹ Interviews of Hulvey and Paul. It should be noted, however, that the BFN Licensing Manager observed that "[i]n the past, Corporate was better at partnering with the sites," and that Corporate has "a desire to be right" and "likes to argue" and he feels as though Corporate "bulldozes over Site Licensing." Interview of Paul.

²² Interviews of McBrearty, Polickoski, and Henderson.

²³ Henderson PD; Interviews of Shea and Henderson.

plus because it peeled off at least one layer of review.²⁴ Other than the additional signing authority, staff did not see much of a change in the operation of the group.²⁵

Disrespectful Conduct

Mr. McBrearty engaged in disrespectful conduct that was targeted at Ms. Henderson. For example, in March 2018, Mr. McBrearty engaged in an exchange of text messages with one of Ms. Henderson's direct reports, asserting that her subordinates are afraid of her and will not raise issues and that there is a SCWE problem in Ms. Henderson's organization.²⁶ However, the undersigned interviewed the entire staff of Ms. Henderson on April 23 and 24 and May 3, 2018, and found that they do not fear raising issues or concerns and, in fact, that it is their job to do so and also they are encouraged to do so.²⁷ In these text messages, Mr. McBrearty also disparages Ms. Henderson who purportedly "blow[s] off procedures" and sweeps "issues . . . under the rug,"²⁸ attempting to sow the seeds of dissent, discontent, and undermine the support and confidence of her direct reports and other subordinates. If he had concerns of this nature about Ms. Henderson, Mr. McBrearty should have directed his complaints

²⁴ Interview of Paul.

²⁵ E.g., Interview of Hess; Complaint at 3.

²⁶ Complaint at 4; Text Messages. As a result of these text messages, ECP has sent out a Pulsing Survey that yet again seeks to gauge whether there is a chilled work environment in Corporate Licensing, despite the facts there have been five findings (including in this Report) to the contrary.

²⁷ See TVA Standard Programs and Processes (TVA-SPP)-11.8.4 (12-03-2014, rev. 0008).

²⁸ Text Messages. In addition to criticizing Ms. Henderson, Mr. McBrearty leveled that accusations against Mr. Shea.

to management above Ms. Henderson (not down the chain to her subordinates) to address his allegations of poor management on the part of Ms. Henderson.²⁹ Of course, these comments were brought to Ms. Henderson's attention (as Mr. McBrearty almost certainly knew would happen); worked only to exacerbate an already tense working relationship between Ms. Henderson and Mr. McBrearty; and dragged Ms. Henderson's subordinates into Mr. McBrearty's two-year grudge against Ms. Henderson.³⁰ This conduct was not only disrespectful but also inappropriate; indeed, Mr. McBrearty put Ms. Henderson's subordinates in the middle of his fight with Ms. Henderson, making it more difficult for Ms. Henderson to manage her employees and undermining her leadership of her group.³¹

Moreover, one of Ms. Henderson's direct reports--Mr. Polickoski--confirms a number of other allegations in Ms. Henderson's complaint. For example, Mr. McBrearty "is open about his hostility toward [Ms. Henderson]" and that Mr. Polickoski "counseled him about it" in February 2017; that Mr. McBrearty "says some pretty awful things about [Ms. Henderson]" and "that if he is that open with [Mr. Polickoski], he can't imagine what [Mr. McBrearty] says about [Ms. Henderson] to other people"; that Mr. McBrearty discusses with him "frequently" that he thought Ms. Conner was "done wrong" by

²⁹ Interview of Polickoski.

³⁰ Interview of Polickoski.

³¹ Interview of Polickoski.

Ms. Henderson and she has “ruined” Ms. Conner’s “career and life”; and that Mr. McBrearty speaks negatively to Ms. Henderson’s direct reports.³²

It has also been documented that Mr. McBrearty has a habit of “delet[ing] [Ms. Henderson] from email chains on which [she had] originally been included”;³³ indeed, Mr. McBrearty has admitted to his management of engaging in this conduct.³⁴ By way of example, on February 8, 2017, Mr. McBrearty forwarded Ms. Henderson’s email that was addressed to Mr. McBrearty only to a number of individuals (including, but not limited to, Mr. Shea, Mr. Polickoski, Ms. Cox, and Jonathan Johnson), after removing Ms. Henderson from the email chain.³⁵ In a second example, on February 17, 2017, Mr. McBrearty forwarded to Mr. Polickoski, as well as to several others, including Ms. Henderson’s manager, Mr. Shea, and at least one of her other subordinates, Ms. Cox, responses in an email chain, without copying Ms. Henderson, as a purported example of Ms. Henderson’s failure to grasp the nature of the issue therein being discussed.³⁶ In a third example, on March 2, 2018 Mr. McBrearty forwarded to Mr. Polickoski Ms. Henderson’s responses in an earlier email chain, without copying Ms. Henderson, as a purported example of Ms. Henderson’s failure to grasp the nature

³² Complaint at 4-5; Interview of Polickoski.

³³ June 13, 2017, Executive Summary (ECP No. NEC-17-00410) at 3.

³⁴ OGC Teleconference with Nuclear Management.

³⁵ January 29, 2017 email chain. Ms. Henderson also “forwarded this email to his supervisor as well because it was a frequent occurrence at that point.” Henderson July 31, 2018 email. Moreover, the subject matter of the email on which that Ms. Henderson was copied “was related to a very time sensitive issue where the site was considering requesting regulatory relief in order to continue operating the plant.” *Id.*

³⁶ February 17, 2017 email chain; Interview of Polickoski.

of the issue therein being discussed.³⁷ Mr. Polickoski also confirms that Mr. McBrearty has sent other emails and text messages to others, including Ms. Henderson's direct reports, calling into question Ms. Henderson's performance.³⁸ Mr. Polickoski further confirms that Mr. McBrearty left Ms. Henderson off of other emails on which she, at least, should be copied and that he forwarded other emails without her knowledge, only for Ms. Henderson to learn from a direct report or her supervisor about the forwarding of the emails.³⁹ As a result, in February 2017, Mr. Polickoski "had discussions with [Mr. McBrearty] to cut out the high school bullshit."⁴⁰ There is no indication that Mr. McBrearty intends to stop such conduct. In any event, this conduct impacts Ms. Henderson's ability to have open and frank email communication directly with Mr. McBrearty and/or others, on which Mr. McBrearty is copied, for fear of Mr. McBrearty forwarding such emails to others (with disparaging commentary) without Ms. Henderson's knowledge.

Similarly, Mr. McBrearty has a habit of not including Ms. Henderson on emails. This conduct has spanned a significant period of time. For example, on December 7, 2016, Mr. Polickoski wryly notes to Ms. Henderson that "You got included!!" on an email from SQN licensing.⁴¹ On January 29, 2017, Mr. Polickoski forwarded to Ms. Henderson an email from Mr. McBrearty that also should been sent to

³⁷ March 2, 2018 email chain; Interview of Polickoski.

³⁸ Interview of Polickoski.

³⁹ Interview of Polickoski.

⁴⁰ Interview of Polickoski.

⁴¹ December 7, 2016 email chain.

Ms. Henderson prompting Ms. Henderson to directly follow up with and respond to Mr. McBrearty, stating that it "seems I get missed on SQN correspondence more frequently than the other sites and it would be beneficial if you could add me" and that "including me on communications would help ensure the licensing team could be fully aligned."⁴² On October 3 and 4, 2017, Mr. Polickoski forwarded several emails from Mr. McBrearty on which Ms. Henderson had not been included and normally would have received from the other two sites.⁴³ On October 4, 2017, Mr. Shea informed Ms. Henderson that "Mike was leaving me off of emails again" and forwarded Ms. Henderson a teleconference invitation, organized by Mr. McBrearty,⁴⁴ to "[d]iscuss [the] pros and cons of either requesting a Regulatory Conference or providing a written response to a pending Choice Letter"⁴⁵--an issue on which Ms. Henderson was directly involved but was not included on the call.⁴⁶ On October 19, 2017, Mr. McBrearty informed Mr. Shea that he had scheduled a meeting with the Chief Nuclear Officer "to brief him on [the] decision to not request a Regulatory Conference for [the] Security SGI issue" but failed to include Ms. Henderson, even though she was involved in the issue that was to be discussed--Mr. Shea emailed Mr. McBrearty, noting that it was his

⁴² February 8, 2017 email chain.

⁴³ October 3 and 4, 2017 email chains.

⁴⁴ Henderson July 31, 2018 email; Henderson notes.

⁴⁵ October 4, 2017 email chain; Henderson July 31, 2018 email.

⁴⁶ Henderson July 31, 2018 email.

expectation that Ms. Henderson, as well as her peers, would take part in the meeting.⁴⁷ On October 26, 2017, Ms. Henderson complained to Mr. Shea that she continued to be frustrated with the "lack of communication coming out of SQN."⁴⁸

As the Merit Systems Protection Board (Board) has made clear, "[t]here can be no dispute that disrespectful conduct is a serious offense." *Suggs v. Dep't of Veterans Affairs*, 113 M.S.P.R. 671, 674 (2010), citing *Ray v. Dep't of the Army*, 97 M.S.P.R. 101, ¶ 58 (2004) ("[D]isrespectful conduct is unacceptable and not conducive to a stable working atmosphere, and ... agencies are entitled to expect employees to conduct themselves in conformance with accepted standards.") (internal citations omitted), *aff'd*, 176 Fed.Appx. 110 (Fed. Cir. 2006). And an agency is entitled to expect its employees to conform to certain accepted standards of civil behavior and decorum. See *Redfeam v. Dep't of Labor*, 58 M.S.P.R. 307, 316 (1993); *Roberson v. Veterans Administration*, 27 M.S.P.R. 489, 494 (1985); *Murphy v. Dep't of the Navy*, 25 M.S.P.R. 333, 338 (1984); *Zara v. Dep't of Labor*, 24 M.S.P.R. 693, 698 (1984).

Typically, the offense of disrespectful conduct arises when a subordinate engages in such conduct toward his or her supervisor. *Lewis v. Dep't of Veterans Affairs*, 80 M.S.P.R. 472, ¶ 8 (1998) ("[I]nsolent disrespect towards supervisors so seriously undermines the capacity of management to maintain employee efficiency and discipline that no agency should be expected to exercise forbearance for such conduct more than once."). However, this is not the typical case. Rather, the conduct is much

⁴⁷ October 19, 2019 email chain.

⁴⁸ October 26, 2019 email chain.

more serious and egregious and, as a TVA manager, under the law, Mr. McBrearty is held to a higher standard. *Ray v. Dep't of the Army*, 97 M.S.P.R. at 101, 136 (2004) ("Furthermore, unlike the appellant in the *Johnson* case on which the administrative judge relied, the appellant in this case was a supervisor, and the agency was therefore entitled to hold the appellant to a higher standard of conduct than other employees.), citing *Halper v. U.S. Postal Service*, 91 M.S.P.R. 170, ¶ 11 (2002). In this case, Mr. McBrearty, a manager in a totally different and separate organization (SQN Licensing) engaged in long campaign of inappropriate conduct to undermine and diminish the "capacity of" Ms. Henderson, who is in a totally different organization (Corporate Nuclear Licensing), "to maintain employee efficiency and discipline" and trust with regard to her subordinates. Of even more significance, Mr. McBrearty sought to undermine Ms. Henderson credibility and trust with managers both inside and outside of Corporate Nuclear Licensing.

While the undersigned was not tasked to make any recommendation of possible discipline (and does not do so herein) as part of this investigation, I nevertheless point out that the Board has made it clear that an agency is entitled to take disciplinary action against those employees who engage in "disrespectful conduct." For example, the Board has determined that "a 30-day suspension is the maximum reasonable penalty" for a single charge and specification of disrespectful conduct," where the employee presented "numerous mitigating factors. *Suggs*, 113 M.S.P.R. at 677. The undersigned is unaware of any mitigating factors (other than Mr. McBrearty's clean disciplinary record) that should be considered with regard to the imposition of any penalty in this case.

At the other end of the penalty spectrum, the Board has determined that termination is a reasonable penalty where the employee's disrespectful conduct was "intentional, repeated, and serious." *Kirkland-Zuck v. Dep't of Housing & Urban Development*, 90 M.S.P.R. 12, ¶ 19 (2001); see also *Jefferson v. Dep't of Veterans Administration*, 6 MSPB 297, 6 M.S.P.R. 348, 352 (1981) (penalty of removal was appropriate and reasonable based on two specifications of disrespectful conduct toward supervisors). In this case, Mr. McBrearty's disrespectful conduct was intentional and repeated and sustained over a long period of time. Moreover, undermining a manager with regard to his or her subordinates and superiors, as well as other managers outside of his or her organization, is serious.

Chilled Work Environment

In September 2017, the NRC conducted an assessment of "the TVA Nuclear corporate safety-conscious work environment (SCWE) by conducting safety culture interviews of individuals from the engineering, licensing, and operations groups. Inspectors interviewed a total of 22 individuals to determine if indications of a chilled work environment exist, employees are reluctant to raise safety and regulatory issues, and employees are being discouraged from raising safety or regulatory issues. Information gathered during the interviews was used in aggregate to assess the work environment at TVA Nuclear corporate."⁴⁹ All members of Ms. Henderson's staff were

⁴⁹ November 22, 2017, NRC Integrated Inspection Report, Nos. 05000390/2017003, 05000391/2017003 (NRC Inspection Report), at 22. The result of the NRC's SCWE assessment of the chilled work environment allegation regarding Corporate Licensing is included in the WBN Inspection Report.

interviewed.⁵⁰ "Based on the interviews conducted, the inspectors determined that licensee management emphasized the need for all employees to identify and report problems using the appropriate methods established within the administrative programs, including the CAP and Employee Concerns Program. These methods were readily accessible to all employees. Based on the discussions conducted with a sample of employees from various departments, the inspectors determined that employees felt free to raise safety and regulatory issues, and that management encouraged employees to place issues into the CAP for resolution. The inspectors did not identify any reluctance on the part of the licensee staff to report safety concerns."⁵¹

Similarly, ECP has addressed concerns of an allegation of a chilled work environment in Corporate Licensing on three separate occasions. In July 2016, Mr. McBrearty filed a concern with ECP, alleging that Ms. Henderson had harassed members of her staff and created a chilled work environment in Corporate Licensing.⁵² However, ECP investigated the concern and the concern was not substantiated.⁵³ Second, after Mr. Shea and Ms. Henderson engaged site and corporate leadership with regard to Mr. McBrearty's behavior, Mr. McBrearty filed a second concern with ECP in April 2017, alleging that Ms. Henderson was creating a hostile work environment.⁵⁴ As

⁵⁰ Complaint at 3-4.

⁵¹ NRC Inspection Report at 22.

⁵² Complaint at 3.

⁵³ Complaint at 3.

⁵⁴ Complaint at 3.

ECP confirms, the second concern also was not substantiated; rather, ECP informed Ms. Henderson that it had determined that it was Mr. McBrearty who was the harassing party.⁵⁵ In July 2017, Mr. McBrearty filed a third concern with ECP, alleging that Ms. Henderson retaliated against him when in a meeting with her direct reports she informed them of the closure of a previous concern (raised by Mr. McBrearty) as part of SCWE mitigation.⁵⁶ ECP investigated, but "could find no intent on the part of [Ms. Henderson] to retaliate against [Mr. McBrearty] and believes that [Ms. Henderson] intended to share this information to ensure that employees were aware that she was not found to have created a harassing work environment in the prior concerns."⁵⁷

In addition to the NRC assessment and the three ECP findings, the undersigned interviewed Ms. Henderson and her entire staff, as well as her manager, Mr. Shea, and found no evidence of a chilled work environment in Corporate Nuclear Licensing.⁵⁸

There have been five separate instances, within the last two years, wherein the issue of whether a chilled work environment exists in Corporate Licensing has been investigated. Consistent with each successive investigation, there was a finding of no chilled work environment. However, the undersigned did find evidence that

⁵⁵ Complaint at 3; June 13, 2017 Executive Summary (ECP No. NEC-17-00410) at 3; Interview of Henderson. It should be noted that the transmittal memo to Joe Shea from ECP is dated June 12, 2017.

⁵⁶ Complaint at 3; Final Investigation Report (ECP No. NEC-17-00683) at 1.

⁵⁷ Final Investigation Report (ECP No. NEC-17-00683) at 1.

⁵⁸ See page 8, *supra*.

Mr. McBrearty has made repeated unfounded allegations against Ms. Henderson to her subordinates of harassment and the creation of a hostile work environment.

Staff Animosity

Ms. Henderson identified four of her staff--Ms. Conner, Ms. Wetzel, Ms. Justice, and Mr. Schull--as contributors to the hostile work environment.⁵⁹ As to Ms. Conner, she was a direct report of Ms. Henderson until November 2017 when she assumed her current position of Senior Manager, SMR Ops & Training, which came about as part of a settlement of a DOL complaint that Ms. Connor filed in December 2016.⁶⁰ Prior to the filing of the DOL complaint, Ms. Henderson was performance managing Ms. Conner due to Ms. Conner not coming to work and not performing when she came to work.⁶¹ Even though Ms. Conner was not interviewed, other interviewees provided insight into the relationship between Ms. Henderson and Ms. Conner. Mr. Wells noticed that there was "friction" between Ms. Conner and Ms. Henderson and he believed that it was because of Ms. Conner's performance.⁶² Mr. Wells also informed the undersigned that Ms. Conner had an "abrasive personality."⁶³ Similarly, Ms. Wetzel indicated that

⁵⁹ Complaint at 1.

⁶⁰ Complaint at 2.

⁶¹ Interview of Henderson.

⁶² Interview of Wells.

⁶³ Interview of Wells.

Ms. Henderson had a problem with Ms. Conner's performance and had Ms. Conner (and Mr. McBrearty) investigated.⁶⁴

As to Ms. Wetzel, she had a problem with Ms. Henderson from the time Ms. Henderson was selected because, in her view, Ms. Henderson was "too young," "too inexperienced," and "did not have enough nuclear experience."⁶⁵ Ms. Wetzel also stated that her working relationship with Ms. Henderson was strained; in fact, she had been placed on a Performance Improvement Plan (PIP).⁶⁶ Ms. Wetzel further noted that she "does not trust" Ms. Henderson and that, in her view, Ms. Henderson is "vindictive," and Ms. Wetzel does not understand what motivates a person to pull people's gate records and have them investigated.⁶⁷ Moreover, Ms. Wetzel describes Corporate Licensing as "toxic" and will "only work better if [Ms. Henderson] is moved out."⁶⁸ Finally, Ms. Wetzel said that she took the NEI loan assignment to get away from Ms. Henderson.⁶⁹

⁶⁴ Interview of Wetzel.

⁶⁵ Interview of Wetzel.

⁶⁶ Interview of Wetzel.

⁶⁷ Interview of Wetzel.

⁶⁸ Interview of Wetzel.

⁶⁹ Interview of Wetzel. On May 7, 2018, after Ms. Wetzel's interview and after reporting to NEI, Ms. Wetzel sent Mr. Shea an email, proposing that Mr. Shea, not Ms. Henderson, review and approve her travel voucher for the duration of assignment at NEI, because, as she alleges, Ms. Henderson "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" and that she "anticipate[s] [Ms. Henderson] using [her] travel vouchers as an investigative tool." Ms. Wetzel made two of these allegations—purportedly inappropriately having people investigated by HR and pulling of gate

It is evident Ms. Wetzel and Mr. McBrearty talk about Ms. Henderson. For example, Ms. Wetzel stated during her interview that Mr. McBrearty told her that Ms. Henderson "is harmful to TVA's regulatory relationship."⁷⁰ Moreover, Ms. Wetzel stated during her interview that she does not know what motivates Ms. Henderson to investigate someone and to pull someone's gate records.⁷¹ That is information that Ms. Wetzel only could have gotten from McBrearty because, as discussed further below, he was investigated by HR, including review of his gate records, for having an inappropriate relationship with Ms. Conner.⁷²

As to Ms. Justice, while she is "buddies" with Ms. Conner and Ms. Wetzel,⁷³ she does not appear to harbor any animosity toward Ms. Henderson. Ms. Justice stated that she does not interact much with Ms. Henderson; instead, most of her interactions are with her supervisor.⁷⁴ Nevertheless, Ms. Justice described Ms. Henderson as "a

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.

⁷⁰ Interview of Wetzel.

⁷¹ Interview of Wetzel.

⁷² Interview of McBrearty.

⁷³ Interview of Edmondson.

⁷⁴ Interview of Justice.

good manager."⁷⁵ Ms. Justice states that she and Ms. Wetzel do not talk much about work.⁷⁶ Ms. Justice did state, however, that Ms. Wetzel complained to her about her performance review as well as about her view that Ms. Henderson was not qualified for the Senior Manager position.⁷⁷

Moreover, Ms. Justice made an observation about Ms. Wetzel's and Ms. Conner's working relationship with Ms. Henderson. Ms. Justice opined that "women are their own worst enemies" and there "may have been some 'jealousy' when it came to Ms. Wetzel's and Ms. Conner's opinions and views of Ms. Henderson."⁷⁸

As to Mr. Schrull, like Ms. Wetzel, he had a problem with Ms. Henderson from the time Ms. Henderson was selected because, in his view, Ms. Henderson was "too young," "too inexperienced," and "did not have enough nuclear experience."⁷⁹

Mr. Schrull also applied for the Senior Manager position and felt that he was far more qualified than Ms. Henderson.⁸⁰ Moreover, Mr. Schrull's working relationship with Ms. Henderson was strained because he is being performance managed by Ms. Henderson.⁸¹ Mr. Schrull further believes that he is being marginalized by

⁷⁵ Interview of Justice.

⁷⁶ Interview of Justice.

⁷⁷ Interview of Justice.

⁷⁸ Interview of Justice.

⁷⁹ Interview of Schrull.

⁸⁰ Interview of Schrull.

⁸¹ Interview of Schrull.

Ms. Henderson and she is not utilizing his experience.⁸² Mr. Schrull describes himself as being frustrated, using the adage "bring me a rock," but whatever rock he brings "is not the right rock."⁸³

It is evident from the interviews of Mr. Schrull, Mr. McBrearty, and Ms. Wetzel that they talk about Ms. Henderson. For example, Mr. McBrearty discussed in his interview that Mr. Schrull "has expressed a lot of frustration with [Ms. Henderson]."⁸⁴ Similarly, Ms. Wetzel noted that she has discussed with Mr. Schrull "his issues" that he has with Ms. Henderson and that Mr. Schrull told her that he may be leaving sometime later this year because of his difficulties with Ms. Henderson.⁸⁵

Mr. McBrearty's Relationship With Ms. Henderson

Mr. McBrearty does not mince words about his working relationship with Ms. Henderson, stating emphatically that it "is not a good relationship" and referring to Ms. Henderson as "punitive."⁸⁶ Mr. McBrearty has complained about Ms. Henderson, alleging that Ms. Henderson has harassed him and that her actions foster a chilled work environment.⁸⁷ However, none of those concerns has been substantiated.⁸⁸ In fact, as

⁸² Interview of Schrull.

⁸³ Interview of Schrull.

⁸⁴ Interview of McBrearty.

⁸⁵ Interview of Wetzel.

⁸⁶ Interview of McBrearty.

⁸⁷ Complaint at 3-4.

⁸⁸ Complaint at 3-4

to the concern that Mr. McBrearty raised in April 2017, ECP found that the "motivat[ion] of Mr. McBrearty's filing of this concern "seems to have [been] animosity toward [Ms. Henderson]" due to her interactions with Ms. Conner and thus it was Mr. McBrearty who was harassing Ms. Henderson."⁸⁹

Moreover, Mr. McBrearty stated "[Ms. Henderson] had me investigated" and "had his gate records pulled."⁹⁰ Mr. McBrearty is correct that there was an investigation. Specifically, in April 2016, based on a concern raised by Ms. Henderson, HR began an investigation into whether Mr. McBrearty and Ms. Conner were involved in a personal relationship outside of work that might impact the work environment and the possibility of impropriety and conflict of interest due to Ms. Conner's serving in an oversight role with direct responsibility for the SQN Licensing function.⁹¹ (Specifically, Ms. Conner served as Corporate Functional Area Manager (CFAM) and provided corporate governance and oversight of the site regulatory performance improvement and governance including providing focused leadership to the site regulatory organizations and regulatory leadership to the broader site leadership teams by representing corporate regulatory affairs.) After interviewing Ms. Henderson, Mr. McBrearty, and Ms. Conner,⁹² HR concluded "[i]t is apparent that **the parties have a very close**

⁸⁹ June 13, 2017, Executive Summary (ECP No. NEC-17-00410) at 2.

⁹⁰ Interview of McBrearty.

⁹¹ HR Investigation Report at 1; Complaint at 1.

⁹² The inaccuracy of Mr. McBrearty's allegation that Ms. Henderson "had his gate records pulled" is discussed below.

personal relationship but it is not clear as to whether the personal relationship is inappropriate or creates a conflict of interest. However, if the perception is that it interferes, management needs to take appropriate action to address the concerns."⁹³

HR's investigation of this concern was not as robust as it could have been. For example, travel records show that Ms. Conner traveled to Florida on TVA business to attend the Significance Determination Process (SDP) Seminar presented by Curtiss-Wright in Clearwater Beach, Florida.⁹⁴ Although Mr. McBrearty "made a big deal that he was going to California [during this period of time] to visit his sons," Ms. Conner's car rental agreement shows that Ms. Conner and Mr. McBrearty traveled together in Florida.⁹⁵ Moreover, HR did not interview any of Mr. McBrearty's direct reports⁹⁶ who informed one of Ms. Henderson's direct reports—Mr. Polickoski—that it is "common knowledge that there is a relationship" between Mr. McBrearty and Ms. Conner.⁹⁷ Similarly, with regard to the investigation of Mr. McBrearty's April 2017 concern alleging harassment on the part of Ms. Henderson, ECP interviewed some of Mr. McBrearty's staff and found that "there have long been rumors of an inappropriate relationship between [Mr. McBrearty] and the former Licensing employee [Ms. Conner] who is his

⁹³ HR Investigation Report at 3, (emphasis added).

⁹⁴ April 29, 2016, Rental Agreement (Enterprise Rent A Car).

⁹⁵ April 29, 2016, Rental Agreement (Enterprise Rent A Car).

⁹⁶ HR Investigation Report at 1

⁹⁷ Interview of Polickoski.

friend.⁹⁸ Moreover, [i]nterviews further confirmed the belief that [Mr. McBrearty] has not been able to move past actions that occurred to his friend [Ms. Conner] as the result of the friend's conflict with [Ms. Henderson] and "those interviewed indicated the belief that [Mr. McBrearty's] animosity toward [Ms. Henderson] is because of his personal friendship with the former Licensing employee [Ms. Conner]."⁹⁹ In short, with some additional investigation, HR could have gleaned that Ms. Conner and Mr. McBrearty appear to be more than just "close" friends and that Mr. McBrearty harbored ill feelings toward Ms. Henderson because of a conflict between Ms. Henderson and his "close" friend, Ms. Conner.¹⁰⁰

This additional information, coupled with the admission of Ms. Conner and Mr. McBrearty "that they are very close friends outside of work," reflects that there was more than a mere appearance of a conflict. As Ms. Henderson states in the complaint, she hired Ms. Conner in February 2016 as the "new CFAM" and "[i]n that capacity, [Ms. Conner] assumed the responsibility for providing unbiased oversight of the site regulatory organizations."¹⁰¹ Given the nature of Ms. Conner's and McBrearty's "very

⁹⁸ June 13, 2017, Executive Summary (ECP No. NEC-17-00410) at 3.

⁹⁹ June 13, 2017, Executive Summary (ECP No. NEC-17-00410) at 3. Absent the animus of Mr. McBrearty, Ms. Henderson states that she and Mr. McBrearty "don't disagree much on the regulatory issues." Interview of Henderson.

¹⁰⁰ June 13, 2017, Executive Summary (ECP No. NEC-17-00410) at 3.

¹⁰¹ Complaint at 2.

close friends[hip],” Ms. Conner’s ability to provide independent, “unbiased oversight” of SQN Licensing, in my view, was compromised.¹⁰²

Mr. McBrearty incorrectly believes Ms. Henderson “had his gate records pulled.”¹⁰³ To the contrary, HR, not Ms. Henderson, decided to pull his, as well as Ms. Conner’s, gate records as part of its investigation of the concern raised by Ms. Henderson.¹⁰⁴ As one of Ms. Henderson’s direct reports stated during his interview, the pulling of “gate records pushed [Mr. McBrearty] over the edge”¹⁰⁵ and he blames Ms. Henderson¹⁰⁶ and has asserted to others that Ms. Henderson had his gate records pulled.¹⁰⁷

As discussed above, Mr. McBrearty also engaged in an intentional and sustained campaign of disrespectful conduct and behavior toward Ms. Henderson. Both Mr. Shea and Mr. Polickoski indicated during their interviews that Mr. McBrearty engaged in such to undermine Ms. Henderson with regard to her subordinates and superiors and others outside of Corporate Nuclear Licensing.

¹⁰² HR Investigation Report at 1.

¹⁰³ Interview of McBrearty.

¹⁰⁴ HR Investigation Report at 1.

¹⁰⁵ Interview of Polickoski.

¹⁰⁶ Interview of McBrearty.

¹⁰⁷ Interview of Wetzel.

Management's Response

Although it appears that management took three concrete steps to address Mr. McBrearty's conduct, those steps were ultimately unsuccessful. First, after the issuance of the HR Investigation Final Report in June 2016, management limited Ms. Henderson's "time spent at SQN and direct engagement with the peer team--the site Licensing Managers."¹⁰⁸ This step was unsuccessful and ineffective as Mr. McBrearty's conduct and behavior continued.¹⁰⁹ Moreover, this attempt to stem Mr. McBrearty's conduct and behavior effectively has removed a significant piece of Ms. Henderson's duties and responsibilities in that she "[d]irects the governance, oversight, and direction of the Nuclear Power Group (NPG) Corporate and Site Licensing functions in support of the operation of [all] TVA nuclear plants" and "[s]erves as the expert and single point-of-contact for NRC headquarters, interface for licensing issues for [all of] the TVA sites"¹¹⁰ (emphasis added).

In addition to being ineffective, step 1 appears punitive. Ms. Henderson stated in her interview that she "just wants to come to work and do my job" but that it is difficult to accomplish when she "cannot adequately challenge the SQN staff."¹¹¹

¹⁰⁸ Complaint at 3; Interviews of Henderson and Shea. Ms. Henderson states in the Complaint that she "agreed" to this limitation of her duties. Complaint at 3.

¹⁰⁹ Complaint at 1, 3, 8; Interviews of Henderson and Shea.

¹¹⁰ Henderson PD.

¹¹¹ Interview of Henderson

Second, approximately from April to June 2017, Ms. Henderson's manager-- Mr. Shea--and Ms. Henderson engaged SQN management about Mr. McBrearty's conduct and behavior in an effort to bring an end to Mr. McBrearty's conduct and behavior.¹¹² Mr. Shea and Ms. Henderson sought the assistance of Gregory A. Boerschig, Vice President, Nuclear Oversight, Anthony Lawrence Williams IV, Site Vice President, SQN, and Dennis G. Dimopoulos, Director, Plant Operations, to get Mr. McBrearty to stop his inappropriate conduct and behavior toward Ms. Henderson.¹¹³ This step also failed, as Mr. McBrearty's conduct and behavior continued and, in my view, escalated.¹¹⁴ (Moreover, as discussed above (at 11), Mr. Polickoski intervened and counseled Mr. McBrearty but Mr. Polickoski's effort also failed.)

The third step was to settle and resolve Ms. Conner's DOL complaint, by acceding to Ms. Conner's request to be removed from Ms. Henderson's supervision and placing her in the new position of Senior Program Manager, SMR Ops & Training under the supervision of Daniel P. Stout, Senior Manager, SMR Technology.¹¹⁵ Settling with [Ms. Conner] was done, in part, to alleviate some of the challenges [Ms. Henderson]

¹¹² Interviews of Shea and Henderson; Complaint at 3.

¹¹³ Interviews of Shea and Henderson; Complaint at 3.

¹¹⁴ Interviews of Shea and Henderson; Complaint at 3.

¹¹⁵ Complaint at 2; Org Chart; Interviews of Henderson and Shea.

faced with both [Ms. Conner] and [Mr. McBrearty].¹¹⁶ This step too did not stop Mr. McBrearty's conduct and behavior.¹¹⁷

It does not appear that management attempted any other measures to stop the offending conduct. Instead, the conduct and behavior have now continued for two years and counting.

Analysis

Ms. Henderson alleges that she has been, and continues to be, harassed or retaliated against by Mr. McBrearty, SQN Licensing Manager, and such harassment is repetitive and pervasive, resulting in a hostile work environment. Complaint at *passim*. "Harassment is any action or behavior toward a person that has the effect or perceived effect of causing the person to be uncomfortable or afraid of working in the employment environment." *NRC Allegation Manual* (Apr. 23, 2015, rev. 1) at 243. "Harassment covers a wide range of offensive intentional behaviors intended to be disruptive, and is characteristically repetitive, often contributing to a hostile work environment." *Id.* "Harassment that progresses to the point of establishing a hostile work environment is a form of discrimination." *Id.* Harassment is illegal and prohibited under a number of Federal statutes and regulations. See Part A Below. An employer is automatically liable for harassment by a supervisor that results in an adverse employment action and if the supervisor's harassment results in a hostile work environment, the employer can avoid liability only if it can prove (1) it reasonably tried to prevent and promptly correct

¹¹⁶ Complaint at 2; Interviews of Henderson and Shea.

¹¹⁷ Complaint at 3; Interviews of Henderson and Shea.

the harassing behavior, and (2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer. *Burlington Indus. Inc. v. Ellerth*, 524 U.S. 742, 765 (1998); *Faragher v. Boca Raton*, 524 U.S. 775, 778 (1998). Similarly, harassment is prohibited under TVA policy. *E.g.*, TVA-SPP-11.8.4 (at 5).

However, petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of actionable harassment. *Burlington N. and Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006). To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people. *Thomton v. Federal Express*, 530 F.3d 451, 455 (6th Cir. 2008); *Hafford v. Seidner*, 183 F.3d 506, 512 (6th Cir. 1999). Offensive conduct may include, among other things, actions that result in the interference with work performance. *Thomton*, 530 F.3d at 455; *Hafford*, 183 F.3d at 512.

The conduct alleged in this case also gives rise to a claim of retaliation. Retaliation is an action taken against an employee because he or she has engaged in protected activity. *EEOC v. New Breed Logistics*, 783 F.3d 1057, 1066 (6th Cir. 2015). Retaliation is illegal and prohibited under a number of federal statutes and regulations. See Part A below. Likewise, retaliation is prohibited under TVA policy. *E.g.*, TVA-SPP-11.8.4 (at 5).

A. Discrimination

A federal employee may not be discriminated (nor retaliated) against or harassed with respect to the terms, conditions, or privileges of employment on the basis of race, color, religion, sex, national origins, age or disability. See Title VII of the Civil Rights Act

of 1964, 42 U.S.C. § 2000e-16 (2012); The Age Discrimination in Employment Act of 1973, 29 U.S.C. § 633a (2012); The Rehabilitation Act of 1973, 29 U.S.C. §§ 791, 794 (2012). In her interview, Ms. Henderson informed the undersigned that she does not assert that she is (or was) being discriminated or retaliated against or harassed on any of the bases in the above statutes.

B. Retaliation/Harassment (Whistleblower)

The Whistleblower Protection Act, 5 U.S.C. § 2302 (2012), does apply. A Federal employee may not take a personnel action against an employee because of protected whistleblowing. 5 U.S.C. § 2302(b)(8) (2012). Protected whistleblowing is defined, under 5 U.S.C. § 2302(b)(8), as disclosing information which the discloser reasonably believes evidences (1) a violation of law, rule, or regulation; (2) gross mismanagement; (3) gross waste of funds; (4) an abuse of authority; or (5) a substantial and specific danger to public health or safety. Personnel action includes, *inter alia*, "any significant change in duties, responsibilities, or working conditions." 5 U.S.C. § 2302(a)(2)(xii) (2012).

Ms. Henderson is a whistleblower. In April 2016, Ms. Henderson raised a concern to HR as to whether Ms. Conner could provide independent and unbiased oversight of the SQN Licensing group due to the nature of the personal relationship between Ms. Conner and Mr. McBrearty. As a general matter, under applicable Federal regulations, Ms. Conner's employment "is a public trust," requiring her to "to place loyalty to," among other things, "ethical standards above private" matters; to "put forth honest effort in the performance of [her] duties"; and to "avoid any actions creating the appearance" that she is "violating" applicable "ethical standards." 5 C.F.R.

§ 2635.101(b)(1), (5), and (14) (2017). Moreover, under the *TVA Code of Conduct*, "TVA management will act impartially and avoid situations in which an employee or contractor within their scope of supervision or **oversight** reasonably could be perceived as receiving an unfair advantage, such as because of a romantic, financial, or other personal relationship." *TVA Code of Conduct* at 5 (emphasis added). Of equal significance, "TVA management will ensure that **employees understand their affirmative duty to report actual or suspected violations of laws or ethics requirements** and the procedures and mechanisms available to them for reporting." *TVA Code of Conduct* at 5 (emphasis added). Ms. Henderson thus had an obligation, and was duty-bound, to raise this concern.

Given the nature of the relationship, Ms. Henderson reasonably believed that Ms. Conner could not exercise independent and unbiased oversight as CFAM over the SQN Licensing organization and the performance of oversight under these circumstances would violate federal and TVA ethical standards as well as pose a substantial and specific danger to public health or safety. Mr. Paul explained that Site Licensing is "the conscious of the station"; "ensures that the site complies with all regulatory requirements, as well as with all the "commitments" it makes and undertakes; serves as "the backstop for Operations"; and determines "what events are reportable or not."¹¹⁸ Compromised oversight of Site Licensing upsets this dynamic and is a nuclear safety concern. This disclosure is thus is protected activity under the WPA.

¹¹⁸ Interview of Paul.

In order to prove a prima facie case for retaliation for whistleblowing activities, the employee must establish by a preponderance of the evidence that he or she made a disclosure within the meaning of 5 U.S.C. § 2302(b)(8) and that the disclosure was a contributing factor in the personnel action at issue. *Chambers v. Dep't of the Interior*, 116 M.S.P.R. 17, 25 ¶¶ 12 (2011). "Further, evidence of retaliatory motive, and of the agency officials' knowledge of whistleblowing and the timing of the prohibited personnel action, may properly be considered in deciding both the second and third steps of a whistleblower analysis." *Caddell v. Dep't of Justice*, 61 M.S.P.R. 670, 681 (1994), citing *Marano v. Dep't of Justice*, 2 F.3d 1137, 1141–42 (Fed. Cir. 1993); *Clark v. Dep't of the Army*, 997 F.2d 1466, 1472 (Fed. Cir. 1993).

Mr. McBrearty was aware of Ms. Henderson's disclosure to HR. In fact, Mr. McBrearty declared in the interview that Ms. Henderson "had me investigated" and "had my gate records pulled."¹¹⁹ Both Mr. McBrearty and Ms. Conner, as well as Ms. Henderson, were interviewed by HR in 2016 and Site Security informed Mr. McBrearty that his gate records were being "pulled."¹²⁰ HR noted, in its June 2016 Investigation Report, that "[t]he individuals were inappropriately made aware that their gate records were pulled so there was a heightened level of sensitivity during the investigation."¹²¹ This shows that there is no dispute that Mr. McBrearty was/is aware of

¹¹⁹ Interview of McBrearty.

¹²⁰ HR Investigation Report at 1.

¹²¹ HR Investigation Report at 1.

the concern that Ms. Henderson raised to HR.¹²² As a direct result of Mr. McBrearty's conduct and behavior, the evidence shows that Ms. Henderson's management "limit[ed] both [her] time spent at SQN and [her] direct engagement with the peer team (site licensing managers) even though there was a significant need to engage in that forum to improve performance."¹²³ This restriction severely impacts Ms. Henderson's responsibility "for formulating and executing fleet governance and oversight strategies and programs to achieve and sustain excellence in **all** of TVA's operating fleet nuclear regulatory matters" and "providing "strategic guidance to senior corporate **and site leaders** on range of nuclear regulatory issues." Henderson PD (emphasis added). This limitation is a "significant change in duties, responsibilities, or working conditions." 5 U.S.C. § 2302(a)(2)(xii).

The evidence supports a retaliatory motive. Mr. McBrearty remains ticked that Ms. Henderson "had [him] investigated" and "had [his] gate records pulled." He told Ms. Wetzel that Ms. Henderson had him investigated and pulled his gate records. The statement to Ms. Wetzel persuaded her that Ms. Henderson is not a person who can be trusted and she just does not "understand what motivates a person to pull gate records and have people investigated."¹²⁴ Some members on his own staff have recognized "that [Mr. McBrearty] has not been able to move past actions that occurred to his friend

¹²² Moreover, Mr. McBrearty told Ms. Wetzel about the investigation and that his gate records were pulled. Interview of Wetzel.

¹²³ Complaint at 3.

¹²⁴ Interview of Wetzel.

[Ms. Conner] as the result of the friend's conflict with [Ms. Henderson]."¹²⁵ In my view, the grudge Mr. McBrearty has against Ms. Henderson is still alive and well. His conduct and behavior rise to the level of retaliation/harassment under the WPA.

Ms. Henderson also is a whistleblower under Section 211 of the Energy Reorganization Act, 42 U.S.C. § 5851 (2012). Her disclosure/concern reported to HR is protected activity in that, as described above, it involved a nuclear safety-related issue. In addition, Mr. McBrearty was aware of the disclosure/concern and the same retaliatory motive exists as it does in regard to the WPA.

C. Retaliation/Harassment (TVA Policies)

Mr. McBrearty's conduct and behavior fall under and violate three TVA policies. The *TVA Code of Conduct* cannot be any clearer: "TVA management will maintain a workplace environment that prevents retaliation or reprisals against an employee who in good faith reports actual or suspected violations of laws or ethics requirements. Retaliation against employees who report perceived violation, or who participate in investigations as witnesses or in other capacities, violates the law and TVA policy.¹²⁶ Such retaliation is prohibited and will not be tolerated." *TVA Code of Conduct* at 5. Mr. McBrearty was/is aware of Ms. Henderson's report to HR and has engaged in retaliatory conduct and behavior that is motivated by the fact that he and Ms. Conner were investigated and had their gate records pulled to determine whether Ms. Conner could perform independent and unbiased oversight of SQN Licensing given

¹²⁵ June 13, 2017, Executive Summary (ECP No. NEC-17-00410) at 3.

¹²⁶ In his Appointment Affidavit, Mr. McBrearty subscribed and certified that he understood that his "appointment and subsequent changes in status are subject to the terms and conditions described in this document, and those existing laws and TVA agreements and policies." Appointment Affidavit at 4.

Mr. McBrearty's and Ms. Conner's close personal relationship outside of work.

Ms. Henderson's report to HR was made in good faith and, indeed, mandated by the *TVA Code of Conduct* (at 5). Mr. McBrearty's conduct "is prohibited" and TVA policy requires it "not be tolerated." *Id.*

TVA's *No Fear Executive Policy* also is plain, clear, and unambiguous. It states that "TVA personnel at every level have the right to work in an atmosphere that is free from harassment or illegal discrimination. Accordingly, retaliation against an employee or applicant who exercised his or her rights under any of the federal antidiscrimination or whistleblower protection laws is prohibited." Under the *No Fear Executive Policy*, TVA informs all employees that "TVA encourages employees, applicants, and contractors to raise concerns without fear of retaliation" and that TVA maintains a zero tolerance policy that prohibits retaliation against any employee for reporting matters under this policy or procedure." *No Fear Executive Policy* at 1. Mr. McBrearty's conduct and behavior against Ms. Henderson for raising a concern to HR as to whether Ms. Conner could perform independent and unbiased oversight of SQN Licensing, given Mr. McBrearty's and Ms. Conner's close personal relationship outside of work, violates the *No Fear Executive Policy* for the reasons previously outlined above.

TVA Standard Programs and Processes (TVA-SPP)-11.8.4, *Expressing Concerns and Differing Views*, also comes into play in this matter. TVA-SPP-11.8.4 states (at 4) "TVA encourages the voluntary expression of concerns and differing views" and that employees may do so "without fear of reprisal" and "[t]he ability to freely express differing views and opinions will enhance employee productivity, observance of standards and promote a safety conscious work environment (SCWE)."

Mr. McBrearty's retaliatory conduct and behavior toward Ms. Henderson for raising a concern to HR as to whether Ms. Conner could perform independent and unbiased oversight of SQN Licensing given Mr. McBrearty's and Ms. Conner's close personal relationship outside of work violates TVA-SPP-11.8.4 (at 5) for the reasons previously outlined above.

"Every supervisor [including Mr. McBrearty] has the responsibility to create an environment in which employees can raise concerns without fear of retaliation. Harassment, intimidation, retaliation, or discrimination will not be tolerated. Any person found guilty of such acts will be subject to disciplinary action, up to and including termination." TVA-SPP-11.8.4 (at 5). It also should be noted that TVA policy obligates TVA management to maintain a workplace environment free of retaliation or reprisals against an employee who in good faith reports actual or suspected violations of laws or ethics requirements as well as for those employees who express differing views and concerns. *TVA Code of Conduct* at 5; TVA-SPP-11.8.4 (at 4-5). TVA management failed to do so here; instead, it allowed harassing and retaliatory conduct and behavior to fester and to continue practically unabated for two years and counting. Just like retaliation itself, the allowance of retaliation—either through inaction or the failure to taken prompt, effective, and adequate corrective action to stop such retaliation—is just as prohibited and must not be tolerated.

D. Disrespectful Conduct

Mr. McBrearty's intentional, repeated, and serious behavior toward Ms. Henderson also is characterized as disrespectful conduct and, as a manager, Mr. McBrearty is held to a higher standard than other employees. *Ray v. Dep't of the*

Army, 97 M.S.P.R. at 101, 136 (2004) ("Furthermore, unlike the appellant in the *Johnson* case on which the administrative judge relied, the appellant in this case was a supervisor, and the agency was therefore entitled to hold the appellant to a higher standard of conduct than other employees.). As discussed on pages 8 through 13 above, the Board has determined that a penalty of range of a 30-day suspension to termination is reasonable and appropriate for an agency to impose, given the particular circumstances of the case, for such conduct.

E. Conclusion

Based on the foregoing, Ms. Henderson's allegation of harassment and retaliation is substantiated, and Mr. McBrearty's conduct and behavior violated two Federal statutes, a Federal regulation, and three TVA policies.

/s/ John E. Slater
John E. Slater
Senior Attorney
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902-1401
Telephone No. (865) 632-7878
jeslater@tva.gov

Date: August 10, 2018

66641059

INVESTIGATION INTO HARASSMENT AND HOSTILE WORK ENVIRONMENT ALLEGATIONS IN NUCLEAR LICENSING ORGANIZATION - INVOLVEMENT OF BETH WETZEL

OFFICE OF THE GENERAL COUNSEL

Recommendation:

OGC's recommendation, based on the information described in more detail below, is that Beth Wetzel's employment with TVA be terminated as a result of her involvement in a pattern of harassment and retaliation directed at Erin Henderson, Director, Nuclear Regulatory Affairs. OGC recommends that management, in its discretion, may determine whether to offer Ms. Wetzel a no-fault separation agreement, allow her to resign in lieu of termination, or terminate for cause.

Summary:

The information described in more detail below was obtained through the course of the investigation conducted by OGC Senior Attorney John Slater into the harassment and hostile work environment allegations raised by Erin Henderson ("Report"), as well as additional information about Ms. Wetzel's recent conduct provided by management. The findings of the report are that Ms. Wetzel has engaged in harassment, retaliation, and the creation of a hostile work environment with respect to Ms. Henderson in violation of multiple TVA policies and federal law.


Christopher C. Chandler
Associate General Counsel (Acting), Nuclear


Jennifer L. Grace
Managing Attorney, Human Resources

Dated August 30, 2018

Policy Violations:

TVA Code of Conduct -- The TVA Code of Conduct states that "TVA Management will maintain a workplace environment that prevents retaliation or reprisals against an employee who in good faith reports actual or suspected violations of laws or ethics requirements. Retaliation against employees who report perceived violation, or who participate in investigations as witnesses or in other capacities, violates the law and TVA policy. Such retaliation is prohibited and will not be tolerated." Ms. Wetzel is aware that Ms. Henderson engaged in protected activity by raising concerns about the ability of Michelle Connor to perform unbiased oversight of Michael McBrearty's licensing work, and has engaged in a pattern of retaliatory behavior as a result because of the fact that Ms. Henderson raised that concern, which resulted in an investigation of Ms. Wetzel's peers and friends.

TVA No Fear Executive Policy -- TVA's No Fear policy states that "TVA personnel at every level have the right to work in an atmosphere that is free from harassment or illegal discrimination. Accordingly, retaliation against an employee or applicant who exercised his or her rights under any of the federal antidiscrimination or whistleblower protection laws is prohibited." It also states that "TVA encourages employees, applicants, and contractors to raise concerns without fear of retaliation" and that "TVA maintains a zero tolerance policy that prohibits retaliation against any employee for reporting matters under this policy or procedure." Ms. Wetzel's deliberate undermining of Ms. Henderson was a direct result of Ms. Henderson's having engaged in the protected activity of raising concerns about the relationship between Ms. Connor and Mr. McBrearty.

TVA-SPP-11.8.4, Expressing Concerns and Differing Views -- TVA-SPP-11.8.4 states that "TVA encourages the voluntary expression of concerns and differing views" and that employees may do so "without fear of reprisal" and "[t]he ability to freely express differing views and opinions will enhance employee productivity, observance of standards and promote a safety conscious work environment (SCWE)." Again, Ms. Wetzel was aware that Ms. Henderson had raised concerns about Ms. Connor and Mr. McBrearty's relationship and the impact it could have on the oversight of the Sequoyah Licensing program, which could affect safety at the plant. Ms. Wetzel's actions toward Ms. Henderson were the result of her raising concerns, which directly impacts Ms. Henderson's ability to freely raise concerns and to work in an environment that is free from fear and reprisal.

Violations of Law:

Whistleblower Protection Act - The WPA protects employees from personnel actions taken against employees because of protected whistleblowing. This includes a significant change in working conditions, such as being submitted to a hostile, harassing, or retaliatory working environment. In this case, Ms. Henderson was a whistleblower as the result of having raised concerns about the relationship between Ms. Connor and Mr. McBrearty and its impact on the safe oversight of licensing activities at Sequoyah Nuclear Plant. That whistleblowing was the reason for Ms. Wetzel's engaging in a pattern of harassing behavior toward Ms. Henderson, rendering Ms. Wetzel's conduct retaliation in violation of the WPA.

Section 211 of the Energy Reorganization Act -- Similarly, Section 211 of the ERA protects employees from personnel actions taken against employees because of protected whistleblowing regarding nuclear-safety issues. Because Ms. Henderson's concerns involved the operation of the Sequoyah licensing department, they implicated nuclear safety and made her a whistleblower under the ERA. Ms. Wetzel's behavior as described above was retaliation in violation of Section 211 of the ERA.

Discipline:

Ms. Wetzel's actions in violation of these three policies are subject to discipline pursuant to TVA-SPP--11.316, Employee Discipline, Appendix B, Section 1.1, Violation of Ethical Laws or TVA Code of Conduct; Section 5.1, Harassment/Intimidation/Retaliation/Discrimination (HIRD). These sections provide for disciplinary action up to and including termination when an employee engages in behavior that is a violation of the ethic laws or Code of Conduct, and when an employee engages in harassment and retaliation.

Ms. Wetzel's behaviors, as described in the Report, repeatedly undermined and disrespected her supervisor by insinuating that Ms. Henderson had initiated inappropriate investigations of TVA employees, for vindictive motives, despite having provided no reasonable basis or specific knowledge to support that assertion. Ms. Wetzel has continued to push this unsupported theory throughout the period of the investigation, making these assertions to the attorney investigator, as well as Joe Shea, Vice President, Nuclear Licensing, in various written communications. Ms. Wetzel has repeatedly refused to enter travel expenses into TVA's travel reimbursement system for vague and unsupported reasons tied back to those unsubstantiated and inaccurate representations of Ms. Henderson's motives. Overall, this disrespectful and harassing conduct directed toward Ms. Henderson is actionable under the law. "[D]isrespectful conduct is unacceptable and not conducive to a stable working atmosphere, and ... agencies are entitled to expect employees to conduct themselves in conformance with accepted standards." *Roy v. Dep't of the Army*, 97 M.S.P.R. 101, ¶ 5B (2004), *aff'd*, 176 Fed.Appx. 110 (Fed. Cir. 2006) (internal citations omitted). A subordinate who engages in harassment of a supervisor has engaged in such disrespectful conduct. *Lewis v. Dep't of Veterans Affairs*, 80 M.S.P.R. 472, ¶ 8 (1998) ("[I]nsolent disrespect towards supervisors so seriously undermines the capacity of management to maintain employee efficiency and discipline that no agency should be expected to exercise forbearance for such conduct more than once."). In this case, Ms. Wetzel has engaged in a sustained campaign of disrespectful conduct over a lengthy period of time, and has in fact continued to perpetuate that conduct in the midst of the investigation conducted into that exact harassment. This misconduct has hindered Ms. Henderson's ability to execute her job responsibilities and has potentially undermined her standing with her subordinates. When an employee has engaged in such "intentional, repeated, and serious" misconduct, termination is an appropriate remedy. As a result, OGC recommends that Ms. Wetzel be removed from TVA employment.

Attachment 13

Exhibit 18

Exhibit 18

2-2019-015



Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801

January 14, 2019

Beth A. Wetzel
2326 Wood Sorrell Lane
Signal Mountain, TN 37377

NOTICE OF TERMINATION

This is notification that you are being terminated from your position as Manager, Regulatory Programs, effective immediately.

The reason for this action is your violation of TVA's Code of Conduct, the TVA No Fear Executive Policy, TVA's SPP-11.8.4, Expressing Concerns and Differing Views," the Whistleblower Protection Act and Section 211 of the Energy Reorganization Act. TVA-SPP-11.316, Employee Discipline, including Appendix B, Section 1.5, Respectful Workplace, and Section 1.1.1, Violation of Ethical Laws or TVA Code of Conduct, describes work conduct expectations of employees and provides guidelines on the application of disciplinary actions.

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.

These behaviors are a violation of TVA-SPP-11.316, Employee Discipline, Appendix B, Section 1.5, Respectful Workplace, including subparts 1.5.1, Harassment/ Intimidation/ Retaliation/Discrimination (HIRD), 1.5.2, Abusive or Unprofessional Language or Conduct, and 1.5.3, Insubordination; and Section 1.1.1, Violation of Ethical Laws or TVA Code of Conduct; TVA Code of Conduct, TVA No Fear Executive Policy; as well as the Whistleblower Protection Act and Section 211 of the Energy Reorganization Act. Everyone at TVA is responsible for helping maintain a safe, professional, and respectful workplace. It is core to our TVA Values and it is what we expect of each other each and every day.

Beth A. Wetzel
Page 2
January 14, 2019

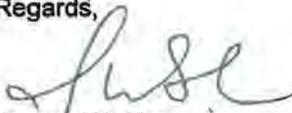
As an organization, TVA is committed to providing a professional and respectful work environment that is free from harassment and retaliation. The list below captures training and expectations you have been given to ensure that you are aware of your responsibilities as both a Manager and an employee:

- Employee Rights and Responsibilities for Supervisors and Managers – 10/27/17
- Prohibition of Discrimination in the Workplace: Principles of Conduct for TVA Managers & Supervisors – 8/29/17
- Professional and Respectful Workplace Behavior – 4/26/16
- Employee Handbook – 7/11/16
- Management Actions to Promote a Safety Conscious Work Environment – 6/18/18

TVA must be able to rely upon its employees to act in a safe, trustworthy, and responsible manner. Your conduct and behavior, as outlined above, do not meet minimum acceptable standards.

Please be aware that you are eligible to use TVA's Employee Assistance Program, Espyr, up to 90 days after termination of employment. To utilize these services, you may call Espyr, the administrator of TVA's Employee Assistance Program at 1-866-570-3480.

Regards,



Joseph W. Shea
Vice President, Nuclear Regulatory Affairs & Support Services

cc: J. L. Grace, WT 6A-K
A. E. Poland, LP 3A-C
HR Support, BR 3A-C (868DUYKOM)

Attachment 14

To: McBrearty, Michael[mmcbrearty@tva.gov]
From: Arent, Gordon
Sent: 2017-02-08T21:13:15Z
Importance: Normal
Subject: RE: Follow up on 2015 Mods Inspection NCV's
Received: 2017-02-08T21:13:16Z

Mike,

I think backfit is the way to go on the service life issue.

I also agree that the kirk key is best served through a submittal to allow manual operator action. I always thought that one was a little on the dark side.

Gordon

From: McBrearty, Michael
Sent: Wednesday, February 08, 2017 3:33 PM
To: Shea, Joseph W; Henderson, Erin Kathleen; Polickoski, James Thomas; Johnson, Jonathan Thornton; Wilson, Peter Rathvon; Dimopoulos, Dennis G; Nelson, Blake Jon; Rescheske, Peggy Ruth; Arent, Gordon; Paul, Jamie Lee; Oliver, Michael C
Cc: Kitts, Zachary T; Bowman, Scott Travis
Subject: Follow up on 2015 Mods Inspection NCV's

----- Original Message -----

Subject: Follow up on 2015 Mods Inspection NCV's

From: "McBrearty, Michael" <mmcbrearty@tva.gov>

Date: Feb 8, 2017, 12:13 PM

To: "Johnson, Jonathan Thornton" <jtjohnson0@tva.gov>

All,

I spoke with Ellis Merschoff yesterday regarding his thoughts and availability to support a Reg Analysis and denial letter for the NCV's regarding service life and kirk key mod. I also solicited his thoughts on whether we should seek external support from someone with more recent NRC experience. Here is a summary of my conversation with Ellis:

- Ellis did not feel a denial letter would be productive at this point since we are so untimely addressing the NCV's. NRC would likely send a response denying our denial due to its untimeliness. This may actually be counterproductive as it could come across as confrontational, and would also put our untimeliness/noncompliance on the public docket and result in negative media attention.

- Ellis felt our best approach would be to develop corrective actions and get the issue behind us. He had some thoughts on developing a screening approach for the service life issue that

would address NRC concern and, which he feels, would have minimal impact on costs/resources (this may be where EPRI is heading).

- For the Kirk key issue, Ellis felt our best approach to minimize loss of NRC confidence/relationship damage and put the issue behind us would be to submit a LAR and get NRC approval. He indicated there is much precedence for this approach on 50.59 violations, and is likely the most satiable for the NRC.

- Given a choice between a denial or a backfit appeal, the backfit would be his preferred path.

- If we choose a licensing response (i.e., either denial or backfit), he recommended Eric Leeds as the right external expertise to support us. He indicated he has worked with Eric on several projects and Eric's strength is in the regulatory process.

I will set up a meeting for next Monday to revisit and discuss path forward. In the mean time, I think it is important that we get in process with the following actions:

- Ensure the issue is captured in CAP via a CR to address decision making time line that led to current situation. We have discussed the importance of generating the CR several times, but I am not aware of a CR being generated.

- I believe there is significant regulatory exposure such that a new Regulatory Analysis should be conducted (led by CNL given fleet wide implications and history) to assess potential enforcement actions, and develop a regulatory response strategy and communication plan to ensure TVA executive alignment.

Please let me know your thoughts.

Thanks,

Mike

Attachment 15

To: mmcbrearty@sbcglobal.net[mmcbrearty@sbcglobal.net]
From: McBrearty, Michael
Sent: 2017-06-30T22:42:09Z
Importance: Normal
Subject: FW: Draft RE: CR [1262488] Notification of Closure
Received: 2017-06-30T22:42:10Z

From: McBrearty, Michael
Sent: Friday, June 30, 2017 6:03 PM
To: mmcbrearty@sbcglobal.net
Subject: FW: Draft RE: CR [1262488] Notification of Closure
Sensitivity: Private

From: McBrearty, Michael
Sent: Friday, June 30, 2017 6:02 PM
To: Hagins-Dyer, Inza E
Subject: Draft RE: CR [1262488] Notification of Closure
Sensitivity: Private

Inza,

Sorry, Inza, my computer screen was not displaying the entire text of your email earlier, hence my earlier question on resolution.

As I stated in my CR and emails, and as I told Joe Shea and Erin Henderson during our 4/28/17 Peer Team face-to-face meeting, I believe CNL needs to fully document the critical thinking they applied in the decision-making and communications regarding this issue, and develop lessons learned (and any applicable corrective actions). The regulatory compliance issue is still unresolved today and a clear path forward to regulatory compliance (denial or corrective actions) has not been established. After Erin Henderson closed the first CR to no action and canceled the only CR Action, she indicated in her 4/22/17 email to me that, "Because this has been the subject of several phone calls where both Joe and I recounted the basis and what would be done differently in the future, I felt the lessons learned had been adequately reflected on and discussed both at CNL and with the involved SQN personnel." My recollection is that there was one meeting where Joe Shea and Erin stated that they would "never do this again" (i.e., stray from recognized NRC process), and during that meeting they also stated that they would never trust Tony Gody (NRC Region II Director of Reactor Safety) or the NRC to follow through on verbal agreements (Joe and Erin were referring to the supposed verbal agreement they obtained with Tony Gody during an NRC RII drop-in visit on 11/4/2015 that TVA should not deny the violation but should submit a "clarification letter" instead). I have known Tony Gody for many years, dating back to my employment with the USNRC in the early 1990's, and it is very difficult, if not impossible, for me to believe that either he or any NRC senior manager would make such an agreement. It is not within NRC process and is most likely in violation of federal law. I cannot recall any Licensing meetings or

phone calls where Joe or Erin discussed decision-making, communications, or lessons learned.

My clear recollection is that SQN (both myself and Jon Johnson) repeatedly brought the issue up during Licensing phone calls in early 2017 and requested CNL generate a CR to assess and document, but we were repeatedly ignored. I finally created and distributed draft CR words and sought CNL input/comments over a period of several days, including direct conversations with the Acting CNL CFAM. After receiving all CNL comments, I generated the first CR 1262488, which was subsequently closed to no action and the only CR Action was canceled.

I want to see CNL management accountability for the inappropriate manner in which they have handled this issue, including; 1) the inappropriate and possibly illegal manner in which they apparently made a regulatory compliance decision based on a closed door "drop-in" visit with NRC RII management, 2) how they repeatedly ignored SQN's request that they follow the Corrective Action Program and document the problem in a CR (this request was first made by Jon Johnson repeatedly over several months in early 2017), 3) how they have now repeatedly "blown off" two CR's and closed them to no action despite the regulatory importance of the issue and despite stating in a 4/28/17 Licensing Peer Team Meeting that they agreed they needed to address, 4) the inappropriateness of CNL management attempting to censor any discussion of this issue in a Peer Team Meeting forum (Safety Conscious Work Environment problem), and 5) why does a senior CNL manager seem to fear expressing any disagreement with his CNL management (i.e., Pete Wilson's statement that, "... I'm not answering that, I know know who signs my paycheck"), which is clearly a Safety Conscious Work Environment Concern.

Please let me know if you have any questions or wish to discuss further.

Mike McB.

From: Hagins-Dyer, Inza E
Sent: Friday, June 30, 2017 12:13 PM
To: McBrearty, Michael
Subject: RE: Draft RE: CR [1262488] Notification of Closure
Sensitivity: Private

Ok. I have started to look into this by reviewing the CR's. However I have not informed CNL yet. I will send you our concern intake form to ensure that the issues are correctly captured. What would you like to see as a resolution?

From: McBrearty, Michael
Sent: Friday, June 30, 2017 12:09 PM
To: Hagins-Dyer, Inza E
Subject: RE: Draft RE: CR [1262488] Notification of Closure
Sensitivity: Private

Inza,

Thank you for asking... No, I do not think it would be possible to maintain anonymity at this point.

Michael McBrearty
Manager, SQN Site Licensing
Office 423-843-7170
Cell 858-945-0073

NOTICE: This electronic message transmission contains information which may be TVA SENSITIVE, TVA RESTRICTED or TVA CONFIDENTIAL. Any misuse or unauthorized disclosure can result in both civil and criminal penalties. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the content of this information is prohibited. If you have received this communication in error, please notify me immediately by email and delete the original message.

From: Hagins-Dyer, Inza E
Sent: Friday, June 30, 2017 12:04 PM
To: McBrearty, Michael
Subject: RE: Draft RE: CR [1262488] Notification of Closure
Sensitivity: Private

Mike,

Do you wish to remain anonymous on this concern?

From: McBrearty, Michael
Sent: Thursday, June 29, 2017 5:32 PM
To: Hagins-Dyer, Inza E
Subject: RE: Draft RE: CR [1262488] Notification of Closure
Sensitivity: Private

Inza,

Just following up to check on status of this concern.

Thanks,
Mike

From: Hagins-Dyer, Inza E
Sent: Friday, June 23, 2017 4:25 PM
To: McBrearty, Michael
Subject: RE: Draft RE: CR [1262488] Notification of Closure
Sensitivity: Private

Mike,

Thanks for sharing this. I am going to digest this over the weekend and follow up. I think that the closure of this CR in this manner could certainly have implications for the SCWE..

From: McBrearty, Michael
Sent: Friday, June 23, 2017 4:09 PM
To: Hagins-Dyer, Inza E
Subject: FW: Draft RE: CR [1262488] Notification of Closure
Importance: High
Sensitivity: Private

Inza,

In follow up to our discussion yesterday (6/22/17) afternoon, below **in this color** is the email I drafted but **did NOT send** to Joe Shea and Erin Henderson regarding what I feel is a repeat inappropriate CR closure. If you continue reading, you will see the string of emails leading up to the current situation. The issue is the manner in which the two NCV's from the 2015 NRC inspection were handled and the fact that nearly two years later SQN is still in a state of noncompliance.

If you follow the email chain, after the initial CR (CR 1262488) was closed by CNL with the only CR action being canceled, I challenged CNL as to whether this was an appropriate way to close the CR and requested that this issue be discussed during our scheduled Peer Team call on Monday April 24, 2017. However, neither Joe nor Erin dialed into the Peer Team call so the issue was not discussed. I then requested it be added to the Face to Face Peer Team agenda for Friday April 28, 2017 (see my email below dated 4/24). On Tuesday April 25, I received an email from Pete Wilson indicating that the issue was not appropriate for a Peer Team face to face meeting (see email below from Pete Wilson to me on April 25 at 0610). I (and Jon Johnson from my group) subsequently called Pete and asked why he did not feel it was appropriate for the Peer Team call; he responded that his manager, Erin Henderson, directed him not to include it on the agenda. I then asked Pete whether he thought CR 1262488 was properly closed; he started to respond to me, and then stopped and said something to the effect of, "oh no, I'm not answering that, I know who signs my paycheck." On Thursday 4/27, I sent an email to Joe and Erin explaining why I thought it was important that this issue be discussed and why I thought the Peer Team was an appropriate venue. I never received a response from either one of them.

During the 4/28/17 Peer Team face to face meeting, as we were all eating lunch, Erin asked me if I wanted to discuss my issue. I essentially reiterated what was in my email, and I told Joe and Erin that I thought this was a significant issue and that it was important to document the critical thinking that went into the decision making and communications, and identify lessons learned to improve Fleet Licensing. After I finished talking, Joe responded that he agreed with me and that CNL would generate a new CR to document critical thinking and capture lessons learned.

Following the Peer Team meeting on 4/28/17, CNL generated CR 1289450 to document the critical thinking and capture the lessons learned. On 6/8/17, CR 1289450 was again closed to no action and simply referred to my 4/27/17 email as the basis for closure. At this point, I'm feeling reluctant to even bring it up again with CNL as they've now closed it twice to no actions.

Please let me know if you would like to discuss or need more information.

Mike

Michael McBrearty

Manager, SQN Site Licensing
Office 423-843-7170
Cell 858-945-0073

NOTICE: This electronic message transmission contains information which may be TVA SENSITIVE, TVA RESTRICTED or TVA CONFIDENTIAL. Any misuse or unauthorized disclosure can result in both civil and criminal penalties. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the content of this information is prohibited. If you have received this communication in error, please notify me immediately by email and delete the original message.

[This is the email I drafted but did not send]

Joe, Erin,

As you recall, during our 4/28/17 Fleet Licensing Peer Team meeting, I described the issues in my email below and my concerns with the way CNL closed CR 1262488. At the time, I recommended that CNL generate a new CR to document the critical thinking that went into the decision making and communications, and identify lessons learned. During the 4/28/17 discussion, you both indicated your agreement, and following the meeting you generated CR 1289450. I understand this new CR (1289450) was closed on 6/8/17 with no actions and simply referenced my email below as the closure basis document.

I am not quite certain what to make of this latest CR closure since my email recommended (and at the 4/28/17 meeting you indicated your agreement) that we be self-critical and document the critical thinking that went into the decision making and communications; none of that was done in simply closing the CR to my email. "Decision Making," and "Communications," are two of the traits identified by INPO to assess the health of nuclear safety culture, and are mirrored by the cross-cutting aspects used by the NRC to assess nuclear safety culture. The dismissive manner in which the two CRs were closed by CNL, without any critical thinking or identification of any lessons learned that could help us improve as a Licensing organization, seems to reflect a lack of transparency and accountability, and a lack of reverence for nuclear safety culture.

Michael McBrearty
Manager, SQN Site Licensing
Office 423-843-7170
Cell 858-945-0073

NOTICE: This electronic message transmission contains information which may be TVA SENSITIVE, TVA RESTRICTED or TVA CONFIDENTIAL. Any misuse or unauthorized disclosure can result in both civil and criminal penalties. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the content of this information is prohibited. If you have received this communication in error, please notify me immediately by email and delete the original message.

From: McBrearty, Michael
Sent: Thursday, April 27, 2017 2:55 PM
To: Wilson, Peter Rathvon; Shea, Joseph W; Henderson, Erin Kathleen; Polickoski, James Thomas;

Johnson, Jonathan Thornton; Nelson, Blake Jon
Subject: RE: CR [1262488] Notification of Closure

Joe, Erin, Pete, Jim,

With respect to the closure text for CR 1262488, I think we may be missing some important learning opportunities if we do not take the time to be self-critical and better document the critical thinking that went into some of the decision making and communications. Below are what I believe are the most salient points that need to be addressed in the CR and which are not addressed by the current closure text:

- **Decision Making (Process/Basis)** – Per procedure NLDP-3, we identified and sequestered a multi-disciplined team (Site and Corporate Licensing, Site and Corporate Engineering, OGC and external expertise from MPR Associates) to conduct a detailed Regulatory Analysis of the NCV's. The initial Regulatory Analysis concluded we should deny both NCV's. We then decided against the conclusion of the Regulatory Analysis, and chose a path forward that was not in accordance with any TVA or NRC process. There was much site reservation with pursuing an approach that was out of NRC process. Prior to and following submittal of the Clarification Letter on the Kirk Key Interlock issue, the NRC Region II Engineering Branch Chief noted on several occasions that there was no NRC process for reviewing this type of submittal and that it would become very low priority for the NRC; he repeatedly informed us the NRC has a process for denying a violation and NRC encourages licensees to use the denial process if they disagree with violations. There seem to have been some missed opportunities to either rethink our path forward or re-engage NRC Region II management to ensure understanding/alignment with our planned Clarification Letter.
- **Communications** (internal to TVA and external to NRC) – The Service Life clarification letter went through several iterations in December 2015 and January 2016 to address CNL feedback. The final revision was concurred on by SQN (up to and including the SVP) in January 2016, and provided to CNL. In late January/early February 2016, it was noted that CNL management concurred on the revised letter, and the letter was with the CNL VP for signature. During the next several months, each time SQN inquired about the status of the letter, we were told it was still with the CNL VP for signature. In late 2016, when CNL designated a new Acting CFAM, the status of the letter and SQN's corrective actions for the NCV's was again questioned. In early 2017, CNL communicated to SQN Licensing that the clarification letter was never submitted because a decision was made to try to resolve the issue via the RIS (the basis for this decision was not communicated and its uncertain if this decision was previously communicated to the NRC).

The recent SQN management 4/19/17 drop-in visit with NRC Region II senior management underscored some of the potential communication gaps; during the drop-in visit, NRC RII senior management again re-emphasized that they encourage licensees to communicate disagreements with violations during inspection exit meetings and to utilize the NRC denial process for such disagreements. NRC management suggested it would have been much better for TVA to have utilized that process for the Service Life NCV.

I think it would be valuable for Fleet Licensing to discuss these issues during tomorrow's Peer Team Meeting and consider either revisiting CR 1262488 or generating a new CR to ensure we capture

learning opportunities.

Best Regards,

Mike

Michael McBrearty
Manager, SQN Site Licensing
Office 423-843-7170
Cell 858-945-0073

NOTICE: This electronic message transmission contains information which may be TVA SENSITIVE, TVA RESTRICTED or TVA CONFIDENTIAL. Any misuse or unauthorized disclosure can result in both civil and criminal penalties. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the content of this information is prohibited. If you have received this communication in error, please notify me immediately by email and delete the original message.

From: Wilson, Peter Rathvon
Sent: Tuesday, April 25, 2017 6:10 AM
To: McBrearty, Michael
Subject: RE: CR [1262488] Notification of Closure

Please call me. I am not sure this is the best venue for this topic.

From: McBrearty, Michael
Sent: Monday, April 24, 2017 4:18 PM
To: Henderson, Erin Kathleen; Wilson, Peter Rathvon
Cc: Polickoski, James Thomas; Justice, Alesia Cox; Johnson, Jonathan Thornton
Subject: RE: CR [1262488] Notification of Closure

Pete.. Can we add this to the Peer Team FTF on Friday?

Thanks,
Mike

Michael McBrearty
Manager, SQN Site Licensing
Office 423-843-7170
Cell 858-945-0073

NOTICE: This electronic message transmission contains information which may be TVA SENSITIVE, TVA RESTRICTED or TVA CONFIDENTIAL. Any misuse or unauthorized disclosure can result in both civil and criminal penalties. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the content of this information is prohibited. If you have received this communication in error, please notify me immediately by email and delete the original message.

From: McBrearty, Michael
Sent: Monday, April 24, 2017 8:57 AM
To: Henderson, Erin Kathleen; Wilson, Peter Rathvon
Cc: Polickoski, James Thomas; Justice, Alesia Cox; Johnson, Jonathan Thornton
Subject: RE: CR [1262488] Notification of Closure

Pete,

Can we add this to the Peer Team discussion today.

Thanks,
Mike

Michael McBrearty
Manager, SQN Site Licensing
Office 423-843-7170
Cell 858-945-0073

NOTICE: This electronic message transmission contains information which may be TVA SENSITIVE, TVA RESTRICTED or TVA CONFIDENTIAL. Any misuse or unauthorized disclosure can result in both civil and criminal penalties. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the content of this information is prohibited. If you have received this communication in error, please notify me immediately by email and delete the original message.

From: Henderson, Erin Kathleen
Sent: Saturday, April 22, 2017 10:48 AM
To: McBrearty, Michael
Cc: Polickoski, James Thomas; Justice, Alesia Cox; Johnson, Jonathan Thornton
Subject: Re: CR [1262488] Notification of Closure

Sorry for the confusion about referencing CDBI. I had just been looking at something CDBI related and will talk to Alesia to see if we can correct that.

My understanding is the purpose of the CR was to document CNL lessons learned. Because this has been the subject of several phone calls where both Joe and I recounted the basis and what would be done differently in the future, I felt the lessons learned had been adequately reflected on and discussed both at CNL and with the involved SQN personnel. I think there are other CRs that drive the actual resolution of the related violations. If there something specific the site is looking to accomplish in this CR, it'd be most efficient to give me a call on monday to help me understand better.

Have a great weekend.

Thanks
Erin
(302) 507-1192

On Apr 21, 2017, at 6:10 PM, McBrearty, Michael <mmcbrearty@tva.gov> wrote:

The subject CR is associated with evaluating the decision making process that determined we should not respond to the two NCVs from the 2015 Mods Inspection (note the CR write up seems to incorrectly refer to a CDBI Inspection). It appears the only action associated with this CR was canceled, and it refers to an email for explanation.

I am uncertain why the action was canceled as this seemed to be a fairly significant issue. Can you provide a copy of the email referred to in the CR and provide a little more insight as to the basis for canceling the action?

Thanks,
Mike

From: capdeveloper@tva.gov [<mailto:capdeveloper@tva.gov>]

Sent: Friday, April 21, 2017 4:39 PM

To: McBrearty, Michael

Subject: CR [1262488] Notification of Closure

CR [1262488], which you initiated, has been closed as described below.

Description: Follow Up on SQN 2015 NCV resolution

Details: NRC Inspection Report 05000327/2015007, 05000328/2015007, dated September 14, 2015, documented, in part, two Green NRC-Identified Noncited Violations (NCVs) and a Severity Level IV (SLIV) violation as follows: 1) Green NCV of 10 CFR Part 50, Appendix B, Criterion III, "Design Control," for failing to verify the adequacy of defined shelf life and design life characteristics of Class 1E Electrical equipment, 2) Green NCV of 10 CFR Part 50, Appendix B, Criterion III, "Design Control," and SLIV violation of 10 CFR Part 50.59.c.(2).ii, for implementing, without prior NRC approval, a modification that removed the kirk key interlocking system from the AC electric systems supplying the shared Essential Raw Cooling Water (ERCW) systems. TVA subsequently performed an analysis of the violations in accordance with procedure NLDP-3, "Regulatory Analyses." A team consisting of SQN and Corporate Licensing and Engineering staffs, TVA Office of General Counsel, along with an external industry expert from MPR Associates, performed the Regulatory Analysis and concluded that SQN should contest the violations. In accordance with the instructions in the related NRC Inspection Report, SQN Licensing drafted a Denial Letter to contest the violations. Subsequently, on November 3, 2015, TVA Corporate Nuclear Licensing(CNL) management personnel met with NRC management in the NRC RII Office, and discussed TVA's position regarding the violations. Based on the 11/3/15 meeting, CNL management concluded that a clarification letter, vice a

denial letter, should be submitted to the NRC. A clarification letter regarding the kirk key Interlock was prepared and submitted to the NRC on January 8, 2016. A clarification letter regarding the service life issue was prepared but was never submitted to the NRC (SQN concurrences up to and including the Site Vice President were obtained, but the letter was never approved/signed by CNL). Rather than submit the clarification letter regarding service life, it was decided to try to resolve this issue via inclusion in a draft NRC Regulatory Issues Summary (RIS). As of February 13, 2017, the NRC has not responded to the clarification letter regarding the kirk key interlock, and it does not appear the service life issue will be addressed in an NRC RIS. Consequently, SQN has neither contested nor taken corrective actions for the 2015 violations, and could face additional uncertain NRC enforcement actions. This CR should be assigned to CNL for the following action to address the current situation: 1. Evaluate decision-making and strategy leading up to the current situation, and any needed corrective actions. This CR should be related to CR 1262490

Initial Actions Taken: Discussed with CNL management personnel and generated this CR.

Corrective Action: Y
Recommend WO: N

Location:
Workorder:
WO Priority:
Work Type:
Sub Work Type:

Corrected Immediately: N
Immediate Actions Taken:
Non-Issue: N
Justification:
Significance Level: E
Analysis Effort: NONE
Owner Group: D1B6300000

Problem Statement: A clarification letter regarding the service life issue was prepared but was never submitted to the NRC (SQN concurrences up to and including the Site Vice President were obtained, but the letter was never approved/signed by CNL). Rather than submit the clarification letter regarding service life, it was decided to try to resolve this issue via inclusion in a draft NRC Regulatory Issues Summary (RIS).

Cause Evaluation:

Resolution: Evaluate decision-making and strategy leading up to the current situation regarding the NCV concerning the key interlocking system Licensing MGR

evaluated As noted in the CR, the decision not to deny the two violations from CDBI was made by the leadership team (including the SQN Site VP and Corporate VP of Licensing) for a variety of reasons. A variety of factors were considered including: 1. At that time, there had no been no instances identified where denying a violation resulted in the NRC changing its position on the violation. 2. In that period, SQN was also susceptible to a 95001 inspection for plant scrams. The potential for a significant regulatory inspection was taken into consideration. 3. Overall fleet performance was considered. 4. Feedback from the NRC was factored in as well. The decision not to formally deny the violations was made in conjunction with the SQN Site VP at that time based on the considerations above. In the future, TVA leadership will again factor in all of the different variables and make decisions on a case by case violation for the violation. However, since that decision was made, there have been successful denials which could result in TVA taking a different stance in the future. The basis for the decision and individual lessons learned was previously recounted by the VP of Licensing on multiple phone calls with the SQN team while the team was revisiting the next steps on the two violations. CR 1262490 will address future actions with NCV

Attachment 16

Exhibit 2

2-2018-033

Exhibit 2

RII ALLEGATION REVIEW BOARD DISPOSITION RECORD
Tuesday, August 21, 2018
ARB MINUTES ARE REVIEWED AND APPROVED BY THE ARB CHAIR

Allegation Number: RII-2018-A-0082	
ARB Type: Initial ARB Purpose: To discuss concern 1 and determine course of action	Facility: Sequoyah Responsible Branch: DRP/PB5
Received Date: 8/13/2018 30-Days = 9/12/2018 45-Days = 9/27/2018 150-Days = 1/10/2019 180-Days = 2/9/2019	Allegation Source: Licensee Employee Total # Concerns: 5

Concern #: 1 Concern Type: Allegation Discipline: Licensing Select (Select Only One)
--

Concern Description:

THE CI WAS RETALIATED AGAINST (SUSPENDED) FOR RAISING NUCLEAR SAFETY AND REGULATORY COMPLIANCE ISSUES.

Follow-Up ARB Input: (if applicable)

Safety Impact and Applicable Regulation:

Safety Significance: Normal

Describe potential safety impact, assuming concern is true: Retaliation in the workplace could lead to a chilled work environment

Applicable Regulation: 50.7

When did potential violation occur (date)? 5/25/2018

Concern Disposition Method/Branch Input and Comments:

- Transfer to:** (NRC Internal Exchange to another region/NRR/NMSS, etc.)
- Request for Additional Information (RFI):** (Fill out RFI Considerations section in back)
Branch to review the licensee response to the RFI:
- Provide to Licensee for Information Only:**
- Referral to Select :**
- Inspection Follow-Up:** (Provide information on what is to be inspected, inspection schedule, etc.)
- ADR:** (For discrimination cases, after prima facie has been established. Fill out Prima Facie Recommendations section in back)
- Office of Investigations (OI):** CI requests OI investigation
- Too General/Need More Details:** (Provide recommendation, e.g. Inspector contact allegor for details, etc.)
- Closure in acknowledgment letter:**
- Closure Letter or Memo to File:**
- Other:** Specify recommendation (e.g. Contact licensee, chilling effect letter etc.)
- EICS Close File Administratively:**

Prompt notification of SRI/RI or region-based inspector required: Already Notified

Related allegation number: 17-115 - previous allegation from CI

Related OI Case Number: N/A

Is this a response after closure?: No

ARB Assigned Actions:

PRIMA FACIE ESTABLISHED. OI INVESTIGATE – HIGH PRIORITY.

2-2018-033

RII ALLEGATION REVIEW BOARD DISPOSITION RECORD
Tuesday, August 21, 2018
ARB MINUTES ARE REVIEWED AND APPROVED BY THE ARB CHAIR

NOTE: EICS HAD ALREADY DISCUSSED ADR/OI PROCESS WITH CI (BECAUSE CI IS LEAVING THE COUNTRY SOON). CI WAS FAMILIAR WITH THE ADR PROCESS AND ELECTED OI INVESTIGATION.

Assigned Branch/Individual: OI

Estimated Completion Time: 90 DAYS

OI Investigations:

OI Priority: High

Rationale for OI priority: very significant regulatory concern, potential consequences for safety are high and would result in prompt regulatory action by NRC, person(s) involved would very likely be removed from licensed activities for a substantial period, the violation (absent willfulness) would likely be at least a SL III/White or, if it would be categorized at less than a Level III, it would involve management at the level of a mid level manager or above.

Prima Facie Recommendations

Applicable Concern(s): 1

1. **Alleger engaged in protected activity (PA)?** Y N

Please explain: CI raised concerns about regulatory non-compliance. Since November 2015, the CI disagreed with and challenged the position directed by Mr. Shea and Ms. Henderson, and repeatedly emphasized neither TVA nor NRC processes addressed "informational" letters for responding to violations (NCVs issued by the 2015 Mods inspection at SQN). The CI repeatedly told them that if they did not deny the violations, they had a legal obligation to implement corrective actions to restore compliance.

If no PA, would it be reasonable for the allegor to believe he/she engaged in PA? Y N N/A

Please explain:

2. **Adverse action taken against allegor?** Y N

Please explain: Suspended with pay - May 25, 2018, CI eventually resigned August 16, 2018

3. **Licensee or Contractor had knowledge of allegor's PA or perceived PA?** Y N

Please explain: Since November 2015, the concern was raised to J. Shea and Erin Henderson multiple times in person; it was discussed during meetings (peer team call on May 7, 2018), and was also raised via the CAP (April 21, 2017) and via email to management (12/14/2017).

If raised to ECP/HR/NRC, could it be inferred that management was aware of the PA? Y N N/A

Please explain:

4. **Reasonable inference exists that PA was, at least in part, a reason for the adverse action?** Y N

Please explain: Suspension due to harassment investigation was initiated by the individuals responsible for not restoring compliance (J. Shea, E. Henderson). The CI was placed on suspension for allegedly harrasing Erin Henderson and undermining her ability to perform her job (due to a text sent by the CI to J. Polickoski on March 6, 2018 - another corporate regulatory affairs employee).

If all 4 questions (or subpart to a question) were answered yes, then CI has established prima facie and ADR should be offered.

Offer ADR - Discrimination Allegation Prima-Facie Showing? Y N

Provide a summary of the prima facie case (i.e. allegor X raised concerns about Y to Supervisor on date A. Supervisor then demoted allegor on date B and told him/her it was because the allegor raised a safety concern). Please be as detailed as possible and detail events in chronological order (i.e. include names, dates, etc.): Since November 2015, the CI raised concerns about corporate regulatory affairs (J. Shea and E. Henderson) actions putting the SQN site in continual non-compliance and their actions preventing SQN from restoring noncompliance. The CI raised the concerns to J. Shea and E. Henderson via multiple avenues (in person, CAP, etc.). The CI was suspended on May 25, 2018, due to allegedly harrasing and undermining E. Henderson due to a text he sent to another corporate regulatory affairs employee (J. Polickoski) on March 6, 2018. The CI believes he was suspended because he raised concerns about corporate regulatory affairs.

OGC/Regional Counsel ADR Determination: Y N Other OGC/Regional Counsel Comments: RC concurs.

ARB Attendees

2-2018-033

Exhibit 2
Page 2 of 25

RII ALLEGATION REVIEW BOARD DISPOSITION RECORD
Tuesday, August 21, 2018
ARB MINUTES ARE REVIEWED AND APPROVED BY THE ARB CHAIR

Chairs: L. Suggs
EICS: S. Mendez, M. Kowal, M. Checkle
OI: A. Echavarria
OGC/Counsel: S. Price
Branch Chiefs: A. Masters
Other Attendees: J. Seat, A. Wilson, S. Monarque

August 13, 2018

From: Michael W. McBrearty

To: NRC Allegations Coordinator, RII

I am writing to raise specific examples of harassment, intimidation, and retaliation that I have experienced at TVA for raising nuclear safety and regulatory compliance issues, and which have resulted in my current suspension (paid) from TVA (suspended on 5/25/18 with no return date).

I am currently the Site Licensing Manager at the Sequoyah Nuclear Power Plant for TVA. I have been employed with TVA since February 2013. Prior to that, I was employed for two years with General Atomics in San Diego, California, as a Quality Assurance Manager for their Radiation Monitor product line, and for about 15 years with Southern California Edison (SCE) at the San Onofre Nuclear Generating Station (SONGS) in several individual contributor and management positions within Regulatory Affairs, Employee Concerns Program, and Performance Improvement (the large majority of my time was spent in Regulatory Affairs). Prior to my employment with SCE, I worked for the USNRC for approximately 6 years (1990-1996); Technical Reviewer in NRC/NRR, Resident Inspector at Peach Bottom Atomic Power Station, and Engineering Inspector in NRC Region I.

Two major regulatory issues that I believe led to the harassment, intimidation, and retaliation, and my on-going suspension, involve two Non-cited Violations (NCV's) received during a 2015 Baseline NRC Modifications Inspection at the Sequoyah Nuclear Power Plant (SQN); 1) replacement of molded case circuit breakers (service life), and 2) removal of a mechanical interlock device (kirk key). Following this 2015 inspection, Sequoyah followed TVA

procedures and performed a Regulatory Analysis, which included participation by an external industry expert. The Regulatory Analysis concluded the two NCV's did not have an appropriate regulatory technical basis, and that TVA/SQN should deny both NCV's. SQN Licensing contacted NRC RII to inform them we planned to deny the violations, requested an extension of time to submit the denials, and drafted a denial letter.

In early November 2015, TVA Vice President of Regulatory Affairs, Joseph Shea, and Director of Regulatory Affairs, Erin Henderson, directed SQN to rewrite the NCV denial letters as "informational" letters vice denials. I repeatedly disagreed with and challenged the position directed by Mr. Shea and Ms. Henderson, and repeatedly emphasized neither TVA nor NRC processes addressed "informational" letters for responding to violations. I repeatedly told them that if we did not deny the violations, we had a legal obligation to implement corrective actions to restore compliance. Mr. Shea directed me to contact Mr. Jonathan Bartley, NRC Region II Engineering Branch Chief, let him know we would not deny the violations but would submit "informational" letters, and request an extension to submit the "informational" letters.

I followed Mr. Shea's direction and contacted Mr. Bartley with our planned submittals and request the extension for submitting the "informational" letters. Mr. Bartley informed me that TVA does not need to obtain NRC approval for this extension, since NRC process does not address "informational" letters. He emphasized the NRC will review any information TVA submits, but NRC process includes either a formal denial or else the licensee must implement corrective actions for violations to restore compliance. The following summarizes actions related to each of the two NCVs.

1. Replacement of Molded Case Circuit Breakers (Service Life)

Based on the direction by Mr. Shea and Ms. Henderson in November 2015, SQN revised the 2015 denial letter to be an "informational" letter. The letter was reviewed and approved by SQN site management, up to and including the Site Vice President, numerous times, but Mr. Shea repeatedly refused to sign the submittal. Mr. Shea repeatedly noted he did not feel the letter was sufficiently compelling, but he refused to provide any written editorial changes/suggestions (I repeatedly requested he provide written comments on the letter but he refused). Each time this occurred, I emphasized to Mr. Shea that we (TVA) were out of regulatory process in neither denying nor correcting the violation, and as such, we had significant regulatory exposure (e.g., potential willful noncompliance for failing to either deny or correct the violation). From about March 2016 through February 2017, I repeatedly inquired as to the status of TVA Corporate Regulatory Affairs review of the latest "informational" letter, and each time I was told the letter was still pending Mr. Shea's approval and was in his inbox.

In March/April 2017, TVA recognized this NCV would likely be reviewed during an upcoming NRC Biennial Baseline Problem Identification & Resolution Inspection (PI&R) scheduled for June 2017. Mr. Shea and Ms. Henderson then directed that SQN draft a combined denial/backfit letter for the service life issue. Again, numerous versions of the letter were developed by SQN with TVA Office of General Counsel review/concurrence and site concurrence up to the Site Vice President, but again, Mr. Shea refused to sign the submittal, and would not provide written comments. Mr. Shea indicated he wanted to have an external expert review the submittal. He initially told me he would have Darani Reddick (Exelon lawyer) review the submittal, but later informed me he wanted Marty Murphy (Excel Energy) to review the submittal. I spoke to Mr. Murphy via telephone but never received any specific or written comments from Mr. Murphy

(based on my conversations with Mr. Murphy, it was not clear to me that he received any specific direction/request from Mr. Shea). As it turned out, the NRC Biennial PI&R Inspection Team did not focus on this issue, and it then again began to linger at TVA. My perception was that this issue was no longer an immediate concern for TVA Corporate Regulatory Affairs (specifically Mr. Shea and Ms. Henderson) because they did not sense any immediate regulatory pressure to restore compliance. I continued to push TVA Corporate Regulatory Affairs to approve and submit the combined denial/backfit letter, and continued to emphasize that we were now in noncompliance for two years.

In November 2017, the SQN NRC Resident Inspectors indicated they were reviewing TVA's corrective actions for the 2015 Service Life NCV as part of their quarterly PI&R review. The SQN NRC Resident Inspectors concluded that SQN failed to implement corrective actions for the 2015 Service Life NCV. The resident inspectors and the NRC RII DRP Branch Chief, Mr. Anthony Masters, indicated the NRC planned to issue a new violation to SQN for this issue. They indicated the new violation would be a Cited Level IV Violation with the same wording as the original 2015 NCV, and would require TVA to respond to the new violation. I communicated this issue to Mr. Shea, Ms. Henderson and Mr. James Polickoski. On 12/21/2017, Mr. Shea finally signed the denial/backfit letter, and it was submitted to the NRC. In June 2018, shortly after I was suspended from TVA, the NRC withdrew the Service Life NCV based on the Sequoyah denial.

2. Removal of Kirk Key Interlock

Based on the direction by Mr. Shea and Ms. Henderson in November 2015, SQN revised the 2015 denial letter for the Kirk Key issue to be an "informational" letter. The revised letter went through a few iterations and was approved by Mr. Shea and submitted to the NRC in January/February 2016 timeframe. After the letter was submitted, I contacted NRC Region II Engineering

Branch Chief Mr. Jonathan Bartley to see if he had any questions on our submittal. Mr. Bartley was very professional, and indicated he did not have any questions, but again emphasized that TVA was out of process. He noted the NRC will review the "informational" letter, and would let TVA know if the information changed the NRC's characterization of the issue as a violation. Mr. Bartley noted the NRC review would be given low priority as it was out of process, and the NRC had many higher priority responsibilities they were required to complete.

I contacted Mr. Bartley numerous times throughout 2016 and early 2017 to get status of the NRC review. Mr. Bartley was always very professional, noted he was having an independent engineer from his group review the information and had also requested NRR review, but again emphasized the NRC was not working to a specific schedule and that the NRC had no formal process for reviewing this type of letter. Following each conversation with Mr. Bartley, I communicated this information to Mr. Shea and Ms. Henderson, and I repeatedly communicated my concern that TVA neither denied nor corrected the violation, and as such, TVA had significantly regulatory exposure.

In March 2017, Mr. Bartley contacted me via telephone, and informed me that both NRC Region II and NRR completed their review of the TVA "informational" letter, and that both NRC RII and NRR upheld the original Kirk Key NCV. I communicated this information to Mr. Shea and Ms. Henderson, and I recommended that we submit a License Amendment Request (LAR) to the NRC and request NRC approval (after-the-fact) for removing the Kirk Key Interlock. I also indicated that I would like to consult with an external industry expert to obtain their perspective. I subsequently contacted an external industry expert (retired NRC Regional Administrator). The external industry expert concurred with my position and suggested TVA should prepare and submit a LAR, and get the issue corrected ASAP and behind us.

Mr. Shea then challenged me on the appropriateness of submitting a LAR, and provided no alternative direction/ suggestions for addressing the existing noncompliance (NCV). Similar to the Service Life issue, there was renewed concern that the NRC would review this issue during the 2017 PI&R Inspection, and TVA could face additional or escalated enforcement for failing to correct the 2015 violation.

I subsequently communicated with the TVA Corporate Licensing group (they work for Mr. Shea and Ms. Henderson). The Corporate Licensing Group agreed that a LAR could be developed and could be completed and submitted by the end of August 2017. During the NRC PI&R Inspection, the NRC challenged TVA regarding the corrective actions for the Kirk Key NCV. I verbally told the NRC PI&R inspectors TVA would submit a LAR to request NRC approval, and that we expected to submit the LAR by the end of September 2017 (I gave this date to provide additional margin for the TVA Corporate Licensing Group in case they encountered delays in preparing the LAR). The NRC inspection team was satisfied with this proposed action. The TVA Corporate Licensing Group repeatedly extended the LAR submittal date and Mr. Shea continued to challenge the appropriateness of submitting a LAR, but never offered or suggested any other corrective action for addressing the noncompliance. I repeatedly communicated to Mr. Shea that submitting a LAR was the most appropriate corrective action (and that an external industry expert concurred), and that TVA had significant regulatory exposure for potential escalated NRC enforcement actions. The LAR was finally approved by Mr. Shea in February/March 2018, and submitted to the NRC.

The two issues described above created significant tension and distrust between TVA Corporate Regulatory Affairs and the Sequoyah Site Licensing Group.

Additional Information on Harassment, Intimidation and Retaliation

In March 2017, after Mr. Bartley informed me the NRC upheld the Kirk Key NCV, I pointed out that TVA Corporate Regulatory Affairs failure to follow TVA and NRC process and allow Sequoyah to deny the two 2015 NRC Mods Inspection violations created significant/ongoing regulatory exposure for TVA. I repeatedly recommended (during TVA Licensing Peer Team teleconferences and meetings) TVA Corporate Regulatory Affairs generate Condition Reports (CRs) to review these issues and develop immediate corrective actions to restore compliance and develop lessons learned/corrective actions/process changes to prevent recurrence. Corporate Regulatory Affairs repeatedly ignored my recommendation and refused to generate CRs. I subsequently generated two draft CR's and solicited input/comments from Corporate Regulatory Affairs prior to entering into the TVA Corrective Action Program. After the CR's were entered into Maximo, Ms. Erin Henderson closed the CR requesting lessons learned/corrective actions. Ms. Henderson closed this CR to no actions needed. I challenged the appropriateness of closing the CR in this manner, and I requested that this issue be included on the subsequent Licensing Peer Team Meeting Agenda. The TVA Corporate Licensing CFAM at the time, Mr. Peter Wilson, informed me that his manager (Ms. Erin Henderson) specifically directed that he not include this issue on the Peer Team Agenda. I subsequently called Mr. Wilson and asked him whether he thought Ms. Henderson's closure of the CR to no action was appropriate. Mr. Wilson responded, "Oh no, I am not answering that, I know who signs my paycheck." Mr. Jonathan Johnson from the Sequoyah Licensing Group was in my office during this phone call and can attest to Mr. Wilson's response.

On Friday May 4, 2018, in response to a routine weekly email request from the TVA Corporate Nuclear Regulatory Affairs organization regarding the weekly Licensing Peer Team Conference Call Agenda (this meeting is managed by the Corporate Licensing Cognizant Functional Area Manager), I recommended that TVA Corporate Nuclear Licensing perform a common cause evaluation of numerous recent TVA Fleet regulatory violations that appear to have originated from actions by the Corporate Office. The following are the specific items I identified and recommended be included in the Peer Team Agenda:

- 1) Failing to respond to or correct two SQN 2015 NRC Mods Inspection NCV's for over two years.
- 2) White Finding at SQN for Uncontrolled Safeguards Information (SGI) which came out of a past corporate project,
- 3) Individual site NCV's for recent Uncontrolled SGI at the Corporate Office,
- 4) 50.9 violation associated with TVA's response to WBN Chilled Worked Environment Letter (CWEL) ultimately leading to the 2017 Fleet Confirmatory Order; development of the response letter was led by the corporate office,
- 5) Data omitted from Radiological Emergency Plan (REP) by the corporate office which resulted in individual site NCV's, and
- 6) Recent data omitted from EPIP by the corporate office resulting in potential GTG Findings at BFN and WBN.

My specific written additions to the Face-to-Face Meeting Agenda are included as the email in Attachment 1. The actual Agenda issued by Corporate Licensing to the entire TVA Fleet Licensing is included as the email in Attachment 2, and omitted all of my specific examples. The Agenda simply noted that I would discuss some concerns during the meeting.

During the Monday May 7, 2018 TVA Licensing Peer Team call (there were representatives from all three TVA nuclear sites and

the TVA corporate office on this call), I explained that it seems unusual for actions taken by the nuclear fleet corporate office to cause site regulatory violations, and I listed the specific violations at TVA (i.e., the list of violations I provided in the email on Friday May 4, 2018). During this Peer Team call, Joe Shea, the Vice President of TVA Nuclear Regulatory Affairs, twice asked me if I was suggesting there was a problem with David Czufin's organization (David Czufin is Joe Shea's manager and a TVA Senior Vice President reporting directly to the Chief Nuclear Officer). Mr. Shea pointed out that all the examples I described involved organizations that reported to Mr. Czufin. Mr. Shea's accusation came across in a threatening manner; i.e., if I pushed these issues they would be presented to Mr. Czufin as my personal accusations against his organization. I told Mr. Shea that I was not singling out any organization and I was only describing the examples of which I was aware. I recommended that we add this issue to the next Licensing Peer Team Monthly Face-to-Face Meeting Agenda, discuss as a Licensing Peer Team, and identify whether there were other examples and whether there may be a potential common cause issue. Mr. Shea agreed this should be added to the agenda for the monthly meeting. Ms. Henderson voiced her disagreement, and opined that many of the issues seemed to be old legacy issues. I replied that the next Face-to-Face Meeting, with all three nuclear sites involved, would be a good opportunity to discuss whether any of the issues should be included or omitted from any subsequent common cause analysis. [Note that following my suspension on 5/25/18, this issue was completely deleted from the Licensing Peer Team Face-to-Face Agenda].

At approximately 1530 on Friday May 25, 2018, as I was leaving my office for the Memorial Day weekend, I was directed to meet my immediate manager (Mr. Al Dodds) at the Sequoyah Nuclear Plant Training Center in Soddy Daisy, TN. During our meeting, my manager informed me that I was immediately being placed on Administrative Leave (paid) and that my site access was being

suspended. He informed me that a recent TVA investigation concluded that I was responsible for harassing Ms. Erin Henderson, Director of Regulatory Affairs in the the TVA Corporate Office. In response to my question as to what I had done, he noted that my actions were determined to have undermined Ms. Henderson's ability to do her job. During our meeting, my manager informed me that my potential termination of employment with TVA was "on the table." My manager informed me that, although he had not yet seen the investigation report (at the time, my manager was a relatively new TVA employee having been hired in February 2018), he understands a recent (March 2018) personal text message from myself to Mr. James Polickoski (TVA Corporate Nuclear Licensing) was a key part of the investigation. My manager advised me to develop and communicate to him ASAP, a recovery plan that included "actionable" and "measurable" criteria to demonstrate that I understand the seriousness of the offense and which will demonstrate a sincere effort to remedy the situation. My manager also recommended that I not contact or discuss this issue with Ms. Henderson, anyone in my Sequoyah Licensing Group, or anyone in TVA. My manager stated that he would meet with my direct reports on Tuesday May 29, 2018, and explain to them that I was out of the office due to personal reasons.

As I explained to my manager during our meeting on Friday May 25, 2018, and during subsequent phone calls, my referenced text message to Mr. Polickoski challenged why Corporate Nuclear Licensing was continuing to refuse to generate Condition Reports (Corrective Action Program CRs) for significant adverse issues at Sequoyah and within the TVA Nuclear Fleet which were caused by or had significant fingerprints of Corporate Licensing. I have made several previous challenges to Corporate Nuclear Licensing regarding this same concern for a variety of issues, and each time I have essentially been blown off.

Since I first started raising concerns in December 2015 about TVA Corporate Regulatory Affairs performance, the following actions have been taken against me: 1) in April 2016 I was accused by Ms. Henderson of having an inappropriate relationship with one of her employees; the investigation was unsubstantiated but caused embarrassment and harm to my professional reputation [Note: I was subsequently informed by TVA Employee Concerns Program that Ms. Teri Michelle Conner was actually the target of Ms. Henderson's accusation and that I was simply a "casualty" of the issue], 2) Ms. Henderson told her direct reports that I had filed an Employee Concerns Program complaint against her and inaccurately told them that I was found guilty of creating a chilled work environment for Ms. Henderson. I subsequently filed a concern with TVA ECP and met with the ECP Senior Program Manager; ECP investigated and substantiated my concern and told me that Ms. Henderson would be disciplined for this issue, and 3) during the period of approximately April 2017 through October 2017, I was repeatedly called into my then manager's office (Dennis Dimopoulos) and accused of intentionally omitting Ms. Henderson from emails and meeting invitations; I repeatedly denied these accusations. On October 4, 2017, my immediate manager (Mr. Dimopoulos) called me into his office and accused me of intentionally leaving Ms. Henderson off of a meeting invitation that I sent earlier that same day. My manager told me that he received this complaint by a telephone call from Joe Shea, the Vice President of TVA Regulatory Affairs. I explained to my manager that, earlier that same day, the TVA Corporate Nuclear Security Director (Fred Marcussen, now retired) asked me to set up a meeting with he (Mr. Marcussen), myself and Joe Shea, the Vice President of Regulatory Affairs, to discuss a Sequoyah White Finding regarding Uncontrolled SGI and that is what I did; in fact, my discussion with Mr. Marcussen occurred just a couple of hours before Mr. Shea contacted my manager to complain. The next day, I met with my manager and told him that I considered the ongoing accusations from Mr. Shea and Ms. Henderson to be harassment and that I wanted it to stop.

On Friday May 25, 2018, I was informed of my suspension. I believe Mr. David Czufin, TVA Senior Vice President, was at the Sequoyah site on May 25, 2018, and met with my manager in a closed door meeting immediately prior to my manager informing me of my suspension.

On the morning of Wednesday May 30, 2018, my manager texted me and requested that I call him ASAP. I called my manager and he asked me if I had given thought to the personal recovery plan that he recommended on Friday May 25, 2018. I told my manager I would apologize for the text message to Mr. Polickoski, and that TVA could perform a 360-degree performance assessment, and I was receptive to any additional corrective action based on the 360-degree assessment results. My manager noted he thought this was a very good plan, and would communicate it to the cognizant TVA management individuals.

On the evening of Wednesday May 30, 2018, my manager called me and informed me that my proposed recovery plan was well received, that termination was no longer being considered, but that I would receive a 2-day unpaid suspension. I told my manager that this issue has had a very significant emotional impact on me, and that I would like to use Annual Leave during the week of June 4, 2018; my manager verbally approved my Annual Leave.

On Thursday June 7, 2018, my manager called and informed me that I was not yet approved to return to work, and he was unsure if or when I would be approved, and, in response to my question, he noted that my possible termination was again on the table. My manager told me that I may get a call from either the TVA Office of General Counsel (OGC) investigator or TVA Human Resources (HR) with additional questions (I never received calls from either TVA OGC or HR). My manager stressed that both he and the Sequoyah Site Vice President fully supported me, and they were

trying to work through the process to get me back on site. He indicated the decision-making was now at the TVA corporate office in Chattanooga.

I have worked in the nuclear power industry for nearly 30 years, both as a USNRC regulator and with different licensees, and as a manager with an Appendix B Vendor. I take my job responsibilities very seriously and my focus is to ensure that Sequoyah and TVA comply with federal regulations to ensure public health and safety. I have been recognized for my good performance and the good regulatory counsel I have provided to TVA management, and in the past, to Southern California Edison management. I have a legal obligation to perform my job responsibilities in this manner. I am very well aware of the NRC enforcement action taken against Mr. Dale L. Miller, who was the Compliance Manager (comparable position to my position at Sequoyah) at the Davis Besse Nuclear Plant in 2002, when the reactor vessel head degradation issue was discovered. This operational experience constantly reinforces my personal and legal responsibilities to ensure TVA complies with federal regulations to ensure public health and safety. See Attachment 3 for the enforcement actions taken against Mr. Miller. Mr. Shea and Ms. Henderson's actions are as egregious, if not more so, than those of Mr. Miller as they both knew that Sequoyah was in continual noncompliance and their actions directly prevented Sequoyah from restoring compliance for over two years. Their actions and high level positions as TVA senior managers/ executives, may warrant similar individual NRC enforcement actions as was taken against Mr. Miller.

I have established a strong positive professional reputation with my direct reports, my site management, my peers, and with NRC inspectors and management. My good performance is documented in my Annual Performance Reviews, including most recently, an outstanding performance award earlier in 2018. My 2017 Annual Performance Review included specific feedback

from NRC Region II senior management with respect to the trust they have in me (NRC RII management made this statement during a formal drop-in visit).

The issues I have encountered at TVA are all related to my raising certain safety and compliance issues, and challenging whether the TVA corporate office (TVA Corporate Licensing, and specifically Mr. Joe Shea and Ms. Erin Henderson) appropriately handled these issues. I understand the current actions taken against me were initiated by Mr. Shea and Ms. Henderson.

I believe the action taken by TVA on Friday May 25, 2018, in which they placed me on Administrative Leave, suspended my site access, and threatened potential termination, constitute ongoing Harassment, Intimidation and Retaliation. At the present time, I am still on Administrative Leave and have received no recent contact from TVA for about the past three weeks. This ongoing issue has thrown my life into disarray, as I have no idea whether I will still have a job, and I am actively searching for new employment.

Sincerely,

Michael W. McBrearty



RII ALLEGATION REVIEW BOARD DISPOSITION RECORD
Wednesday, August 29, 2018
ARB MINUTES ARE REVIEWED AND APPROVED BY THE ARB CHAIR

Allegation Number: RII-2018-A-0082	
ARB Type: Initial ARB Purpose: To discuss concerns and determine course of action	Facility: Sequoyah Responsible Branch: DRP/PB5
Received Date: 8/13/2018 30-Days = 9/12/2018 45-Days = 9/27/2018 150-Days = 1/10/2019 180-Days = 2/9/2019	Allegation Source: Licensee Employee Total # Concerns: 4

Concern #: 2 Concern Type: Allegation Discipline: Select Wrongdoing (Select Only One)

Concern Description:
TVA CORPORATE LICENSING WILLFULLY FAILED TO DENY OR CORRECT TWO 2015 NRC VIOLATIONS.

Follow-Up ARB Input: (if applicable)

Safety Impact and Applicable Regulation:

Safety Significance: Normal

Describe potential safety impact, assuming concern is true: Conditions adverse to quality remained uncorrected. At this time, safety significance with the kirk key issue is low. There were no concerns with the administrative controls in place. The issue was that the 50.59 was inadequate.

Applicable Regulation: 50.5 and 10 CFR 50 Appendix B Criterion XVI

When did potential violation occur (date)? Unknown

Concern Disposition Method/Branch Input and Comments:

- Transfer to:** (NRC Internal Exchange to another region/NRR/NMSS, etc.)
- Request for Additional Information (RFI):** (Fill out RFI Considerations section in back)
Branch to review the licensee response to the RFI:
- Provide to Licensee for Information Only:**
- Referral to Select :**
- Inspection Follow-Up:**
- ADR:** (For discrimination cases, after prima facie has been established. Fill out Prima Facie Recommendations section in back)
- Office of Investigations (OI):** See draft Criterion XVI VIO below. It is understood that the timeliness aspects of Criterion XVI are not easily enforceable, nevertheless, Criterion XVI is the applicable regulation and is being offered for OI consideration.

10 CFR Part 50, Appendix B, Criterion XVI, "Corrective Actions," stated, in part, that that "Measures shall be established to assure that conditions adverse to quality, such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and nonconformance's are promptly identified and corrected." Contrary to the above since September 2015, the licensee failed to promptly correct conditions adverse to quality, such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and nonconformance's with procurement processes were promptly identified and corrected. Specifically, the licensee failed to correct nonconformances with Class 1E electrical equipment (Mechanical Kirk-Key Interlocks) identified in NCV 05000327,328/2015007-02.

(Provide draft NOV to Allegations Office)

- Too General/Need More Details:** (Provide recommendation, e.g. Inspector contact allegor for details, etc.)
- Closure in acknowledgment letter:**
- Closure Letter or Memo to File:**
- Other:** Specify recommendation (e.g. Contact licensee, chilling effect letter etc.)
- EICS Close File Administratively:**

Prompt notification of SRI/RI or region-based inspector required: Already Notified

Related allegation number: 17-115 - previous allegation from CI

Related OI Case Number: N/A
Is this a response after closure?: No

To be filled out at the ARB

ARB Assigned Actions:

INSPECTION (NO SPECIFIC INDICATION OF WRONGDOING AT THIS TIME – DELAY OF THE ACTIONS IS NOT NECESSARILY A VIOLATION). IF INDICATION OF WRONGDOING IS IDENTIFIED, RE-ARB FOR OI CONSIDERATION. OTHERWISE, CLOSE.

NOTE – OI WILL ALSO ASK QUESTIONS ABOUT CN 2 DURING INTERVIEW WITH CI ON SEPTEMBER 4.

Assigned Branch/Individual: DRP/PB5
Estimated Completion Time: 30 days

OI Investigations:

OI Priority: Select

Rationale for OI priority:

If potential discrimination or wrongdoing and OI is not opening a case, document rationale for not initiating OI investigation:

Concern #: 3
Concern Type: Allegation
Discipline: Corrective Action Select (Select Only One)

Concern Description:

CORPORATE LICENSING INAPPROPRIATELY CLOSED CRS 1262488 AND 1289450 WITHOUT TAKING APPROPRIATE CORRECTIVE ACTIONS.

Follow-Up ARB Input: (if applicable)

Safety Impact and Applicable Regulation:

Safety Significance: Normal

Describe potential safety impact, assuming concern is true:

Applicable Regulation: 10 CFR 50 Appendix B Criterion XVI

When did potential violation occur (date)? Unknown

Concern Disposition Method/Branch Input and Comments:

- Transfer to: (NRC Internal Exchange to another region/NRR/NMSS, etc.)
- Request for Additional Information (RFI): (Fill out RFI Considerations section in back)
Branch to review the licensee response to the RFI:
- Provide to Licensee for Information Only:
- Referral to Select :
- Inspection Follow-Up: Residents inspect the licensee's actions to address the NCVs 05000327,328/2015007-002 and 003, as the subject CRs were written to address TVA's handling of those violations.
- ADR: (For discrimination cases, after prima facie has been established. Fill out Prima Facie Recommendations section in back)
- Office of Investigations (OI): (Provide draft NOV to Allegations Office)
- Too General/Need More Details: (Provide recommendation, e.g. Inspector contact allegor for details, etc.)
- Closure in acknowledgment letter:
- Closure Letter or Memo to File:
- Other: Specify recommendation (e.g. Contact licensee, chilling effect letter etc.)
- EICS Close File Administratively:

Prompt notification of SRI/RI or region-based inspector required: Already Notified

Related allegation number: 17-115 - previous allegation from CI

Related OI Case Number: N/A

Is this a response after closure?: No

To be filled out at the ARB

ARB Assigned Actions:

INSPECTION.

Assigned Branch/Individual: DRP/PB5
Estimated Completion Time: 30 days

2-2018-033

Concern #: 4
Concern Type: Allegation
Discipline: Chilling Effect Select (Select Only One)

Concern Description:

CORPORATE AND SQN LICENSING STAFF ARE AFRAID TO RAISE CONCERNS BECAUSE THEY FEAR RETALIATION FROM THE DIRECTOR AND VICE PRESIDENT OF NUCLEAR REGULATORY AFFAIRS.

Follow-Up ARB Input: (if applicable)

Safety Impact and Applicable Regulation:

Safety Significance: Normal

Describe potential safety impact, assuming concern is true: Staff maybe reluctant to raise safety concerns.

Applicable Regulation:

When did potential violation occur (date)? Unknown

Concern Disposition Method/Branch Input and Comments:

- Transfer to: (NRC Internal Exchange to another region/NRR/NMSS, etc.)
- Request for Additional Information (RFI): (Fill out RFI Considerations section in back)
Branch to review the licensee response to the RFI:
- Provide to Licensee for Information Only:
- Referral to Select :
- Inspection Follow-Up: Perform SCWE evaluation of sites and corporate licensing.
- ADR: (For discrimination cases, after prima facie has been established. Fill out Prima Facie Recommendations section in back)
- Office of Investigations (OI): (Provide draft NOV to Allegations Office)
- Too General/Need More Details: (Provide recommendation, e.g. Inspector contact allegor for details, etc.)
- Closure in acknowledgment letter:
- Closure Letter or Memo to File:
- Other: Specify recommendation (e.g. Contact licensee, chilling effect letter etc.)
- EICS Close File Administratively:

Prompt notification of SRI/RI or region-based inspector required: Already Notified

Related allegation number: 17-115 - previous allegation from CI

Related OI Case Number: N/A

Is this a response after closure?: No

To be filled out at the ARB

ARB Assigned Actions:

INSPECTION.

Assigned Branch/Individual: DRP/PB5

Estimated Completion Time: 60 days

ARB Attendees

Chairs: M. Franke
EICS: S. Mendez, M. Kowal, M. Checkle
OI: A. Echavarria, C. Kontz
OGC/Counsel: S. Price
Branch Chiefs: A. Masters
Other Attendees: J. Seat (via phone)



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
245 PEACHTREE CENTER AVENUE NE, SUITE 1200
ATLANTA, GEORGIA 30303-1257

December 20, 2018

SUBJECT: CONCERNS YOU RAISED TO THE NRC REGARDING SEQUOYAH NUCLEAR
PLANT - ALLEGATION REPORT RII-2018-A-0082

Dear Sir or Madam:

The NRC has completed its follow up in response to some of the concerns you brought to our attention by electronic mail messages on August 13, 14, 15 and 17, 2018 and via the telephone conversation on August 15, 2018. Your concerns were related to discrimination, wrongdoing, inappropriate corrective action implementation, and a chilled work environment at Sequoyah Nuclear Plant and the Tennessee Valley Authority (TVA) Corporate Licensing group. The Enclosure to this letter restates your Concerns 2, 3, and 4 and describes the NRC's review and conclusions with regard to each concern. Concern 1 continues to be under investigation. As indicated in our letter of September 12, 2018, we take identity protection very seriously, which is why we do not include your name on our written correspondence with you. We do not intend for the omission of your name to be impersonal. The practice simply adds another layer of protection in our communications with you.

Allegations are an important source of information in support of the NRC's safety mission. We take our safety responsibility to the public seriously and will continue to do so within the bounds of our lawful authority. We believe that our actions have been responsive to your concerns. However, new information is provided that suggests that our conclusions should be altered, we will reevaluate that information to determine if additional evaluation is indicated. Should you have any additional questions, or if the NRC can be of further assistance, please call me at the Regional office toll-free number 1-800-577-8510 extension 4465 or you may provide information to me in writing at EICS, 245 Peachtree Center Avenue, NE, Suite 1200, Atlanta GA 30303-1257. You may also communicate with me by electronic mail, if you so choose. Also, please be advised that the NRC cannot protect the information during transmission on the Internet and there is a possibility that someone could read your response while it is in transit. My e-mail address is Anthony.Masters@nrc.gov. When sending an email to NRC, please also include the following email address: R2Allegations@nrc.gov.

Sincerely,

A handwritten signature in cursive script that reads "Anthony D. Masters".

Anthony D. Masters, Chief
Reactor Projects Branch 5
Division of Reactor Projects

Enclosure: As stated

SEQUOYAH NUCLEAR PLANT

RESPONSE TO CONCERNS

ALLEGATION REPORT NO. RII-2018-A-0082

Concern 2:

TVA Corporate Licensing willfully failed to deny or correct two 2015 NRC violations.

Response to Concern 2:

The inspectors reviewed the two 2015 NRC violations and the licensee's corrective action program (CAP) document NPG-SPP-22.300, "Corrective Action Program."

The Condition reports (CR) associated with non-cited violation (NCV) 05000327, 328/2015007-002 (Criterion III) are:

- CR 1064736 (C level) - This CR was written during the inspection on 7/30/2015 and was listed in the inspection report. The issue identified in this CR was to evaluate if the removal of the essential raw cooling water (ERCW) motor control center (MCC) Kirk Key Interlocks in design change notice (DCN) 23085 would cause a common mode single failure between Unit 1 and Unit 2 and if the DCN was not meeting certain licensing requirements. In addition, this CR was to determine if a license amendment request (LAR) would have been required for the change. Action 1 to evaluate DCN 23085 was completed by the licensee on 1/25/2016, the results of this evaluation were documented in a letter of disagreement which was submitted to the NRC on 1/8/2016. At some point between 1/8/2016 and 2/12/2016 the licensee was informed that the letter of disagreement would not change the NRC's position on this issue and so this CR was closed out to CR1084294 which would include further corrective actions.
- CR 1084294 (B level) – This CR was written after the inspection report 2015-007 was issued on 9/21/2015. This CR is currently still open awaiting the NRC response to the LAR that was submitted on 3/9/2018 (over 29 months later).

CRs associated with NCVs 05000327, 328/2015007-003 (SL-IV) are:

- CR 1076179 (C level) – This CR was written during the inspection on 8/28/2015 and was listed in the inspection report. The issue identified in this CR was that the 50.59 evaluation, for the replacement of the Molded Case Circuit Breaker (Service Life), Question #2 was inadequate as written (i.e. it did not support the conclusion.) The corrective action was to revise the evaluation to include additional detail. The inspectors reviewed this updated evaluation and determined that the licensee adequately addressed the problem identified in the CR description. This action was completed on 3/1/2016 (~6 months later) and the CR was closed out on 3/25/2016. This CR also was related to CR 1084295.
- CR 1084295 (B level) – This CR was written after the inspection report 2015-007 was issued. This was closed to CR 1084294 (as discussed above).

The inspectors have reviewed all relevant CRs and actions associated with these two NCVs documented in inspection report 2015-007. The inspectors have determined that the licensee has adequately taken corrective action according to their corrective action program (CAP) and 10 CFR 50, Appendix B, Criterion XVI. Even though it took over 29 months from when the inspection report was issued until when the LAR was submitted for NRC review and the LAR doesn't appear to have any new information in it, the licensee always had administrative

Enclosure

controls in place to prevent this issue from inadvertently occurring. Procedures 1-SO-201-9 and 2-SO-201-9 are in place to prevent inappropriately cross-tying ERCW MCCs.

The violation that dealt with the "Service Life issue" was denied by TVA and the NRC after review of the denial retracted the violation. The CRs that were related to this issue were not inspected during this inspection due to the violation being retracted.

Based on our review, there is no evidence to suggest that TVA willfully failed to deny or correct the violations. The issues were entered into the CAP and dispositioned in accordance with the CAP.

Conclusion:

Based upon the review described above, the allegation that TVA Corporate Licensing willfully failed to deny or correct two 2015 NRC violations, was not substantiated. On the basis of the foregoing, the NRC plans no further action regarding this concern at this time.

Concern 3:

Corporate licensing inappropriately closed CRs 1262488 and 1289450 without taking appropriate corrective actions.

Response to Concern 3:

The inspectors determined that both CRs 1262488 and 1289450 were screened E level, which under TVA's corrective action program are Non-Conditions-Adverse-to-Quality. The inspectors reviewed the CRs and the licensee's CAP program document NPG-SPP-22.300, "Corrective Action Program" and determined that the licensee correctly screened these CRs in accordance with their CAP. Section 3.4.4.H.1.a of NPG-SPP-22.300, "Corrective Action Program," lists what is considered within the scope of CAP or a C-level CR. These include 1. If the CR identifies conditions adverse to quality and significant conditions adverse to quality, 2. If the CR identifies issues for which a corrective action is required by NRC regulations, orders, and licenses, 3. If the issue is associated with a safety-related or quality-related System, Structure, or Component (SSC) or program. For both of these CRs, none of the three apply, so the CAP directs the issue to be screened as an E-level CR. The licensee's corrective action program allows for E level CRs to be closed without taking action. The inspectors did note that the licensee did attempt to document their critical thinking on how the issue of concern was addressed.

Conclusion:

Based upon the review described above, we determined that corporate licensing inappropriately closed CRs 1262488 and 1289450 without taking appropriate corrective actions was not substantiated. On the basis of the foregoing, the NRC plans no further action regarding this concern at this time.

Concern 4:

Corporate and Sequoyah Nuclear Plant licensing staff are afraid to raise concerns because they fear retaliation from the Director and Vice President of Nuclear Regulatory Affairs.

Response to Concern 4:

During the week of October 15, 2018, the inspectors conducted a sample safety conscious work environment (SCWE) inspection. The inspectors interviewed 15 TVA employees in the Licensing and Regulatory Affairs organizations at Sequoyah Nuclear Plant and TVA Corporate Nuclear, approximately 94% of the workforce in those groups. Interviewees were asked a series of questions as follows:

List Questions

1. In your opinion, what level of emphasis does your management team seem to put on safety (nuclear, radiological, and industrial)/regulatory compliance? Examples?
2. Do you believe that decisions made at TVA prioritize nuclear safety / regulatory compliance? Why or why not? Examples?
3. Are you able to challenge a decision if you disagree with it? What if it's a management decision? Please give examples.
4. How would you raise a safety or regulatory issue (e.g., inform supervisor, corrective action program, employee concern program (ECP), NRC)? If supervisor not mentioned ask -> Do you feel free to approach your supervisor regarding a nuclear safety/regulatory concern? What about your department manager or senior management?
5. Do you feel like your department encourages people to raise nuclear safety or regulatory issues?
6. Are you aware of any instance where someone experienced a negative reaction or was retaliated against for raising a nuclear safety or regulatory issue? If yes, please describe the incident.
7. Do you feel like you can raise nuclear or regulatory safety concerns without fear of retaliation?
 - a. If NO → Is there a specific incident or set of behaviors that cause you to feel this way?
8. Have there been any issues recently that might affect you or your coworkers' willingness to raise safety/regulatory issues? (e.g., chastisement for submitting issues to corrective action program, ECP, or NRC; supervisors holding up submittal of concerns)?
9. Do you think people are treated fairly and with respect by management? Why or why not?
10. Do you believe that your supervisors and managers have trust and confidence in the staff?
11. Do you have trust and confidence in your supervisors and managers?
12. How do you feel about using the Employee Concerns Program? Is it effective?

13. Do you believe that if you bring a concern to the ECP it will be kept confidential?
14. Is there anything else we didn't talk about that you think we should know?

The NRC defines SCWE as a work environment in which employees are encouraged to raise safety concerns, are free to raise concerns to both their management and the NRC without fear of retaliation, where concerns are promptly reviewed, given the appropriate priority, and appropriately resolved, and where timely feedback is provided to those raising concerns. To the contrary, a chilled work environment is defined as an environment where raising nuclear safety concerns to the employer or to the NRC is being suppressed or is discouraged and where employees fear retaliation for raising concerns and it is not isolated (e.g., multiple individuals, functional groups, shift crews, or levels of workers within the organization are affected). In general, based on responses from the sampled group, personnel stated that they felt free to raise nuclear safety concerns without fear of retaliation. As such, we could not conclude that Corporate and Sequoyah Nuclear Plant employees in general are chilled.

Conclusion:

Based upon the review described above, the allegation that Corporate and Sequoyah Nuclear Plant licensing staff are afraid to raise concerns, was not substantiated. The inspection report on this area and the results of the inspection was documented in NRC inspection Report 05000327, 328/2018013 (ML18338A404). On the basis of the foregoing, further NRC intervention on this issue is warranted at this time.

Attachment 17

Redacted

Attachment 18

To: Williams, Anthony Lawrence IV[alwilliams12@tva.gov]
From: Dodds, Ralph Alexander
Sent: 2018-07-30T13:05:22Z
Importance: Normal
Subject: Fwd: Anything I should add to cover your comms prior to migrating it into the SCWE Mitigation Plan?
Received: 2018-07-30T13:05:26Z

Sent from my iPad

Begin forwarded message:

From: "Dodds, Ralph Alexander" <radodds@tva.gov>
Date: July 30, 2018 at 9:04:36 AM EDT
To: "Dodds, Ralph Alexander" <radodds@tva.gov>
Subject: **Anything I should add to cover your comms prior to migrating it into the SCWE Mitigation Plan?**

May 24. Informed Mike McBrearty that he was being placed on paid suspension due to an ongoing investigation around alleged statements and actions of his. I informed that his access was on hold and that he should refrain from doing anything that might impede. The investigation.

May 25. I met with Jon Johnson and asked him to be Acting Licensing Manager since Mike was off site attending to a personal matter. John asked several questions about the issue. I informed him that we need to respect Mike's privacy and have trust that TVA's processes are fair and thorough. I asked Mike to meet with the Licensing Department and make them aware. I had several follow up meetings with Jon over the next 4 weeks to let him know we were still in process and that Mike's privacy should be respected.

June 14. Since it was becoming clear that the issue was not going to be resolved speedily, and since Jon continued to ask questions and state concerns for Mike, I met with him and brought him more into the picture. I shared that a concern had been identified around some statements and actions Mike may have conducted and it was being handled by a third party. I told him I was not privy to the details of the investigation at this point but was staying in close contact with the stakeholders. I also asked him to make me aware if he was hearing any faint signals from his group.

June 14. I began a series of weekly "chance encounters" with each Licensing member. I would ask generally how they are, what help they need, if they had concerns etc. They did not initiate any conversations regard Mike, other than one member who asked frequently if I had heard from Mike. I told him yes, and that he seemed to be doing well and had asked about the department to see how everyone was. These

are still ongoing.

July 11. I found an anonymous handwritten note under my keyboard stating that Mike was being treated unfairly due to the long suspension (6 weeks and counting). It seemed to me that it might have been written by someone in Licensing, but I did not inquire and did not care very much who wrote it. I discussed the letter with my SVP, and HR Manager. The SVP suggested I share it with SQN ECP so that they could help monitor for other symptoms concern.

July 12. I met with the entire Licensing Department to update them. I informed them of the ongoing investigation and my belief that it was being conducted fairly. I mentioned that it was looking into the possibility of Mike not following company policy is some of his communications with personnel off site. Note: the mood was definitely sour at this meeting. Through body language and comments I could tell there was animosity towards the company and possibly towards me. I asked them to stay focused on their work, respect Mike's privacy and have trust in our processes and our intentions.

I mentioned the anonymous letter and told them I understood its perspective and appreciated the author making their concern known. I reminded them of their right and responsibility to identify any nuclear safety or other concerns and the company's obligation to support this.

I discussed the above with the SQN HR Manager who suggested that I have a follow up meeting with the unreceptive Licensing members, which I did on July 16 (see below).

July 13. SVP met with Jon Johnson to reiterate my earlier communications and provide additional perspective.

Met with ECP coordinator to see if there are any other actions I should be taking. She did not suggest anything additional.

July 16. I met privately with Jon to provide an update—essentially that there was no change in status or timeframe. He reported that his department was staying focused on their work.

I also met with Zach Pitt privately since I concluded at our July 12 meeting that he was unconvinced that the Company was doing the right thing. I asked him if this was accurate and he said it was. He then shared his frustration at the pace of the investigation, the lack of transparency, and his opinion that Mike's reputation was already damaged. I mainly listened. I did say that I withheld the reason for Mike's absence since I was initially hopeful he would be back onsite quickly and did not want to unnecessarily draw attention to Mike's conduct. Zach said he appreciated the discussion and asked to be kept in the loop as appropriate.

July 27. I met with the entire Licensing Department to update them. I said that it appeared we were approaching an endpoint so to remain focused and patient. The mood at this meeting was significantly improved.

Attachment 19

Redacted

Attachment 20



Planet Depos[®]
We Make It *Happen*[™]

Transcript of Nicholas Dale Hilton

Date: July 7, 2021

Case: Tennessee Valley Authority, In re:

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD
Docket Nos. EA-20-006 and EA-20-007

- - - - - x
In the Matter of : ASLBP No.
TENNESSEE VALLEY AUTHORITY : 21-969-01-EA-BD01
(Enforcement Action) :
- - - - - X

Deposition of
NICHOLAS DALE HILTON
Conducted Virtually
Wednesday, July 7, 2021
8:02 a.m. EDT

Job No.: 379707
Pages 1 - 219
Reported by: Debra A. Whitehead

1 Q So for our purposes today, defending the
2 violations before a board, is it reasonable to say
3 that the order is what sets forth the basis for
4 the violations that we're dealing with right now?

5 A Yes.

6 Q Is it correct that if a licensee wants to
7 dispute a violation at a hearing, that this is the
8 document that they should look to in order to
9 determine what they need to dispute?

10 A Yes.

11 Q So when I refer to the NRC's claims or
12 violations, can we agree that I'm referring to the
13 issues that are mentioned in this order?

14 A Yes.

15 Q Are you familiar with the four violations
16 that are described in this document? And the
17 violations are described starting on PDF Page 13,
18 if you want to skip there.

19 A Okay. If you'll excuse me, I'm having --
20 I have yet to successfully figure out how to
21 easily transition back and forth between your
22 screen the PDF file. If I've got the PDF file
23 open, where do I need to go to go directly to it?

24 (Discussion off the record; technical
25 difficulty.)

1 A Yes. I'm generally familiar with these,
2 yes.

3 Q Okay. Would you say that you're familiar
4 with the facts supporting the issuance of these
5 violations?

6 A Very generally.

7 Q Does that mean you don't know the
8 specific facts that are supporting the issuance of
9 the violations?

10 A That means I'm aware of the basic case
11 description from the staff's perspective. I am
12 not aware of any of the evidence or the detail
13 behind it. I did not participate in any
14 substantive review or detailed discussion. That's
15 not my role.

16 Q Do you believe that you can competently
17 testify as to the facts supporting this violation?

18 A I cannot -- I cannot testify to the
19 facts, the evidence supporting the facts. My role
20 was to take the facts, if you will, as presented,
21 and assist and guide, from a historical
22 perspective and from a policy application
23 perspective, the application of the enforcement
24 policy.

25 Q Okay. Do you know the protected

1 activities that are referenced in these
2 violations?

3 A Only generally.

4 Q So if I were to ask you if a specific
5 document were one of the protected activities,
6 would you be able to confirm whether or not that's
7 the case?

8 A Perhaps, but not with any certainty.

9 Q So you would have to qualify any
10 testimony as to that level of detail with the fact
11 that it may or may not be correct?

12 A Correct.

13 Q Do you know the adverse actions that are
14 being referenced in these violations?

15 A I believe I am aware of the adverse
16 actions, yes.

17 Q Would you be able to competently testify
18 as to the specifics of the adverse actions that
19 are involved in this case?

20 A I think I can articulate what the adverse
21 action was. But, again, not the -- not any of the
22 evidence in detail behind that action.

23 Q Do you know the facts that demonstrate
24 that protected activities contributed to adverse
25 actions for these violations?

1 A Not specifically. Again, I was in staff
2 meetings where that was discussed, so I heard
3 reference to them. I did review some of the
4 documents, the summary documents, beforehand. I
5 am aware of the general statements of them. But I
6 did not -- I had very limited reading of any
7 exhibits or the actual evidence of the case. I
8 have little direct knowledge of that.

9 Q What meetings were you in?

10 A Well, through the -- through the
11 enforcement process we have a variety of staff
12 meetings to continue our review and analysis. And
13 I don't recall exactly, I think I was in most but
14 not even all of those.

15 The original enforcement panel, where the
16 staff has reviewed the investigation and decided
17 to proceed in the escalated process.

18 Q Any others?

19 A I believe I was in at least one what we
20 refer to as caucus, after the PEC, for the staff
21 to discuss whether new information was heard and
22 its relevance and determine the appropriate
23 enforcement action going forward.

24 Q Was that the July 19th or July 20th
25 caucus?

1 A That makes sense. I don't recall the
2 dates, but that would be reasonable.

3 Q So we could say it's a late July caucus?

4 A It was after the PEC. And I think the
5 PEC occurred in late June, so that sounds about
6 right.

7 Q All right.

8 A Said differently, it could have been the
9 1st of August, I don't recall. But that's about
10 the right time frame, so I think that's the right
11 date.

12 Q I understand. Let's talk about the first
13 enforcement panel where you said that the staff
14 reviews the investigation and decides whether or
15 not to proceed with escalated enforcement.

16 I believe I have a document where that is
17 discussed.

18 MS. LEIDICH: And can we pull up
19 exhibit -- hold on. I have too many pieces of
20 paper. I'm a little too old school, clearly.

21 Can we pull up Tab 5.

22 A/V TECHNICIAN: Stand by.

23 MR. GILLESPIE: And, Nick, they'll
24 probably explain this, but he has to upload it to
25 the site, and then it will show up on the

1 '90s, I believe, if I recall correctly.

2 Q And it was --

3 A As part --

4 Q I'm sorry. Go ahead.

5 A I'm sorry.

6 Q I was just going to say, it's Curtis,
7 could you spell for the court reporter what the
8 Curtis --

9 A Overall.

10 Q Overall.

11 A O-V-E-R-A-L-L.

12 Q Is that someone's name --

13 A That's not -- yes.

14 Q Or is it a company's name?

15 A Individual. Individual. Like I say, we
16 have not -- we have not pursued a case like that
17 since then, to my knowledge.

18 Q Is saying that you dislike your boss a
19 protected activity?

20 MR. GILLESPIE: Objection. Form.

21 A Again, it would depend on the
22 circumstances. But I'd have to know the rest of
23 the -- rest of the facts, the why. The why. Just
24 the simple statement would not be, but the why
25 would be, could be.

1 Q Can you describe for me a circumstance in
2 which case it would be a protected activity?

3 MR. GILLESPIE: Objection. Form.

4 A If you -- I'd have to create the facts.
5 But a simple statement of "I don't like my boss"
6 on its face, simplistically, would not be
7 protected activity. Obviously there are --
8 there's a reason that statement is made, and the
9 reason could become protected activity. Every
10 time I raise a safety concern, they dock my pay.
11 I raise concerns, so I never get overtime, so I
12 don't like my boss, that kind of thing.

13 Q Is saying that you are afraid of your
14 boss a protected activity?

15 MR. GILLESPIE: Objection. Form.

16 A I think it could be, yes. But, again,
17 speculation depending on the nature of the case.

18 Q Is saying that your boss is vindictive a
19 protected activity?

20 MR. GILLESPIE: Objection. Form.

21 A I don't know.

22 Q Would it again depend on the facts of the
23 case?

24 A It would.

25 Q Is saying that you are afraid your boss

1 might investigate you if you do something illegal
2 a protected activity?

3 MR. GILLESPIE: Objection. Form.

4 A I don't know what the illegal part is, so
5 I'd have to speculate.

6 Q Is there a case in which saying that
7 you're afraid your boss might investigate you if
8 you do something illegal, is there a case in which
9 it would be a protected activity?

10 MR. GILLESPIE: Objection. Form.

11 A I think if the -- if the issue is in
12 terms of a nuclear safety concern, it very well
13 could be, yes.

14 Q How do you square that with the part of
15 the Energy Reorganization Act that says that
16 individuals performing illegal activities are not
17 protected?

18 MR. GILLESPIE: Objection. Form.

19 A Whose illegal activity? I'm sorry, maybe
20 I cross-connected. Whose illegal activity? What
21 was the original question?

22 Q Yes. This is an individual saying that
23 they are afraid that their boss might investigate
24 them if they do something illegal.

25 If the individual does something illegal.

1 Q Ms. Wetzel states in this e-mail that it
2 appears this contract was written so NEI would
3 reject it summarily.

4 Is that correct?

5 A Reads like -- responsible for my
6 expenses. Appears -- yes, it does. In the middle
7 paragraph, yes.

8 Q And then Ms. Wetzel states, "If my boss
9 is going to be unreasonable with NEI and
10 effectively block my loanee opportunity, would you
11 please tell me so I know what to do next."

12 Correct?

13 A Correct.

14 Q Would you agree that the purpose of
15 Ms. Wetzel's e-mail is to express a concern that
16 her boss might block or interfere with her
17 assignment at NEI?

18 A That appears to be the purpose, yes.

19 Yes, that's what it says.

20 Q Do you know whether Ms. Wetzel was
21 blocked from her assignment at NEI?

22 A I believe -- again, I -- my apologies. I
23 haven't read the evidence. It doesn't stick in my
24 mind greatly. I believe she ended up going on
25 that rotation. So I'm -- the natural conclusion

1 after that would be that she was not blocked.

2 Q Can you identify for me the protected
3 activity in this e-mail?

4 A I don't know that there is any protected
5 activity in this e-mail alone as it stands.

6 Q Do you see any nuclear safety concerns in
7 this e-mail?

8 A Not in this e-mail.

9 MS. LEIDICH: Next we'll be moving on to
10 Tab 10, which will be marked Exhibit 6.

11 A/V TECHNICIAN: Stand by.

12 (Hilton Deposition Exhibit 6 marked for
13 identification and is attached to the transcript.)

14 Q And this is another e-mail from
15 Ms. Wetzel to Mr. Shea, or a series of e-mails,
16 rather, around May 7, 2018.

17 You can take a moment to look at this
18 document and then answer, do you recognize it?

19 A I do not recognize this document.

20 Q Did you consider this document when
21 determining whether or not there was a violation
22 in this case?

23 A No, I did not.

24 Q Okay.

25 A Again, I didn't make that determination.

1 Q Is it fair to say that Ms. Wetzel is
2 expressing concerns in this document about TVA
3 reimbursement of expenses associated with her
4 assignment at NEI?

5 A Let me read it just to --

6 MR. GILLESPIE: Objection. Form.

7 A Give me a minute just to read it here for
8 a second.

9 Q Sure. Take your time.

10 MR. GILLESPIE: Anne, is this available?
11 I don't see it.

12 Oh, there it is, under Tab 10. I
13 apologize.

14 Just for the record, this is not the full
15 e-mail chain. Is that correct? There were
16 follow-on e-mails from this?

17 MS. LEIDICH: I'll have to check on that.

18 A Okay, I've read it once.

19 Q So the question was, is it fair to say
20 that Ms. Wetzel is expressing concern about her
21 TVA reimbursement of expenses associated with her
22 assignment at NEI?

23 MR. GILLESPIE: Objection. Form.

24 A It appears, based on what I'm reading
25 here, that that is the basis of her concern, yes.

1 Q At the bottom of PDF Page 2, Ms. Wetzel
2 says, "I know that Erin has used HR to investigate
3 people, reported people to ECP, threatened to have
4 people for cause drug tested and pulled badge and
5 gate records."

6 Is that correct?

7 A That's what's written there, yes.

8 Q Okay.

9 A And it goes on.

10 Q Yes. And the rest of it, "And probably a
11 lot more actions that I am not aware of."

12 Correct?

13 A Yes.

14 Q Did you confirm whether or not
15 Ms. Wetzel's allegations of these retaliatory
16 actions were accurate?

17 A I did not.

18 Q Did you do any work to evaluate whether
19 or not Ms. Wetzel was making baseless factual
20 assertions here?

21 A Personally, I did not.

22 Q Do you know if anyone at the NRC did any
23 work to determine that?

24 A It's my understanding that -- that people
25 that, between the Office of Investigations, the

1 assigned enforcement specialist, at the panel this
2 was -- this was looked at.

3 But, again, I didn't do any of the actual
4 review.

5 Q So you would have expected the
6 enforcement specialist to look at whether or not
7 Ms. Wetzel was making baseless factual assertions?

8 A I would expect he would have understood
9 that part of the discussion, yes, in terms of its
10 relevance. If -- if this is the only issue. But,
11 again, this is one e-mail out of the story, and
12 not the complete investigation, so there's
13 other -- at least conceivable and likely possible
14 moving parts in terms of, this may not be the
15 entire story.

16 Q If this were the entire story, would you
17 have expected the enforcement specialist to look
18 into the veracity of these allegations?

19 MR. GILLESPIE: Objection. Form.

20 A That's a hypothetical. I would expect
21 him to understand -- he or she, in this case he,
22 understand the issue and how it --

23 Q What do you mean by "understand the
24 issue"?

25 A Well, and how it plays into the case in

1 total.

2 Q Based on these claims, Ms. Wetzel then
3 asserts that Ms. Henderson "has demonstrated a
4 long-standing pattern of using TVA process as
5 punitive and retaliatory tools. Based on the lack
6 of detail in her NEI loanee confirmation 2018
7 document, I anticipate her using my travel
8 vouchers as an investigative tool."

9 So would you agree that Ms. Wetzel's
10 concern here was that Ms. Henderson might
11 investigate her travel reimbursement requests?

12 MR. GILLESPIE: Objection. Form.

13 A That's what this sentence says, yes.

14 Q Does Ms. Wetzel say in her e-mail what
15 she is concerned Ms. Henderson might retaliate
16 against her for?

17 A It doesn't say what she's concerned
18 about. She says she -- her -- the plain English
19 to me says she's demonstrated long-standing
20 pattern of using TVA processes as punitive and
21 retaliatory tools, period.

22 Based on that -- her confirmation
23 document, she's thinking that she may do the same
24 using her vouchers as a tool. That is -- could
25 easily be read as an excuse, not a -- not an

1 Ms. Henderson does not respond positively to
2 Ms. Wetzel's request regarding her NEI loanee
3 confirmation memo. Correct?

4 MR. GILLESPIE: Objection. Form.

5 A Wait a minute. You asked a couple three
6 questions here. So say that again so I can
7 follow. She only responds when?

8 Q I'm saying -- the question was,
9 Ms. Wetzel only e-mails Joe Shea with her claims
10 regarding Ms. Henderson after Ms. Henderson did
11 not respond positively to Ms. Wetzel's request
12 regarding her NEI loanee confirmation memo.

13 Is that an accurate assessment?

14 MR. GILLESPIE: Same objections.

15 A Well, just based on this thread and what
16 I'm reading here, that -- that implies a -- she
17 interpreted that as a -- not a positive response.

18 Is that what she said up here? I mean, I
19 read Ms. Henderson's e-mail as being rather
20 factual and explanatory. And then based on this
21 document, okay. That's the Wes.

22 Okay, yes, it looks like she -- it looks
23 like Ms. Wetzel was continuing -- forwarding this
24 thread, this response, and her concern, to
25 Mr. Shea at 11:21, which should be after the --

1 yes, after she received Ms. Henderson's response,
2 yes.

3 Q Do you see any nuclear safety concerns in
4 this e-mail?

5 A Nothing articulated in the e-mail.

6 MR. GILLESPIE: Objection. Form.

7 A Do you see any protected activity in this
8 e-mail?

9 MR. GILLESPIE: Objection. Form.

10 A Not in the e-mail.

11 Q Do you see any chilled work environment
12 concerns in this e-mail?

13 MR. GILLESPIE: Objection. Form.

14 A I do not in this e-mail.

15 MS. LEIDICH: First of all, can we close,
16 actually, Tab 7 and Tab 8. You can go ahead and
17 close those.

18 And the next tab we will open is Tab 11,
19 which should be Exhibit 7.

20 A/V TECHNICIAN: Stand by.

21 (Hilton Deposition Exhibit 7 marked for
22 identification and is attached to the transcript.)

23 Q And this is another Beth Wetzal e-mail to
24 Joe Shea. It occurs about a month after the last
25 e-mail.

1 You can go ahead and read it if you'd
2 like. The first question will be, do you
3 recognize this document?

4 A I do not recognize the document.

5 MS. LEIDICH: And this is Joe Shea
6 Exhibit Number 18.

7 Q Did you consider this document in
8 determining whether there is a violation in this
9 case?

10 A I did not determine whether there's a
11 violation in the case or not. So -- and I did not
12 consider this document. I don't recognize it.

13 Q If you go to the bottom, do you see that
14 there is a June 9, 2018, e-mail from Beth Wetzel
15 to Joe Shea?

16 A Beth Wetzel to Shea? Yes. Yes, I see
17 that.

18 Q Go ahead and read it, if you haven't
19 already.

20 A Okay, I have read it.

21 Q Is this -- this e-mail is approximately
22 one month after the prior e-mails that we looked
23 at. Correct?

24 A Yes.

25 Q And what message is Ms. Wetzel relaying

1 Q Are you aware of any historical basis
2 there might be for issuing the violations in this
3 case?

4 MR. GILLESPIE: Objection. Form.

5 A Historical -- I'm not sure I understand
6 the question, to tell you the truth. Historical
7 basis? To my knowledge, there's not a case
8 exactly like this, and there's never -- there's no
9 two cases are the same. They're all
10 fact-dependent.

11 Q I'm wondering because you said you
12 provided sort of a historical perspective. And
13 I'm trying to determine what your historical
14 perspective is that you're providing.

15 A Oh. Based on my -- based on my
16 experience in terms of, for example, when we got
17 into the -- citing the four violations,
18 determining the severity level, did Ms. Henderson
19 fit in the general term of a supervisor or more of
20 a manager, did that -- did that fit more of a
21 Severity Level 3 or a 2, and how -- how did we
22 apply it, the policy, in terms of how we've
23 treated individuals and the -- and the
24 organizational structure in the past to try to get
25 consistency with -- with our general practice and

1 where individuals fit in terms of the -- both the
2 significance of the adverse action versus, you
3 know, termination is one thing, written counseling
4 is another, a comment is another. So where does
5 that fit in the -- in the scale of significance.

6 There's fear of influence, and how they
7 fit, and how the people involved fit in the
8 organization. So that -- that's where there is --
9 you know, an assignment has to be made, and I
10 participate in those kind of discussions.

11 Q Since we're discussing adverse actions
12 and their historical basis, is there any
13 historical basis for considering a complaint to be
14 a violation of NRC regulations?

15 A A complaint to be a -- are you referring
16 to Ms. Henderson's harassment complaint?

17 Q Yes.

18 A Yes, there's been -- we've been -- in
19 terms of a manager not taking what you might call
20 a classic adverse action like termination or pay
21 or something, there have been other examples of
22 taking an action that, you know, is known to yield
23 a result in something down the line.

24 So -- and I referenced Mr. Fiser's case
25 this morning. A big part of that case was the

1 fact that he was sent to TVA Services. He wasn't
2 laid off; that was the end result, that was going
3 to be the end result. But the actual action was,
4 he was -- he was sent to another organization.

5 So that that mere transfer of him to
6 another organization ended up resulting in his
7 termination, even though it wasn't the actual
8 issue.

9 So, yes, we've dealt with those kind of
10 scenarios before.

11 Q Transferring an individual to another
12 organization impacts their terms and conditions of
13 employment, does it?

14 A It could.

15 Q In what cases does it impact their terms
16 and conditions of employment?

17 A If that organization is, as I was just
18 referencing, if that -- if the new organization is
19 one that is simply a holding facility for a future
20 layoff, future RIF, then that obviously has
21 impact. But there's any number -- any number of
22 things that could influence.

23 An involuntary assignment that -- to a
24 less prestigious, any -- any kind of an action
25 that could be -- that could, would be viewed by

1 others as a negative action, would be considered
2 by us as an adverse action.

3 Q So would moving someone's office to a
4 less preferential location be an adverse action?

5 A Yes, it could be. In fact, we've had
6 cases like that.

7 Q Have you ever previously issued a
8 violation for an individual filing a complaint?

9 A Again, an individual, are you talking
10 about the filing the harassment complaint that
11 Ms. Henderson filed?

12 Q Yes. I'm asking if in any prior case,
13 before Ms. Henderson's case, if you've ever issued
14 a violation for an individual filing a complaint?

15 A I don't believe that specific -- I don't
16 recall that specific action. Although for some
17 reason I think there was one that involved an
18 investigation, but it was more of a director.
19 This has been years ago. But I don't recall a
20 specific one that fit this exact fact pattern, no.

21 Q On the day after Ms. Henderson filed her
22 harassment complaint, what was the impact to the
23 terms and conditions of Mr. McBrearty's
24 employment?

25 MR. GILLESPIE: Objection. Form.

1 A On the next day?

2 Q Yes.

3 A He was then subject to an investigation.

4 Q And is being subject to an investigation
5 an impact to the terms and conditions of someone's
6 employment?

7 A Could be.

8 Q So is every investigation that's
9 undertaken an adverse action?

10 A No.

11 Q In what case is it not an adverse action?

12 A When there is no protected activity that
13 serves as part of the basis for moving that
14 investigation.

15 Q So do you first determine whether or not
16 there is a nexus to protected activity with an
17 action, and then decide whether or not it's an
18 adverse action?

19 A I never really viewed it as determining
20 them all in a very specific order. So that
21 question is a little different.

22 It goes to the -- any change in terms and
23 conditions of your employment could be an adverse
24 action, if the reason is taken in part because of
25 protected activity.

1 So you -- you do need, in order to have
2 the adverse action, yes, in some -- some cases it
3 may need to be understood why that adverse -- why
4 that action was taken in order to -- for it to
5 become an adverse action.

6 Q But I'm asking you how you determine
7 whether or not an adverse action results in a
8 change to the terms and conditions of employment.

9 And I understood what you said earlier to
10 be that that analysis depends in part on whether
11 or not the action per se was taken in response to
12 protected activity.

13 Is that what you said earlier?

14 A I believe so, yes.

15 Q So the adverse action is not decided
16 solely on the grounds of whether or not it results
17 in a change to the terms and condition of
18 employment; it's decided in part based on whether
19 or not it's related to protected activity?

20 A In order -- in the terminology that we're
21 talking about, in order for it to be an adverse
22 action in an employee protection case, there --
23 there does -- there needs to be a link in part to
24 protected activity.

25 Q Could anything be an adverse action?

1 A If it's a change in conditions of terms
2 of employment, yes, it could, if it could result
3 in a -- if it could result in a -- an
4 environment -- I was trying to figure out the
5 right word I want to use -- an environment where
6 others would be deterred from raising a concern,
7 we would generally consider that as an adverse
8 action.

9 The severity level varies immensely, of
10 course, depending on what that action is. But,
11 yes, if an employee -- most employees would not
12 view being subject to an investigation as a normal
13 part of their job. And so when you're subjected
14 to an investigation, then that becomes -- and it
15 is done at least in part because of raising
16 protected activity, then that would become an
17 adverse action.

18 That's why sometimes it is and sometimes
19 it isn't.

20 Q So you're saying that the test for an
21 adverse action is whether or not it would deter
22 future employees from raising protected activity?

23 Is that correct?

24 A In a theoretical sense, that's what --
25 yes.

1 Q Where is that test derived from?

2 A That's the NRC's use of the -- of change
3 in terms and conditions of employment.

4 MS. LEIDICH: Could we pull up Tab 7
5 again. I can give you the exhibit number.
6 Exhibit 3.

7 Q So, Mr. Hilton, can you point me to the
8 section of 10 CFR 50.7 that defines discrimination
9 or an adverse action, as we've been referring to
10 it, as anything that would potentially deter an
11 employee from raising protected activities in the
12 future?

13 A Yeah, it's up in the top. The
14 discrimination includes discharge, other actions
15 that relate to compensation, terms, condition, or
16 privileges of employment.

17 Q And how does that relate to the filing --
18 the deterrence against filing future complaints?

19 A Because the -- because the employees, one
20 of their privileges of employment is they're not
21 under investigation by anyone. They're not the
22 subject of an investigation as a matter of
23 routine.

24 And if you know that you're going to be
25 or believe that you're going to be investigated

Attachment 21

To: Grace, Jennifer Lynn[jlgrace@tva.gov]
From: Chandler, Christopher C
Sent: 2018-07-05T20:58:09Z
Importance: Normal
Subject: 180705 Report of Investigation of Henderson Complaint (ccc).docx
Received: 2018-07-05T20:58:09Z
[180705 Report of Investigation of Henderson Complaint \(ccc\).docx](#)

My biggest comments are organizational, but I pared down the ECP stuff fairly considerably. Also, I do want to make an explicit statement somewhere that the harassment was substantiated without relying in any way on his filing ECP concerns which he knew to be false. Not saying it artfully here, but I think you know what I mean.

Chris

Christopher Chandler

Associate General Counsel (Acting), Nuclear
Office of the General Counsel

Tennessee Valley Authority
400 W. Summit Hill Drive
Knoxville, Tenn. 37902

865-632-7774 (w)
202-631-3367 (m)
ccchandler0@tva.gov



NOTICE: This electronic message transmission contains information that may be TVA SENSITIVE, TVA RESTRICTED, or TVA CONFIDENTIAL. Any misuse or unauthorized disclosure can result in both civil and criminal penalties. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the content of this information is prohibited. If you have received this communication in error, please notify me immediately by email and delete the original message.

Attachment 22

Exhibit 7

Exhibit 7

2-2019-015

June 12, 2017

To: Joe Shea, Vice President, Licensing

Employee Concerns Summary NEC-17-00410

Attached is a summary of an ECP inquiry into issues of a hostile work environment, harassment, intimidation, retaliation and discrimination .

The issue was not substantiated and the report did not identify any conditions that warrant a Requirement to Act Letter. However, please note recommendations that should be considered to address ongoing conflicts.

Please address questions to me at (423) 751-8989.

Inza Hagins-Dyer, Sr. Manager Employee Concerns Program

June 13, 2017

Concern Summary:

The Concerned Individual (CI) works as the Sequoyah Nuclear Plant (SQN) Site Licensing Manager. He asserts that the Senior Manager of Regulatory Affairs (SM) in the Corporate office has been harassing him and has created an environment that could have a negative impact on the Safety Conscious Work Environment. (SCWE). The CI believes that the source of the hostility is because he learned that the SM had informed members of the Nuclear management team that he was at fault for delay in the report of an issue to the NRC in 2016. The CI was especially concerned about this characterization because he had been encouraging the issue to be reported. The CI also referenced an email sent to him by the SM where she encouraged him to stop sending emails that she considered to be detrimental to the work relationship. The CI believes that the email is part of a concerted effort on the part of the SM to discredit him as a professional.

The CI also expressed concern about involvement in an investigation related to allegations of an inappropriate relationship between himself and another Licensing employee. The CI stated that the investigation was conducted by Human Resources (HR) who took several months to inform him of the findings after the conclusion of the investigation.

Summary of Findings

Interview Summary

One individual indicated that things have gotten worse between SQN and Corporate since last summer when ECP did a previous investigation into the work environment in CNL. (It should be noted that during the previous investigation several CNL employees disclosed that there were times in which it was difficult to perform duties at the sites. Some of that was a general bias that sites might have about corporate oversight, while some stated a belief at that time that SQN was less receptive based on personalities of the Licensing management). Two things seem to be motivating the current belief:

- 1)The CI seems to have animosity toward the CI for her role in having the CI's friend moved to a position outside of Licensing ; and
- 2) there is a difference of opinion on work SQN site licensing performed to deny a service life/Kirk Key violation from the NRC on certain equipment used in mild environments.

With regard to the latter issue, interviews reveal that the Vice President of Licensing and SM spoke with the NRC Region II personnel and elected to put the denial on hold, pending Generic Guidance that the NRC was going to publish. However this has not happened . Interviewees indicated that this was an issue impacting morale of SQN licensing employees. In short, there's a belief that the SQN Licensing staff has invested over a month of work on this issue and that it is frustrating to have had Corporate

ignore their recommendation. One individual expressed a belief that the CI was using this decision to "poke" at the SM and Vice President of Licensing.

One other notable strain between Corporate and SQN licensing staffs is a frustration that one employee at SQN has for not having been allowed to apply on the Licensing Manager vacancy at WBN because the site was only promoting from within Watts Bar. All three individuals commented that SQN was the most stable, experienced licensing staff of the sites, but they have developed a noticeable morale problem.

Another individual stated that they would not feel safe going to The Vice President of Licensing or their management chain of command about any issues involving the SM.

Some stated that they lacked trust in management and feared that they would be demoted for difficulties that they have experienced while working for the SM. At least one person felt that the SM had recently questioned individuals about working relationships between the site and Corporate Licensing. This individual felt that the SM was trying to elicit negative responses about the CI.

Interviews further confirmed the belief that the CI has not been able to move past actions that occurred to his friend as the result of the friend's conflict with the SM. At least one person felt that the SM was the cause of the ongoing conflict. Others felt that the CI simply did not understand what went into the decision made about the CI's friend. One individual stated that the CI is rational, and middle of the road on all issues unless they involved the SM. Others were aware of instances where the CI had deleted the SM from emails chains on which she had originally been included. One described the CI as digging in whenever the SM was involved and recalled that he had stated his preference for not working with the SM. Some employees feel as though they are being put in the middle of conflict between the CI and the SM.

It should be noted that there have long been rumors of an inappropriate relationship between the CI and the former Licensing employee who is his friend. Both ECP and the SM received a picture of the CI and the friend which showed them sitting together on an outdoor bench. The picture was alleged to have been on the CI's Facebook page but removed. When showed the picture the CI again stated that he has been friends with the former Licensing employee and frequently socializes with her family. He stated that the picture in question was taken by the friend's daughter. This matter is included in this report only to highlight the fact that the SM has indicated that the CI's concern is rooted in his personal feelings for the former Licensing employee. ECP has no basis to determine the nature of the relationship between the CI and former friend. However those interviewed indicated the belief that the CI's animosity toward the SM is because of his personal friendship with the former Licensing employee.

Two employees noted that the SM's leadership had improved somewhat but that she could still look for ways to check her ego and show vulnerability with her employees. One shared their belief that much of the distrust between the CI, the VP of Licensing and SM could be addressed by them sitting down with the CI as often as necessary to explain their position on Licensing issues, as well as anything that impacted him with the matters involving the CI's friend. No one stated the belief that there was a hostile work environment. However all recognized that the relationship between the CI and the SM was not a good one.

Interviews reveal that all would raise nuclear safety or quality issues. However the tension between the CI and SM is a complication to work that is already challenging.

It should be noted that when provided the interview feedback the CI states that his mistrust of the SM is not based on his friendship with another employee but with the SM's mischaracterization of his role in the 2016 reportability issues. Though he admits that he and the former Licensing employee are close friends, he denies that there has been an inappropriate relationship between the two of them or that the relationship has contributed to his mistrust of the SM. The SM states that she met with the CI after he confronted her about statements she made regarding his role in the issue, and engaged in discussions to resolve the matter. She states that she thought this issue has been resolved and that the CI did not start to show hostility toward her until she and the CI's friend developed work related conflicts.

As a separate issue it should be noted that interviews with HR revealed acknowledgement that the CI had not received timely feedback about the results of the investigation into the alleged inappropriate relationship between the CI and another employee. It was explained that personnel changes within HR had resulted in the inadvertent oversight of providing feedback until several months after the conclusion of the investigation.

Conclusion

Interviews did not reveal a hostile work environment, harassment, intimidation, retaliation or discrimination by the SM against the CI. However there remains mistrust and tension that has had an impact on both the SQN Licensing staff and Corporate Licensing staff.

Recommendations

- Engagement in targeted conflict resolution to help the CI and SM address and resolve the ongoing tension
- Clarification of expectations regarding respectful communications between the CI and the SM (suggest working with the SQN Director of Site Support as the CI's supervisor)
- Engagement of the Learning and Organizational Development to help implement conflict resolution between the CI and SM.
- Resolution of the issue related to the service life/Kirk Key violation from the NRC
- Actions to address feedback that employees cannot raise concerns about the SM to the Vice President for fear of retaliation

Attachment 23



Deposition of:
Beth Wetzel

June 16, 2021

In the Matter of:

**In the Matter of Tennessee Valley
Authority**

Veritext Legal Solutions

800-734-5292 | calendar-dmv@veritext.com |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

-----)
IN THE MATTER OF) Docket Nos.
TENNESSEE VALLEY AUTHORITY) EA-20-006
CHATTANOOGA, TENNESSEE) EA-20-007
-----)

REMOTE DEPOSITION OF BETH WETZEL
JUNE 16, 2021

REPORTED BY: Tina Alfaro, RPR, CRR, RMR

1 each position, or how do you want me -- what are
2 you asking?

3 Q. Yeah. I'm trying to get a sense of,
4 generally speaking, how frequently you traveled
5 over the course of your TVA career.

6 A. A lot of travel.

7 Q. So pretty regularly?

8 A. Yes. And it varied with which position I
9 was in.

10 Q. And generally I'd like to understand the
11 procedures that you followed for reimbursement for
12 that travel. Can you describe that and, you know,
13 whether that was consistent generally across
14 different positions or handled differently in
15 different offices?

16 A. So are you -- let me answer one question
17 at a time. So are you asking -- I'm sorry. Can
18 you ask your question again?

19 Q. Sure. Sure. And you're right, it was two
20 parts. So fair enough.

21 My question is what's the process for --
22 or what was the process for getting reimbursement

1 for your travel while you were traveling for TVA?

2 A. Come back from travel, prepare a travel
3 voucher with my expenses, and TVA will reimburse me
4 directly into my account.

5 Q. So I'm asking you over a period of time
6 where you had different positions. So if you need
7 to sort of explain in answering this that it was
8 different in different positions, you can do that,
9 but my question -- my next question is who would
10 you normally submit your vouchers to?

11 A. I don't recall for each position. I think
12 some positions it may have been to my supervisor
13 and some positions the supervisor may have
14 delegated that to the management assistant, the
15 admin.

16 Q. As a general matter would your vouchers
17 have to be approved by someone before they could be
18 paid?

19 A. Yes.

20 Q. And who would have to approve your
21 voucher?

22 A. My supervisor or a manager.

1 Q. Were there policies or procedures for TVA
2 that applied to the submittal of vouchers?

3 A. I believe so. I can't quote them.

4 Q. I won't ask you to do that. They're
5 complicated in the best of times. I'm really just
6 wondering if you're aware of them, it sounds like
7 you were, and, you know, was that something that
8 you used to guide the submittals that you made?

9 A. Yes.

10 Q. During the course of your TVA career,
11 aside from the NEI loan which we're going to talk
12 about specifically later, did you go on any other
13 details or loan programs?

14 A. Not outside of TVA, no.

15 Q. So you had internal TVA details?

16 A. No. Just different positions in TVA.

17 Q. From your perspective are external details
18 or loans something that's common at TVA?

19 A. Not sure what you mean by "common."

20 Q. Whatever your understanding is. You can
21 explain what that means to you.

22 A. It's typical to have employees, TVA

1 Q. Anyone else you think you would have
2 discussed that with?

3 A. I don't -- I don't know.

4 Q. What was your understanding of
5 Ms. Henderson's background at the time she got the
6 position?

7 A. My understanding was that she had very
8 little licensing and regulatory experience.

9 Q. What did you understand her experience to
10 be?

11 A. My understanding was that she was site
12 licensing manager at Sequoyah for not very long, I
13 don't know, maybe -- not very long, and that she
14 was licensing manager over Bellefonte for a short
15 period of time.

16 Q. Did you have any understanding of her
17 qualifications beyond that experience?

18 A. My understanding was that she worked in
19 chemistry at Salem Hope Creek nuclear power plant.
20 I didn't have a -- yeah. I think she worked -- she
21 worked as manager of the performance improvement
22 group at Watts Bar.

1 Q. What did you think of Ms. Henderson when
2 she first became your supervisor?

3 A. I'm trying to think what I thought when
4 she first became my supervisor.

5 Q. Yeah. Right.

6 A. I thought she was inexperienced. I
7 thought she was smart, a smart lady, very well
8 organized.

9 Q. Did you think she could do the job?

10 A. I didn't think she had the knowledge and
11 the experience to be good at the job.

12 Q. I want to talk for a second about an
13 interview that you had with John Slater from OGC.
14 Do you recall that?

15 A. Yes.

16 Q. What was your understanding of the purpose
17 of that interview?

18 A. My understanding was that he was
19 interviewing everyone in our group to assess the
20 work environment in our group.

21 Q. And what do you mean by "work
22 environment"?

1 A. I believed we had a poor work environment,
2 and he was assessing that and going to help improve
3 it.

4 Q. When you say "work environment," though,
5 what do you mean by that?

6 A. I believe we had a chilled work
7 environment and people were afraid to speak
8 honestly and share honest information, and that's
9 not good in nuclear power.

10 Q. What was that belief based on?

11 A. Well, that belief was based on, in part,
12 my own fear for my job.

13 Q. Can you describe your fear for your job to
14 us?

15 A. I feared that Ms. Henderson was trying to
16 look for a reason to demote or fire me.

17 Q. And why were you afraid of that?

18 A. Because I was the -- one of the bread
19 winners for my family. I wanted to keep my job.

20 Q. But what made you think that that was what
21 she wanted to do?

22 A. Because over a period of time she slowly

1 reorganized and took my resources away from me from
2 having eight employees reporting to me to two and
3 was -- looked like she was trying to make me an
4 individual contributor.

5 Q. And when you say "individual contributor,"
6 does that mean not a supervisor?

7 A. Yes.

8 Q. I'm going to get back to that in a minute
9 and ask you some more questions a little bit down
10 the road, but I want to finish some of the
11 questions I was working on here now.

12 You mentioned a chilled work environment.
13 Have you ever been a part of a chilled work
14 environment interview or investigation prior to
15 this?

16 A. Prior to what?

17 Q. The one that you mentioned was John
18 Slater's interview.

19 A. The NRC came and interviewed us.

20 Q. When was that?

21 A. I don't recall the exact dates.

22 Q. Was that -- how long was that before the

1 believe we're going -- I'm going to be able to go
2 on loan because of the way the contract's worded.

3 Q. And what resulted from that conversation?

4 A. By the time I got back to my desk I had a
5 phone call from OGC and he was going to -- he
6 shared the contract with me and fixed the contract.
7 Didn't realize that I had not seen the contract and
8 changed the words so I could go to -- go on my
9 loan.

10 Q. Did you raise concerns with anyone about
11 the travel reimbursement?

12 A. Yes.

13 Q. And who was that?

14 A. Joe Shea.

15 Q. And what did you tell Mr. Shea?

16 A. I told him that I was concerned that the
17 specifics weren't written down as he dictated. He
18 said before you go let's write all the travel
19 specifics down so there's no question when you're
20 up there. I'm a stickler for rules, I thought that
21 was a great idea, and I was concerned that what I
22 wrote down after my research my boss did not accept

1 and she said HR will write it down. I was
2 concerned that there weren't specifics written down
3 and I was going to be putting in my travel
4 authorizations for a lot of money.

5 Q. In the end, though, your concerns did not
6 bear out; is that right?

7 A. I was concerned that TVA might use travel
8 authorizations to fire me.

9 Q. Why were you concerned about that?

10 A. Because they wouldn't write down the
11 specifics and it's a lot of money and I want to
12 follow the rules.

13 Q. But to be clear, I think you've indicated
14 that you did receive reimbursement for all of the
15 expenses you submitted; is that right?

16 A. Yes, and TVA fired me.

17 Q. That didn't relate in any way to vouchers
18 you submitted, did it?

19 A. I don't know why I was fired.

20 Q. Does that appear in any of the written
21 articulations of the reasons for your termination?

22 A. Not that I know of.

1 (TVA Exhibit 7 was marked for
2 identification.)

3 BY MS. RIMON:

4 Q. I'm going to give you a document that will
5 be Exhibit 7. It's document TVA-DOC-0004272 to 74.
6 You should have it. Take a minute to read it and
7 let me know when you're done.

8 (Witness reviewing document.)

9 A. Okay.

10 Q. Okay. This is an e-mail in May of 2018
11 between you and Joe Shea. I'd like you to look at
12 the second e-mail down which is from you to
13 Mr. Shea May 7, 2018, 11:12 a.m., and if you can go
14 to the fourth paragraph from the bottom of that
15 e-mail. It starts with "I am thrilled to have the
16 CNO support."

17 A. Yes.

18 Q. In the middle of that paragraph you refer
19 to "I know that Erin has used HR to investigate
20 people." I wanted to ask what you meant by that.

21 A. I guess the fact that she used HR to
22 investigate Michelle.

1 Q. Are you referring to the issue we talked
2 about earlier related to her relationship with
3 Mr. McBrearty?

4 A. I don't know the details. I just know
5 Michelle said she was investigated.

6 Q. So you don't know if that investigation
7 related to something else?

8 A. I don't know the details of that
9 investigation other than what's written in this
10 case.

11 Q. Any other HR investigations that you were
12 thinking of there?

13 A. An HR investigation of Ed Schrull.

14 Q. And what do you know about that?

15 A. Ed told me he was being investigated, HR
16 investigated him. I don't remember the details,
17 but it was comments he made on a telephone call
18 about a technical matter. I don't remember the
19 details.

20 Q. And how was Ms. Henderson involved in
21 that?

22 A. Ed said that Ms. Henderson asked HR to

1 investigate it.

2 Q. Do you know the outcome of that
3 investigation?

4 A. Not the details, no.

5 Q. What do you know about it?

6 A. I don't recall.

7 Q. Do you know if the concern was
8 substantiated against Mr. Schrull?

9 A. No, I don't know.

10 Q. Anything else that falls in the category
11 of instances that she used HR to investigate
12 people?

13 A. Those are the two that I recall.

14 Q. The next clause says "Reported people to
15 ECP." What are you referring to there?

16 A. I don't recall. I believe it was -- I
17 believe it was her reporting Mike McBrearty to ECP
18 is what I may have been referring to there.

19 Q. Do you remember what that was for?

20 A. No.

21 Q. Can you think of any other instance, or is
22 that it?

1 A. No, I can't think of any other instance.

2 Q. Now, the next clause says "Threatened to
3 have people for cause drug tested." What were you
4 referring to there?

5 A. When Michelle Conner -- there was an
6 incident where Michelle Conner was emotional and
7 crying and Erin wanted to have her drug tested.

8 Q. How do you know that?

9 A. I was told by Michelle.

10 Q. Was she drug tested?

11 A. No.

12 Q. And what did Michelle tell you?

13 A. She told me that management talked Erin
14 out of it.

15 Q. Anything else, any other incidents, or
16 just that one?

17 A. Not that I know of.

18 Q. Then it says "Pulled badging gate
19 records." What does that refer to?

20 A. I believe that that was probably referring
21 to pulling gate records at Sequoyah for Michelle
22 and Mike, I believe.

1 Q. Anything else?

2 A. Not that I recall.

3 Q. Then you say "And probably a lot more
4 actions that I'm not aware of." Why did you say
5 that?

6 A. Because of -- because of the way Erin
7 managed.

8 Q. What do you mean?

9 A. It was fear and intimidation.

10 Q. The next sentence says "She has
11 demonstrated a long-standing pattern of using TVA
12 processes as punitive and retaliatory tools."
13 Punitive and retaliatory for what?

14 A. If you don't agree with her technically.

15 Q. The last sentence there says "Based on the
16 lack of detail in her NEI loanee confirmation 2018
17 document, I anticipate her using my travel vouchers
18 as an investigative tool." What did you mean by
19 that in terms of "investigative tool"?

20 A. So being a manager and a federal employee
21 for 30 years I've always known that the easiest way
22 to fire someone is by travel, if they misuse travel

1 funds, and I was afraid because the rules weren't
2 clearly written that if I submitted a travel
3 voucher she might -- that had an error on it or
4 something that wasn't to our understanding, she
5 would use that to fire me, that I misappropriated
6 funds or didn't use funds appropriately.

7 Q. Had she ever questioned any of your
8 expenses from prior travel in the three or so years
9 that you had worked for her before this?

10 A. I don't recall. I submitted a lot of
11 travel vouchers.

12 Q. So there were lots of opportunities for
13 similar concerns it sounds like then?

14 A. Not as big as an opportunity as this NEI
15 loanee and not as clear travel written
16 requirements.

17 Q. Looking at the e-mail at the top, which is
18 to you from Mr. Shea, the bottom of the largest
19 paragraph there, the paragraph starts "Your first
20 concern," but towards the end of that paragraph he
21 refers to "Having confidence in our team -- that
22 our team has the ability to process the travel

1 claims in a manner that is rigorous in its
2 compliance and with the travel regulations and in
3 turn consistent with the understandings you had
4 from your meetings." And then towards the end he
5 says "Claims will be processed through our existing
6 channels, which I have confidence in."

7 What are the existing channels that he's
8 referring to there?

9 A. I believe what he's referring to is Carla
10 Edmondson processed most of the travel vouchers in
11 our group.

12 Q. So that was going to be the same process
13 for this loanee?

14 A. Yes.

15 (TVA Exhibit 8 was marked for
16 identification.)

17 BY MS. RIMON:

18 Q. I'd like to give you another document
19 which will be marked as Exhibit 8, I think, and it
20 is TVA-DOC-0004306. You should have that now.

21 A. I have that now. I'm opening it. Okay.

22 Q. Please take a minute to read it, and let

Attachment 24

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Deposition of Charles Wingo

Docket Number: EA-20-006 and EA-20-007

Location: teleconference

Date: Wednesday, June 30, 2021

Work Order No.: NRC-1569

Pages 1-151

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

+ + +

-----x

IN THE MATTER OF: : Docket No.
TENNESSEE VALLEY AUTHORITY : EA-20-006
: EA-20-007

-----x

Wednesday,
June 30, 2021

DEPOSITION OF
CHARLES "WES" WINGO

called for examination by counsel for the Agency,
pursuant to Notice of Deposition, via video
teleconference, when were present on behalf of the
respective parties:

1 A No, sir.

2 Q Mr. Wingo, have you been interviewed by
3 the NRC's Office of the Investigation?

4 A No, sir.

5 Q Office of Investigations. I'm sorry.

6 A No, sir, I have not.

7 Q Okay. Mr. Wingo, I'd like to start off
8 with, if you could walk me through your education
9 history since high school?

10 A Yes, sir.

11 So, I have a bachelor of arts degree from
12 The Citadel, class of 2003; a bachelor of arts degree
13 from the University of Tennessee, Knoxville, 2004, and
14 a master of arts degree in industrial and
15 organizational psychology from Middle Tennessee State
16 University from 2009.

17 Q Could you walk me through your job history
18 before working for TVA?

19 A Yes, sir.

20 I'm a commissioned officer in the
21 Tennessee Army National Guard. I earned my commission
22 in July of 2003. And then, while I was in graduate
23 school, I interned for the town of Smyrna, Human
24 Resources Department, and then, the Human Resources
25 Department for Rutherford County, Tennessee. And

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 then, since then, I have been an active Reservist with
2 the Tennessee Army National Guard. So, I'd say that's
3 kind of my part-time employment.

4 Q When did you start working for the
5 Tennessee Valley Authority?

6 A October 2008.

7 Q What was your first position at the NRC?
8 I mean, sorry. At the TVA?

9 A I was a Human Resources Generalist. I
10 supported organizations within our coal fleet.

11 Q And from October 2008, how long from there
12 on did you hold that position?

13 A From October 2008 until, it would probably
14 have been July of 2009.

15 Q And where did you go from there within
16 TVA?

17 A So, from there, I went on military leave.
18 And from July 2009 to July 2010, I was deployed in
19 support of Operation Iraqi Freedom.

20 Q And when you returned from deployment, did
21 you come back to TVA?

22 A Yes, sir.

23 Q And what position were you in at that
24 time? That was July of 2010?

25 A Yes, sir.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 From July of 2010 through August 2012, I
2 was a Human Resources Generalist supporting the coal
3 fleet.

4 Q And what was your next position after
5 August 2012?

6 A August 2012 through October 2014, I was
7 the Human Resources Manager at Watts Bar Nuclear
8 Plant.

9 Q And who did you report to in that
10 position?

11 A So, I reported to two different senior
12 managers. The first one -- well, no, so I just had
13 one in that time. Her name was Sarah Walker, and she
14 was the Senior Manager of Nuclear Human Resources.

15 Q And where was your next position after
16 October 2014?

17 A My next position was Senior Human
18 Resources Generalist at the Nuclear Corporate Office
19 in Chattanooga, Tennessee.

20 Q And how long were you in that position, in
21 that role?

22 A I was in that role from October 2014 to
23 April of 2018.

24 Q And who did you report to in that role?

25 A I reported to Sarah Walker for a period of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 time, and then, Debra Keil for a period of time, and
2 then, briefly, to Amanda Poland.

3 Q Do you recall when you started reporting
4 to Ms. Poland?

5 A It would have been likely around February-
6 March timeframe.

7 Q Of 2018?

8 A Yes, sir.

9 Q And do you know, roughly, when you were
10 reporting to Ms. Keil, when that began?

11 A It would have been probably October 2015.

12 Q Okay. All right. From April 2018, what
13 was your next position at TVA?

14 A From April of 2018 through July of, or
15 June of 2019, I was deployed for military operations
16 in Ukraine.

17 Q So, from April, from the time your
18 deployment began in April 2018 to June of 2019, did
19 you do any work for TVA?

20 A So, from -- well, more specifics. April,
21 it would have been the last week of April and I was
22 deployed for a month at the National Training Center
23 in Fort Irwin, California. That would have been
24 through mid-May. And when I returned, I had about a
25 week, less than a week, before I had to conduct

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 follow-on training in preparation for that deployment.

2 So, no official training, just -- or
3 excuse me -- no official work because the focus was on
4 training. So, I still had access to email, different
5 things like that, but I was not able to really perform
6 any kind of work.

7 Q Do you recall, did you respond to emails
8 or engage in work at all during that period in May of
9 2018 at TVA?

10 A Other than to turn over any kind of, any
11 action, you know, kind of work that I was doing at the
12 time, that was primarily my function during that
13 timeframe.

14 Q And that was one week in May of 2018
15 you --

16 A It would have been like three or four days
17 during that timeframe, yes, sir.

18 Q And then, from that time in May 2018
19 through June of 2019, you were deployed then, is that
20 correct?

21 A Yes, sir.

22 Q And you were not doing any work in that
23 period for TVA?

24 A No, sir.

25 Q Okay. And since you returned from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 deployment in 2019, have you been at TVA?

2 A Yes, sir.

3 Q And when you came back in June of 2019,
4 what role did you, would you --

5 A That was the Corporate HR Manager for
6 Nuclear.

7 Q And how long did you have that role?

8 A From June of 2019 until September of 2020.

9 Q And then, since September 2020, what's
10 been your role at TVA?

11 A Senior Program Manager for Labor
12 Relations.

13 Q Other than the deployments that you've
14 described, are there other periods when you're on
15 military leave and not working for TVA? Or is it just
16 the deployment?

17 A No, sir. Typically, there's two weeks,
18 two to three weeks during the summer where we go for
19 -- it's called annual training. That varies when in
20 the summer that occurs, but, normally, that's in the
21 summer timeframe.

22 Q And during that two-to-three-week period,
23 are you working at all for TVA?

24 A No, sir.

25 Q Thank you for running through your job and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 military deployment history for me.

2 A Yes, sir.

3 Q Are you familiar with the harassment
4 complaint made by Erin Henderson on March 9th, 2018?

5 A Yes, I'm aware of that complaint.

6 Q Are you familiar with the Report of
7 Investigations into that complaint?

8 A I am familiar that there is a Report of
9 Investigations that was issued.

10 Q Regarding what is in the complaint?

11 A Yes, sir.

12 Q Do you know who wrote that Report of
13 Investigation?

14 A Yes, sir.

15 Q Who was that?

16 A John Slater.

17 Q And where does he work at TVA?

18 A At the time, I believed he worked for the
19 Office of General Counsel with TVA.

20 Q He's an attorney at TVA?

21 A Yes, sir.

22 Q Do you know when the initial draft of the
23 report -- do you know when the draft, the initial
24 draft of the report written by John Slater into
25 Henderson's complaint was issued?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 question?

2 BY MR. STEINFELDT:

3 Q Yes. Do you consider the training you've
4 -- do you consider the training you've received in
5 order to prepare you to conduct investigations, do you
6 consider that training to be important in preparing
7 you to perform sound investigations?

8 A Yes, sir.

9 MS. SANTELLA: Same objection.

10 MR. STEINFELDT: I notice we've been going
11 for a little over an hour now. Mr. Wingo, would you
12 like a break?

13 THE WITNESS: Sure. Yes, sir.

14 MR. STEINFELDT: Okay. Ten minutes? Is
15 that good or?

16 THE WITNESS: Ten minutes works great.

17 MR. STEINFELDT: Is that good with you,
18 Ms. Santella?

19 MS. SANTELLA: That works.

20 MR. STEINFELDT: All right. We'll come
21 back -- it's 1:44 -- we'll resume at 1:54.

22 We can go off the record.

23 (Whereupon, at 1:44 p.m., the
24 foregoing matter went off the record and went
25 back on the record at 1:56 p.m.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BY MR. STEINFELDT:

2 Q Mr. Wingo, other than the investigations
3 related to abusive language that you've discussed
4 investigating, during your time in Corporate Nuclear
5 Licensing, in the HR Department there, how many
6 complaints would you say you've investigated, other
7 than the abusive-language-related ones?

8 A I would say, you know, outside of abusive
9 language, I would say there may, maybe more, related
10 more towards performance management, but I don't
11 recall anything else in terms of a disciplinary
12 investigation.

13 Q And just generally, in terms of the
14 investigation, Reports of Investigations that you do,
15 how many annually in Corporate Nuclear Licensing would
16 you say you usually did?

17 MS. SANTELLA: Objection. Vague.

18 THE WITNESS: I would say, annually, when
19 I supported Corporate Nuclear Licensing, less than --
20 maybe five or less.

21 BY MR. STEINFELDT:

22 Q Do you still conduct Reports of
23 Investigation, employee complaints, in your current
24 role?

25 A No, sir.

1 Q In the investigations that you conducted
2 into employee complaints, would you provide enough
3 context to the person or people that you would
4 interview for the investigations, so they would
5 understand why they were being interviewed?

6 MS. SANTELLA: Objection. Vague.

7 THE WITNESS: Yes, I would try to provide,
8 to the best extent of my ability, to let a person know
9 why they were being investigated.

10 BY MR. STEINFELDT:

11 Q Do you know if there is a requirement to
12 provide this kind of context or understanding, so the
13 person has an idea as to why they're being
14 interviewed?

15 A No, sir, I'm not -- sorry.

16 MS. SANTELLA: Go ahead.

17 Objection. Vague.

18 Now you can answer.

19 THE WITNESS: No, sir, I'm not aware of a
20 requirement.

21 BY MR. STEINFELDT:

22 Q Mr. Wingo, have you taken any training
23 regarding chilled work environment?

24 A Yes, sir.

25 Q What kind of training was that?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 A So, my recollection, we had online a
2 computer-based training module that talked about that
3 topic, and then, we also had face-to-face meetings
4 with members of our General Counsel who supported the
5 nuclear group that would discuss that topic with us as
6 well.

7 Q Was that specific for HR or companywide
8 training?

9 A So, my understanding is that all nuclear
10 employees are required to go through that training,
11 and any employee who supports nuclear. So, that would
12 include HR personnel assigned to nuclear, as well as
13 supply chain representatives. Anyone who provides
14 support to nuclear would have been required to go
15 through that type of training.

16 Q And how often have you taken that
17 training?

18 A When I was assigned to nuclear, typically,
19 we would be required to take that training at least
20 once a year.

21 Q And is there a similar training that
22 you've taken related to identifying safety-conscious
23 work environment?

24 A Yes, sir.

25 Q Is that the same training or is that --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 are there two different things?

2 A That, my recollection is, that would be
3 the same training.

4 Q Okay. And have you conducted
5 investigations into concerns of a chilled work
6 environment?

7 A So, my answer would be, no, I have not.
8 I have not received a chilled work environment
9 complaint. However, I have investigated behaviors
10 that may be associated with that.

11 Q Are complaints of a chilled work
12 environment handled by TVA's Employee Concerns
13 Program?

14 A Yes, Employee Concerns has the ability to
15 investigate those types of complaints.

16 Q The same for the complaints, safety-
17 conscious work environment?

18 A Yes, sir.

19 Q When a harassment is investigated, does HR
20 conduct the investigation and issue the Report of
21 Investigations in most cases at TVA?

22 A That would just depend on a variety of
23 circumstances -- the nature of the -- the nature of
24 the allegation, the resources that were involved, and
25 then, primarily those factors.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Q In your time working in Corporate Nuclear
2 Licensing at TVA, how many times has OGC produced an
3 investigation report regarding a harassment complaint?

4 A During my time there, I'm not aware of OGC
5 producing a report, outside of what we've already
6 discussed.

7 Q More generally, do you know how many
8 employee complaints generally that OGC has
9 investigated at TVA during your time in CNL?

10 A No, sir, I'm not aware of a number.

11 Q Mr. Wingo, have you conducted
12 investigations that led to an employee being suspended
13 or put on administrative leave?

14 A Is there a specific timeframe that you're
15 referencing?

16 Q Not specifically. Anytime during your HR
17 time at TVA.

18 A So, can you just restate the question for
19 me? I'm sorry.

20 Q Absolutely, yes. In your work in HR at
21 TVA, have you conducted an investigation that resulted
22 in an employee being suspended or put on
23 administrative leave?

24 A Yes, I have participated in an
25 investigation where an employee has been placed on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 paid status, pending the outcome of an investigation.

2 Q And how many of those investigations with
3 that result have you been involved in?

4 A I don't recall the specific number.

5 Q With these investigations that we just
6 discussed, did you provide the Report of
7 Investigations to the supervisor of the employee
8 placed on administrative leave?

9 A I don't recall specifically, but I would
10 assume that, yes, I did.

11 Q Would you have talked with that supervisor
12 about your investigation, if the supervisor wanted to?

13 MS. SANTELLA: Objection. Vague.

14 THE WITNESS: Can you be more specific or
15 restate the question?

16 BY MR. STEINFELDT:

17 Q Regarding these investigations where the
18 employee was put on administrative leave as a result
19 of the investigation, did you speak with the
20 supervisor of that employee about your investigation?

21 MS. SANTELLA: Same objection.

22 Go ahead.

23 THE WITNESS: Based on my recollection,
24 the investigations that I conducted, yes, I would have
25 had shared my report findings with the supervisor.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BY MR. STEINFELDT:

2 Q Would that supervisor have received a copy
3 of your Report of Investigation?

4 A Yes, in circumstances that I recall, I
5 would have provided them a report.

6 Q Would you have provided any additional
7 information that you used to develop your report to
8 the supervisor?

9 MS. SANTELLA: Objection. Vague.

10 THE WITNESS: What, just any information?
11 Are you asking if I would have provided anything
12 beyond the investigative report?

13 BY MR. STEINFELDT:

14 Q Yes. So, would you have provided
15 documents or other supporting evidence that you used
16 to form the bases of your conclusions for your
17 investigation? Would you have shared that with the
18 supervisor, if asked?

19 A In general, no, I would not have shared
20 anything beyond the investigative report.

21 Q So, based on your professional experience,
22 what does it mean to conduct an independent review of
23 an investigation into a harassment complaint?

24 MS. SANTELLA: Objection. Vague.

25 THE WITNESS: Would you mind restating the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Attachment 25

Exhibit 16

Exhibit 16

2-2019-015

Fact Finding Notes

Employee Information		
Name: Beth Wetzel	Manager: Elin Henderson	Hire Date: 10/30/ 2006
Department: Nuclear Regulatory Affairs	Job Entry Date: 10/08/2012	Job Title: Mgr, Regulatory Programs
Location: COC	Veteran: <input type="radio"/> Yes <input checked="" type="radio"/> No	

Employee History		
Previous Disciplinary Action: <input type="radio"/> Yes <input checked="" type="radio"/> No Previous Discipline Actions		
Any Non-disciplinary Actions: <input type="radio"/> Yes <input checked="" type="radio"/> No Actions Documented		
Prior Service Review Information (3 Previous Years):		
Year	Year	Year
2017	Solid	2016
		Solid
		2015
		Solid

Offenses and Disciplinary Guideline Information

Offense Under Investigation:
 An allegation was filed in which a supervisor in Corporate Nuclear Regulatory Affairs claimed that the supervisor had been and continued to be harassed and retaliated against and subject to a hostile work environment by a number of specific employees. Ms. Wetzel was one of the employees named in the complaint as conducting the harassing and retaliatory conduct and creating the hostile work environment.

Disciplinary Guideline: Verbal Warning Written Warning Suspension Discharge Other

Summary of Situation In Question (include all relevant information):	Incident Date:
As discussed in an investigation report dated August 10, 2018 and supplemental memorandum prepared by OGC and forwarded on August 30, 2018, Ms. Wetzel has been found to have acted in violation of three TVA policies governing employee behaviors and two Federal statutes that provide protection to whistle blowers. Specifically, the investigation concluded that Ms Wetzel had engaged in a sustained campaign of disrespectful conduct over a lengthy period of time. The disrespectful conduct included repeated insinuations by Ms Wetzel that her supervisor had initiated inappropriate investigations of TVA employees for vindictive motives, despite Ms Wetzel having no reasonable basis or specific knowledge to support those insinuations. This misconduct on Ms Wetzel's part hindered her supervisor's ability to execute her own (supervisor's) job responsibilities and undermined her supervisors standing with her subordinates.	2016-2018

Add Another Offense

Recommended Level of Disciplinary Action
--

Coaching
 Verbal Warning
 Written Warning
 Suspension - Days _____
 Discharge

Other An offer of a no fault separation agreement will be made to Ms. Wetzel. If not accepted, termination will be implemented.

Comments and explanation, as needed:
 Details are in the report of investigation dated August 10, 2018 and supplemental documentation prepared by OGC and forwarded on August 30, 2018.

Name:

Beth Wetzel

Similar Offenses & Disciplinary Action Taken

Add Row to Table

Delete Row from Table

Date of Discipline Action	Disciplinary Action Taken	Location	Summary of Incident

Supporting Information

What immediate actions were already taken? Employee is currently on loan at Nuclear Energy Institute. Although additional instance of harassing behavior occurred while employee was on loan, this additional instances was referred for inclusion in the investigation which was ongoing (and which is documented in the supplemental evaluation provided by OGC on August 30, 2018).

What was the employees rationale for the issue? During the investigation, Ms Wetzel did not offer a rationale for the campaign of harassment; however, Ms. Wetzel offered repeated unfounded assertions about her supervisor without offering any reasonable basis for those assertions.

If you answer "No" to any of the questions below, please provide an explanation:

- Was the employee on clear notice of any rules and/or expectations that were violated prior to this event? Yes No
- Did the employee receive appropriate training on all aspects of the job? Yes No
- Were there witnesses and relevant parties interviewed about the event? Yes No
- Were the appropriate key stakeholders contacted related to this incident? Yes No

Name:

Beth Wetzel

If you answer "Yes" to any of the questions below, please provide an explanation:

Was the action confirmed to be willful misconduct (intentional/deliberate)?

Yes No

Explanation

The attached report of investigation establishes the bases for the conclusion that the harassing behavior was intentional. (The term deliberate was not evaluated in the context of 10 CFR 50.5)

Are there any mitigating circumstances (personal problems, emotional distress, unusual job tensions, as example) that should be considered?

Yes No

Does the offense create notoriety upon or negatively impact the agency's reputation?

Yes No

Explanation

The removal of Ms Wetzel from her current loaned employee assignment will have to be addressed by TVA management with management at NEI (the organization receiving the loaned services).

Was a CR written to document this offense? (If yes, provide CR #.)

Yes No



Prepared By:

JOSEPH SHEAF

Title:

VP REG AFFAIRS + SS

Date:

10/16/2019

(ONB help 9/19/2019)

Supervisor Name:

JOSEPH SHEAF

Supervisor Signature:

Joseph Sheaf

Date:

10/16/2019

(ONB help 9/19/2019)

Executive Review Board

Proposed Adverse Action Review Form (TVA 41651)

The Executive Review Board (ERB) reviews proposed actions to:

- 1) Determine if the proposed adverse employee action, i.e., the discipline, is consistent with recent disciplinary actions taken in similar circumstances in accordance with TVA discipline policy.
- 2) Ensure that the discipline is not taken because an employee engaged in activities protected by the employee protection regulations of 10 CFR 50.7 and TVA procedure TVA-SPP-11.8.4.
- 3) Determine if the action could be perceived as negatively impacting any individual or organizational aspects of SCWE; cause a potential chilling effect; or be perceived as retaliatory, independent of discipline legitimacy.

Individuals cannot, under any circumstance, be retaliated against for engaging in a protected activity.

For purposes of this form the term "Employee" is defined as TVA employees, contractors and vendor workforce personnel.

Information contained in this document is **CONFIDENTIAL** and must only be shared and maintained with appointed ERB members/designees, appropriate TVA Human Resources (HR) representatives/designees, and impacted TVA Nuclear site managers/designees. All requests for copies of this documentation must be approved by the OGC.

Please attach any additional relevant document(s) or information as needed.

ERB Case No. _____ Date ERB Convened: 19 September 2018
Employee Name Beth Wetzell Employee No. [REDACTED]
Employee Hire Date: 10/30/2006 Employee Title: Mgr, Regulatory Programs

Has the employees access been suspended pending the ERB determination? Yes No

If yes, date suspension began: N/A

If yes for TVA employees, please check whether suspension was: With Pay Without Pay

Proposed Action (check all that apply):

ERB Adverse Actions (TVA Employee)	
<input type="checkbox"/> Suspensions (one or more days off without pay)	<input checked="" type="checkbox"/> Terminations For Cause
<input type="checkbox"/> Involuntary Reduction In Force	<input checked="" type="checkbox"/> No-fault Terminations of Employment

Significant Adverse Actions (Contractors Only)	
<input type="checkbox"/> Suspensions (one or more days off without pay)	<input type="checkbox"/> Terminations For Cause

OTHER
If other, specify: _____

Executive Review Board

Proposed Adverse Action Review Form (TVA 41651)

Name and Title of Person Proposing Action and Date Joseph Shea, Vice President, Nuclear Regulatory Affairs and Support Services, [TBD]

Overview:

1. To your knowledge, has the individual engaged in any potentially protected activity within the past 12 months?
- | | | |
|---|---|--|
| Raised any safety or quality issue(s) to their immediate supervisor or manager | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Submitted a site Condition Report / Corrective Action Report | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Contacted Human Resources regarding workplace environment or safety concerns | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Contacted the Legal department | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Contacted NRC, DOL, or other external regulatory agency | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Contacted the Employee Concerns Program | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Participated in an investigation (other than the one currently at issue) by providing a written or signed statement | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

If "Yes", specify (*what, when*): By the nature of Ms. Wetzel's role, she has the opportunity to identify and raise safety and quality issues.

During the current FY, Ms Wetzel has initiated 6 CR's. The other two individuals in her work group submitted approximately 17 CR's as well.

The nature of the safety or quality or work environment concerns raised during the period to her management and via CR are discussed under Question 2 below.

Ms Wetzel did provide verbal statements to OGC investigator as part of the investigation regarding the claim of harrasment filed by the Director of Regu;atory Affairs (filed in March 2018).

It is not known specifically whether she raised concerns to HR, Legal Department or ECP , NRC DOL or other external agency.

It is expected that she participated in at least one set of interviews (NRC inspection). Since 2016, she would have been an interviewee in more than one ECP investigation. However, it is knot known whether she gave any written or signed statements.

2. Has the individual raised issues or concerns regarding nuclear safety or quality, industrial safety, environmental safety, compliance or substandard work conditions?
- Yes No
- If "Yes", specify (*what, when*):

During the current FY, Ms Wetzel has initiated 6 CR's. The other two individuals in her work group submitted approximately 17 CR's as well. These numbers and the nature of the CR's (largely related to followup for challenges related to NRC correspondence related to Anchor Darling check valves).

3. Has the individual raised issues or concerns regarding harasment, intimidation, discrimination, retaliation or a hostile work environment?

Executive Review Board

Proposed Adverse Action Review Form (TVA 41651)

Yes No

If "Yes", specify (*what, when*): In an email thread that began on May 7, 2018, Ms Wetzel expressed concern regarding the review by her supervisor of travel claims for her loanee project with NEI - which was commencing at that time. She did claim that she anticipated that her supervisor would use the review of her travel vouchers as an investigative tool for retaliatory purposes. She referenced her "knowledge" that her supervisor had previously had people investigated by HR and had site badge access records pulled. During a followon phone call on July 2018, Ms Wetzel was asked "What was she experiencing specifically that led her to believe something was going on?" with regard to her supervisors review of her travel vouchers. Ms. Wetzel responded that she had nothing to add to her previous email material. Ultimately, Ms. Wetzel could provide no specific evidence to support her concern that her supervisor would improperly leverage her travel voucher review. However, the aspect of her claim of previous retaliatory practice by her supervisor was, in part, the subject of the investigation which forms the basis of the proposed action.

In a separate Email dated March 29, 2018, Beth indicated her view that her supervisor was taking steps to block her proposed loanee arrangement at NEI. Multiple emails between her and her supervisor and between her supervisor and the various other parties in TVA show a diligent effort being made by her supervisor to ensure that loanee contract was ironed out. The contract was in fact completed in April 2018 in time to support the planned start date of early May 2018.

4. Other individual(s) affected by the proposed action, if applicable: N/A

5. Provide a detailed justification for the proposed action.

Include a chronological sequence of events leading to the decision to propose action, previous discipline history with individual, impact on safety/production/co-workers/client/plant/community and other facts related to the case.

Ms. Wetzel's actions in violation of these three policies are subject to discipline pursuant to TVA-SPP-11.316, Employee Discipline, Appendix B, Section 1.1, Violation of Ethical Laws or TVA Code of Conduct; Section 1.5.1, Harassment/Intimidation/Retaliation/Discrimination (HIRD). These sections provide for disciplinary action up to and including termination when an employee engages in behavior that is a violation of the ethic laws or Code of Conduct, and when an employee engages in harassment and retaliation.

Ms. Wetzel's behaviors, as described in the report, repeatedly undermined and disrespected her supervisor by insinuating that Ms. Henderson had initiated inappropriate investigations of TVA employees, for vindictive motives, despite having provided no reasonable basis or specific knowledge to support that assertion. Ms. Wetzel has continued to push this unsupported theory throughout the period of the investigation, making these **assertions to the attorney investigator**, as well as Joe Shea, Vice President, Nuclear Licensing, in various written communications. Ms. Wetzel has repeatedly been tardy in entering travel expenses into TVA's travel reimbursement system for vague and unsupported reasons tied back to those unsubstantiated and inaccurate representations of Ms. Henderson's motives. Overall, this disrespectful and harassing conduct directed toward Ms. Henderson is actionable under the law. "[D]isrespectful conduct is unacceptable and not conducive to a stable working atmosphere, and ... agencies are entitled to expect employees to conduct themselves in conformance with accepted standards." *Ray v. Dep't of the Army*, 97 M.S.P.R. 101, ¶ 58 (2004), *aff'd*, 176 Fed.Appx. 110 (Fed. Cir. 2006) (internal citations omitted). A subordinate who engages in harassment of a supervisor has engaged in such disrespectful conduct. *Lewis v. Dep't of Veterans Affairs*, 80 M.S.P.R. 472, ¶ 8 (1998) ("[I]nsolent disrespect towards supervisors so seriously undermines the capacity of management to maintain employee efficiency and discipline that no agency should be expected to exercise forbearance for such conduct more than once."). In this case, Ms. Wetzel has engaged in a sustained campaign of disrespectful conduct over a lengthy period of time, and has in fact continued to perpetuate that conduct in the midst of the investigation conducted into that exact harassment. This misconduct has hindered Ms. Henderson's ability to execute her job responsibilities and has potentially undermined her standing with her subordinates. When an employee has engaged in such "intentional, repeated, and serious" misconduct, termination is an appropriate remedy. As a result, consistent SPP-11.316, it is recommended that Ms. Wetzel be removed from TVA employment.

Executive Review Board

Proposed Adverse Action Review Form (TVA 41651)

6. Identify specific rules and/or policies violated and attach copies of the relevant rules/policies. Ms Wetzel was found in violation of three TVA policies to include the TVA Code of Conduct, TVA SPP-11.8.4, Expressing Concerns and Differing Views and the TVA No Fear Act Executive Policy. In addition, Ms Wetzel was found in violation of two Federal statues including the Whistle Blower Protection Act and Section 211 of the Energy Reorganization Act.

7. Is this an issue covered by TVA-SPP-11.316 Employee Discipline?

Yes No

If yes, identify the rule in TVA-SPP-11.316 Employee Discipline

Appendix B, Section 1.5.1 Harrassment/Intimidation/Retaliation/Discrimination (HIRD)

8. Have all witnesses and relevant parties, including the individual in question, been interviewed and are their statements documented and included in the ERB package?

Yes No

If "No", explain:

9. What was the individual's explanation of the policy violation or issue? The individual's view of the policy violation was not described in the report. The documentation of the interviews, including of Ms Wetzel, is contained in the report of investigation dated August 10, 2018. In an email dated August 31, 2018, OGC representatives further explained "She was presented with an opportunity to explain her behavior during [the attached] investigation, so the language in the report (I think on pp18&19 is on point. She found Erin untrustworthy, vindictive, etc. In essence, that is the basis she gave for her animosity towards Erin and is appropriate to use in response to this question."]

10. Did the individual receive appropriate training and have all the time, tools and equipment to perform the job/task?

Yes No

If "No", explain:

11. What is the individual's prior performance history? What actions have been taken up to this point? Has the employee been disciplined for related infractions? Attach any existing performance / disciplinary documentation. Ms. Wetzel was rated off track at mid year review in 2016; however her performance recovered and she was rated as solid for FY 2016 and subsequently rated solid for FY 2017. She is rated Inconsistent for FY 18 principally from the impact of the results of the investigation on numerous goals and competencies.

12. Is the proposed action consistent with applicable TVA policies, procedures or past practices?

Yes No

If "Yes", identify relevant policies/procedures, practices:

The proposed action is directly discussed in TVA-SPP-11.316, Appendix B Section 1.5.1. In addition, past examples of termination for significant issues of harrasment were identified through discussion with HR leadership. Specific cases are not discussed further here.

If "No", explain:

13. Is the proposed action reasonably related to the seriousness of the offense and actions taken with other individuals who have committed similar offenses?

Yes No

If "No", explain:

Executive Review Board

Proposed Adverse Action Review Form (TVA 41651)

NOTES

1. In any case where there appears to be an actual or perceived conflict of interest involving an ERB member, that individual will be excused from the review and an appropriate alternate member designated.
2. The TVA Line Manager, CTS, or delegate proposing the Adverse Action should present the Fact Finding (TVA 41656 or TVA 41664), SCWE Mitigation Plan Screening -(TVA 41647), SCWE Mitigation Plan-(TVA-41648), and the ERB Adverse Action Review -(TVA 41651) through Question 13. The TVA Line Manager, CTS, or delegate proposing the Adverse Action shall then be excused from the remaining portions of the ERB review to prevent inadvertent disclosure of sensitive information.
3. The ERB Chairperson will determine which portions of the ERB additional attendees may attend. If OGC, ECP, or other individual provides privileged or confidential information to the ERB, the ERB Chairperson may excuse the non-ERB members from the meeting.
4. The Plant Support Director, NSCMP Chair or delegate assigned by the ERB Chairperson will complete Questions 14 through 18 during the ERB review. They will also make changes to other documents (SCWE Mitigation Plan Screening -(TVA 41647), SCWE Mitigation Plan-(TVA-41648), as necessary, based on the remaining portions of the ERB review .
5. The final SCWE Mitigation Plan-(TVA-41648) may be provided to the manager assigned to implement the plan. Other ERB documents should be handled as described in Section 3.4 and 3.5.

Protected Activity Summary

14. Based on input provided by ECP, OGC, and HR has the individual, to your knowledge, engaged in any potential protected activity within the past 12 months?

- | | | |
|---|---|-----------------------------|
| a. Contacted legal? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| b. Contacted an external regulatory agency? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| c. Contacted the Employee Concerns Program? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

Complete Question 15, 16, and 17 only if a response in Question 1 or Question 14 was marked "Yes".

15. Does it appear the individual's involvement in a protected activity contributed in any way to the proposed action recommendation?

Yes No

If "Yes", explain: No. However, tMs Wetzel was involved in the OGC investigation as described in the report dated August10, 2018.

16. Is there any reason the individual might believe the proposed action is a result of his/her engagement in a protected activity?

Yes No

Executive Review Board

Proposed Adverse Action Review Form (TVA 41651)

If "Yes", explain: It is possible that the individual may perceive that with respect to having raised the travel review issue, she was expressing a protected concern to her management.. This perspective does not seem consistent with the specific reference she made that her supervisor had previously had people investigated or had their badges pulled in that she would have had not factual knowledge of such actions

17. Is there any reason to believe others at the site believe the proposed action is a result of the individual engaging in a protected activity?

Yes No

If "Yes", explain: The response of the work force is likely to split down several modes in which the reg affairs staff operates. One portion of the staff will be aware of Ms Wetzel's general tendencies to attempt to undermine her supervisor - these individuals have spoken to this in their interviews. This group is not likely to be negatively impacted in their willingness to raise concerns, nuclear safety or otherwise, to the Director or others in management subject to reasonable reinforcement of SCWE principles. Others in the group are more influencable by negative chatter and are capable of participating in negatively reinforcing patterns of conversation. This group will require a more direct mitigation approach followed by planned monitoring .

Executive Review Board

Proposed Adverse Action Review Form (TVA 41651)

18. Given the information presented to the ERB for review, does the SCWE Mitigation Screen/Plan adequately address the potential negative impact to SCWE of the workforce if the proposed action is taken? Yes No
19. ERB Members will deliberate on the proposed action as presented. The ERB renders a determination by soliciting input from voting ERB members present. The outcome of the ERB, a listing of the ERB members present, and any proposed employment action will be recorded on TVA 41653 "ERB Record of Action".

Signature documents the ERB members review of the proposed adverse action has fulfilled the requirements of the ERB purpose described on page 1 of this attachment.		
Human Resources	<u>Archie Reeves</u> name (print) and signature	Date <u>10/19/18</u>
Plant Support Director/NSCMP Chairperson or delegate	<u>JOE CALLE</u> name (print) and signature	Date <u>10/16/18</u>
Contractor Representative (if applicable)	_____	Date _____
Office of General Counsel	<u>See attached</u> name (print) and signature	Date _____
Other	<u>See attached</u> name (print) and signature	Date _____
ERB Chairperson or delegate	<u>S. BONO</u> name (print) and signature	Date <u>10/16/18</u>

Executive Review Board

Proposed Adverse Action Review Form (TVA 41651)

18. Given the information presented to the ERB for review, does the SCWE Mitigation Screen/Plan adequately address the potential negative impact to SCWE of the workforce if the proposed action is taken? Yes No
19. ERB Members will deliberate on the proposed action as presented. The ERB renders a determination by soliciting input from voting ERB members present. The outcome of the ERB, a listing of the ERB members present, and any proposed employment action will be recorded on TVA 41653 "ERB Record of Action"

Signature documents the ERB members review of the proposed adverse action has fulfilled the requirements of the ERB purpose described on page 1 of this attachment

Human Resources	name (print) and signature	Date
Plant Support Director/NSCMP Chairperson or delegate	name (print) and signature	Date
Contractor Representative (if applicable)	name (print) and signature	Date
Office of General Counsel	 Ryan Dreke	Date 10/16/18
Other	name (print) and signature	Date
ERB Chairperson or delegate	name (print) and signature	Date

Executive Review Board

Proposed Adverse Action Review Form (TVA 41651)

18. Given the information presented to the ERB for review, does the SCWE Mitigation Screen/Plan adequately address the potential negative impact to SCWE of the workforce if the proposed action is taken? Yes No
19. ERB Members will deliberate on the proposed action as presented. The ERB renders a determination by soliciting input from voting ERB members present. The outcome of the ERB, a listing of the ERB members present, and any proposed employment action will be recorded on TVA 41653 "ERB Record of Action"

Signature documents the ERB members review of the proposed adverse action has fulfilled the requirements of the ERB purpose described on page 1 of this attachment

Human Resources	name (print) and signature	Date
Plant Support Director/NSCMP Chairperson or delegate	name (print) and signature	Date
Contractor Representative (if applicable)	name (print) and signature	Date
Office of General Counsel	name (print) and signature	Date
Other *non-voting member DLF initials	<u>Deanna Fills</u> name (print) and signature	<u>10/16/18</u> Date
ERB Chairperson or delegate	name (print) and signature	Date

SCWE Mitigation Plan Screening

This form can be used by the manager for actions not required to be reviewed by the ERB, but may negatively impact the SCWE of the workforce.

ERB shall review proposed adverse employment actions (TVA employee only) to include suspensions (one or more days off without pay), terminations for cause, involuntary reduction in force, and no-fault terminations of employment. for potential effects on the safety conscious work environment, regardless of whether the employee engaged in a protected activity. [R.3]

ERB shall review proposed significant adverse employment actions (Contractor only), to include suspensions (one or more days off without pay) and terminations for cause, for potential effects on the safety conscious work environment, regardless of whether the employee engaged in a protected activity. [R.8]

1. Identify the proposed personnel action that may have a negative impact on the SCWE of the worker or the workforce.

The proposed action is an offer of a no-fault separation in lieu of termination, or termination if offer of no fault is not accepted

2. Put yourself into the shoes of the workforce and identify the reasons why you believe there may be a negative impact on the SCWE of the workforce if this personnel action proceeds. In other words, what will the decision look like to the workforce? How could the proposed personnel action cause workers to be reluctant to raise nuclear safety concerns? Also consider how the action(s) of the individual that resulted in an executive review board could impact the safety conscious work environment of others in the group.

The response of the work force is likely to split down several modes in which the reg affairs staff operates. One portion of the staff will be aware of Ms Wetzel's general tendencies to attempt to undermine her supervisor - these individuals have spoken to this in their interviews. This group is not likely to be negatively impacted in their willingness to raise concerns, nuclear safety or otherwise, to the Director or others in management subject to reasonable reinforcement of SCWE principles. Others in the group are more influencable by negative chatter and are capable of participating in negatively reinforcing patterns of conversation. This group will require a more direct mitigation approach followed by planned monitoring

3. Has this person written a CR in the last 12 months or openly discussed any concerns with management or the workforce?

Yes. During the current FY, Ms Wetzel has initiated 6 CR's. The other two individuals in her work group submitted approximately 17 CR's as well. These numbers and the nature of the CR's (largely related to followup for challenges related to NRC correspondence related to Anchor Darling check valves).

With regard to other concerns expressed to management, in an email thread that began on May 7, 2018, Ms Wetzel expressed concern regarding the review by her supervisor of travel claims for her loanee project with NEI - which was commencing at that time. She did claim that she anticipated that her supervisor would use the review of her travel voucehrs as an investigative tool for realtiatory purposes. She referenced her "knoweldge" that her supervisor had previously had people investigated by HR and had site badge access records pulled. During a follow-on phone call on July 2, 2018, Ms Wetzel was asked "What was she experiencing specifically that led her to believe something was going on?" with regard to her supervisors review of her travel vouchers. Ms. Wetzel responded that she had nothing to add to her previous email material. Ultimately, Ms. Wetzel could provide no specific evidence to support her concern that her supervisor would improperly leverage her travel voucher review. However, the aspect of her claim of previous retaliatory practice by her supervisor was, in part, the subject of the investigation which forms the basis of the proposed action.

In a separate Email dated March 29, 2018, Ms Wetzel indicated her view that her supervisor was taking steps to block her proposed loanee arrangement at NEI. Multiple emails between her and her supervisor and between her supervisor and the various other parties in TVA show a diligent effort being made by her supervisor to ensure that loanee contract was ironed out. The contract was in fact completed in April 2018 in time to support the planned start date of early May 2018.

4. Consider if the individual being evaluated is an outlier either in a positive manner or negative manner in the number of CRs/PCRs/Safety issues identified, etc. and if so could the fact that there is an AEA being taken against them create a perceived chilled work environment.

As noted above, during the current FY, Ms Wetzel has initiated 6 CR's. The other two individuals in her work group submitted approximately 17 CR's as well. These numbers and the nature of the CR's (largely related to followup for challenges related to NRC correspondence related to Anchor Darling check valves). By the number and nature of the concerns in the CR's, Ms Wetzel does not stand out as an outlier within the group.

5. What is the perception of the workforce about the nature of TVA's actions towards this person with respect to HIRD?

With regard to the proposed action, as noted above, the Reg Affairs group will be split. When the TVA expectations regarding Whistleblower Protection for all employees are reinforced, one group will generally understand the action. Another portion of the group will potentially be skeptical and may seek in one forum or another to discuss the action in terms of retaliation. With work, it is possible that the second group can understand that action was justified but more likely the recovery of that group over time will be dependent on long term sustained leadership at the first line manager level regarding a healthy SCWE

6. If the proposed personnel action proceeds, what organizations will be affected by the decision? In other words, will the potential negative SCWE impact be limited to the individual's immediate work group, or will the effect be more widely felt throughout the department organization, site, or corporation?

In general, the affected organizations will be the Regulatory Affairs groups. These groups can be addressed through a department specific mitigation plan. In addition, as a long time TVA employee, Ms Wetzel has numerous contacts and relationships throughout the company. It is reasonable that a company wide reinforcement of Whistleblower protection principles may be needed to address this broader group

Based on this responses above, is there a potential negative impact to the SCWE of the workforce that requires mitigation.

Yes No

If No, at management's discretion, develop a plan to communicate back with the immediate work group to address broader concerns other than SCWE.

If the Screening determines SCWE Mitigation Plan is necessary, continue to Attachment 4 SCWE Mitigation Plan.

Prepared by: TOSOPH SHDA
Line Manager or CTS Supervisor

10/16/2019 (ONB Ltr 9/15/2019)
Date

Reviewed by: [Signature]
NSC Peer Team Member

10/16/18
Date

Safety Conscious Work Environment (SCWE) Mitigation Plan

Planned Mitigating Actions

After completing Attachment 3 SCWE Mitigation Plan Screening, consult with the NSCMP Chairperson, as necessary, to provide assistance and guidance in answering the following questions.

1. Describe the nature, timing and contents of your first intended communication to the immediate work group concerning this personnel action. In this communication, at a minimum, address the following topics:

- (a) The action taken, with appropriate consideration of privacy rights.

Preliminary mitigation was performed in a meeting with the Corporate Regulatory Affairs team on August 2018. This was performed in the wake of the short notice resignation of another employee (Mr McBrearty) who was on suspension with pay pending disposition of findings from the same investigation that examined Ms. Wetzel's behaviors.

In the case of Ms. Wetzel, the intention is to offer a no-fault separation with a potentially extended leave with pay status until her eligible retirement date in March 2019. This is considered by HR and OGC to be consistent with prior cases of similar circumstances.

Because of Ms. Wetzel's current status as a loaned employee at NEI (and the attendant suspension of that loaned arrangement), it is not reasonable to assume that the taking of a personnel action against Ms. Wetzel will be unnoticed or unremarked by the Regulatory Affairs staff, notwithstanding the terms of the no-fault guiding Ms. Wetzel to not discuss the specifics of her situation.

It is envisioned that a communication plan will be created (see attachment to this package) that will be transparent that (1) an investigation regarding potential harassment by certain employees within the Regulatory Affairs group of other TVA employees occurred and that (2) the investigation concluded that one or more of the investigated individuals had violated TVA policy and the law for raising serious concerns about another employee's legitimate pursuit of potential ethical concerns. The communication plan will not specifically name Ms. Wetzel (or McBrearty) by name, but will note that the affected employees have left or will shortly leave the company. (It should be noted that another employee who was not found to have been culpable in the harassment is being let go contemporarily and care will be taken to ensure that employee is not implicated in the communication plan associated with the action against Ms. Wetzel. The Director of Regulatory Affairs will speak to the Licensing Group about this other NFSA retirement under a separate mitigation plan.

- (b) Management's legitimate reasons for taking the proposed action (in other words, tell the workforce the truth about management's reasons -- the antidote to a chilling effect is the truth);

As part of the communication plan, the legal obligations on TVA management to take action when HIRD is known to be occurring will be clearly emphasized. It is envisioned that the communication plan will include active involvement from the OGC staff to underscore this point.

- (c) Management's support for employees who raise concerns;

As part of the communication/mitigation plan, it will be discussed that all employees need to be comfortable to raise concerns without fear of retaliation or harassment - by either their management or by their colleagues. The mitigation plan will discuss the difficulty in addressing employee on employee harassment without giving unintended messages of management bias or management retaliation, but will emphasize that management is compelled to act no matter the source, nature or direction of the harassment. The plan will emphasize that great care was taken within the investigation to ensure that the integrity of crucial paths for raising concerns (to management, via CAP, to ECP) was

Safety Conscious Work Environment (SCWE) Mitigation Plan

not violated both in the action taken and in the basis for the action taken

Employees will be given a clear opportunity to express what specific types of issues and which specific avenues they may be holding any anxiety in light of the investigation results

(d) Your availability to employees who have concerns and the availability of the other avenues for the raising of concerns; and

Management will encourage individuals to raise any concerns to management, or any of the available avenues. Additionally, management will reinforce the open door policy which many in the organization have utilized and also reinforce other opportunities to raise concerns such as our Monday morning group meeting, monthly fleet licensing team meetings, skip level meetings, and All Hands Meetings as has been the practice for the past 3 years

(e) The individual's protected activity did not contribute to management's decision to take personnel action.

The discussion of the investigation and of whistleblower protections will be of sufficient detail to explain that there are many types of protected activity and that the ability of all employees, staff or management, to raise various types of issues is protected. It will be noted that while the actions taken against individuals was not on the basis of them having taken protected activity, it was a very careful examined aspect of the investigation.

2. If appropriate under the circumstances, consider discussing the following:

(a) The relevant standards and expectations to prevent a recurrence of the circumstances that led to the personnel action against the individual;

As part of the communication/mitigation, TVA policies and Federal law on whistleblower protection will be discussed. Examples of types of protected activities that staff may not be aware of (e.g., pursuit of ethical violations) will be presented in terms of standards and expectations

(b) The deliberate process that led up to the decision to take the personnel action;

The fact that (1) a concern regarding harassment was raised, that (2) a multi-month investigation by an entity independent of Regulatory Affairs was performed and that (3) all HR and AEA procedures were followed will be discussed

(c) The nature of the review(s) that preceded the decision to take the personnel action; and

Refer to answer for 2 (b)

(d) The status of the individual's safety or other concern and management's commitment to investigate and resolve the concern.

Refer to answer for 2 (b). Should the individual need to be terminated, management will discuss that TVA adhered to the ERB process to ensure a thorough review of the adverse action process in advance of taking personnel action. Management will describe the ERB process

Safety Conscious Work Environment (SCWE) Mitigation Plan

3. Consider if the individual being evaluated is an outlier either in a positive manner or negative manner in the number of CRs/PCRs/Safety issues identified, and if so could the fact that there is an AEA being taken against them create a perceived chilled work environment.

During the current FY, Ms Wetzel has initiated 6 CR's. The other two individuals in her work group submitted approximately 17 CR's as well. These numbers and the nature of the CR's (largely related to followup for challenges related to NRC correspondence related to Anchor Darling check valves) By the number and nature of the concerns in the CR's, Ms Wetzel does not stand out as an outlier within the group.

4. Describe the nature, timing, and content of any communications with persons beyond the individual's immediate work group, if warranted. Ensure this communication is consistent with the information provided to the immediate work group and that this communication address items 1(a)-(e), above. If no such communications are planned, describe the reasons why they are not necessary.

A company wide reinforcement message that Whistleblower protections are afforded to all employees both staff and management alike is planned. It is envisioned that OGG will own the development and timing of this communication. The importance of respectful interactions between site and corporate regulatory teams will be reinforced at a face to face regulatory peer team meeting before December 31, 2018.

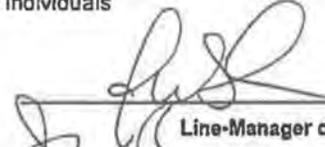
5. Describe the actions that you intend to take to determine if the workforce understood and accepted your initial communications. Describe the timing associated with these efforts and other follow-up actions. Preliminarily identify steps that may be required to reinforce your original message or to correct any misunderstandings.

The following actions will be taken

Oak Ridge Associated University will be invited in to interview the regulatory affairs staff and assess the impacts of this action (and several contemporary actions) on the willingness to raise concerns or the fear of retaliation. It is anticipated that this assessment would be done in December 2018

Further communications or mitigation would potentially be a direct recommendation of that assessment. Depending on the nature of the residual concern further actions might include focus group interaction within smaller groups of individuals

Prepared By:



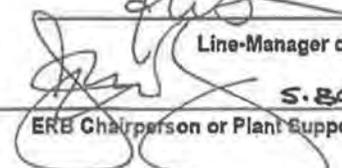
Line-Manager or CTS Supervisor

10/19/2017

CAS 402 5/15/2018

Date

Approved By:



S. BONO
ERE Chairperson or Plant Support Director/NSCMP Chairperson

10/18/18

Date

Safety Conscious Work Environment (SCWE) Mitigation Plan

6. Follow-up Actions

Determine the appropriate follow-up measures needed in order to assess whether additional mitigation actions are necessary. Follow-up measure may include actions such as the following:

- Pulsing Surveys ⁽²⁾
- Focus Groups
- Survey Monkey
- Other

Follow-up Actions are warranted:

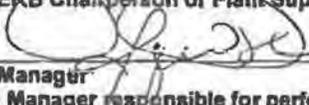
Yes No

If Yes, describe the specific follow-up actions to be taken to include items such as owner, specific questions to be asked or discussed, impacted work groups and population to include, and due date. If Pulse Surveys are not utilized explain why.

Additionally because of several changes within the regulatory affairs organization and a history of investigations within the work group, management will proactively contract with ORAU to perform a SCWE assessment within the Regulatory Affairs organization within 2 months of the action being taken. The VP of Regulatory Affairs will discuss with NPG executive leadership and with OGC consideration for a fleet wide communication (or broader) reinforcing the broad scope of protected activities under the Whistleblower Protection Act and TVA policy.

If Yes, responsible manager will issue a CR action to track completion of follow-up actions and reporting to the ERB Chairperson or Plant Support Director/NSCMP Chairperson for completion of Section 7. Use the following statement to initiate the CR. "This CR tracks completion of the follow-up actions to Case # ___ and close-out with the Plant Support Directors/NSCMP Chairperson." CR _____

Approved By:  10/18/18
 ERB Chairperson or Plant Support Director/NSCMP Chairperson⁽¹⁾ Date

Acknowledged By:  12/18/2018
 Manager Date

* Will be signed by the Manager responsible for performing follow-up action⁽¹⁾.

⁽¹⁾ SCWE Mitigation Plans are approved by ERB Chairperson or delegate if initiated for employee actions that are reviewed by the ERB. Other SCWE mitigation plans should be approved by the Plant Support Director (site) or NSCMP Chairperson (corporate).

⁽²⁾ Pulsing Survey shall be conducted as appropriate shortly after a SCWE mitigation plan has been implemented to assess whether additional actions are necessary. (R.6)

7. Post Follow-up Action Assessment

Follow-up actions have been completed and results have been provided to the approving manager of the actions (ERB Chairperson or Plant Support Director⁽¹⁾).

Based on the outcome of the follow-up actions, are additional mitigation actions required?
Yes No

Explain why.

MITIGATION COMMUNICATION PLAN

PURPOSE: To provide detailed guidance for mitigating potential impacts on safety conscious work environment within TVA associated with departure of one or more long time licensing employees.

KEY AUDIENCE:

(1) Staff and management in the Regulatory Affairs teams at COC, BFN, SQN and WBN

KEY COMMUNICATORS:

(1) Directors Plant Support - as necessary at BFN, SQN, WBN

(2) VP Regulatory Affairs and Support Services - COC

(3) OGC - all locations

TIMELINE:

(1) NPG management to determine disposition of all potential adverse actions stemming from recently completed OGC investigation - DUE DATE: SEPTEMBER 20, 2018

(2) TVA to implement all confirmed adverse actions - DUE DATE: OCTOBER 31, 2018

(3) Directors of plant Support, VP Reg Affairs and Support Service to receive pre-briefing NOVEMBER 9, 2018

(3) Directors of plant Support, VP Reg Affairs and Support Service to speak to affected groups. Note that COC regulatory staff will be addressed in a series of small group and individual meetings to ensure most thorough communication.

DUE DATE: NOVEMBER 30, 2018

MESSAGE:

(1) Through a detailed and independent investigation of a claim of harassment and intimidation, the independent investigator identified that several employees had participated in harassment efforts since April 2016 against a fellow employee who had properly raised concerns about potential ethical policy violations. As previously mentioned in a briefing to the corporate licensing team in August 2018, supervisors have obligations to raise and have evaluated certain concerns, including potential ethical policy violations as a requirement of their jobs. Moreover, TVA support organizations have an obligation to assist the manager in ensuring that such concerns are evaluated. The nature of the ethics concern and the response of various individuals with regard to harassing and retaliatory behavior will be explained in detail appropriate to each group.

(2) Harassment, retaliation and intimidation by fellow employees, be they peers, superiors or subordinates, against an employee who raises such concerns will not be tolerated at TVA.

(3) The raising of concerns, whether nuclear safety concerns, concerns about potential ethical violations or other concerns, raised by anyone (peer, subordinate or supervisor, or members of supporting organizations) constitutes a protected activity under TVA Policy and Federal statute. Violating those policies and/or Federal statutes involves consequences up to and including termination.

(4) Of the employees found to have violated those policies or statutes, they are either no longer employed with the company or TVA has taken other appropriate action.

(5) TVA undertook the original concern of harassment seriously. TVA took great care to ensure that the investigation examined the multiple potential protected activities that had been performed by all of the individuals looked at in the examination. TVA was especially mindful of the potential for competing protections for multiple different concerns.

(6) Within the nuclear organization, nuclear safety concerns have a special status and the avenues for raising them incur protections under NRC oversight; however, under Federal law and TVA policy, other types of concerns, such as the raising of concerns about potential ethical violations, also have very strong protections. Management is obligated to ensure that the raising of these various concerns is rigorously protected.

(7) OGC will provide more specific detail to ensure that the law and policy are explained in detail.

Executive Review Board

Record of Action

For purposes of this form the term "Employee" is defined as TVA employees, contractors and vendor workforce personnel.

ERB Case No.	Employee Type: <input checked="" type="checkbox"/> TVA employee (check one) <input type="checkbox"/> Contractor
Employee Name: Beth Wetzel	
Employee No.: [REDACTED]	
Employee Job Title: Manager, Regulatory Programs	Employee Group: Nuclear Regulatory Affairs
Date ERB Convened:	Time ERB Convened:
	Time ERB Concluded:

Case Summary:

Proposed Action:

Justification for proposed action: Based on the attached investigation report dated August 10, 2018 and followup analysis dated August 30, 2018, Ms. Wetzel's was found to have been in violation of these three policies which are subject to discipline pursuant to TVA-SPP-11.316, Employee Discipline, Appendix B, Section 1.1, Violation of Ethical Laws or TVA Code of Conduct; Section 1.5.1, Harassment/Intimidation/Retaliation/Discrimination (HIRD). These sections provide for disciplinary action up to and including termination when an employee engages in behavior that is a violation of the ethic laws or Code of Conduct, and when an employee engages in harassment and retaliation.

Ms. Wetzel's behaviors, as described in the attached report, repeatedly undermined and disrespected her supervisor by insinuating that her supervisor, Ms. Henderson, had initiated inappropriate investigations of TVA employees, for vindictive motives, despite having provided no reasonable basis or specific knowledge to support that assertion. Ms. Wetzel has continued to push this unsupported theory throughout the period of the investigation, making these assertions to the attorney investigator, as well as to the, Vice President, Nuclear Regulatory Affairs and Support Services, in various written communications. Ms. Wetzel has repeatedly been tardy in entering travel expenses into TVA's travel reimbursement system for vague and unsupported reasons tied back to those unsubstantiated and inaccurate representations of Ms. Henderson's motives. Overall, this disrespectful and harassing conduct directed toward Ms. Henderson is actionable under the law. "[D]isrespectful conduct is unacceptable and not conducive to a stable working atmosphere, and ... agencies are entitled to expect employees to conduct themselves in conformance with accepted standards." Ray v. Dep't of the Army, 97 M.S.P.R. 101, ¶ 58 (2004), aff'd, 176 Fed.Appx. 110 (Fed. Cir. 2006) (internal citations omitted). A subordinate who engages in harassment of a supervisor has engaged in such disrespectful conduct. Lewis v. Dep't of Veterans Affairs, 80 M.S.P.R. 472, ¶ 8 (1998) ("[I]nsolent disrespect towards supervisors so seriously undermines the capacity of management to maintain employee efficiency and discipline that no agency should be expected to exercise forbearance for such conduct more than once."). In this case, Ms. Wetzel has engaged in a sustained campaign of disrespectful conduct over a lengthy period of time, and has in fact continued to perpetuate that conduct in the midst of the investigation conducted into that exact harassment. This misconduct has hindered Ms.

Executive Review Board

Record of Action

Henderson's ability to execute her job responsibilities and has potentially undermined her standing with her subordinates. When an employee has engaged in such "intentional, repeated, and serious" misconduct, termination is an appropriate remedy. As a result, consistent SPP-11.316, it is recommended that Ms. Wetzel be removed from TVA employment.

Review Summary:

- 1. The proposed action is based on legitimate, non-retaliatory reasons. Yes No
 - 2. The proposed action is compliant with TVA policies, procedures and/or past practices. Yes No
 - 3. The proposed action has potential to create a negative impact on workforce SCWE? Yes No
- If "Yes," has a SCWE Mitigation Plan been prepared and approved? Yes No
 If "Yes," ensure planned mitigating actions are listed on Attachment 4.

Did any ERB members have a dissenting view with the conclusions or actions of the ERB? Yes No
 If Yes, provide a brief summary of the reasons for the dissenting view(s).

ERB Decision

List of all voting ERB members present: (indicate name of person in role or N/A if no voting member in that role)

Chair: STEVE BOND
 Director of Plant Support: JOE CALLE
 HR: ARLIE REEVES
 Legal Counsel: RYAN BREKE
 Other Witnesses attending ERB: DEANNA FULTS (ECP)

The ERB does not object to the proposed employment action

The ERB objects to the proposed employment action

Alternative employment action proposed and accepted

Alternative employment action proposed but rejected

The ERB cannot render a decision until additional information is provided and/or questions are answered.
 (Attach questions and/or directives to obtain additional information)

Executive Review Board

Record of Action

A second ERB meeting for this case is set for (date/time):

Prepared by (print name): Joe. CALLIE J. Fuller Title: 10/19/18

ERB Chair or delegate Signature: [Signature] S. BONO Date: 10/19/18

Resultant ERB records are complete and accurate with the required approvals submitted for recordkeeping.
Plant Support Director/Corp NSCMP Chair or Delegate [Signature] Date: 10/22/18

Resultant ERB records are verified complete prior to filing for recordkeeping
Human Resources _____ Date _____

ERB Update
December 18, 2018
Beth Wetzel

PURPOSE: This document provides an update to the ERB package signed on October 16, 2018 with regard to:

- (1) the unsuccessful effort to implement a No Fault Separation Agreement,
- (2) implementation of the contingency in the original ERB package to implement termination
- (3) revisions to ERB package

(1) No Fault Separation Agreement. A NFSA letter was first offered to Beth Wetzel on October 25, 2018. Following a request from Ms. Wetzel, a revised NFSA letter was signed on November 15, 2018. Ms. Wetzel signed the letter on December 5, 2018 and provided it to TVA. Subsequently, during the allowance period in the NFSA to cancel within seven days, Ms. Wetzel rescinded her signature by email dated December 11, 2018. The rescission followed a series of communications from Ms. Wetzel's attorney asking for additional terms and for additional time to negotiate with TVA on separation.

(2) Termination: Within the ERB package dated October 16, 2018, an approval to proceed with termination if the NFSA was not successful was included.

CHANGES TO ERB PACKAGE

CHANGES TO Fact Finding Notes: Form TVA 41656: None

CHANGES TO Proposed Adverse Action Review Form (TVA 41651)

page 2/7: Overview Question 1: The item "Contacted NRC, DOL or other external regulatory agency" should be changed from "No" to "Yes". TVA was contacted by Ms. Wetzel's attorney via email on December 10 in which the attorney indicated that Ms. Wetzel had initiated the NRC Mediation program. It can be inferred from this that Ms. Wetzel had contacted the NRC. In a separate email dated December 6, the attorney forwarded a letter which among other things indicated a series of issues in which Ms. Wetzel believed she had been wrongly treated.

page 2/7: Question 2 "Has the individual raised issues or concerns regarding nuclear safety or quality, industrial safety, environmental safety, compliance or substandard work conditions?" , Question 3 "Has the individual raised issues or concerns regarding harassment, intimidation, discrimination, retaliation or a hostile work environment." These questions were answered yes. The explanations should be expanded to include:

By letter dated December 6, 2018, the attorney for Ms. Wetzel sent a letter which, in part, included the following text:

As I wrote on October 22, her retaliation claims are grounded on the fact that she engaged in protected conduct when she persisted in reporting that TVA needed to bring itself into compliance with critical NRC regulations, including the fatigue rule requirements at Watts Bar 2; the so-called Fukushima requirements at Sequoyah; the failure to identify all NRC commitments in responding to the NRC's March 23, 2016 chilled work environment letter; and the failure to perform TS (Technical Specification) Surveillances during the outages at Watts Bar.

In addition to these disclosures identified in my prior correspondence, Ms. Wetzel has also made protected disclosures regarding (1) the failure at Browns Ferry to identify, repair or replace, in accordance with the BWR Owners Group guidance, all the Anchor Darling double-disc gate valves (DDGV) to address the wedge-pin and stem separation failures (NRC IN 2017-03), which had resulted in an NRC red finding several years ago; and (2) the failure of Browns Ferry to provide information required for an NRC submission due on December 31, 2017 regarding addressing the valve failures (an issue that originally arose at the LaSalle plant and had to be addressed by TVA's plants). These disclosures were made to senior TVA management, including Ms. Henderson, who reacted angrily when Ms. Wetzel reported that TVA engineers were not addressing the DDGV issue.

CHANGES TO SCWE MITIGATION PLAN SCREENING (FORM TVA 41647)

Page 1 of 2, Question 3: "Has this person written a CR in the last 12 months or openly discussed any concerns with management or the workforce?" The existing ERB package answer should be supplemented with the following paragraph:

While Ms. Wetzel's attorney forwarded a list of issues in his letter dated December 6, 2018, it is not clear which if any of those issues Ms. Wetzel discussed with staff. However, each of the issues, whether characterized accurately by Ms. Wetzel or not in terms of her presentation to her management, were likely known about by one or more of her staff in that many of her staff participated in either addressing or correcting the issues.

CHANGES TO SAFETY CONSCIOUS WORK ENVIRONMENT (SCWE) MITIGATION PLAN (FORM TVA 41648)

p 3/5: Change to Question 5: The Oak Ridge Associated University review with the Regulatory Affairs staff will be conducted within 90 days of the implementation of the mitigation communication (Vs December 2018 - since the final action to be mitigated has not yet occurred.)

Beth Wetzel ERB Update

Presented to ERB members on Dec 18, 2018 by Joe Shea (VP Regulatory Affairs & Support Services)

ERB Members Participating:

Steve Bono (ERB Chair)

Joe Calle (NSCMP Chair)

Ryan Dreke (OGC)

Renee Gray (HR)

Deanna Fults (ECP)

Comment from ERB:

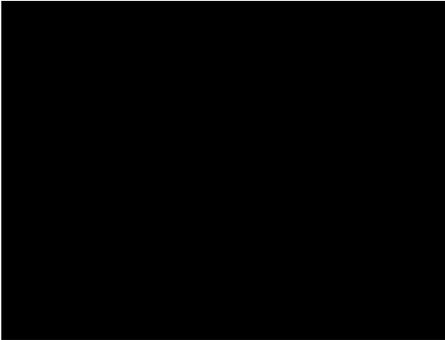
Joe Shea to conduct a review of Ms. Wetzel's legal documentation to ensure no new information impacting previous ERB recommendations.

Attachment 26

Redacted

Attachment 27

[Redacted]



[Redacted]

[Redacted]

Jun 5, 2016, 2:28 PM

Any perspective of creating a position (eg, Assistant Director of Fleet EP) as a home for the subject of the investigation. the point was well made yesterday that if we don't term the individual OR we don't separate the parties, we are really raising the legal risk. I continue to cogitate on consensus solutions.

No. Job, we can't give him a promotion.

Ok... just a mgr in EP?

Ok

  Message 

Attachment 28

Redacted

Attachment 29

Redacted

Attachment 30

EARLS, Chris

From: EARLS, Chris
Sent: Wednesday, August 1, 2018 10:12 AM
To: Henderson, Erin Kathleen
Cc: EARLS, Chris (cee@nei.org)
Subject: RE: Performance Feedback

Hi Erin,

Here is my feedback on Beth since she has arrived at NEI. Please let me know if you need additional info or have any questions.

Chris

Accountability & Driving for Results

Since arriving at NEI, Beth has taken a very proactive approach to driving accountability within the Regulatory Issues Task Force. She developed a RITF Issues table that captures all the key issues and assigns responsibility for each of them. This table will be adopted by other areas with the NEI Regulatory Affairs group.

Continuous Improvement

Beth has been on a mission since she has arrived to strengthen the RITF. As a long-term member of the group, she knows where the group does well and not so well. She has focused on improving those areas where they need improvement.

Leveraging Diversity

Beth is very good at seeking out diverse opinions and thoughts. She goes out of her way to make sure all stakeholders are considered.

Adaptability

Beth has had to quickly adapt from a utility work environment to NEI's environment which can be significantly different. She has been very eager to learn and fit in with the way NEI conducts work. It has not taken her long to figure how things get down here and how to make it work for herself.

Effective Communications

Beth communicates very well with her peers industry and regulatory peers. She has taken advantage of her contacts within the NRC to help facilitate communications on key topics. She also communicates well with NEI management. On a number of occasions, she has sought out the CNO to communicate info or provide feedback. This is not always common with a loanee.

Leadership Courage

Beth can be counted upon to speak up on issues even if her thoughts are counted to the current position. She is careful to not offend people, but at the same time gets her point across. This is very helpful especially when dealing with the regulator.

Business Acumen

Beth is able to bring a utility perspective to internal NEI discussions which is invaluable. She is able to explain how different issues will affect the people or operation of the power plants. She is also able to identify issues of concern before they are obvious to others.

Building Organizational Talent

With Beth's broad regulatory affairs experience, she has been able to help NEI staffer learn about utility regulatory affairs practices and focus. I plan to use her as a mentor for a new NEI loanee that starts in October. This loanee has limited experience in regulatory affairs and it is their utilities desire that NEI help develop her in this area so that she may return to a reg affairs leadership role. Beth will be ideal for this assignment.

Inspiring Trust

Beth has very good relationships with both her peers and regulatory counterparts. She has a pleasant personality which enables her to put others at ease and enable a good working relationship. Also, her extensive regulatory background inspire confidence in what she is doing and saying.

Vision, Innovation, and Strategic Execution

As discussed previously, Beth has a real vision for what the RITF must become to be more effective in addressing the key industry issues. She has already begun driving the organization and industry toward that vision.

In general, Beth has been the ideal loanee for NEI. Her experience and approach to work has enabled her to jump right into the role and be successful. She has been very easy to supervise. I do not have to worry about what she is doing and can count of her to do the right thing. The one thing I would say that she needs to guard against is stretching herself too thin and trying to take on too many issues. Her passion for the issues is a key to her early success at NEI but it can also potentially cause her to take too much work on and as result affect her performance on those issues. This is not a problem right now. It's just something to be aware of and guard against. As her supervisor, I will continue to monitor her work load and try to make sure she doesn't get overwhelmed.

From: Henderson, Erin Kathleen [mailto:ekwest@tva.gov]

Sent: Wednesday, July 25, 2018 2:45 PM

To: EARLS, Chris

Subject: Performance Feedback

Importance: High

Chris,

We're in the early part of the process for doing performance reviews for the end of the fiscal year. Just checking to see if you had any feedback to share regarding Beth from her first 3 months that I should factor in?

We rate managers against both goals and 10 leadership competencies. I've attached a document so you know what our leadership competencies are and can share any perspective you may have against those. If you can send me any feedback you have by Friday, that'd be great.

Give me a call if you have any questions!

Thanks,
Erin

Erin Henderson
Director, Nuclear Regulatory Affairs
Tennessee Valley Authority
Office: 423.751.7620
Cell: 302.507.1192

Attachment 31

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Interview of Joseph Shea

Docket Number: EA-20-006 and EA-20-007

Location: teleconference

Date: Thursday, July 8, 2021

Work Order No.: NRC-1572

Pages 1-162

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 need, if you're confused as to what I might be
2 referring to.

3 A That's when I met him, spring of 2018,
4 yes.

5 Q Okay. Do you have, I guess have you
6 attended social events with Erin Henderson in the
7 past?

8 A To my recollection, a handful of group
9 interactions.

10 Q What about Michael Henderson?

11 A To the best I can recall -- well, sorry.
12 What was your question specifically to Mr. Henderson?

13 Q Yes, yes, Michael Henderson. I apologize.
14 Let me ask this question first. Do you know Michael
15 Henderson?

16 A I do.

17 Q Okay. Are you friends with him outside of
18 the office?

19 A I would not say so.

20 Q Okay. Are you friends with Erin Henderson
21 outside of the office?

22 A How do you mean?

23 Q I guess I mean do you regularly, you know,
24 have you had, go out to dinner, for example?

25 A No.

1 Q Okay. Did you ever talk to Erin Henderson
2 about Erin Conner's settlement with TVA?

3 A I'm sorry. Whose settlement?

4 Q Erin -- I'm sorry. Did I say Erin?
5 Michelle Conner. I apologize. Michelle Conner's
6 settlement with TVA.

7 A And which specific, what settlement are
8 you referring to there, if I can ask you to be more
9 specific.

10 Q Yes, absolutely. So do you recall whether
11 Michelle Conner submitted a complaint to the
12 Department of Labor alleging surrounding events in the
13 2016 time frame?

14 A I do.

15 Q And are you aware of the outcome of that
16 case, of that complaint?

17 A I am.

18 Q Okay. Did that result in a settlement?

19 A It did.

20 Q Did you discuss that settlement with Ms.
21 Henderson?

22 A Only to the extent that Ms. Conner, after
23 that settlement, worked in a new work organization
24 after that; so I would have discussed with Ms.
25 Henderson that Ms. Conner was transferring, being

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 transferred, moved to a different department.

2 Q Would that have been the only discussion
3 about the terms of the settlement with Ms. Henderson?

4 A To the best I can recall, yes.

5 Q Okay. Do you recall Ms. Henderson's
6 reaction to that conversation?

7 A I don't.

8 Q Did you ever hear someone say that Ms.
9 Henderson disagreed with the settlement?

10 A Not that I can recall.

11 Q Okay. I'm going to pull up a document.
12 Tim, I had sent you a list yesterday. This is TVA
13 Doc. 0003240. Mr. Shea, I don't, do you have -- I
14 will share my screen, but I would also, I don't know
15 whether you have your own access to these or not.

16 A If I can, if we could try sharing it so
17 that, you know, I'm not trying to manipulate the
18 keyboard while --

19 Q Yes, absolutely.

20 A If that doesn't work, I do have access to
21 it, but let's try, if you wouldn't mind, try scrolling
22 through it.

23 Q Yes, absolutely.

24 MR. WALSH: Mr. Gillespie, this looks like
25 a one-page email anyway, so it should be pretty easy

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Attachment 32

Exhibit 11

Exhibit 11

2-2019-015

From: Wetzel, Beth A
Sent: Thursday, March 29, 2018 7:52 PM
To: Shea, Joseph W
Subject: NEI Loanee Contract

Joe,
Have you read the contract regarding my loanee assignment that Erin sent to NEI?

It is significantly different than other industry or previous TVA contracts for NEI loanees. It unnecessarily discloses both my salary and my incentive opportunity. These numbers are not on the other contracts. Disclosing these numbers is both distasteful and unprofessional.

Instead of using language from both Greg's and Pat's previous contracts regarding NEI travel, it contains unclear, ambiguous language that reads like NEI will be responsible for my expenses and lodging for the duration. It appears this contract was written so NEI would reject it summarily.

I am imploring someone in this company to be honest with me. I understood from the CNO that he fully supported this move. I know that Erin's budget for next year includes lodging and M&IE for my rotation to DC and she's still under budget. If my boss is going to be unreasonable with NEI and effectively block my loanee opportunity, would you please tell me so I know what to do next?

Beth

Fwd: Wetzel NEI Loanee Confirmation 2018

From: WETZEL, Beth (baw@nei.org)

To: [REDACTED]

Date: Tuesday, May 15, 2018, 9:23 AM EDT

Sent from my iPhone

Begin forwarded message:

From: "Shea, Joseph W" <jwshea@tva.gov>
Date: May 14, 2018 at 12:00:13 PM EDT
To: "WETZEL, Beth" <baw@nei.org>
Subject: RE: Wetzel NEI Loanee Confirmation 2018

Beth,

Good morning. Am back from travel...I hope you are enjoying the NEI role as you had envisioned.

Thank you for raising these concerns with me.

Your first concern relates to the adequacy of documentation with regard to the details of processing travel claims as it relates to your extended detail to NEI. I certainly did want the detailed and practical aspects of the travel reimbursements explored and fully understood by you, Erin, Carla, HR, OGC et. al. before you headed out. From the meetings you had, and the manner in which you expressed that you were satisfied with the discussions that occurred, I am satisfied that was met. It is also true that I had indicated I wanted to see some of that detail in writing to you and that is the path Erin was pursuing. Ultimately, in the drafting and review process, it was determined that the reference to Federal policies and regulations was sufficient. Given the complexity of the Federal Travel Regulations, it was not in anyone's best interest to attempt to summarize or paraphrase the details. Thus, the final agreed-upon memo contains what is in essence a reference or pointer to existing regulations, and I am satisfied with the explanation for the shortened form of the memo. This was reinforced by your expressed satisfaction with the preceding meetings on the subject. Ultimately, I have confidence that our team has the ability to process the travel claims in a manner that is rigorous in its compliance with the travel regulations, and in turn consistent with the understandings you had from your meetings. (I did not review the summary version you sent a few days prior to your most recent email as ultimately, claims will be processed through our existing channels, which I have confidence in).

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.

Joe

From: WETZEL, Beth [mailto:baw@nei.org]
Sent: Monday, May 07, 2018 11:12 AM
To: Shea, Joseph W
Subject: Wetzel NEI Loanee Confirmation 2018

TVA External Message. Please use caution when opening.

Joe,

I am concerned with the lack of commitment to write the details that we worked on as a team for my TVA reimbursements. I typed up a detailed proposal and Erin, Wes, Mike Griffin, Carla and I met to discuss the proposal 3 times with each of us researching specific questions. The team reached an agreement on the specifics. Erin assigned Wes to document what we agreed on, as you directed, so we wouldn't have misunderstandings in the middle of my temporary duty assignment. Erin told Wes that she didn't need too many details in his write-up, but I was shocked to see what Erin sent out. It contained none of the particulars we agreed on. So, yesterday I sent both you and Erin a short write-up containing the facts the team agreed on.

I am thrilled to have the CNO's support in allowing me to participate as an NEI loanee. I know it's a significant investment on the part of TVA. I will be processing large travel vouchers through Carla and will follow all TVA, Federal and NEI requirements to the best of my ability. I know I will get audited based on the amount of dollars that will be processed through vouchers and I believe all the research the team did will result in clean audits. 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.

I propose I work with you, as my approver, and Carla on the travel vouchers and if there's anything in question, I be notified so I can promptly correct the issue vs. being investigated.

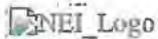
4/9/2019

AT&T Yahoo Mail - Fwd: Wetzel NEI Loanee Confirmation 2018

I also intend to report directly to you, which was the level in the organization that my predecessor, Greg Cameron, reported to. I don't anticipate any additional burden to you, as Chris Earls is my NEI supervisor.

I am asking for your help in this matter.

Thanks,



Beth A. Wetzel

Senior Project Manager
1201 F Street, NW, Suite 1100 | Washington, DC 20004
P: 202.739-8011 M: 423-290-8301
nei.org

From: Wetzel, Beth A [<mailto:bawetzel@tva.gov>]
Sent: Monday, May 7, 2018 8:05 AM
To: WETZEL, Beth
Subject: Fwd: Wetzel NEI Loanee Confirmation 2018

Sent from my iPhone

Begin forwarded message:

From: "Henderson, Erin Kathleen" <ekwest@tva.gov>
Date: May 7, 2018 at 6:18:05 AM EDT
To: "Wetzel, Beth A" <bawetzel@tva.gov>
Cc: "Shea, Joseph W" <jwshea@tva.gov>, "Wingo, Charles W" <cwwingo@tva.gov>
Subject: **Re: Wetzel NEI Loanee Confirmation 2018**

Beth,

The memo states you are on continuous travel status and all of the benefits outlined in the travel policies are available to you. The trip home once per month

3/5

at TVA's expense is not specified in the policy so it was included in the memo to ensure it was clear that we agreed to do that.

Wes interfaced with OGC on drafting the memo. He's out for the next few weeks if you want to give him a call when he gets back in.

Erin

On May 6, 2018, at 7:56 PM, Wetzel, Beth A <bawetzel@tva.gov> wrote:

Joe/Erin,

I appreciate the attached NEI Loanee Confirmation memo signed by Erin and sent to me (attached). However, it doesn't document detailed expenses as previously suggested by Joe. Written details of what was agreed upon for travel and housing compensation is essential, so we don't have questions or different interpretations in the future. I've compiled what we agreed on for expenses based on multiple meetings and e-mails. See attached.

Beth Wetzel

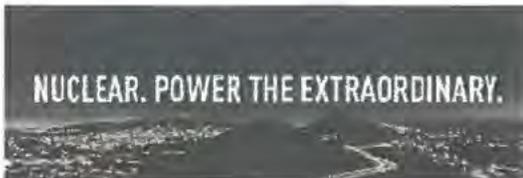
BAW@NEI.org

202-739-8011

423-290-8301

<Wetzel NEI Loanee Confirmation 2018.pdf>

<Living.docx>



This electronic message transmission contains information from the Nuclear Energy Institute, Inc. The information is intended solely for the use of the addressee and its use by any other person is not authorized. If you are not the intended recipient, you have received this communication in error, and any review, use, disclosure, copying or distribution of the contents of this communication is strictly prohibited. If you have received this electronic transmission in error, please notify the sender immediately by telephone or by electronic mail and permanently delete the original message. IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS and other taxing authorities, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed on any taxpayer or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Attachment 33

Exhibit 12

Exhibit 12

2-2019-015

Edmondson, Carla

From: Wetzel, Beth A
Sent: Saturday, June 09, 2018 9:29 AM
To: Shea, Joseph W
Subject: Re: Travel

It's ridiculous because I'm afraid and haven't submitted, so now we're floating. No action has been taken to my knowledge yet.

Sent from my iPhone

> On Jun 9, 2018, at 8:23 AM, Shea, Joseph W <iwshea@tva.gov> wrote:

>

> Beth

>

> Ok. Take care of your health.

>

> 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?

>

> Joe

>

>

>

>

>> On June 9, 2018 at 5:56:04 AM EDT, Wetzel, Beth A <bawetzel@tva.gov> wrote:

>> 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. Now it looks like I have something bigger to worry about. The doctor is sending me for a ct scan and in parallel, to a speech therapist to try to compensate for one vocal chord not moving.

>>

>> Beth

>>

>> Sent from my iPhone

Attachment 34

MEMORANDUM

To: Joe Shea
cc: Amanda Poland
From: Beth Wetzel
Re: Employment
Date: October 31, 2018

Thank you for meeting with me on October 25. I was disappointed to learn that TVA does not want to continue my professional services, and I am seriously concerned that this decision was taken in retaliation because I reported safety issues, including the ongoing chilled work environment that TVA has not addressed. I am particularly concerned that my badge access was pulled only one day before the NRC was arriving for a scheduled site visit to interview personnel in Corporate Regulatory Affairs, and only one week before I was to be a leading participant in three high-profile meetings at NEI and NRC.

I cannot agree to all of the terms that TVA has proposed, but I have discussed your proposal with my lawyer, and I have come up with a counterproposal. In summary, I would agree to most of the terms set forth in the October 25 letter, with the following modifications:

1. I would be allowed to return to my rotation at NEI through the scheduled end of the rotation (October 31, 2019), with the same pay and benefits as before, and TVA would explain to NEI that my temporary removal from duty was not the result of any performance issues;
2. TVA would provide me with performance evaluations for both Fiscal Year 2018 and for Fiscal Year 2019 that would reflect my evaluation from NEI, along with a bonus (annual incentive award) commensurate with those evaluations; and
3. I would resign at the end of that rotation; TVA would agree to provide me with a favorable letter of reference and an agreement that all oral references would be consistent with the written letter of reference.

This modest counterproposal should be amenable to TVA. I have enjoyed working with my colleagues at TVA, and I hope to continue to have a good professional working relationship with them in the future. Thank you, and I look forward to discussing these issues with you in person.

Attachment 35

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION
OFFICIAL USE ONLY
OI INVESTIGATION INFORMATION

Title: Interview of John E. Slater

Docket Number: 2-2019-015

Location: Knoxville, Tennessee

Date: November 20, 2019

Work Order No.: NRC-0727

Pages 1-117

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 represent Mr. Slater, as well as other individuals and
2 TVA in this matter. And I am able to do so because I
3 do not see any conflict of interest, nor do I
4 anticipate one arising. Should a conflict of interest
5 arise, I will certainly advise my clients accordingly.

6 SR. SPECIAL AGENT LUINA: Okay, good. Any
7 questions about anything?

8 MR. SLATER: None.

9 SR. SPECIAL AGENT LUINA: Okay, good. I
10 just want to make sure I cover it. I provided you my
11 card, correct?

12 MR. SLATER: Yes.

13 SR. SPECIAL AGENT LUINA: You have my
14 contact information.

15 MR. SLATER: Yes.

16 SR. SPECIAL AGENT LUINA: So you
17 understand that if you do change your mind at a later
18 date and you want to reach out to me directly about
19 this or anything the NRC investigates or regulates,
20 you know you're free to do that?

21 MR. SLATER: Yes.

22 SR. SPECIAL AGENT LUINA: Okay. Or
23 through Mr. Walsh, however you're comfortable doing
24 it.

25 MR. SLATER: Yes.

1 SR. SPECIAL AGENT LUINA: Excellent. All
2 right. Mr. Slater, if you could, please kind of give
3 me some background information about yourself and kind
4 of explain what your experience is and your time at
5 TVA and in the nuclear industry, it would be great to
6 hear.

7 MR. SLATER: Yes. I came to the Tennessee
8 Valley Authority in May of 1990, came as, I believe it
9 was a staff attorney in the litigation department. I
10 did a full range of litigation. I did primarily
11 employment law, but I also did some tort stuff,
12 condemnation. I did administrative EEO stuff, lots of
13 cases before the Merit Systems Protection Board.

14 I also worked on a number of Department of
15 Labor whistleblower complaints early on and, at some
16 point, perhaps anywhere close to 20 years or so, 20
17 years plus later, I moved to the advisory side of the
18 office where I currently am. I do provide lots of
19 advisory work on a full range of employment matters.

20 I also still litigate and work on EEO
21 administrative matters, a full range of
22 discrimination, age, race, sex matters before the
23 Merit Systems Protection Board, and I also am the
24 coordinator for the Office of Special Counsel on
25 whistleblower matters, as well.

1 Prior to coming to TVA, I worked at the
2 Federal Trade Commission. I worked in their Division
3 of Marketing Practices where I did litigation
4 concerning fraudulent matters, and I worked there for
5 about six years. And then I went to another small
6 government agency, the Pension Benefit Guaranty
7 Corporation, where I worked on a range of pension
8 matters concerning defined benefit plans. So I did a
9 fair amount of bankruptcy work and other stuff related
10 to the agency taking over pension plans that had
11 become insolvent.

12 SR. SPECIAL AGENT LUINA: Okay. All
13 right, excellent. So it does sound like a majority of
14 your time at TVA has been in employment law?

15 MR. SLATER: Employment law; that is
16 correct.

17 SR. SPECIAL AGENT LUINA: That is correct?
18 Okay.

19 MR. SLATER: Yes. And I forgot I also did
20 a bunch of unemployment matters, as well.

21 SR. SPECIAL AGENT LUINA: Okay, excellent.
22 Has your experience, have you conducted investigations
23 similar to the one you conducted in March or April of
24 2018 dealing with the complaint from Ms. Erin
25 Henderson (phonetic), the HIR&D, the harassment,

1 intimidation, retaliation, discrimination complaint?

2 MR. SLATER: No, that was, I believe, my
3 first. However, as to my work in, as to my other
4 capacity, I did the same kind of stuff in that I had
5 to, for every case that I defended, I had to go out
6 and talk to witnesses, review documents, dig out the
7 facts, form opinions, form conclusions, and that kind
8 of thing.

9 SR. SPECIAL AGENT LUINA: Okay. More
10 after the fact, I guess --

11 MR. SLATER: Yes.

12 SR. SPECIAL AGENT LUINA: -- is that kind
13 of the difference there?

14 MR. SLATER: Well, both are really after
15 the fact. With, say, the investigation that's at the
16 center of this matter, it already happened, so I had
17 to just go back and dig out the facts, just like if I
18 got a new case fell on my case and I would have to go
19 out and dig out the facts with respect to that, go
20 talk to witnesses, review documents, and that kind of
21 thing.

22 SR. SPECIAL AGENT LUINA: Okay. In the
23 Office of General Counsel, do you all have a guideline
24 you follow or a policy you follow to conduct those
25 matters?

1 MR. SLATER: No, we get, there are some
2 discretion given to counsel to go out and dig out the
3 facts. I do say, like in this particular case, I did
4 talk to my boss about the process that I was going to
5 go through to conduct the investigation, you know, who
6 I was going to talk to, digging out the documents and
7 whatnot.

8 SR. SPECIAL AGENT LUINA: Let's talk about
9 that. Like, how did you become involved in this
10 matter?

11 MR. SLATER: It was just like any other
12 assignment in the office. Well, I don't know if it
13 was like any other assignment. It just so happened I
14 was, I guess, the next man up. Jennifer's office was
15 right next to mine --

16 SR. SPECIAL AGENT LUINA: And that's
17 Jennifer --

18 MR. SLATER: Jennifer Grace (phonetic).
19 She's the assistant general counsel, and she called me
20 in and said we got a matter in that needs some work
21 and I'm going to assign you to it. And we talked
22 about it a little bit, and she handed me the complaint
23 and said go to it. I reviewed the complaint, and the
24 complaint was from Erin Henderson. I reviewed the
25 complaint and then formed at least a preliminary

1 interview?

2 MR. SLATER: Well, I told her, as I told
3 the other folks, why I was there, and I was told I was
4 looking into allegations. And then I asked her about
5 her relationship with Ms. Henderson, and she also told
6 me that she did not have a good working relationship
7 with her. And I think if we sort of back away from
8 this a little bit and you'll see this reflected in the
9 notes as to a number of the folks I talked to that
10 there was some, an animosity might be too strong of a
11 word but I think it fits. They thought that Ms.
12 Henderson should not have gotten the senior manager
13 job, used terms like she was too young, too
14 inexperienced, not enough NRC or nuclear experience,
15 and that kind of thing.

16 SR. SPECIAL AGENT LUINA: Okay.

17 MR. SLATER: And that came through in Ms.
18 Wetzel's interview. And then --

19 MR. WALSH: Why don't you wait for another
20 question?

21 MR. SLATER: Okay.

22 SR. SPECIAL AGENT LUINA: Well, it's still
23 that answer. What questions you asked her and what
24 her answers were.

25 MR. SLATER: Then I asked the general

1 question about the relationship, and then Ms. Wetzel
2 then volunteered a lot of stuff about not being in a
3 good relationship. And then she started telling me
4 about how can you trust someone like Ms. Henderson,
5 someone who investigates folks without a basis, pulls
6 people's gate records, and so forth. And from that,
7 I gathered that there had to be a link between McBerty
8 and Ms. Wetzel or Ms. Wetzel and Ms. Connor because
9 how else would she know that information that the
10 speculation that Ms. Henderson had those things done
11 when really that was a false conclusion on her part
12 because HR did those things.

13 SR. SPECIAL AGENT LUINA: Okay.

14 MR. SLATER: HR investigated, HR pulled
15 the gate records, HR or at some point in time got the
16 piece of information showing that the two were
17 together when they said that they weren't.

18 SR. SPECIAL AGENT LUINA: Okay.

19 MR. SLATER: And so it sort of, that sort
20 of confirmed up Ms. Henderson's rationale for asking
21 HR to look into it because it looked as though those
22 two were, there was something there, and so she said,
23 well, how can I have someone performing that oversight
24 function if there was a personal relationship there?

25 SR. SPECIAL AGENT LUINA: Okay. What

1 other information did she tell me about Ms. Henderson?

2 MR. SLATER: Well, despite having initial
3 reservations about her not being fit for the job, she
4 said that she was, in essence, a good manager, she was
5 organized. She also indicated that she thought that
6 Ms. Henderson was telling folks that she was, she, Ms.
7 Wetzel, was incompetent and Ms. Henderson denied that.
8 She also said that she thought that Ms. Henderson was
9 vindictive. That's when she launched into here's a
10 person who would have somebody, what would be the
11 motivation to have somebody's gate records pulled and
12 investigated without a good cause?

13 She also talked about why the relationship
14 was not a good thing because she was under a PIP,
15 personal improvement plan, that Ms. Henderson, well,
16 put her on, and she didn't think that that was
17 justified. And she also said that she thought that
18 Ms. Wetzel had her favorites, and she identified in
19 particular Jim Polikowski.

20 SR. SPECIAL AGENT LUINA: Okay.

21 MR. SLATER: She was also upset with Ms.
22 Henderson because, apparently, there was a small
23 reorganization in that group that reduced the number
24 of people reporting to Ms. Wetzel from seven to four
25 and that she said that she had had, the strongest

1 person on her sub-team had retired and Ms. Henderson,
2 in her view, wouldn't allow her to fill that position
3 and that it was the second retirement. She was
4 providing information as to maybe the PIP was not
5 completely justified.

6 She also complained about Ms. Henderson
7 rewriting a lot of the stuff that she would produce.

8 SR. SPECIAL AGENT LUINA: Okay. Work
9 products and stuff?

10 MR. SLATER: Yes. I mean, I've had that,
11 too. But, I mean, I don't know whether that's a
12 reason to be upset with anybody or that that's an
13 indication that she thinks that's why her PIP was
14 unjustified. I didn't look at what was being
15 rewritten or not rewritten or things like that.

16 SR. SPECIAL AGENT LUINA: Okay.

17 MR. SLATER: She also indicated, according
18 to my notes, that she thought that Ms. Henderson
19 didn't speak highly of her and that she
20 inappropriately asked for information on her
21 performance from other managers.

22 SR. SPECIAL AGENT LUINA: Okay.

23 MR. SLATER: And if I can just respond to
24 that, it's just the way that the organization was set
25 up and who corporate licensing had oversight over, you

1 had to ask other people about how was Polikowski
2 doing, how is Shroll handling this at whatever site he
3 was or how is Mr. Riddle (phonetic) doing, this, that,
4 and the other thing. So that's the only way you would
5 get feedback because those are the clients and those
6 are the folks who would know how things are being
7 done.

8 And what was sort of interesting is Beth,
9 or Ms. Wetzel, indicated that she didn't think that
10 Ms. Henderson had enough experience to report to her.
11 I mean, as to whether or not she applied for the job,
12 I don't know. But that goes back to she thought that
13 she was not --

14 SR. SPECIAL AGENT LUINA: Not qualified?

15 MR. SLATER: -- was not the person who
16 should have been selected and that she wanted Ms.
17 Henderson moved out.

18 SR. SPECIAL AGENT LUINA: Did she say why?

19 MR. SLATER: She said that licensing is
20 toxic and that corporate licensing only worked,
21 corporate licensing worked better if Henderson is
22 moved out. That's not a complete quote but --

23 SR. SPECIAL AGENT LUINA: What else did
24 she say about Henderson?

25 MR. SLATER: That she thought that she was

1 the, Joe had her back, Joe Shea.

2 SR. SPECIAL AGENT LUINA: Joe Shea? Okay.

3 MR. SLATER: Yes. And that --

4 SR. SPECIAL AGENT LUINA: What else did
5 she say about Erin?

6 MR. SLATER: She and, according to my
7 notes, she and McBerty said that Henderson was harmful
8 to TVA's regulatory relationship and that what I found
9 that they actually talked to other folks in the
10 industry about that kind of thing. In essence,
11 speaking out of school so to speak, talking to other
12 folks about why they thought Ms. Henderson was not a
13 good fit. I mean, that was the part of some of the
14 environment that Ms. Henderson was working in and
15 trying to work through, that she was, she felt she was
16 being hurt in the industry by these folks talking to
17 others, badmouthing her, and sowing discord.

18 SR. SPECIAL AGENT LUINA: Okay. Anything
19 else --

20 MR. SLATER: No.

21 SR. SPECIAL AGENT LUINA: -- that she --

22 MR. SLATER: Let me go through.

23 SR. SPECIAL AGENT LUINA: Yes, make sure
24 you got --

25 MR. SLATER: I mean, there's one other

1 area that where Ms. Wetzel just volunteered that she
2 thought that some others on the staff had some concern
3 with Ms. Henderson. She talked about Tom Hess
4 (phonetic), that she thought that she was trying to
5 push him out the door, that Chris Readell (phonetic) or
6 Riddle (phonetic) had some apprehension about
7 reporting to Erin, or Ms. Henderson, and that Mr.
8 Bradshaw, and I can't remember his first name, just
9 did what he was told.

10 Now, and these things, when I just
11 inquired about the working relationship, those things
12 came out. She just talked and talked and talked and
13 talked about what her problems were with Ms. Henderson
14 and what she perceived other people having some
15 problems.

16 SR. SPECIAL AGENT LUINA: Okay. And it's
17 up here, your first note up here you wrote chilled,
18 no. Did you ask her that same chilling effect type
19 question?

20 MR. SLATER: Yes. And when you go through
21 my notes, you'll see that sometimes I asked, at least
22 it may reflect that I asked up-front or may asked in
23 the middle. I couldn't tell you when I asked that.
24 It could have been as my first topic of working
25 relationship, I could have talked to Ms. Wetzel until

1 the end of this and then I said, oh, I didn't ask this
2 one question I asked everybody and just put it up at
3 the top.

4 SR. SPECIAL AGENT LUINA: Okay. And you
5 wrote no there. Did she --

6 MR. SLATER: She said, no, she was not,
7 she was not in a chilled environment and that she knew
8 she was free to speak her mind and that she knew that,
9 she was aware of the various avenues to do so.

10 SR. SPECIAL AGENT LUINA: Okay. Was she,
11 did she mention that she felt comfortable to speak her
12 mind to Erin Henderson, to her direct supervisor?

13 MR. SLATER: I don't know whether I asked
14 that direct question. I think, if I had, it would
15 have been in my notes. When she said she wasn't, I
16 didn't think there was any need for a follow up. I
17 think, I would think that if she had a problem she
18 would have said, yes, and my question was, well,
19 please explain, and then she would say I can't go up
20 the chain of command.

21 SR. SPECIAL AGENT LUINA: Yes.

22 MR. WALSH: That's hypothetical. That did
23 not happen.

24 MR. SLATER: That didn't happen.

25 MR. WALSH: Just so the record is clear.

1 SR. SPECIAL AGENT ECHAVARRIA: -- it's
2 written, or anything like that?

3 MR. SLATER: I stand behind this work
4 product.

5 SR. SPECIAL AGENT ECHAVARRIA: Okay.

6 SR. SPECIAL AGENT LUINA: Let me ask you
7 this. Based on other interviews I've conducted, it's
8 my understanding that there was a draft report that
9 went out in May of 2018 to management, and that's when
10 Mr. McBrearty was put on admin leave.

11 I don't know if you were involved in those
12 phone calls or that discussion that led up to that or
13 not. Were you -- that's my first question.

14 MR. SLATER: No.

15 SR. SPECIAL AGENT LUINA: Were you
16 involved in those at all?

17 MR. SLATER: I was not.

18 SR. SPECIAL AGENT LUINA: Okay, and then
19 it's my understanding that a final report didn't come
20 out until August 2018. At the request of TVA
21 managers, they asked for some more supporting facts or
22 some more documentation. Does this sound familiar to
23 you at all, this May to August time frame, or am I --

24 MR. SLATER: That would have been above
25 me. I don't recall making any major changes between

1 that time frame. I don't know what went on between
2 whatever disciplinary action that was going on, and
3 the time frame it took for them to work that out, to
4 finalizing the report.

5 SR. SPECIAL AGENT LUINA: Okay.

6 MR. SLATER: I mean, that was not my --
7 that was not in my ball yard.

8 SR. SPECIAL AGENT LUINA: All right, but
9 does that sound familiar to you though, like that you
10 initially had a draft that you submitted in May 2018,
11 and then were asked to add, you know, to clarify some
12 information, to gather some more facts?

13 That's how it was explained to me by other
14 witnesses at least, like David Zuffin (phonetic), Joe
15 Shea. Erin wasn't involved in those. Those are the
16 main ones. That's who it went to, I think, initially,
17 the report did.

18 And even the site vice president out at
19 Sequoyah and other ones had some concerns, and they
20 went back, it's my understanding, went back to the
21 investigator, which I'm assuming is John Slater, is
22 how it was described to me, to gather some more
23 information and maybe --

24 MR. WALSH: Let's not mischaracterize what
25 he said. He said there was nothing of substance. You

1 can, you know, tell him what you did. You gave the
2 report to Jennifer. Did Jennifer reach back out to
3 you?

4 MR. SLATER: Yes, but I didn't make any --
5 I mean, I don't -- what's in here is what I did. I
6 didn't go back and do anything else.

7 SR. SPECIAL AGENT LUINA: Okay.

8 MR. SLATER: I didn't go back and
9 re-interview anybody.

10 SR. SPECIAL AGENT LUINA: That's a good
11 point, okay.

12 MR. SLATER: I didn't go back and try to
13 find additional documents. I didn't reach out to try
14 to find additional witnesses. If there were any
15 changes, then they were minor changes --

16 SR. SPECIAL AGENT LUINA: Okay.

17 MR. SLATER: -- maybe reordering things.
18 I don't -- no, the bottom line is that I didn't --
19 whatever is contained in this report was the method of
20 how I went about doing the investigation, and who I
21 talked to was there when I submitted the report,
22 whether it was May or June --

23 SR. SPECIAL AGENT LUINA: Okay.

24 MR. SLATER: -- and so I didn't go back
25 and reinvestigate anything.

1 SR. SPECIAL AGENT LUINA: Okay, I
2 understand. Okay, that's good. And --

3 SR. SPECIAL AGENT ECHAVARRIA: Did you
4 change any conclusions?

5 MR. SLATER: No, no.

6 SR. SPECIAL AGENT ECHAVARRIA: Did you
7 take anything out?

8 MR. SLATER: No, I don't recall taking
9 anything out.

10 SR. SPECIAL AGENT ECHAVARRIA: So is it
11 fair to say that it was just minor editorial or style
12 template type of issues?

13 MR. SLATER: Yes, yes, I don't -- if there
14 were major changes, I think I would know.

15 SR. SPECIAL AGENT LUINA: Okay.

16 SR. SPECIAL AGENT ECHAVARRIA: Thank you,
17 sir.

18 SR. SPECIAL AGENT LUINA: The -- I want to
19 firm up this then --

20 MR. WALSH: Okay.

21 SR. SPECIAL AGENT LUINA: -- and just ask
22 him if he wrote this.

23 MR. WALSH: Ask him if he wrote that
24 document. What --

25 SR. SPECIAL AGENT LUINA: This is two

1 pages, undated. It just, at the top, it says, "policy
2 violations." Another section is violations of law and
3 then a discipline section. I just, I'll let you
4 review that. Did you create this document or write
5 this document at all? It's dealing with Ms. Wetzel is
6 who it has to do with. I don't know (inaudible).

7 SR. SPECIAL AGENT ECHAVARRIA: Addendum.

8 MR. SLATER: No.

9 SR. SPECIAL AGENT LUINA: It's been
10 described to me as an addendum to your report, and
11 it's --

12 MR. SLATER: No.

13 SR. SPECIAL AGENT LUINA: The other memo
14 that accompanies it is dated August 30, 2018. And I'm
15 sorry. I might have been speaking over you when you
16 answered that question. Could you answer that again?
17 Did you write that?

18 MR. SLATER: No, I didn't.

19 SR. SPECIAL AGENT LUINA: No, you did not,
20 okay.

21 MR. WALSH: Just so we're clear, and I'm
22 just trying to jibe addendum versus supplement. I
23 think the ERB package refers to a supplement.

24 SR. SPECIAL AGENT LUINA: Okay.

25 MR. WALSH: Just so the record is clear as

Attachment 36

New Message

Cancel

To: Jim Polickoski

Tue, Mar 6, 6:51 PM

Ed said you two did talk... Still want to get together?

Yes, I still want to discuss the bigger issue and get aligned on a new CR to drive corrective action to prevent Corp from putting a site in this position without first communicating with the site. I can draft the CR and we can use



Text Message



New Message

Cancel

To: Jim Polickoski

the site. I can draft the CR and we can use Thursday's timeslot to discuss. I also need a firm date as to when Joe or Erin will sign the LAR since I am now being asked to sign another 2-week extension to the CR action. I am very reluctant to extend the action for a fourth time without a firm date for submitting. This issue should take priority over the CDBA URI's



Text Message



New Message

Cancel

To: Jim Polickoski

reluctant to extend the action for a fourth time without a firm date for submitting. This issue should take priority over the CDBA URI's as it has resulted in continuous high regulatory exposure for the site, and we have no control over it.

Thanks for the download... I did check in with Erin and Ed to stay current and my understanding is the



Text Message



New Message

Cancel

To: Jim Polickoski

download... I did check in with Erin and Ed to stay current and my understanding is the LAR will fly this week. I think Joe is delegating signature to Erin. Would Friday still mean a CR extension? We obviously can talk Thursday no matter what about this and the EQ URIs. BTW, for the URIs and I'm not sure what you were told, but it was just for me to get caught up



Text Message



New Message

Cancel

To: Jim Polickoski

...
the EQ URIs. BTW, for
the URIs and I'm not
sure what you were
told, but it was just for
me to get caught up
with Scott and Michael
on the way ahead and
to review whatever's
ready (Michael and
Scott had asked for
that a while ago...).

Jim... I understand and
did not mean to take
things out on you. Our
two biggest regulatory
exposure issues over



Text Message



New Message

Cancel

To: Jim Polickoski

Jim... I understand and did not mean to take things out on you. Our two biggest regulatory exposure issues over the past two years are the Service life NCV and the ERCW Kirk Key LAR, and the exposure was directly created by repeated poor decision making by Corp Regulatory Affairs senior management (not you). You and I both know it took the threat of a cited NOV



Text Message



New Message

Cancel

To: Jim Polickoski

(not you). You and I both know it took the threat of a cited NOV by NRC to force our service life denial. This ERCW issue is going down the same path. I understand who "signs the paychecks" at Corp Reg Affairs, but at some point somebody needs to demonstrate the leadership courage to speak up when something is wrong. The sites get



Text Message



New Message

Cancel

To: Jim Polickoski

somebody needs to demonstrate the leadership courage to speak up when something is wrong. The sites get hammered to follow process and CRs MUST be generated when we don't. Joe and Erin blow off procedures and everybody in Corp Reg Affairs are afraid or refuse to write a CR; e.g., 1) site followed process for the Service Life and EPCW/NOV's



Text Message



New Message

Cancel

To: Jim Polickoski

everybody in Corp Reg Affairs are afraid or refuse to write a CR; e.g., 1) site followed process for the Service Life and ERCW NCV's and Corp Reg Affairs ignored process resulting in current situation, 2) Joe and Erin repeatedly blow off explicit procedure requirements to participate in Peer Team meetings... SQN has repeatedly pointed this out yet a CR has



Text Message



New Message

Cancel

To: Jim Polickoski

Erin repeatedly blow off explicit procedure requirements to participate in Peer Team meetings... SQN has repeatedly pointed this out yet a CR has never been generated, 3) there are/were procedure requirements with Confirmatory Orders and Corp Reg Affairs immediately ignored them upon receipt of 2017 CO, 4) I wrote two CRs documenting



Text Message



New Message**Cancel****To: Jim Polickoski**

and Corp Reg Affairs immediately ignored them upon receipt of 2017 CO, 4) I wrote two CRs documenting the issues with handling of Service Life and ERCW NCV's and both were closed to no action... I received feedback that the CRs were closed because they were only "E" level... I was told that came from Erin. CFAM oversight needs to look at what



Text Message



New Message

Cancel

To: Jim Polickoski

because they were only "E" level... I was told that came from Erin. CFAM oversight needs to look at what is occurring at corporate as well as the sites. It seems like all the issues in Corp Reg Affairs is swept under the rug or ignored. These are major issues with significant SCWE implications.

At what point will



Text Message



New Message

Cancel

To: Jim Polickoski

Reg Affairs is swept under the rug or ignored. These are major issues with significant SCWE implications.

At what point will somebody in Corp Reg Affairs speak up?

Ok - let's talk Thursday at the site then.. I do need to be at COC for a 1630 exec briefing so as long as I make that. BTW, I'm aware



Text Message



New Message

Cancel

To: Jim Polickoski

Reg Affairs is swept under the rug or ignored. These are major issues with significant SCWE implications.

At what point will somebody in Corp Reg Affairs speak up?

Ok - let's talk Thursday at the site then.. I do need to be at COC for a 1630 exec briefing so as long as I make that. BTW, I'm aware



Text Message



Attachment 37

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Pre-decisional Enforcement Conference
RE Joe Shea

Docket Number: IA-2020-008

Location: teleconference

Date: Thursday, June 25, 2020

Work Order No.: NRC-0944

Pages 1-159

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 were some discussions with Mike and us, and I believe
2 then CNO Mike Balduzzi at the time.

3 And ultimately out of those discussions it
4 was determined to approach OGC to investigate it.

5 MS. KIRKWOOD: Did you discuss with anyone
6 in OGC who should be interviewed as part of this
7 complaint?

8 MR. SHEA: I'm sorry, there was a little
9 break, could you repeat the question?

10 MS. KIRKWOOD: Did you discuss with anyone
11 in OGC who should be interviewed as part of this
12 complaint?

13 MR. SHEA: As in the initial discussions
14 with OGC, which I would characterize as in-brief
15 discussions where before Mr. Czufin took over the role
16 as point of contact for the investigations, there was
17 an initial discussion with the managing attorney and
18 the investigator about what it is, who's the group,
19 how big is it, and those sort of things.

20 Where he would discuss, for example, one
21 of his techniques was to do interviews. So it was a
22 logistical in-brief type of discussions.

23 And in one of those, in that conversation,
24 I know that I raised the issue that one of the
25 individuals mentioned, Ms. Conner, had recently been,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we had gone to settlement. Achieved a settlement with
2 her in, I think it was December or so of 2017.

3 And Ms. Conner had just started
4 approximately December 2017, maybe January of 2018.
5 In a new position that was also in my group. And I
6 had a point of view, two things. One, that Ms. Conner
7 was settling well into that new role. That it was
8 exciting and challenging and she was looking forward
9 to getting some satisfaction from it.

10 And the other was, I was quite mindful
11 that we had just settled with her, at that point,
12 three or four months earlier. And I just expressed my
13 concern that an interview regarding harassment had the
14 potential to have someone who had just been settled
15 with have a perspective that that negotiation and
16 settlement had not been in good faith, the managing
17 attorney was Grace and Mr. Slater, to be aware of
18 that. And if I went so far as to encourage them if
19 there were ways that he could get to the bottom of the
20 entire complaint without upsetting that situation,
21 that would be good.

22 And it was a caution. So that there was
23 awareness of the temporal proximity to something that
24 had been just recently achieved. And was important to
25 the health of that individual, Ms. Conner. As well as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the organization that she just settled in.

2 And I will, if you don't mind, I don't
3 know how much was five minutes. Would that be okay?

4 MR. WILSON: Yes. Yes, Joe, we'll take a
5 ten minutes break. It's 12 o'clock, we'll be back at
6 12:10. Will be ten minutes be good?

7 MR. SHEA: Yes, Mr. Wilson. Thank you.

8 MS. KIRKWOOD: George, do you want to do
9 a ten minute break or do you want to break longer for
10 like a lunch-type of break?

11 MR. WILSON: That's up, I'll ask the
12 group, would you like to do that? How much longer do
13 you think, just an estimate?

14 MS. KIRKWOOD: I'm not sure. Probably, it
15 sort of goes on some of the answers, but --

16 MR. WILSON: Okay. Well, let's go ahead,
17 all right, let's go ahead and take a 30-minute break.
18 We'll be back at 12:30.

19 MR. SHEA: Thank you.

20 (Whereupon, the above-entitled matter went
21 off the record at 12:00 p.m. and resumed at 12:31
22 p.m.)

23 MR. WILSON: Sara?

24 MS. KIRKWOOD: Okay.

25 MR. SHEA: Ms. Kirkwood, I'm sorry.

Attachment 38

From: Grace, Jennifer Lynn
Sent: Tuesday, April 3, 2018 11:44 AM
To: Poland, Amanda Elizabeth; Shea, Joseph W
Cc: Czufin, David Miller
Subject: RE: Status

John has his first interview with Erin scheduled for tomorrow. Wes is also continuing to try to track down information related to the earlier complaints that were raised, so he can provide those to John for review. John also has decided that he needs to pull the emails of the individuals involved to review as part of this investigation. He plans to make that request to IT soon, so if you have any concerns or would like to discuss first, let us know. The intention is to ensure that none of the employees, Erin included, know that the emails are being requested. Once the interview with Erin takes place, he'll begin scheduling interviews with other relevant individuals.

Jennifer L. Grace
Managing Attorney, Human Resources
Office of the General Counsel

Tennessee Valley Authority
400 W. Summit Hill Dr., WT 6A-K
Knoxville, TN 37902

(865) 632-8963 (w)
jlgrace@tva.gov

NOTICE: This electronic message transmission contains information that may be TVA SENSITIVE, TVA RESTRICTED, or TVA CONFIDENTIAL. Any misuse or unauthorized disclosure can result in both civil and criminal penalties. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the content of this information is prohibited. If you have received this communication in error, please notify me immediately by email and delete the original message.

-----Original Message-----

From: Poland, Amanda Elizabeth
Sent: Tuesday, April 03, 2018 8:08 AM
To: Shea, Joseph W
Cc: Czufin, David Miller; Grace, Jennifer Lynn
Subject: Re: Status

Jennifer I'll have to defer to you on current status

Sent from my iPhone

> On Apr 3, 2018, at 5:06 AM, Shea, Joseph W <jwshea@tva.gov> wrote:
>
> Amanda and Jennifer,
>

> Can you provide a status of the investigation of the harassment claim we received March 9?

>

> Thanks

> Joe

>

>

Attachment 39



Planet Depos[®]
We Make It Happen™

Transcript of George Wilson

Date: June 25, 2021

Case: Tennessee Valley Authority, In re:

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

1 afraid to raise any concern. In fact, that's a
2 safety conscious environment that the employees
3 raise all concerns and they are evaluated. So,
4 no, we don't want anyone to feel afraid to raise a
5 concern but if actions are brought out of certain
6 things and it's brought to the NRC, we have to
7 evaluate it as a whole.

8 Q I have one more document and maybe two or
9 three questions on I promise I won't go more than
10 two or three minutes beyond. I think that's fair.
11 I know we started 15 minutes late. It wasn't due
12 to your fault but it also wasn't due to my fault.
13 I'd like to go to one more document, please, and
14 that's Tab 13.

15 (A certain document was marked Wilson
16 Deposition Exhibit 12 for identification,
17 as of 06/25/2021.)

18 BY MR. LEPRE:

19 Q This is an e-mail from -- well, I'm going
20 down to the e-mail from Beth Wetzel to Joe Shea.
21 It's on page -- it's the second paragraph. There
22 is a couple of paragraphs, two long paragraphs,
23 the second paragraph starts with "I am thrilled,"
24 do you see that paragraph Mr. Wilson?

25 A Yes.

1 Q If we could mark this as an exhibit and
2 also this is do you see on the first page this is
3 Mr. Shea's PEC presentation Exhibit No. JF 11.

4 A Okay.

5 Q Have you seen this document before?

6 A I recall reading something like this, yes.
7 I don't know if it's the exact document, but I
8 know I did read e-mail exchange between Ms. Wetzel
9 and Mr. Shea.

10 Q Do you know if this e-mail was part of the
11 protected activity that was -- we were discussing
12 with respect to Ms. Wetzel's case back when we
13 were looking that in Tab 1 just a minute ago?

14 A I can remember reading this and evaluating
15 this. This was part of the overall evidence that
16 we used to make our determination for the
17 enforcement action. I don't know if that answers
18 your question. Because I was reading it so can
19 you repeat your question. I apologize. I was
20 reading it and trying to comprehend it when I was
21 listening to you.

22 Q Is this part of the protected activity
23 that Ms. Wetzel engaged? This e-mail?

24 A I would say that she's raising concerns
25 about Mrs. Henderson's behavior and that would

1 have been part -- in my recollection this would
2 have been part that we would have used where
3 Ms. Wetzel was using the open door policy and
4 talking to her supervisor about potential issues,
5 yes.

6 Q Does this e-mail mention anything about
7 nuclear safety?

8 A No but they could have the potential of
9 nuclear safety, as I had stated earlier Mr. Lepre,
10 if it's not black and white, I will go to OGC to
11 get additional opinion on the protected activity.
12 In this case, this e-mail here has potential to
13 have an impact on safety and I when we talked to
14 OGC was at the panel.

15 Q But it doesn't mention anything
16 specifically about nuclear safety?

17 A No, it does not. It just says a lot of
18 actions but it could put a chill -- you're
19 correct, there's nothing out there. It just has
20 the intention of other issues that could have an
21 impact, like I said --

22 Q I'm sorry?

23 A Once again, like I said, OGC set the panel
24 and OGC is in there and we asked and they can
25 explain more from a regulatory perspective on how

Attachment 40



TENNESSEE VALLEY AUTHORITY
INVESTIGATION FINAL REPORT

Tennessee Valley Authority, 1100 Market Street, Chattanooga, Tennessee 37402

TENNESSEE VALLEY AUTHORITY
EMPLOYEE INVESTIGATION

INVESTIGATION INITIAL REPORT- June 17, 2016

Allegation

Mike McBrearty and Michelle Conner are involved in a personal relationship outside of work that may impact the work environment and possibility of impropriety and conflict of interest due to her serving in an oversight role with direct responsibility for the site Licensing function

Investigation Approach

List of individuals to be interviewed:

- Erin Henderson, Sr Mgr Fleet Regulatory Ops
- Mike McBrearty, Manager Licensing (SQN)
- Michelle Conner, CFAM Corporate Licensing

Information Reviewed

- Gate Records for Mike McBrearty
- Gate Records for Michelle Conner

Evidence Analysis

Through interviews, both individuals involved were very forthcoming and cooperative. They both stated that they are very close friends outside of work but they feel the relationship is not inappropriate and does not interfere with their ability to perform their work functions in a professional manner.

Other Considerations

From the initial allegation date- there was a large gap in timing to closure of this issue. This could have resulted in additional time for the two of them to collaborate on stories

The two individuals were inappropriately made aware that their gate records were pulled so there was a heightened level of sensitivity during this investigation



TENNESSEE VALLEY AUTHORITY
INVESTIGATION FINAL REPORT

Non-Retaliation – Steps taken

All individuals were told that their comments would for the most part be kept confidential, and they should not fear retaliation for what they bring forth in the discussion. This will be reiterated after the investigation is closed and debriefed.

Recommendation

Consult with Ethics Officer to discuss perception of impropriety and what actions can be taken

Management review the situation to assess whether or not they believe that Michelle can still perform in the role and maintain independence

Relevant Ethical information to consider

- Standards of Ethical Conduct
 - 5 C.F.R. §2635.501 et seq.: An employee who is concerned that circumstances would raise a question regarding his impartiality in a particular matter should seek guidance from his supervisor or an agency ethics official. Management may then apply the “appearance of impropriety” test to assess if a reasonable person, apprised of all the relevant facts, would perceive an impropriety may exist as to the situation in question.
- TVA Code of Ethics
 - Guiding Principle #8: Employees shall act impartially and not give preferential treatment to any private organization or individual.
 - Guiding Principle #14: Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards.
- TVA Code of Conduct
 - Page 3
 - We are honest, fair, and trustworthy in all our TVA activities and relationships.
 - Through leadership at all levels, we sustain a culture in which ethical conduct is expected, valued, and exemplified by all employees.
 - Page 5
 - TVA management will exhibit the highest standards of ethical conduct at all times and avoid behavior that could reasonably be perceived as improper
 - TVA management will act impartially and avoid situations in which an employee or contractor within their scope of supervision or oversight



TENNESSEE VALLEY AUTHORITY INVESTIGATION FINAL REPORT

reasonably could be perceived as receiving an unfair advantage, such as because of a romantic, financial, or other personal relationship.

- Page 15: Employees may not, at any time during or after employment with TVA, disclose, use, or aid third parties in obtaining or using any confidential or proprietary information except that which is required to perform duties assigned by TVA.

Conclusion

It is apparent that the parties have a very close personal relationship but it is not clear as to whether the personal relationship is inappropriate or creates a conflict of interest. However, if the perception is that it interferes, management needs to take appropriate action to address the concerns.

Attachment 41

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION
OFFICIAL USE ONLY
OI INVESTIGATION INFORMATION

Title: Interview of Joselito O. Calle

Docket Number: 2-2019-015

Location: Chattanooga, Tennessee

Date: Thursday, November 14, 2019

Work Order No.: NRC-0721

Pages 1-39

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 MR. CALLE: Well, in this case, it was
2 unanimous.

3 SR. SPECIAL AGENT LUINA: It was --
4 everyone agreed.

5 MR. CALLE: Yes. So there was no issue.

6 SR. SPECIAL AGENT LUINA: It would have
7 been marked in there that some dissented.

8 MR. CALLE: Exactly, exactly.

9 SR. SPECIAL AGENT LUINA: All right.

10 MR. CALLE: Now, in all of the ERBs I've
11 sat in here at corporate, I've sat in on almost all
12 the ones at the sites, because I call into those. We
13 typically -- we have not had a dissenting opinion.
14 We've had comments that needed to be incorporated.
15 Once the comments were incorporated, everybody was
16 aligned with regards to the proposed adverse action
17 and moving forward.

18 SR. SPECIAL AGENT LUINA: Okay. All
19 right. And, again, the time between September and
20 October --

21 MR. CALLE: It was almost a month.

22 SR. SPECIAL AGENT LUINA: Yes. To get all
23 the comments incorporated.

24 MR. CALLE: Yes.

25 SR. SPECIAL AGENT LUINA: So it's not

1 typical, but not --

2 MR. CALLE: Right. It's not typical, but
3 it's not unheard of. Again, there's -- in this case,
4 just my opinion --

5 SR. SPECIAL AGENT LUINA: Yes.

6 MR. CALLE: -- that they want -- they were
7 going through it methodically, and there was no rush
8 to --

9 SR. SPECIAL AGENT LUINA: Okay.

10 MR. CALLE: What I would say is no rush to
11 judgment. So we wanted to make sure that everything
12 was clean and good, and that everything, the
13 documentations were all set, that everybody was
14 comfortable with the wording and everything else, with
15 the revision. So it took some time.

16 SR. SPECIAL AGENT LUINA: Was there
17 anyone, including yourself, at that initial meeting in
18 September that did have some strong reservations
19 initially?

20 MR. CALLE: Regarding the adverse
21 employment action?

22 SR. SPECIAL AGENT LUINA: Yes, regarding
23 the adverse employment action.

24 MR. CALLE: Not that I recall.

25 SR. SPECIAL AGENT LUINA: Okay. Regarding

1 the protected activity, regarding anything dealing
2 with this?

3 MR. CALLE: Not that I recall.

4 SR. SPECIAL AGENT LUINA: Not that you
5 recall. Okay. You did the questions 14 through 18.
6 (Perusing document.)

7 One of the things that kind of -- that I
8 wanted to ask you about --

9 MR. CALLE: Uh-huh.

10 SR. SPECIAL AGENT LUINA: On this page, on
11 14 through 18 --

12 MR. CALLE: Yes.

13 SR. SPECIAL AGENT LUINA: -- number 15 --

14 MR. CALLE: Uh-huh.

15 SR. SPECIAL AGENT LUINA: -- it asks, you
16 know, Does it appear the individual's involvement in
17 protected activity contributed in any way to the
18 proposed action recommendation?

19 MR. CALLE: Right.

20 SR. SPECIAL AGENT LUINA: And it's no.

21 MR. CALLE: Right.

22 SR. SPECIAL AGENT LUINA: And it says, If
23 yes, then explain.

24 MR. CALLE: Right.

25 SR. SPECIAL AGENT LUINA: But there's an

1 explanation here.

2 MR. CALLE: Yes.

3 SR. SPECIAL AGENT LUINA: And it says,
4 "However, Ms. Wetzel was involved in the OGC
5 investigation as described in the report, dated August
6 10, 2018."

7 MR. CALLE: Yes.

8 SR. SPECIAL AGENT LUINA: Why was that
9 comment?

10 MR. CALLE: We felt it was germane because
11 the OGC investigation was a key document that we
12 reviewed as part of this executive review board --

13 SR. SPECIAL AGENT LUINA: Uh-huh.

14 MR. CALLE: -- and felt that it was
15 prudent to put it in there, even though we -- and we
16 wanted to make sure that was addressed, the fact that,
17 in spite of that, we did not believe that this had
18 anything to do -- that any protected activity she was
19 involved in had any bearing on this disciplinary
20 action and this adverse employment action that was
21 being proposed.

22 SR. SPECIAL AGENT LUINA: Okay. But her
23 involvement in the OGC investigation was protected
24 activity?

25 MR. CALLE: Oh, yes.

1 SR. SPECIAL AGENT LUINA: Okay.

2 MR. CALLE: She's -- I mean, just her role
3 as a manager in nuclear regulatory affairs, I mean,
4 almost everything she does is protected activity
5 realistically.

6 SR. SPECIAL AGENT LUINA: That's true.

7 MR. CALLE: At the end of the day, most of
8 us conduct -- almost everything I do would be
9 considered protected activity, just by my role as
10 providing governance and oversight in the nuclear
11 safety culture for the TVA fleet.

12 SR. SPECIAL AGENT LUINA: Uh-huh. But you
13 don't believe that contributed --

14 MR. CALLE: No.

15 SR. SPECIAL AGENT LUINA: -- in any way to
16 the --

17 MR. CALLE: No.

18 SR. SPECIAL AGENT LUINA: -- adverse
19 action. Okay. And that's based upon the information
20 that's in this ERB, I'm assuming.

21 MR. CALLE: That's correct. The summary
22 of the information that was presented, as well as the
23 information that we reviewed that was provided to us.

24 SR. SPECIAL AGENT LUINA: Okay.

25 MR. CALLE: So -- which included the OGC

1 evaluation as well.

2 SR. SPECIAL AGENT LUINA: Okay. And
3 that's -- you do a lot of these ERBs.

4 MR. CALLE: Uh-huh.

5 SR. SPECIAL AGENT LUINA: How many do you
6 see that are investigated by OGC?

7 MR. CALLE: Not many.

8 SR. SPECIAL AGENT LUINA: Okay.

9 MR. CALLE: I mean, most of our ERBs deal
10 with cut and dry disciplinary actions. Somebody, you
11 know, brought in a gun to a protected area. You know,
12 somebody was -- failed fitness-for-duty testing,
13 whether it be alcohol or drugs. Somebody just
14 violated procedure. You know, somebody was
15 fraudulent. You know, pretty cut and dry cases that
16 we have.

17 We do have some that require OGC. A lot
18 of those are more what we would categorize as requires
19 interviews, whether -- that could be debated as to
20 what the actions were that were actually taken, things
21 like that. But those are few and far between.

22 SR. SPECIAL AGENT LUINA: What about on
23 harassment, intimidation, retaliation, discrimination
24 cases?

25 MR. CALLE: Well, a lot of those is

1 heavily dependent on -- I mean, most of the HIRD
2 issues are really managed by HR.

3 SR. SPECIAL AGENT LUINA: Okay.

4 MR. CALLE: And then they provide us with
5 the results of the investigation at the end, if
6 there's disciplinary actions associated with it.
7 Not -- I have not seen that -- not that many that
8 required OGC. And we don't have too many of those
9 either, so I can't recall --

10 SR. SPECIAL AGENT LUINA: Oh, too many
11 HIRD cases.

12 MR. CALLE: Yes. That result in
13 termination and that then has to go through an
14 executive review board.

15 SR. SPECIAL AGENT LUINA: Okay. Do you
16 know why this wouldn't -- was conducted by the TVA
17 OGC?

18 MR. CALLE: No, I don't know.

19 SR. SPECIAL AGENT LUINA: You have no
20 idea.

21 MR. CALLE: No.

22 SR. SPECIAL AGENT LUINA: Okay.

23 MR. CALLE: I was just -- I was not aware
24 of any of these activities until it was brought to my
25 attention that we needed to do an executive review

Attachment 42

Edmondson, Carla

From: Wetzel, Beth A
Sent: Sunday, May 06, 2018 7:56 PM
To: Shea, Joseph W; Henderson, Erin Kathleen
Cc: Wingo, Charles W
Subject: FW: Wetzel NEI Loanee Confirmation 2018
Attachments: Wetzel NEI Loanee Confirmation 2018.pdf; Living.docx

Joe/Erin,

I appreciate the attached NEI Loanee Confirmation memo signed by Erin and sent to me (attached). However, it doesn't document detailed expenses as previously suggested by Joe. Written details of what was agreed upon for travel and housing compensation is essential, so we don't have questions or different interpretations in the future. I've compiled what we agreed on for expenses based on multiple meetings and e-mails. See attached.

Beth Wetzel
BAW@NEI.org
202-739-8011
423-290-8301

Edmondson, Carla

From: Henderson, Erin Kathleen
Sent: Monday, May 07, 2018 6:18 AM
To: Wetzel, Beth A
Cc: Shea, Joseph W; Wingo, Charles W
Subject: Re: Wetzel NEI Loanee Confirmation 2018

Beth,

The memo states you are on continuous travel status and all of the benefits outlined in the travel policies are available to you. The trip home once per month at TVA's expense is not specified in the policy so it was included in the memo to ensure it was clear that we agreed to do that.

Wes interfaced with OGC on drafting the memo. He's out for the next few weeks if you want to give him a call when he gets back in.

Erin

On May 6, 2018, at 7:56 PM, Wetzel, Beth A <bawetzel@tva.gov> wrote:

Joe/Erin,
I appreciate the attached NEI Loanee Confirmation memo signed by Erin and sent to me (attached). However, it doesn't document detailed expenses as previously suggested by Joe. Written details of what was agreed upon for travel and housing compensation is essential, so we don't have questions or different interpretations in the future. I've compiled what we agreed on for expenses based on multiple meetings and e-mails. See attached.

Beth Wetzel
BAW@NEI.org
202-739-8011
423-290-8301

<Wetzel NEI Loanee Confirmation 2018.pdf>

<Living.docx>

Edmondson, Carla

From: WETZEL, Beth <baw@nei.org>
Sent: Monday, May 07, 2018 11:12 AM
To: Shea, Joseph W
Subject: Wetzel NEI Loanee Confirmation 2018

TVA External Message. Please use caution when opening.

Joe,

I am concerned with the lack of commitment to write the details that we worked on as a team for my TVA reimbursements. I typed up a detailed proposal and Erin, Wes, Mike Griffin, Carla and I met to discuss the proposal 3 times with each of us researching specific questions. The team reached an agreement on the specifics. Erin assigned Wes to document what we agreed on, as you directed, so we wouldn't have misunderstandings in the middle of my temporary duty assignment. Erin told Wes that she didn't need too many details in his write-up, but I was shocked to see what Erin sent out. It contained none of the particulars we agreed on. So, yesterday I sent both you and Erin a short write-up containing the facts the team agreed on.

I am thrilled to have the CNO's support in allowing me to participate as an NEI loanee. I know it's a significant investment on the part of TVA. I will be processing large travel vouchers through Carla and will follow all TVA, Federal and NEI requirements to the best of my ability. I know I will get audited based on the amount of dollars that will be processed through vouchers and I believe all the research the team did will result in clean audits. 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.

I propose I work with you, as my approver, and Carla on the travel vouchers and if there's anything in question, I be notified so I can promptly correct the issue vs. being investigated.

I also intend to report directly to you, which was the level in the organization that my predecessor, Greg Cameron, reported to. I don't anticipate any additional burden to you, as Chris Earls is my NEI supervisor.

I am asking for your help in this matter.

Thanks,



Beth A. Wetzel

Senior Project Manager
1201 F Street, NW, Suite 1100 | Washington, DC 20004
P: 202.739-8011 M: 423-290-8301
nei.org

From: Wetzel, Beth A [mailto:bawetzel@tva.gov]
Sent: Monday, May 7, 2018 8:05 AM
To: WETZEL, Beth
Subject: Fwd: Wetzel NEI Loanee Confirmation 2018

Sent from my iPhone

Begin forwarded message:

From: "Henderson, Erin Kathleen" <ekwest@tva.gov>
Date: May 7, 2018 at 6:18:05 AM EDT
To: "Wetzel, Beth A" <bawetzel@tva.gov>
Cc: "Shea, Joseph W" <jwshea@tva.gov>, "Wingo, Charles W" <cwwingo@tva.gov>
Subject: Re: Wetzel NEI Loanee Confirmation 2018

Beth,

The memo states you are on continuous travel status and all of the benefits outlined in the travel policies are available to you. The trip home once per month at TVA's expense is not specified in the policy so it was included in the memo to ensure it was clear that we agreed to do that.

Wes interfaced with OGC on drafting the memo. He's out for the next few weeks if you want to give him a call when he gets back in.

Erin

On May 6, 2018, at 7:56 PM, Wetzel, Beth A <bawetzel@tva.gov> wrote:

Joe/Erin,

I appreciate the attached NEI Loanee Confirmation memo signed by Erin and sent to me (attached). However, it doesn't document detailed expenses as previously suggested by Joe. Written details of what was agreed upon for travel and housing compensation is essential, so we don't have questions or different interpretations in the future. I've compiled what we agreed on for expenses based on multiple meetings and e-mails. See attached.

Beth Wetzel
BAW@NEI.org
202-739-8011
423-290-8301

<Wetzel NEI Loanee Confirmation 2018.pdf>

<Living.docx>



This electronic message transmission contains information from the Nuclear Energy Institute, Inc. The information is intended solely for the use of the addressee and its use by any other person is not authorized. If you are not the intended recipient, you have received this communication in error, and any review, use, disclosure, copying or distribution of the contents of this communication is strictly prohibited. If you have received this electronic transmission in error, please notify the sender immediately by telephone or by electronic mail and permanently delete the original message. IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS and other taxing authorities, we

Attachment 43



Planet Depos[®]
We Make It Happen™

Transcript of Scott Luina

Date: June 21, 2021

Case: Tennessee Valley Authority, In re:

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

1 Luina 13.

2 (Luina Exhibit 14 was marked for
3 identification.)

4 BY MR. WALSH:

5 Q Mr. Luina, I did the same as last time.
6 I downloaded it from the chat box and then opened
7 it from the chat box just myself.

8 So you let me know when you've been
9 able to pull up the document, whichever way works
10 best for you.

11 REMOTE TECHNICIAN: And it's in the
12 Google folder now.

13 THE WITNESS: I see it.

14 BY MR. WALSH:

15 Q I would like to go to, in this
16 document, PDF page 15.

17 A Okay.

18 Q And on this page it begins the May 7th,
19 2018 email from Ms. Wetzel to Mr. Shea:

20 "Subject: Wetzel NEI loanee confirmation
21 2018."

22 So, Mr. Luina, we previously said that this
23 was one of the examples of Ms. Wetzel's protected
24 activity.

25 What is the protected activity in this

1 email?

2 A Again, the: "However, I know that Erin
3 has used HR to investigate" -- on the second
4 paragraph, beginning with the sentence that says
5 "However."

6 "However, I know that Erin has used HR to
7 investigate people, reported people to ECP,
8 threatened to have people for cause drug tested,
9 pulled badging gate records and probably a lot
10 more actions that I'm not aware of. She has
11 demonstrated a longstanding pattern of using TVA
12 processes as punitive and retaliatory tools.
13 Based on the lack of detail in her 'NEI Loanee
14 Confirmation 2018' document, I anticipate her
15 using my travel vouchers as an investigative
16 tool."

17 Q So that's what you're --

18 A The continuation of -- of her raising
19 concerns that Ms. Henderson's creating a
20 retaliatory type of environment, which could lead
21 to a chilled work environment.

22 Q Previously you said that there --
23 protected activity needs to have a tie or
24 connection to nuclear safety. Does her email
25 state or provide a tie to nuclear safety?

1 A Yes, in that a -- a retaliatory type of
2 environment could lead to a chilled work
3 environment, where people don't feel safe to raise
4 nuclear safety concerns, for fear of being
5 retaliated --

6 Q Is there a specific -- pardon me.

7 A -- for fear of being retaliated
8 against.

9 Q Is there a specific nuclear safety
10 concern in this email?

11 A I would say, no, there is not a
12 specific, like, technical concern if that's what
13 you are referring to.

14 Q Okay. Does the email specify what the
15 alleged fear of retaliation would be for?

16 A No, it does not.

17 Q As a general matter, is it
18 inappropriate for a supervisor to scrutinize her
19 subordinate's expense reports?

20 A Umm... no, generally speaking, no
21 it's -- nothing wrong with that.

22 Q I want to turn back to the prior, Luina
23 Exhibit 13, that same page that we were on
24 previously. And at the bottom of that page,
25 Mr. Luina, the paragraph that begins "On June 9th,

1 2018 --

2 A Mm-hmm.

3 Q "On June 9, 2018, WETZEL emailed SHEA
4 and stated that she was 'afraid what will happen
5 as soon as I start submitting vouchers.' WETZEL
6 went on to state that she does not 'even try to
7 understand my boss [HENDERSON] and why she does
8 what she does, but I [WETZEL] do know that she
9 [HENDERSON] never gives up."

10 A Mm-hmm.

11 Q Was that email also one of Ms. Wetzel's
12 protected activities?

13 A Yes, it was just a -- they're all
14 together as one. Expressing her concerns, yeah.

15 Q Okay. Let's go to tab -- let's pull up
16 tab 19, again, which should be Exhibit 12 to the
17 OI report and which was provided as part of
18 accession No. ML21044A069.

19 And we'll do the same drill again,
20 Mr. Luina. When you -- when we get it pulled up,
21 let me know when you've had a chance to pull it up
22 and verify that it is in fact Exhibit 12.

23 A Okay.

24 (Luina Exhibit 15 was marked for
25 identification.)

1 MR. WALSH: I think it came through
2 quicker for me this time.

3 THE WITNESS: Yes, I've got it now,
4 too.

5 BY MR. WALSH:

6 Q Let's go to PDF page 2, please.

7 A I've got it. I see it.

8 Q Alright. And this again we're talking
9 about the June 9th, 2018 email exchange and it
10 starts, reading from the bottom up, again just to
11 verify for the record's sake, it's -- the first
12 email came in at -- from Ms. Wetzel to Joe at
13 5:56 a.m. and then he responded later at 8:23.
14 And then she responded back to him at 9:29, okay.

15 A Mm-hmm.

16 Q So, Mr. Luina, what is the protected
17 activity in this email?

18 A Again, it's the amalgamation of all of
19 these emails together, but it's again, just
20 showing the -- the bringing up again that she
21 mentions words like "I'm afraid" and "no action
22 has been taken to my knowledge yet."

23 She's again just raising concerns about
24 a retaliatory type of environment which could lead
25 to a chilled work environment which is a protected

1 activity.

2 Q Okay. And does the email state a tie
3 to nuclear safety?

4 A No, not specifically.

5 Q Okay. And with respect to the alleged
6 retaliation, does the email specify what the
7 retaliation would be for?

8 A No.

9 Q Okay. At the bottom of the page, this
10 is in the first paragraph of the first email at
11 the bottom, it says:

12 "Ms. Wetzel wrote:

13 "I don't even try to understand my boss and
14 why she does what she does ..."

15 A Mm-hmm.

16 Q Do you see that statement there?

17 A Oh wait. Okay, yeah, I was reading --
18 this one is Beth:

19 "I don't even try to understand my boss
20 and why she does what she does, but I do know that
21 she never gives up."

22 Yes.

23 Q How does Ms. Wetzel's statement that
24 she does not know or does not "even try to
25 understand my boss and why she does what she does"

1 support your assertion that this is nuclear
2 safety-related protected activity?

3 A Again, all these emails together,
4 individually and separated out, yeah, they don't
5 make much sense. But when they help tell the
6 whole, entire story and help paint the picture or
7 put it all together of what she was trying to
8 report in several instances to Mr. Shea about
9 Ms. Henderson's behavior.

10 Q In your view, what was Ms. Wetzel
11 trying to report to Mr. Shea about Ms. Henderson?

12 A That she was creating an environment, a
13 retaliatory type of environment and that this
14 could lead to a chilled work environment.

15 Q Staying on this document, you can see
16 there Mr. Shea in his response to Ms. Wetzel said:

17 "What are you referring to 'does what she
18 does' and 'never gives up'? Is there something
19 beyond your last email?"

20 Q And then Ms. Wetzel replied -- if you
21 can scroll up, Brennan.

22 She says:

23 "It's ridiculous because I'm afraid and
24 haven't submitted, so now we're floating. No
25 action has been taken to my knowledge yet."

Attachment 44



Planet Depos[®]
We Make It Happen™

Transcript of Alejandro Echavarria

Date: June 23, 2021

Case: Tennessee Valley Authority, In re:

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

1 And we're going to pull that e-mail up as well
2 too. Juan, it's Tab 13, which will be Exhibit 12.

3 (Echavarria Deposition Exhibit 12 marked
4 for identification and is attached to the
5 transcript.)

6 MR. WALSH: To the -- now I'm going to
7 get myself confused. Pull up Tab 13, please. And
8 if you could tell me what exhibit number that will
9 be when you get there, that will be great.

10 This document that we're pulling up
11 should be Exhibit 12 to the OI report and was
12 provided as part of NRC Accession Number
13 ML21044A069. And I believe that it will also be
14 Echavarria Exhibit 12 once we're there. Okay.

15 Q Mr. Echavarria, please advise when you've
16 had a chance to download and look at the document.
17 I have the document downloaded on my folder now.

18 A I have it, Mr. Walsh.

19 Q Thank you.

20 MR. WALSH: Juan, could you please go to
21 PDF Page 2. And zoom in a little bit. Thank you.

22 Q This is the copy of the June 9, 2018,
23 e-mail chain between Beth Wetzel and Joe Shea.

24 Mr. Echavarria, as I stated, this was
25 included as part of Exhibit 12 to the OI report.

1 Did you review this e-mail as part of
2 your review and approval process?

3 A Yes, it looks familiar.

4 Q If you could, please, after you've had a
5 chance to review the e-mail, could you please tell
6 me what is the protected activity in this e-mail?

7 A Again, in this e-mail, the subject is the
8 travel. The travel to DC as an NEI loanee, I
9 believe is the term they're using. I'll call it
10 rotation.

11 This is an example or information that
12 Ms. Wetzel provided us in her assertion that
13 Ms. Henderson would use travel, travel vouchers,
14 in TVA process as punitive and retaliation for
15 protected activity.

16 Q Does this e-mail state or otherwise
17 provide a tie to nuclear safety?

18 A I don't see one specifically in this
19 e-mail Page -- Exhibit 12, Page 4 of 7, no.

20 Q Does this e-mail state that she
21 anticipated a recourse because she engaged in
22 nuclear safety-related protected activity?

23 A I don't see that in this e-mail, no.

24 Q At the bottom of the e-mail chain, which
25 is actually the first e-mail that was sent, it's

1 the bottom of that page that -- you know, the date
2 stamp is 5:56 a.m. eastern daylight time. And it
3 says, "Joe, I know I've got to get my travel in.
4 This is getting ridiculous. We are now floating
5 my rent, but I'm afraid of what will happen as
6 soon as I start submitting vouchers. I don't even
7 try to understand my boss and why she does what
8 she does. But I do know that she never gives up."

9 Do you see that statement?

10 A Yes, sir.

11 Q How does Ms. Wetzel saying that she does
12 not know why Ms. Henderson does what she does
13 support the OI report's assertion that this e-mail
14 is part of Ms. Wetzel's safety-related protected
15 activity?

16 A Yeah, I would have to look at the entire
17 record to give you that answer, sir. But based on
18 just that excerpt, I can't answer that question.

19 Q Okay.

20 A But I would tell you one thing.
21 Ms. Wetzel's also raised a technical issue at
22 Browns Ferry. That was considered protected
23 activity as well. She had a -- a technical issue
24 that she was under -- that she was -- that she had
25 raised. And I believe that Browns Ferry was the

Attachment 45



Planet Depos[®]
We Make It Happen™

Transcript of David Solorio

Date: July 2, 2021

Case: Tennessee Valley Authority, In re:

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

1 "Ms. Henderson has demonstrated a long-standing pattern
2 using TVA process as punitive and retaliatory tools
3 based on the lack of detail in her NEI loan confirmation
4 2018 document." She says "I anticipate her using my
5 travel vouchers as an investigative tool."

6 Would you agree that Ms. Wetzel is expressing
7 concern that Ms. Henderson may investigate her travel
8 vouchers?

9 MR. STEINFELDT: Objection; form.

10 You can answer.

11 A Can you -- I got so focused on the objection
12 word. Can you just ask your question again one more
13 time, please?

14 Q Yeah. So I'm reading her e-mail, and we just
15 read some language from it. And my question is, what is
16 Ms. Wetzel concerned that Ms. Henderson may investigate?

17 MR. STEINFELDT: Same objection.

18 You may answer.

19 A Okay. Well, yeah. She's making these
20 allegations about how Ms. Henderson's behaved, and she's
21 worried that Ms. Henderson will use her travel vouchers
22 as a -- you know, dive into them and make trouble for
23 her I suppose.

24 Q During the course of your review of this case,
25 did you determine whether Ms. Henderson had used her

1 travel vouchers as an investigative tool?

2 A I don't -- I don't believe so, because I don't
3 think she was reviewing them. I think Shea ended up
4 reviewing them is what I thought was discussed at some
5 point or I read about.

6 Q Does Ms. Henderson -- strike that. Excuse me.
7 Does Ms. Wetzel explain in this e-mail chain
8 what she is concerned Ms. Henderson may investigate her
9 for?

10 A Like, she doesn't state it like that. She
11 says, based on all these other behaviors of
12 Ms. Henderson, I'm worried she -- I'm worried she will
13 use my vouchers to get at me. That's all I can see
14 here. Therefore, will you do -- oversee my trip.

15 Q Is the submission of travel vouchers a
16 protected activity?

17 A Not -- I don't believe it would be. I
18 don't -- I mean, maybe a lawyer could get there, but I
19 can't see how.

20 Q Do you -- does Ms. Wetzel raise a nuclear
21 safety issue in this e-mail?

22 A Well, she raises a concern about how Henderson
23 is creating an environment that seems retaliatory
24 towards people. So it is kind of like information
25 related to a chilling environment, you know, be careful

1 she'll use all these tools against you. So that
2 discourages people from wanting to raise concerns if
3 they know that there's a manager that looks to retaliate
4 by putting you through these things.

5 Q And does Ms. Wetzel explain what -- what
6 activities Ms. Henderson would be retaliating in
7 response to?

8 A I don't believe she does. Scrolling down to
9 see -- this is pretty much the meat of everything here.
10 I'm looking at the later e-mails just to see if I'm not
11 recalling something. No.

12 Q Well, let's -- we'll move on to Exhibit 10.

13 AV TECHNICIAN: So you mean the older
14 Exhibit 10 or a new exhibit? Marking 10 -- tab 10 as
15 14?

16 MR. HENNESSEY: Tab -- it would have been
17 tab 13, which is now Solorio Exhibit 10.

18 AV TECHNICIAN: So the older exhibit. Okay.
19 I just want to make sure. One moment, please.

20 So this is the correct document, right?

21 A I'm looking at something that says what --
22 from Beth on Saturday, June 9th, to Joe, regarding
23 subject travel.

24 AV TECHNICIAN: Yep, that's what I see here.

25 Q This is Exhibit 10. I believe you reviewed it

Attachment 46

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION
OFFICIAL USE ONLY
OI INVESTIGATION INFORMATION

Title: Interview of Inza Hagins-Dyer

Docket Number: 2-2018-033

Location: Chattanooga, Tennessee

Date: May 21, 2019

Work Order No.: NRC-0365

Pages 1-64

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 was stuff about Henderson, feeling that Henderson had
2 maybe, you know, acted inappropriately towards here.

3 MS. HAGINS-DYER: Yes.

4 SR. SPECIAL AGENT LUINA: So Joe said, you
5 know, you raised some very serious assertions against
6 your supervisor, and I have turned these over for
7 further evaluation to an appropriately independent
8 review party. And I don't know if he's talking about
9 -- I haven't asked him yet, but I wanted to ask you
10 first to see if you had anything in your files.
11 Nothing?

12 MS. HAGINS-DYER: No. I was not
13 appropriately, whatever he called it.

14 SR. SPECIAL AGENT LUINA: That would have
15 been OGC maybe?

16 MS. HAGINS-DYER: Yes, maybe. Probably
17 that was - -

18 SR. SPECIAL AGENT LUINA: I'll ask Joe,
19 personally, but I wanted to ask you while I had you in
20 front of me.

21 MS. HAGINS-DYER: I don't recall that at
22 all, no.

23 SR. SPECIAL AGENT LUINA: Okay. Do you
24 have allegations from Ms. Wetzel?

25 MS. HAGINS-DYER: I do not. I'll put her

1 name in here. But I'll look. Because we've talked
2 about that it, Deanna talked about and I talked about
3 that once because, you know, we knew that she was
4 unhappy. I thought that her dismissal, as I read the
5 report -- see, we have nothing in here.

6 SR. SPECIAL AGENT LUINA: What report do
7 you mean?

8 MS. HAGINS-DYER: I lost my train of
9 thought. What was I talking about?

10 SR. SPECIAL AGENT LUINA: Wetzel's
11 dismissal?

12 MS. HAGINS-DYER: Yes. So the OGC report,
13 that did that investigation, I read that and I just
14 didn't get the connection between her termination and
15 any inappropriate behavior on her part that warranted
16 a termination. And maybe I missed it.

17 SR. SPECIAL AGENT LUINA: So is there a
18 separate -- I've seen a Mike McBrearty one. Is that
19 the same one? Maybe there's another report out there.
20 Why did you review the report?

21 MS. HAGINS-DYER: Because I asked to look
22 at it.

23 SR. SPECIAL AGENT LUINA: Oh, you did?

24 MS. HAGINS-DYER: Yes.

25 SR. SPECIAL AGENT LUINA: When all this

1 kind of happened?

2 MS. HAGINS-DYER: Yes. I said I want to
3 know what's going on because they were -- at this
4 point they were really shutting me out of a lot of
5 things.

6 SR. SPECIAL AGENT LUINA: Who's that?

7 MS. HAGINS-DYER: Licensing. You know,
8 like I kept asking, I want to see this report, I want
9 to see this report, you know, because if these people
10 are alleging this chilled work environment, or
11 whatever, I need to know about it.

12 SR. SPECIAL AGENT LUINA: Oh, if it's in
13 that report?

14 MS. HAGINS-DYER: If it's in that report.

15 SR. SPECIAL AGENT LUINA: Oh, okay.

16 MS. HAGINS-DYER: And so I finally got to
17 take a look at it. And I believe I got to take a look
18 at it in conjunction with the ERB, the Executive
19 Review Board, where they were talking about her
20 termination and all of that.

21 SR. SPECIAL AGENT LUINA: Oh, for Wetzel?

22 MS. HAGINS-DYER: For Wetzel.

23 SR. SPECIAL AGENT LUINA: Okay.

24 MS. HAGINS-DYER: I saw it and I just --
25 I don't recall all the details, but I remember

1 thinking to myself, I'm just not sure that I see --
2 and I remember asking a question: tell me what it is
3 that she did that warrants termination. And I
4 remember the answer was, well, she, Beth, had made
5 statements that Erin was harassing Mr. McBrearty.

6 And I believe the legal counsel asked her,
7 what basis do you have to make that conclusion. And
8 she may have said, I don't really have any, or
9 something like that, which led them to conclude, well,
10 then, you're just making this allegation to harass
11 her.

12 SR. SPECIAL AGENT LUINA: You're throwing
13 out false accusations, or something like that?

14 MS. HAGINS-DYER: Yes.

15 SR. SPECIAL AGENT LUINA: Okay.

16 MS. HAGINS-DYER: So that's where that
17 came from. But I thought, yes, I thought that's a
18 little -- you know, there's so much. I know that she
19 had some performance problems, and those are well
20 documented. I thought the termination would be
21 because of that, because the Licencing group had had
22 some performance issues. But it seemed to be mostly
23 focused on this harassing of Erin.

24 These are just times when maybe she may
25 have been restless, but I don't have any concern. She

1 was an interview --

2 SR. SPECIAL AGENT LUINA: Yes. She was
3 interviewed as part of that one. Yes. Okay.

4 Well, is there anything I haven't asked
5 you about that you feel is relevant today that you
6 forgot to mention? No?

7 MS. HAGINS-DYER: I'm trying to think if
8 there's anything else. I'm sure I'll think of
9 something the minute that you leave. If I do, I will
10 --

11 SR. SPECIAL AGENT LUINA: You've got my
12 card. You can reach out to me, if you need to. And
13 I might reach out to you -- I've got a lot of ECP
14 documents already.

15 MS. HAGINS-DYER: Okay.

16 SR. SPECIAL AGENT LUINA: I'll make sure
17 I've got good summaries and their responses. I'll
18 check all that when I get back.

19 But if there's nothing else, I've got some
20 closing questions I need to ask you here at the end
21 that we ask everyone.

22 MS. HAGINS-DYER: Okay.

23 SR. SPECIAL AGENT LUINA: I need to ask
24 you, have I or any representative of the NRC
25 threatened you in any manner today?

Attachment 47

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION
OFFICIAL USE ONLY
OI INVESTIGATION INFORMATION

Title: Interview of Deanna Fults

Docket Number: 2-2018-033

Location: Chattanooga, Tennessee

Date: Thursday, May 23, 2019

Work Order No.: NRC-0369

Pages 1-94

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 back to people all the time.

2 SR. SPECIAL AGENT LUINA: Yes.

3 MS. FULTS: And people would say, what a
4 pain in the butt, these are minor petty type things.
5 But we would hear about it in the ECP.

6 SR. SPECIAL AGENT LUINA: Okay.

7 MS. FULTS: So, we heard about that kind
8 of thing from employees.

9 SR. SPECIAL AGENT LUINA: Okay.

10 MS. FULTS: And so, for someone to get
11 terminated because of a dispute about a travel voucher
12 taking too long, it was kind of common in the CNL
13 organization that everybody had issues from one time
14 or another that they could point to or it was
15 anecdotal about Kris Willingham and her approval of
16 vouchers.

17 SR. SPECIAL AGENT LUINA: Oh, okay.

18 MS. FULTS: And she even called me before
19 I went out on maternity leave, being upset about how
20 someone else was being treated about not approving a
21 voucher.

22 SR. SPECIAL AGENT LUINA: Okay.

23 MS. FULTS: So, for admins, that is a span
24 of control for them. They know their names are on it,
25 they do not want to get in trouble if they've approved

1 something that's incorrect.

2 But some of them are a little more vocal.

3 SR. SPECIAL AGENT LUINA: Okay.

4 MS. FULTS: And Kris happens to be one who
5 is.

6 So, I was surprised that something that
7 was so common place was leading to someone being
8 terminated. And I shared that concern with Inza.

9 So, the writeup, the next part that really
10 kind of blew me away was on Page 11 of this 30 page
11 document. What was the individuals explanation of the
12 policy violation or issue.

13 And it says, the individuals view of the
14 policy violation was not described in the report.
15 Joe, and it should say Joe Shea.

16 I asked him about this particular thing
17 and he said, she was not confronted, to my knowledge,
18 during the investigation. So if she was never given
19 an opportunity to explain why she continued to say or
20 continued to think that Erin was harassing her --

21 SR. SPECIAL AGENT LUINA: Oh, okay.

22 MS. FULTS: -- about the travel voucher
23 taking so long. And I don't know if Kris Willingham
24 was the one who approved it or if it was really just
25 going to Erin at that point. I don't know who would

1 have approved it for her.

2 SR. SPECIAL AGENT LUINA: Okay.

3 MS. FULTS: RC Reeves said it was
4 important to close the loop on this, about the
5 voucher. John McCammon said, had some questions about
6 whether this is willful or not, under 10 CFR 50.55.

7 SR. SPECIAL AGENT LUINA: What, her, the
8 travel voucher stuff?

9 MS. FULTS: Yes. That her continuing to
10 pursue this line would have made a difference as to
11 whether she was willfully violating the statute or
12 not.

13 SR. SPECIAL AGENT LUINA: Okay.

14 MS. FULTS: And then willfully violating
15 disciplinary policies of TVA.

16 SR. SPECIAL AGENT LUINA: Why?

17 MS. FULTS: By continuing to allege this
18 about the travel vouchers.

19 SR. SPECIAL AGENT LUINA: Okay. So
20 they're saying that because she kept, she was
21 harassing Henderson because you kept bringing up the
22 same issues about the travel vouchers?

23 MS. FULTS: Yes.

24 SR. SPECIAL AGENT LUINA: And that's a
25 terminational offense?

1 MS. FULTS: Yes. Apparently.

2 SR. SPECIAL AGENT LUINA: Oh.

3 MS. FULTS: She had been --

4 SR. SPECIAL AGENT LUINA: Did they talk
5 about if she, because I know this is in some of the
6 ERBs, if she participated in protective activity?

7 MS. FULTS: They do ask that question.
8 That's up here on one of the other pages of the form.

9 SR. SPECIAL AGENT LUINA: And what did it
10 say?

11 MS. FULTS: This is, to their knowledge,
12 Joe Shea filling this out, has she raised any
13 concerns, has she contacted HR, contacted legal,
14 contacted the NRC, DOL or other external regulatory
15 agency. They always no so they can say we didn't know
16 this person had alleged something.

17 SR. SPECIAL AGENT LUINA: Yes. And they
18 did say she's raised safety or --

19 MS. FULTS: And had written CRs.

20 SR. SPECIAL AGENT LUINA: -- and written
21 CRs. I mean, that's probably everybody.

22 MS. FULTS: Well --

23 SR. SPECIAL AGENT LUINA: No, that's --

24 MS. FULTS: -- they don't have a lot of
25 confidence in the CAT program, so no, not everybody

1 writes CRs.

2 SR. SPECIAL AGENT LUINA: Yes, okay. Got
3 it. Okay, so, I don't know where you're at down here.

4 MS. FULTS: So --

5 SR. SPECIAL AGENT LUINA: Oh, you
6 challenged some of the stuff on there.

7 MS. FULTS: Yes. Challenged some of the
8 stuff on there, challenged the fact that she didn't
9 give, was never given an opportunity to actually
10 respond. And that she was probably not even properly
11 on notice, and if continue down this path, hey, we're
12 going to discipline you.

13 SR. SPECIAL AGENT LUINA: Yes.

14 MS. FULTS: Or forget any iron, you're not
15 going to be working at all.

16 SR. SPECIAL AGENT LUINA: Okay.

17 MS. FULTS: No one ever had that
18 conversation with her.

19 Joe Shea, Inza and I have had
20 conversations about Joe Shea not being able to show
21 leadership courage. That he's frequently one to not
22 deal well with conflict and backs Erin up and does not
23 listen. Or argues about ECP and our ability to do
24 anything.

25 SR. SPECIAL AGENT LUINA: And it does seem

1 like that too, from other people I've interviewed. Do
2 you have any knowledge or know why he supports her so
3 much?

4 Or she's getting, I don't want to say
5 getting away with all this, but it seems like it's
6 just a lot that's going on there with, like you
7 mentioned earlier, all these people on PIPs. Like,
8 people being voluntarily separated and it's different
9 the rest of the fleet.

10 What's unique about Erin Henderson, I
11 guess?

12 MS. FULTS: I don't know. I mean, I think
13 she's a very bright individual. She went to law
14 school as well for a semester to, so she's done a wide
15 range of things.

16 At her to ream, reference somebody that
17 she was brought in because she had been, had some
18 connections with Bill Johnson, but I don't know. I
19 have no idea.

20 SR. SPECIAL AGENT LUINA: Okay.

21 MS. FULTS: Those are just rumors.

22 SR. SPECIAL AGENT LUINA: All right. I
23 was just curious if you knew. All right.

24 MS. FULTS: So --

25 SR. SPECIAL AGENT LUINA: So anyways, keep

1 going. What's ERB.

2 MS. FULTS: Let's see. I'm trying to see
3 what else is in here. Let's see.

4 It did appear that the individual's
5 involvement in a protected activity contributed in any
6 way to the proposed action. Her involvement is the
7 nature of the OGC investigation. And her behavior is
8 outlined in the report. I think that got added.

9 SR. SPECIAL AGENT LUINA: What are you
10 saying now? Does it appear --

11 MS. FULTS: In March, yes.

12 SR. SPECIAL AGENT LUINA: Oh, okay, you're
13 ready the question. Does it appear the individuals
14 involved in protected activity contribute in any way
15 to the proposed action? Why is yes checked?

16 MS. FULTS: They marked yes to presume
17 that. And then those comments were added in. And may
18 have been typed up at the final ERB report. So I
19 don't know.

20 SR. SPECIAL AGENT LUINA: And what does
21 this say?

22 MS. FULTS: Her involvement is the nature
23 of the OGC investigation, and her behavior is as
24 outlined in the report. Then Ryan Dreke said no.

25 So there was some discussion around that.

1 I don't recall all the discussion. But he says no
2 because it's in bad faith and therefore not protected
3 activity.

4 So she --

5 SR. SPECIAL AGENT LUINA: Bad faith.

6 MS. FULTS: -- had not engaged in
7 protected activity because there was this belief from
8 OGC that she was willful in continuing to persist and
9 say this about Erin after any reasonable person would
10 have given it up and just let this go.

11 SR. SPECIAL AGENT LUINA: I'd feel like
12 she, okay. All right. So, all right.

13 MS. FULTS: And that's where I guess two
14 reasonable people can differ.

15 SR. SPECIAL AGENT LUINA: Yes.

16 MS. FULTS: So I don't know what the
17 reasonable person standard is there. And then we ask,
18 and they amend the communication plan, and they said
19 yes, they would.

20 Because I pointed out, people hear that
21 you're getting let go because of harassing your
22 supervisor. That's a big problem for TVA because when
23 people either, they won't question anything. They
24 might stop asking any questions if it can viewed as
25 being harassment.

Attachment 48

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION
OFFICIAL USE ONLY
OI INVESTIGATION INFORMATION

Title: Interview of Erin Henderson

Docket Number: 2-2018-033

Location: Chattanooga, Tennessee

Date: June 12, 2019

Work Order No.: NRC-0407

Pages 1-57

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 MR. CHANDLER: Yes. My name is
2 Christopher Chandler. I'm an associate general
3 counsel in the TVA's Office of the General Counsel.
4 I am here on behalf of TVA and on behalf of Ms.
5 Henderson in her capacity as a TVA employee. If a
6 conflict were to arise, we would have to take a break
7 and discuss the nature of the conflict, but I do not
8 anticipate a conflict.

9 SR. SPECIAL AGENT LUINA: Okay, good.
10 Again, any questions or follow-up Chris on that issue?

11 MS. HENDERSON: No.

12 SR. SPECIAL AGENT LUINA: Okay. Well Erin
13 if you could, like I mentioned kind of explain to me,
14 excuse me, your history in the nuclear industry and
15 your job experience and your locations you've worked
16 at, positions you've held, that kind of stuff, and
17 then we'll talk about your current role and position?

18 MS. HENDERSON: Sure. After college, I
19 actually started in the chemical industry as a
20 research scientist at DuPont in Wilmington, Delaware.
21 After some time there, I went over to Hope Creek as a
22 chemist. Shortly after I started there, I became a
23 chemistry, environmental and rad waste supervisor.

24 Then I moved over to a rotation in the
25 corporate licensing organization, and in 2011 I came

1 to TVA as the licensing supervisor for the Belafont
2 Project. While I was technically a Belafont
3 supervisor, I went to SRO class and when that was
4 over, I went to Watts Barr as the performance
5 improvement manager.

6 In 2014, I went to Sequoyah as the site
7 licensing manager. In 2015, I was selected as the
8 senior manager of Corporate Licensing, so I came to
9 the TVA Corporate Office. Several years into that
10 role, my role was upgraded to a director level
11 position, and then just recently effective yesterday,
12 I became the Director of Plant Support at Sequoyah.

13 SR. SPECIAL AGENT LUINA: Okay. Director
14 of Plant Support at Sequoyah. Okay. I don't know why
15 I thought -- were you ever NRC?

16 MS. HENDERSON: No.

17 SR. SPECIAL AGENT LUINA: No, okay. Maybe
18 I just got you confused with somebody else I guess.
19 Never been with NRC, okay.

20 MS. HENDERSON: No.

21 SR. SPECIAL AGENT LUINA: 2011 you started
22 with TVA?

23 MS. HENDERSON: That's correct.

24 SR. SPECIAL AGENT LUINA: (inaudible) and
25 then you got to this position. Director of Plant

1 Support. All right. So in your role -- we're going
2 to talk about the 2015 to 2018 time frame most likely
3 today. In that role as the Senior Manager of
4 Corporate Licensing and then the director out there,
5 who was your direct supervisor? Who did you report
6 to?

7 MS. HENDERSON: Joe Shea.

8 SR. SPECIAL AGENT LUINA: Joe Shea.

9 MS. HENDERSON: For the entire period.

10 SR. SPECIAL AGENT LUINA: Okay, and that's
11 S-H-E-A?

12 MS. HENDERSON: That's correct.

13 SR. SPECIAL AGENT LUINA: All right, and
14 did you have direct reports before reporting to you?

15 MS. HENDERSON: Yes.

16 SR. SPECIAL AGENT LUINA: And who were,
17 and what their titles and names. It might have been
18 a bunch of them --

19 MS. HENDERSON: Well, it changed over
20 time. When I first came to Corporate Licensing, I had
21 several direct reports. Chris Willingham was my
22 administrative support. Beth Wetzel was one of my
23 managers. Pete Wilson was another manager and Ed
24 Schrull was a third manager that reported to me.

25 SR. SPECIAL AGENT LUINA: That like S --

OFFICIAL USE ONLY-OI INVESTIGATION INFORMATION 11

1 MS. HENDERSON: S-C-H-R-U-L-L.

2 SR. SPECIAL AGENT LUINA: And W-E-T-Z-E-L
3 is Wetzel?

4 MS. HENDERSON: That's correct.

5 SR. SPECIAL AGENT LUINA: All right.

6 MS. HENDERSON: More recently, the
7 managers that have reported to me were Tony Brown,
8 Michael, technically Michael Brown. He took over from
9 Ed Schrull after Ed left.

10 SR. SPECIAL AGENT LUINA: Yeah.

11 MS. HENDERSON: Beth was reporting to me
12 until she left, and Jim Polikoski (phonetic).

13 SR. SPECIAL AGENT LUINA: Jim.

14 MS. HENDERSON: There was also a period of
15 time where Michelle Conner reported to me as a
16 manager. Jim replaced Michelle.

17 SR. SPECIAL AGENT LUINA: Michelle yeah,
18 because Jim's still here right?

19 MS. HENDERSON: He is.

20 SR. SPECIAL AGENT LUINA: All right.
21 That's it?

22 MS. HENDERSON: I think that covers all of
23 the people that were my direct managers. When Beth
24 went to NEI, I took Chris Riegel as a direct report to
25 me.

OFFICIAL USE ONLY-OI INVESTIGATION INFORMATION

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS

Attachment 49

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Deposition of Michelle Conner

Docket Number: EA 20-006 and EA 20-007

Location: teleconference

Date: Friday, June 25, 2021

Work Order No.: NRC-1567

Pages 1-147

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 So, that's not a complete answer to what
2 you asked. That part does make me uncomfortable just
3 because I'm unfamiliar with what I'm allowed.

4 Q Was there an exception in that agreement,
5 in that settlement about being able to speak to the
6 NRC or any restrictions on speaking to the NRC?

7 A I don't recall.

8 Q Are you fearful that today that your
9 testimony that you give will be used to retaliate
10 against you?

11 MR. LEHMAN: Object to form.

12 MR. GILLESPIE: You can go ahead and still
13 answer.

14 THE WITNESS: Okay, there is concern, but
15 (audio interference).

16 MR. GILLESPIE: I'm sorry, Ms. Conner, I
17 think you just cut out.

18 THE WITNESS: And maybe it was a mental
19 cutout. There's always concern in these situations
20 and, you know, I had a case with TVA. It's unfamiliar
21 territory for me to be in this particular situation,
22 so there's a concern more around just the unfamiliar
23 aspect, but (audio interference) no, not at this time.

24 BY MR. GILLESPIE:

25 Q Okay, I guess how long have you known Erin

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Henderson?

2 A That's a good question. I have known Erin
3 Henderson, I want to say -- so she became the Sequoyah
4 licensing manager and I want to say that was in the
5 2013-2014 time frame. I did not work for her at that
6 point, but I did work with her at that point, and so
7 that would have been my first experiences with her,
8 which were not negative ones, and in fact, we had
9 dinner and, you know, talked about the CFAM position
10 (audio interference) offered and accepted, but when I
11 started to work for her, in that relationship, I've
12 known her since February of 2016.

13 Q Okay.

14 A Yeah, as a supervisor.

15 Q And similarly, I guess, when did you first
16 meet Joseph Shea?

17 A And that's another good question. I
18 believe it was in 2011. It may have been 2012, so I
19 don't know how exact you want me to be here, but he
20 wasn't --

21 Q No, that's good.

22 A -- really acting in the role of the VP at
23 the time. He was, I believe, a Watts Bar program
24 manager at the time at corporate, and again on that
25 ICS, the improved tech spec conversion that we were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 doing at Sequoyah. I interfaced with him on that
2 project starting in 2011-2012.

3 Q Okay, turning to, you know, when you were
4 acting as CFAM for Sequoyah, is that -- I was a little
5 unclear on that in terms of is that -- are there
6 multiple CFAMs, like one for each site, or is there
7 just one total?

8 A Okay, so, no, so as a corporation
9 functional area manager, you actually have oversight
10 of that functional area for the nuclear fleet. At
11 that point, I was no longer at Sequoyah. I was at
12 corporate and I had oversight for Sequoyah, I had
13 oversight for Watts Bar, I had oversight for Browns
14 Ferry, and in reality also for corporate.

15 And the licensing CFAM role is somewhat
16 different than other CFAM roles in other functional
17 areas because the way that they're set up in most
18 functional areas is that they were not within the
19 organization that they're providing oversight for.

20 So, if you took maintenance for example
21 and operations, they report up through a CFAM senior
22 manager, right, so they're actually having the
23 oversight of the corporate and the operating sites.

24 It was different for me as a licensing
25 CFAM because I was reporting to one of the groups that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Attachment 50

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION
OFFICIAL USE ONLY
OI INVESTIGATION INFORMATION

Title: Interview of Edward Schrull

Docket Number: 2-2018-033

Location: Chattanooga, Tennessee

Date: Thursday, May 23, 2019

Work Order No.: NRC-0369

Pages 1-44

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 MR. SCHRULL: I do not.

2 SR. SPECIAL AGENT LUINA: All right. If
3 you could please raise your right hand with me. Mr.
4 Schrull, do you swear the testimony that you are about
5 to provide today will be the truth, the whole truth,
6 and nothing but the truth, so help you God?

7 MR. SCHRULL: Yes.

8 SR. SPECIAL AGENT LUINA: All right.
9 Thank you, sir. I appreciate you doing that.

10 Well, if you could, as I kind of
11 mentioned, kind of give me some background information
12 about yourself, sir, and just kind of explain what
13 your experience is in the nuclear industry --

14 MR. SCHRULL: Okay.

15 SR. SPECIAL AGENT LUINA: -- and the
16 (inaudible) you worked on and things like that, that
17 would be great.

18 MR. SCHRULL: I have over 44 years in the
19 nuclear industry. Got a masters in nuclear
20 engineering, University of Arizona, and I've worked
21 pretty much all over the country and Canada.

22 SR. SPECIAL AGENT LUINA: Okay.

23 MR. SCHRULL: Half of that time is in
24 technical areas, the other half has been in nuclear
25 licensing, although there's some flow in between

1 those, obviously.

2 SR. SPECIAL AGENT LUINA: Okay.

3 MR. SCHRULL: Since 2013, I was working at
4 TVA. I retired in October of 2018.

5 SR. SPECIAL AGENT LUINA: October of 2018,
6 okay.

7 MR. SCHRULL: And at TVA, I was the
8 manager of Fleet Licensing, downtown Chattanooga.

9 Interfaced with, obviously, the -- the
10 three nuclear sites, their personnel, primarily with
11 their licensing organizations, but also with the rest,
12 the engineering operations, maintenance, et cetera.

13 SR. SPECIAL AGENT LUINA: Okay, excellent.
14 So, just -- but prior to TVA, what other licensees did
15 you work with?

16 MR. SCHRULL: Oh, licensees? Let's see,
17 when I first started I was -- I'll go through the
18 history.

19 SR. SPECIAL AGENT LUINA: Yes.

20 MR. SCHRULL: I was up at the FFTFS, Flux
21 Test Facility --

22 SR. SPECIAL AGENT LUINA: Yes.

23 MR. SCHRULL: -- up in the Tri-Cities.

24 SR. SPECIAL AGENT LUINA: Okay.

25 MR. SCHRULL: So, that was a DOE we were

1 contracting to, it was Westinghouse Hanford.

2 SR. SPECIAL AGENT LUINA: Okay.

3 MR. SCHRULL: Then I worked for GE down in
4 San Jose. From there I went to Clinton. I worked at
5 the Clinton Station in Illinois.

6 SR. SPECIAL AGENT LUINA: Illinois, yes.

7 MR. SCHRULL: Then at Carolina Power and
8 Light in Raleigh, North Carolina. Also, Three Mile
9 Island. Down at Crystal River. Ontario Hydro nuclear
10 sites. Did I miss any?

11 SR. SPECIAL AGENT LUINA: Did you do,
12 like, outage work or were you kind of just --

13 MR. SCHRULL: No. I went to problem
14 plants --

15 SR. SPECIAL AGENT LUINA: Okay.

16 MR. SCHRULL: -- in licensing and -- and
17 project management.

18 SR. SPECIAL AGENT LUINA: Okay.

19 MR. SCHRULL: So, Crystal River, it was
20 when they were voluntarily shut down and I --

21 SR. SPECIAL AGENT LUINA: Okay.

22 MR. SCHRULL: -- worked for -- in the
23 recovery efforts for that.

24 SR. SPECIAL AGENT LUINA: Okay.

25 MR. SCHRULL: Three Mile Island,

1 obviously, well, it was after the accident.

2 SR. SPECIAL AGENT LUINA: Yes, after the
3 accident.

4 MR. SCHRULL: '88 to '94.

5 SR. SPECIAL AGENT LUINA: Okay.

6 MR. SCHRULL: We were putting in the post
7 refueling monitored storage, PDMS --

8 SR. SPECIAL AGENT LUINA: Okay.

9 MR. SCHRULL: -- safety analysis report
10 licensing to get that into its storage --

11 SR. SPECIAL AGENT LUINA: Okay.

12 MR. SCHRULL: -- condition. Carolina
13 Power and Light, I was in corrective action. I was a
14 director of (inaudible). And Ontario Hydro, we put in
15 a corrective action program --

16 SR. SPECIAL AGENT LUINA: Program.

17 MR. SCHRULL: -- for the entire

18 12,000 --

19 SR. SPECIAL AGENT LUINA: Okay.

20 MR. SCHRULL: -- people that were working
21 there.

22 SR. SPECIAL AGENT LUINA: Okay.

23 MR. SCHRULL: Clinton it was pre-
24 operational. It was in the licensing organization.

25 SR. SPECIAL AGENT LUINA: There's a lot --

1 would you say the majority of your time has been in
2 licensing, I guess?

3 MR. SCHRULL: I would say half of it.

4 SR. SPECIAL AGENT LUINA: Half of it.

5 MR. SCHRULL: You know, when I look at
6 putting together a number of years and months and
7 everything, it looks about half and half.

8 SR. SPECIAL AGENT LUINA: Okay.

9 MR. SCHRULL: However, when I was in the
10 technical aspects, you know, you obviously deal with
11 the FSARS, tech specs, and things like that.

12 SR. SPECIAL AGENT LUINA: Okay.

13 MR. SCHRULL: So, the lines are somewhat
14 blurry, but licensing has been at least half of what
15 my career has been --

16 SR. SPECIAL AGENT LUINA: Okay.

17 MR. SCHRULL: -- involved in.

18 SR. SPECIAL AGENT LUINA: So, who did you
19 report to when you were at TVA? Who was your direct
20 supervisor?

21 MR. SCHRULL: When I retired it was Erin
22 Henderson.

23 SR. SPECIAL AGENT LUINA: And that's E-R-
24 I-N, right? Henderson?

25 MR. SCHRULL: Yes. H-E-N-D-E-R-S-O-N.

1 And before Erin it was Mike McBrearty --

2 SR. SPECIAL AGENT LUINA: Okay.

3 MR. SCHRULL: -- for, I'd say a short
4 time. I think it was, like, a year, year and a half,
5 something like that.

6 SR. SPECIAL AGENT LUINA: Yes, he did a
7 temporary stint up there.

8 MR. SCHRULL: Well it was -- he was a --
9 the general manager so, I don't know if you'd consider
10 that temporary. It was just he got into the position.
11 A year and a half later he basically swapped positions
12 with Erin.

13 SR. SPECIAL AGENT LUINA: Yes.

14 MR. SCHRULL: And then before that, it was
15 Joe Shea. So, the -- the position of general manager
16 came in between Joe and I.

17 SR. SPECIAL AGENT LUINA: Okay. All
18 right. And did you have people reporting to you?

19 MR. SCHRULL: I did.

20 SR. SPECIAL AGENT LUINA: Who were your --
21 who were your direct reports?

22 MR. SCHRULL: Russ Wells, Gordon Williams,
23 I'll go slow.

24 SR. SPECIAL AGENT LUINA: Okay.

25 MR. SCHRULL: Tom Hess, H-E-S-S, and then

Attachment 51

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION
OFFICIAL USE ONLY
OI INVESTIGATION INFORMATION

Title: Interview of Alesia Justice

Docket Number: 2-2018-033

Location: Chattanooga, Tennessee

Date: Wednesday, August 28, 2019

Work Order No.: NRC-0581

Pages 1-32

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 MS. JUSTICE: And obtained a degree in
2 nursing.

3 SR. SPECIAL AGENT LUINA: When did you get
4 into your current role?

5 MS. JUSTICE: Oh. I think it was 2014.

6 SR. SPECIAL AGENT LUINA: 2014?

7 MS. JUSTICE: Mm hmm.

8 SR. SPECIAL AGENT LUINA: To present?
9 Okay. And who do you report directly to? Who is your
10 direct supervisor currently?

11 MS. JUSTICE: Well, we've had --

12 SR. SPECIAL AGENT LUINA: Several changes?

13 MS. JUSTICE: Yes, recently.

14 SR. SPECIAL AGENT LUINA: Okay.

15 MS. JUSTICE: So, right now I have a
16 interim. I don't, and it's --

17 SR. SPECIAL AGENT LUINA: Okay.

18 MS. JUSTICE: -- Jeff Sowa. He's an
19 (unintelligible) oversee.

20 SR. SPECIAL AGENT LUINA: And do you, what
21 department are you in? Are you in --

22 MS. JUSTICE: Licensing.

23 SR. SPECIAL AGENT LUINA: You're in
24 licensing? Okay.

25 MS. JUSTICE: Well, it's called regulatory

1 compliance. Now what it's called.

2 SR. SPECIAL AGENT LUINA: It used to be
3 called corporate nuclear licensing, or something like
4 that?

5 MS. JUSTICE: Yes.

6 SR. SPECIAL AGENT LUINA: So, who did you
7 report to like in 2015, '16, '17 timeframe?

8 MS. JUSTICE: I guess Beth Wetzel
9 (phonetic).

10 SR. SPECIAL AGENT LUINA: Beth Wetzel?

11 MS. JUSTICE: Yes. Because, see, I've
12 been moved around. I don't think, they don't know,
13 they can't figure out what to do with me, or what.
14 But I've had Beth Wetzel as a manager. I've had
15 Michelle Connor (phonetic).

16 SR. SPECIAL AGENT LUINA: Yes.

17 MS. JUSTICE: I've had Jim Polikonski
18 (phonetic).

19 SR. SPECIAL AGENT LUINA: Okay.

20 MS. JUSTICE: Those are the --

21 SR. SPECIAL AGENT LUINA: Now I know why
22 you've been interviewed so many times.

23 MS. JUSTICE: Those are the three that I
24 know of that, I can't think of the others. I don't
25 think I've been put in with anybody else.

1 SR. SPECIAL AGENT LUINA: Okay.

2 MS. JUSTICE: From what I can remember.
3 If I had, it wasn't for very long. But --

4 SR. SPECIAL AGENT LUINA: And what is your
5 job as a manager analyst, analyst manager? What do
6 you, what's your daily duties?

7 MS. JUSTICE: Well, commitment program,
8 I'm a manager. Let's see, commissioner forts
9 (phonetic). And I also try to trend and find trends,
10 identify trends.

11 SR. SPECIAL AGENT LUINA: Okay.

12 MS. JUSTICE: And revise procedures for
13 lots of things. Procedure writer.

14 SR. SPECIAL AGENT LUINA: Okay. And how
15 long did you think, did you work for Ms. Wetzel?

16 MS. JUSTICE: A good, I don't know.

17 SR. SPECIAL AGENT LUINA: A good long?

18 MS. JUSTICE: Yes. I mean, it was, she's
19 probably the longest one I worked under I would think.
20 Because I worked for her. And then, I think I got
21 moved to -- Oh, okay. In between, sometime I,
22 temporarily I worked for Pete Wilson (phonetic) too,
23 a little bit. I forgot about him.

24 SR. SPECIAL AGENT LUINA: Okay.

25 MS. JUSTICE: So, mainly, you know, I

1 worked for her. Then they moved me to somebody else.
2 And then sometimes they'd move me back to her.

3 SR. SPECIAL AGENT LUINA: To Beth?

4 MS. JUSTICE: Uh huh.

5 SR. SPECIAL AGENT LUINA: Okay.

6 MS. JUSTICE: And then I worked for
7 Michelle. And then they moved me back to Beth again.

8 SR. SPECIAL AGENT LUINA: Okay.

9 MS. JUSTICE: And then I got moved to, or
10 sometime, or maybe I went to Jim sometime in between.
11 I don't know. But it's, I mean, it's like, I been
12 back and forth.

13 SR. SPECIAL AGENT LUINA: How would you
14 describe Beth as a supervisor?

15 MS. JUSTICE: She seemed thorough. I mean,
16 --

17 SR. SPECIAL AGENT LUINA: Yes?

18 MS. JUSTICE: Mm hmm.

19 SR. SPECIAL AGENT LUINA: Was she
20 competent in her job? Did she know what she was
21 doing, and stuff?

22 MS. JUSTICE: I thought so.

23 SR. SPECIAL AGENT LUINA: You thought so
24 (unintelligible)? How about her behavior, her
25 workplace behavior? How did she treat you and others?

Attachment 52

TVA Confidential Information

Special Pulsing Summary

July 12, 2018

Background

TVA's Vice President of Nuclear Regulatory Affairs and Support Services (NRASS VP) contacted the Employee Concerns Program (ECP) and communicated that a site Licensing employee had raised concerns that there is a reluctance among site and NRASS employees to express differing views and concerns to or about NRASS using the Corrective Action Program (CAP). It should be noted that site Licensing employees report to their respective nuclear plant sites, while the NRASS employees report to the office of Nuclear Regulatory Affairs and Support Services.

As a result of the contact ECP conducted a special pulsing to evaluate the environment for raising concerns. Specifically the pulsing focused on the level of comfort that Licensing site and NRASS locations have for using CAP to raise concerns and express differing views.

It should be noted that this pulsing is described as "special" because it varies from the established pulsing survey used by ECP to assess the Safety Conscious Work Environment (SCWE). Whereas the typical survey contains between 11 and 13 questions to examine various aspects of the work environment, the pulsing used in this instance contained only four questions. These questions were narrowly focused on the issue that was brought to the attention of the VP.

It should be noted that ECP has handled two prior concerns raised about the work environment in Licensing, most of which center around conflict between a particular site Licensing employee and NRASS Management. ECP partially substantiated one concern about retaliation and issued a Requirement to Act Letter. (NEC-17-00683 -July 24, 2017), ECP did not substantiate one other similar concern filed by the same individual (NEC-17-00410 April 17, 2017). In 2017 the Licensing work environment was also examined by the NRC, with no findings of a chilled work environment.

Prior to the pulsing, an interview was conducted with the NRASS Manager of Regional Compliance to whom the concern was originally voiced. This interview revealed that the employee did not raise the issue because of concern about any current action on the part of NRASS. Instead the issue is reiteration of past concerns that NRASS does not always support an environment conducive for differing opinions, particularly about NRASS's decision making.

Despite the fact that these issues have been raised in the past, ECP adheres to the practice of receiving each concern on its own merit and evaluating the facts currently presented. It should also be noted that the Sr. Manager of Regulatory Affairs has expressed concern that the repeated accusations by the site Licensing employee has created a hostile work environment. NRASS management is addressing the Sr. Manager's concern in separate proceedings. To ensure independence and objectivity ECP has no role in those proceedings and has not reviewed the results or findings.

Rev 4

Pulsing Responses

The questions and responses are as follows:

1. I would use the Corrective Action Program to raise Nuclear Safety or Quality concerns.
Response: 87.5% - yes 12.5% - no
2. I would use the Corrective Action Program to raise concerns not related to Nuclear Safety or Quality.
Response: 68.8% - yes 18.8% maybe 12.5% - no
3. I would use the Corrective Action Program to raise concerns related to actions or decisions made by Corporate Licensing.
Response: 43.8% - maybe 37.5% - yes 18.8% - no
4. I can raise issues about actions or decisions made by Corporate Licensing without fear of retaliation.
Response: 50% - yes 38% - no 13% - maybe

The special pulsing was provided electronically to all 16 members of the Licensing organizations at WBN, SQN, BFN and Corporate. There was 100% participation. Six participants opted not to reveal their location.

Summary of Comments

- One comment suggested that there may be a preference for having face to face discussions as opposed to using CAP for issues that are not related to Nuclear Safety or Quality. This could be considered an indication that employees are comfortable speaking their concerns or differing opinions directly to management.
- Another comment indicated that all management encourages and supports the use of CAP.
- Two comments indicated a distrust for Corporate Management's receptivity differing views.

Conclusion

Overall it appears that the majority of respondents would use CAP to report Nuclear Safety or Quality concerns. However the number of respondents willing to use CAP to report other types of issues is slightly below 70%. Separate comments suggest both positive and negative reasons for the result. As noted above at least one commenter refers to the use of face to face discussions as the preferred method to raise issues. Two other comments indicate that NRASS is not always receptive to feedback.

With regard to raising issues about decisions made by NRASS without fear of retaliation, 50% responded that they felt that they could do so. However 38% answered that they could not and 13% stated

“maybe”. Thus while it clear that nuclear and safety concerns would be raised using CAP, there exists the perception that NRASS’s environment for raising other issues including those related to decision making, may be met with retaliation.

In recent evaluations at TVA, the NRC has concluded that a chilled effect or chilled environment exists when 20% or more of employees questioned, respond that they cannot raise safety issues without fear of retaliation. In this case, the question was not specifically focused on raising safety issues, but about questioning decisions that have been made by NRASS.

The conclusion from the special pulsing is that half of the survey participants feel that they cannot question decision making made by NRASS without fear of retaliation. Though the survey does not focus on whether this fear extends to raising safety issues, it is concluded that the fear of raising other issues could be a precursor to raising safety issues.

The survey does not distinguish between answers provided by NRASS employees and those provided by site Licensing employees. This distinction is significant to the extent that those who are organizationally aligned (i.e. reporting to) NRASS may have more reason to fear retaliation. Those who are not within the chain of command may have less reason to have this fear. In any case, the following recommendations should be considered to address both groups and to ensure that the environment does not degrade into one where there is a fear of raising Nuclear Safety or Quality issues.

Recommendation

NRASS should develop a plan to ensure that the environment is conducive for raising concerns and differing opinions. Actions may include:

- Communicate the conclusions of this pulsing
- Conduct focus groups to gain better understanding of the responses
- Clearly communicating support for raising concerns and differing opinions
- Developing methods to provide positive recognition for those who raise concerns and differing opinions using CAP
- Developing processes to encourage free flow of information and challenge to decisions made in NRASS
- Conducting follow up pulsings to assess the health of SCWE to include site Licensing employees and NRASS employees

Attachment 53

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION
OFFICIAL USE ONLY
OI INVESTIGATION INFORMATION

Title: Interview of Thomas A. Hess

Docket Number: 2-2018-033

Location: Chattanooga, Tennessee

Date: May 21, 2019

Work Order No.: NRC-0365

Pages 1-30

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 working on that part. And the dam safety issues, the
2 hydrology.

3 SR. SPECIAL AGENT LUINA: Browns Ferry,
4 did you deal with the anchor darling?

5 MR. HESS: A little bit. I know about it.

6 SR. SPECIAL AGENT LUINA: You know about
7 it.

8 MR. HESS: I didn't see there was anything
9 really wrong with how we were handling that. I think
10 that that was a difficult one to manage.

11 But again there were some probably
12 management meetings.

13 (inaudible)

14 SR. SPECIAL AGENT LUINA: Yes, some of
15 this stuff I don't think is relevant. I just want to
16 make sure I got.

17 I mean, did -- okay, no that's fine.

18 MR. HESS: I mean you can ask.

19 SR. SPECIAL AGENT LUINA: No, I think I
20 got it. I just want to make sure I got everything.
21 And you knew a lot about the kirk-key which is good.

22 You left in 2018?

23 MR. HESS: Yes, July. Mike was on
24 suspension when I left.

25 SR. SPECIAL AGENT LUINA: Yes. Do you

1 know -- do you know anything about that? Do you know
2 why Mike was put on suspension?

3 MR. HESS: I know what I heard. I heard
4 that it was because -- he was put on suspension
5 because he was creating an environment, a hostile
6 environment for the director (inaudible). That's all
7 I heard.

8 SR. SPECIAL AGENT LUINA: Were you
9 interviewed as part of that investigation into that?
10 By Office of General Counsel or somebody?

11 MR. HESS: So I was interviewed in April
12 or May, but it wasn't specific. It wasn't like okay
13 hey, we need to talk about this thing with Mike.

14 It was more of a generic organizational --

15 SR. SPECIAL AGENT LUINA: Work
16 environment.

17 MR. HESS: Work environment interview.

18 SR. SPECIAL AGENT LUINA: Was that with
19 the TVA attorney?

20 MR. HESS: Yes.

21 SR. SPECIAL AGENT LUINA: Did you tell him
22 some of the things you told me today about Ms.
23 Henderson and stuff?

24 MR. HESS: Yes, I did. I did. There was
25 -- it just didn't feel like there was a lot of

1 continuity to how they were -- to how the organization
2 was run.

3 I know that some of the things that were
4 coming down through our managers were, it felt like we
5 were focused a lot more on -- it was a step up on the
6 discipline side of performance management.

7 And whether or not that was tied to -- it
8 felt like that was tied in part to the chilled work
9 environment issue at Watts Bar because one of the
10 biggest challenges that we got from the NRC was how do
11 we manage our adverse action program.

12 And so the way that that's handled at that
13 -- now is it's focused a lot more on discipline so
14 that -- and but you can still, you can finagle it
15 however you want to do it.

16 I know the other issue that folks had with
17 Erin is it didn't feel like she had the adequate
18 experience to be in that position.

19 SR. SPECIAL AGENT LUINA: What was your
20 view of Erin as a manager? I mean, did you feel
21 comfortable in that environment to raise up concerns
22 to her specifically or Joe Shea?

23 MR. HESS: Let's separate the nuclear
24 safety concern. Let's draw that line right here. I
25 don't care who you are. If I've got a nuclear safety

1 concern I'm going to bring it up.

2 SR. SPECIAL AGENT LUINA: Without fear of
3 retaliation?

4 MR. HESS: I don't care at that point.
5 I'm not even saying -- I won't even use that term. If
6 it's a -- a genuine nuclear safety concern I'm going
7 to say something.

8 Now, once you get below that line I'm not
9 sure I would challenge. I didn't feel like there was
10 -- do I think that I'd be sitting in a meeting and
11 somebody would just go off? No.

12 But there was a lot of backdoor or closed
13 door kind of discussions that were, you know, didn't
14 -- I've been in a lot of different organizations.
15 I've never been in an organization where it was as I
16 won't use the word cutthroat because I think at the
17 working level we all got along well.

18 I didn't feel like the guy sitting at the
19 table next to me or in the cube next to me was going
20 to stab me in the back. But I also didn't feel like
21 I could trust my management above -- my direct
22 manager, I felt like I could trust him.

23 SR. SPECIAL AGENT LUINA: Above Ed.

24 MR. HESS: Above Ed I didn't feel like I
25 could trust any of them. All the way up through Dave

Attachment 54

Exhibit 33

Exhibit 33

2-2019-015

OFFICIAL USE ONLY - OI INVESTIGATION INFORMATION

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF INVESTIGATIONS

INTERVIEW REPORT WITH EDWARD D. SCHRULL

Edward D. SCHRULL, former Manager of Fleet Licensing, employed by the Tennessee Valley Authority (TVA), was interviewed on August 27, 2019, at the NRC RII Office, by Senior Special Agent (SSA) Scott K. Luina. SCHRULL related the following information in substance:

OI:RII conducted a follow-up interview with SCHRULL and reminded SCHRULL that the interview was voluntary and about his oath to provide truthful and complete information to the NRC. SCHRULL stated he understood and agreed to be voluntarily interviewed over the phone. The purpose of the OI:RII interview of SCHRULL was to determine if he was interviewed by the TVA's Office of General Counsel (OGC) in March-May 2018, and for what purpose. SCHRULL confirmed he was interviewed once by TVA's OGC for approximately thirty minutes. SCHRULL explained the interview questions and his answers revolved around Erin HENDERSON and SCHRULL's impression of her. SCHRULL does not recall the specific reason for the interview but stated he mostly discussed HENDERSON and her professional relationship with others. SCHRULL recalled he spoke about how he felt she was not the most qualified person for the position. SCHRULL does not recall being given a preamble or any advisement by TVA OGC concerning the nature of the interview. SCHRULL related several of the licensing staff were interviewed at the same time frame. SCHRULL does not recall if he discussed Mike MCBREARTY or Beth WETZEL during the interview and related that the questions were very general and not specific. SCHRULL related he could not determine the purpose of the interview.

This report was prepared on August 27, 2019, from Agent's notes.



Scott K. Luina, Senior Special Agent
Region II Field Office
Office of Investigations, USNRC

OFFICIAL USE ONLY - OI INVESTIGATION INFORMATION

Attachment 55

Exhibit 4

Exhibit 4

2-2019-015

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

OFFICIAL USE ONLY
OI INVESTIGATION INFORMATION

Title: Interview of Beth A. Wetzel

Docket Number: 2-2019-015

Location: Signal Mountain, Tennessee

Date: Wednesday, November 13, 2019

Work Order No.: NRC-0721

Pages 1-41

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 MS. WETZEL: I don't know if you've got a
2 copy of that -- of it, but I was told not to share it.

3 SR. SPECIAL AGENT LUINA: Okay.

4 MS. WETZEL: Looking back, it was very
5 strange that they sent that to me before mediation.
6 And I took it as a threat.

7 SR. SPECIAL AGENT LUINA: That they would
8 give you that.

9 MS. WETZEL: Yes.

10 SR. SPECIAL AGENT LUINA: Okay. So if I
11 mention the name Slater, John Slater --

12 MS. WETZEL: Yes. Slater.

13 SR. SPECIAL AGENT LUINA: -- does that
14 sound familiar?

15 MS. WETZEL: Yes.

16 SR. SPECIAL AGENT LUINA: That sounds like
17 who you recall?

18 MS. WETZEL: Yes. That's who it was.

19 SR. SPECIAL AGENT LUINA: Okay. That
20 interviewed you. Was he just by himself?

21 MS. WETZEL: He was by himself.

22 SR. SPECIAL AGENT LUINA: Did he record
23 it, like I'm recording today?

24 MS. WETZEL: He did not tell me he was
25 recording it.

1 SR. SPECIAL AGENT LUINA: Okay.

2 MS. WETZEL: But -- and he didn't take
3 notes, and that report had some quotes, and it made me
4 think that he recorded it. But I don't know.

5 SR. SPECIAL AGENT LUINA: You don't think
6 he was taking -- I mean, you're positive he wasn't
7 taking notes.

8 MS. WETZEL: I don't think he took notes.

9 SR. SPECIAL AGENT LUINA: Okay.

10 MS. WETZEL: He might have, but I don't
11 think so.

12 SR. SPECIAL AGENT LUINA: Okay.

13 MS. WETZEL: And he asked strange
14 questions --

15 SR. SPECIAL AGENT LUINA: What did he ask?

16 MS. WETZEL: -- now that I look back. It
17 was more relationship and what do I think someone
18 thinks of Erin Henderson. It was like he was digging
19 to find out who didn't like Erin. And looking back --
20 I mean, I was naive.

21 I was about to leave for NEI, getting away
22 from a very toxic environment, and I shared with him
23 my thoughts and my opinion. And he asked like what
24 does Mike McBrearty think of Erin Henderson; what
25 does -- and I told him. I don't remember specifically

1 what I told him. Then he asked if I was friends with
2 Mike McBrearty.

3 SR. SPECIAL AGENT LUINA: Uh-huh.

4 MS. WETZEL: I said, Yes, I'm friends.
5 And he said, Are you sure; how do you know him. And
6 I said, Well, I worked for him, and I worked with him.
7 And then he asked what -- he asked what each of the
8 site licensing managers thought of Erin Henderson.
9 And I said, I don't know what the Browns Ferry site
10 licensing manager thinks of Erin. I don't know what
11 the Watts Bar site licensing manager thinks of Erin.

12 Looking back, they were digging to find
13 out who didn't like Erin, and Erin just thought there
14 was this -- or made up a story that there was this big
15 conspiracy against her. And there was not. I --

16 SR. SPECIAL AGENT LUINA: Uh-huh.

17 MS. WETZEL: I have always been respectful
18 to her in front of my colleagues and workers.

19 SR. SPECIAL AGENT LUINA: Did -- what did
20 you tell him about Erin, I guess, when he asked you
21 about --

22 MS. WETZEL: So I told him that from the
23 beginning, that I didn't think she liked me, that I
24 thought she was -- she was -- I told him from the
25 beginning why I think she didn't like me was at a

Attachment 56

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Deposition of Anthony Williams

Docket Number: EA-20-006 and EA-20-007

Location: teleconference

Date: Monday, June 28, 2021

Work Order No.: NRC-1568

Pages 1-76

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 And so, the answer to your question is, in
2 itself the challenging or the questioning attitude is
3 not a negative in the nuclear industry.

4 Q Did you believe that his behaviors, that
5 he had the specific intent to undermine Ms. Henderson?
6 Or do you think that it was a communication breakdown
7 or misunderstanding? Something to that effect?

8 A At the time I didn't make a judgment on
9 what it was, intent or not. My coaching was it needs
10 to be professional. It needs to be in an environment
11 that doesn't undermine her ability to manage her
12 department.

13 So, I didn't cast a judgment on something
14 that I didn't observe. I didn't witness it. I got
15 feedback that it was occurring, so I coached Mike that
16 your interactions need to be professional, they need
17 to be to this standard, and you need to do it this
18 way.

19 But at the time, I don't think I made an
20 opinion whether he did any of this stuff in a manner
21 to be negative. To undermine her ability. I think it
22 could have been.

23 That was in my mind that it could have
24 been just a misunderstanding.

25 Q Just to confirm, you had just received

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 feedback from Corporate and you turned around and gave
2 the counseling. You didn't ask for any proof, or
3 emails, or anything to that nature. You just said,
4 this is what I'm hearing from Corporate, this behavior
5 needs to stop, kind of thing.

6 A This is what I'm hearing from Corporate.
7 This is how I expect you to interact with Corporate.

8 Q Okay.

9 A And then, that. So, it wasn't any
10 accusations, or anything like that. But it was that
11 this is the way you should be professional and keep
12 that professional environment maintained at all times.

13 Q So, Mr. McBrearty never admitted to you
14 that he was leaving Ms. Henderson off of emails. Is
15 that correct?

16 A No. I did not know about that until the
17 report.

18 Q And so, I believe you're mentioning the
19 Johnny Slater report of May of 2018?

20 A Yes. Yes, that's correct.

21 Q Did you receive a copy of that report?

22 A I received a copy of that about two days
23 before we ended up -- about the 23rd of May, I think
24 is when I received that report.

25 Q And did you read that report in full?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 A Yes. Yes, I did.

2 Q Did you notice anything odd about the
3 citations in the report?

4 MR. LEPRE: Object to form.

5 THE WITNESS: Yeah, what do you mean by
6 odd?

7 BY MR. MCMANUS:

8 Q I guess, did you find it odd that you were
9 not interviewed by Mr. Slater for this report?

10 A No, I did not. Interviewing myself, who's
11 two levels above Mike, I wouldn't expect that to be
12 part of the interview.

13 Q Did you notice, was Mr. Dodds interviewed
14 for this report?

15 A No, he was not interviewed for this
16 report.

17 Q And did you find that strange?

18 A I didn't really think much about it. This
19 report was issued in Corporate on an environment that
20 was going on at Corporate. I don't know what they
21 would -- no. I didn't think either way. When I read
22 the report, none of that entered my mind.

23 Q Okay. So, you were never interviewed by
24 Mr. Slater in the preparation of the initial May draft
25 of the Slater report? Were you interviewed for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 final Slater report issued in August?

2 A No, I was not.

3 Q While this investigation was going on, did
4 Human Resources at TVA provide any updates to either
5 yourself or Mr. Dodds, if you're aware if Mr. Dodds
6 got updates?

7 A Updates from what period to what period?
8 I guess I don't understand the question.

9 Q So, my understanding is that -- let me
10 regroup. When you received the Slater report on
11 May 23rd, what was your initial reaction?

12 A Well, there were some things in there that
13 I found inappropriate for a senior manager to be
14 doing, things that were not opinion-based.

15 They were text messaging to subordinates
16 for Erin, continuing even after we had the discussion
17 on the professional environment and undermining her
18 ability to manage her department.

19 And then, multiple occurrences of him
20 interacting and making communications about Erin's
21 leadership style, continuing those issues I had a
22 problem with.

23 I don't think that for a senior manager,
24 after I had that discussion with him, that behavior
25 should not have continued.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we wanted to make sure that we're addressing what we
2 know now going forward. I didn't take a lot of time
3 reflecting back on, you know, where were all the
4 opportunities for us to see some of these signals and,
5 you know, potentially stop the behavior earlier and
6 critique ourselves that way. I didn't do that.

7 Q In the other instances you cited when you
8 were at other plants or companies, in those instances,
9 did the supervisor get to see direct evidence in those
10 investigations?

11 A Yeah, yeah. It's consistent that, you
12 know, regardless of who's pulling the data in, it all
13 goes to that direct supervisor to assess the situation
14 unless the direct supervisor was part of the issue.
15 Sometimes you had that. Then it moves up to the next
16 level. But yes, they pull in all the data and then
17 they assess and they make the determination on their
18 employee on the issues. And a lot of times with the
19 independent investigations, they do address -- you
20 know, they're very thorough. They get all the
21 details. They get everything lined up so it's easier
22 -- easy for you as a manager to, you know, line
23 everything up with the issue.

24 Q And to your knowledge, Mr. Dodds, was he
25 afforded any of the evidence, underlying evidence

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 while the investigation was going on or the direct --
2 I'll let you answer that.

3 A Not to my knowledge. I know we had
4 discussions about him going to sit down with Mr.
5 Slater and go through the data, and I can't recall if
6 that occurred or that was what -- because it was
7 taking so long, that was the resolution that we were
8 moving towards. But we had that discussion that Al
9 would do that, he would go to Mr. Slater and he would
10 look at all the data that he was working on.

11 Q While Mr. McBrearty was on administrative
12 leave or paid administrative leave, did anyone from
13 TVA reach out to him and give him updates?

14 A I talked to Mike very, very early when
15 this first came out, but Al Dodds talked to him a
16 couple times when he was at home and tried to appraise
17 him that the investigation was going on and, you know,
18 we still got to go through the information. We've
19 still got to understand what it is. So Al would be
20 the one that would reach out to him.

21 Q Okay. And the final disposition of Mr.
22 McBrearty, I understand that he resigned; is that
23 correct?

24 A Yes, yes, he did.

25 Q And did he contact you to submit his

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 resignation?

2 A Yes, yes. He called me and verbally
3 communicated his resignation. Then he followed it up
4 with an email.

5 Q Can you describe the conversation you had
6 with him on the phone call?

7 A Yes. It was just concise to the issue
8 that his decision to move forward and seek employment
9 with a previous boss of his and that he was going to
10 end his employment with TVA. It wasn't anything -- he
11 was appreciative of his opportunities. He was
12 appreciative of working with Al and myself and Dennis.
13 But he didn't go down any path on, you know, about the
14 investigation or anything like that.

15 Q And at that time, had TVA or decision
16 makers at TVA decided his disposition, whether --
17 based on the final Slater report?

18 A No. No, we did not.

19 Q And at this point, before Mr. McBrearty
20 had contacted you to submit his resignation, had you
21 made a determination vis a vis his employment at TVA?

22 A No.

23 MR. LEPRE: Sorry. Can you clarify what
24 you mean by at this point? At what point?

25 MR. MCMANUS: Sorry. At the point you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 received -- well, can I -- I'll ask, do you remember
2 what month or what day Mr. McBrearty called you to
3 submit his resignation?

4 THE WITNESS: It was in August. I do
5 remember where I was. I was in, I was at Watts Barr.
6 I was still the Site Vice President in Sequoia at the
7 time, and I was actually here at Watts Barr and at an
8 MRM. It was in August.

9 BY MR. MCMANUS:

10 Q Can you -- sorry, can you define an MRM?

11 A Oh, I'm sorry. Management Review Meeting.
12 So it's a meeting that discusses the performance of,
13 this situation was Watts Barr's performance and the
14 vice presidents come in and assess their current
15 performance in a meeting at that site.

16 Q Okay. And so, and by that point, because
17 I believe the Slater report had been issued in August,
18 the final Slater report, and you've said that you read
19 that, maybe not as thoroughly as the draft Salter
20 Report, but had you made a determination at that point
21 in time in your head what Mr. McBrearty, what
22 discipline was warranted, foundational initiative any?

23 A No, no. Like I said, a lot of the issues,
24 a lot of the challenges we had was I needed to
25 understand Mike's position, Mike's -- where he was on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Attachment 57

To: Slater, Johnny E[jeslater@tva.gov]
From: Grace, Jennifer Lynn
Sent: 2018-06-01T14:26:38Z
Importance: Normal
Subject: FW: Follow up
Received: 2018-06-01T14:26:38Z

Can you please add the footnote where appropriate in the report and then create a new version?
Thanks.

Jennifer L. Grace

Managing Attorney, Human Resources
Office of the General Counsel

Tennessee Valley Authority
400 W. Summit Hill Dr., WT 6A-K
Knoxville, TN 37902

(865) 632-8963 (w)
jlgrace@tva.gov



NOTICE: This electronic message transmission contains information that may be TVA SENSITIVE, TVA RESTRICTED, or TVA CONFIDENTIAL. Any misuse or unauthorized disclosure can result in both civil and criminal penalties. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the content of this information is prohibited. If you have received this communication in error, please notify me immediately by email and delete the original message.

From: Shea, Joseph W
Sent: Thursday, May 31, 2018 5:51 PM
To: Grace, Jennifer Lynn; Walker, Emily Beegle
Cc: Slater, Johnny E; Balduzzi, Michael Anthony; Poland, Amanda Elizabeth; Chandler, Christopher C; Czufin, David Miller
Subject: RE: Follow up

Jennifer....

Perfect. If you can amend the report accordingly, my concerns will be met. That will provide the documentation that was missing.

Thanks for the thorough consideration and response.

Joe

On May 31, 2018 at 5:26:09 PM EDT, Grace, Jennifer Lynn <jlgrace@tva.gov> wrote:

Joe,

I'm sorry I missed your call earlier. I was in meetings all afternoon and so I thought it may be better to send an email to capture my thoughts. First, I strongly disagree that any investigation of Beth's allegations in her email is warranted. In fact, I think any further investigation would do more harm than good, as it allows the harassing behavior that was identified in John's report to be perpetuated. Beth was identified as having participated in the harassment of the last several years. Her email and the allegations therein are clearly part of that same pattern. To take further action, when the other investigation just concluded and found no substance to any of these types of allegations against Erin, could be interpreted as management allowing further harassment against a whistleblower (Erin) to occur.

I've discussed this with both John and Chris Chandler, and they concur. John confirmed that he considered Beth's email during the investigation and that he concluded that the email was simply further evidence of the pattern of harassing behavior that has been occurring over the last several years. John has suggested including the footnote below in the investigative report to specifically address the allegations in the email, which I think will help to assuage your concerns about appearing to take no action in response to the email. This would allow you to respond to Beth that the most recent investigation looked into her allegations and found that they were unfounded and part of this pattern of harassing behavior.

On May 7, 2018, after Ms. Wetzel's interview and after reporting to NEI, Ms. Wetzel sent Mr. Shea an email, proposing that Mr. Shea, not Ms. Henderson, review and approve her travel voucher for the duration of assignment at NEI, because, as she alleges, Ms. Henderson "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" and that she "anticipate[s] [Ms. Henderson] using [her] travel vouchers as an investigative tool." 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 is more of the same, with no details, and do not warrant further follow-up. Nevertheless, out of an abundance of caution, I suggest that Mr. Shea and Ms. Edmondson process Ms. Wetzel's travel voucher during her assignment at NEI.

Please let me know if you have any questions.

Jennifer L. Grace

Managing Attorney, Human Resources
Office of the General Counsel

Tennessee Valley Authority
400 W. Summit Hill Dr., WT 6A-K
Knoxville, TN 37902

(865) 632-8963 (w)
jlgrace@tva.gov



NOTICE: This electronic message transmission contains information that may be TVA SENSITIVE, TVA RESTRICTED, or TVA CONFIDENTIAL. Any misuse or unauthorized disclosure can result in both civil and criminal penalties. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the content of this information is prohibited. If you have received this communication in error, please notify me immediately by email and delete the original message.

From: Shea, Joseph W
Sent: Thursday, May 31, 2018 12:39 PM
To: Walker, Emily Beegle
Cc: Shea, Joseph W; Czufin, David Miller; Balduzzi, Michael Anthony; Grace, Jennifer Lynn; Poland, Amanda Elizabeth
Subject: Follow up

Emily,

Thanks for your support over the past few days. As a follow up to one thread of our

conversation, I still need assistance putting together a documented evaluation that is directly responsive and conclusive regarding Beth Wetzel's allegation from earlier in May. I have a call in to Jennifer to discuss and I know both you and David have discussed with Jennifer to some degree. While I understand that Johnny's report talks about Beth's role and behaviors, there is no documented reference to her allegation. What I am concerned about and can't accept is that it leaves me in a position to have to back extract snippets from Johnny's report to draw conclusions regarding Beth's allegation. This is problematic and unacceptable because those conclusions will not be "independent" as (1) they properly should be and (2) I advised Beth with Jennifer's assent that they would be.

As I shared with you, I think this is a relatively simple matter of an additional interview with Beth and Erin that pull's the string on each of Beth's itemized assertions. What I specifically think was missed in the OGC treatment of Beth's email is the assertion that Erin initiated HR investigations in a retaliatory or vindictive manner. I strongly suspect that was actually a reference to the 2018 investigation Arcie did of Ed Schroll regarding the claim by one of Ed's employees that Ed had chilled the employee over a safety culture matter. Which sounds similar to the protected whistleblower aspect that Johnny so thoroughly documented for Mike McB. Regardless, I need support in getting specific facts, analyses and conclusions that are independent.

Like I said, I have a call in to Jennifer to discuss but am not sure where that will lead. Thus, as you and I discussed, we may need to get Arcie to look and document this piece- as inefficient as that might be.

The OGC report was exceptionally well done on the themes it drew conclusions on; however; I still have a separate but strongly linked allegation in my plate and am looking for the organization's support to draw equally well documented analyses and conclusions whatever they might be.

Thanks for your support.

Joe

Attachment 58


Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Pre-decisional Enforcement Conference
Re Erin Henderson

Docket Number: IA-20-009

Location: teleconference

Date: Tuesday, June 23, 2020

Work Order No.: NRC-0942

Pages 1-144

NEALR GROSS AND CO., INC
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, DC 20005
(202) 234-4433



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

+ + + + +

PRE-DECISIONAL ENFORCEMENT CONFERENCE

RE

ERIN HENDERSON

(DOCKET NO. IA-20-009)

+ + + + +

TUESDAY

JUNE 23, 2020

+ + + + +

The conference was convened at 8:00 a.m.,
George Wilson, Director, Office of Enforcement,
presiding.

NRC STAFF PRESENT:

GEORGE WILSON, Director, Office of Enforcement

ALEX ECHAVARRIA, Office of Investigations

IAN GIFFORD, Office of Enforcement

NICK HILTON, Office of Enforcement

SARA KIRKWOOD, Office of the General Counsel

SCOTT LUINA, Office of Investigations

CHRIS MILLER, Office of Nuclear Reactor

Regulation (NRR), Division of Reactor

Oversight

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Turning to the specific apparent violation that states that I am in violation of 10 CFR 50(a) and 10 CFR 50.5(a), because Beth engaged in a protected activity by raising concerns of a chilled work environment, after becoming aware of these protected activities, you as the director of Corporate Nuclear Licensing, filed a formal complaint.

The Wetzel OI report provides much more description regarding these concerns, as was shown previously on Slide 10 in my presentation. According to the OI report, these concerns raised by Beth were raised through her interview with OGC Attorney Mr. Slater in late April 2018, and via email to Joe Shea in late March, 2018, May 2018 and thereafter.

This means that these concerns from Beth were raised weeks or months after I filed my complaint on March 9th, 2018. Therefore, I could not have had knowledge of them at the time my complaint was filed, or even when they were initially raised to Mr. Slater or Joe.

To the best of my recollection today, I am not aware of Beth ever having raised chilled work environment concerns within CNL to anyone prior to submitting my written complaint.

I note that the Department of Labor found

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

that in November 2017, Beth filed a complaint with NRC related to my management. I had no knowledge of this complaint and only became aware of this upon reading the DOL finding. Further, I also note that in Beth's own statement to DOL she claims this came back as unsubstantiated.

The cover letter transmitting the notes of apparent violation to me states that in my complaint I specifically cited that I suspected that Beth had made assertions to the NRC about a chilled work environment as an example of hostile behavior from her.

This is not true. My complaint says no such thing, nor is it in any way related to the reason why I included Beth in my complaint.

On page 6 of my complaint, I wrote that there were some indications that other individuals, including Beth, may potentially be contributing to this environment, or colluding with each to facilitate creating a hostile work environment for me.

On the next page of the complaint, I wrote that on September 11th, 2017, I received feedback from a direct report of mine relating a discussion my direct had with a Sequoyah employee, during which the Sequoyah employee, who was a direct report of Mike's, stated that there was a drastic increase in the amount of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

communication between Beth and Mike in the prior two months.

I also wrote that the Sequoyah employee said that he thought Mike and Beth are the reason for the NRC inspection in my organization. OI never asked me about this part of my complaint in my interview.

For the record, I included this information in my complaint to demonstrate that others noted an unusual change in their conduct.

I did not, and do not believe that the Sequoyah employee was correct regarding the origin of the NRC inspection. Based on previous discussions with my managers, including Beth, I had reason to believe that Beth thought the work environment was improving, as can be seen in Exhibit 44.

As I explained in my complaint, and in my OI interview, when I heard that Beth was interfacing with Mike much more frequently, such that the site had even taken notice, it seemed off to me, considering that Beth had typically had limited interaction with the site. I also testified to OI that Beth and Michelle Conner seemed to have a very close-knit relationship.

Beth's name, among others, was included in my complaint because I was encouraged to include the names of any individuals who I thought could

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

possibly have been contributing to the work environment and harassment I had been suffering since this ethics concern I had raised. Based on feedback from others, and my own observations, I included the name of any individuals who may have been doing so.

Additionally, during the time period when TVA was investigating my complaint, I was so focused on ensuring my actions could not be viewed as retaliatory, that I declined to do Beth's 2018 performance review.

Now I'm going to step to technical issues raised by Mike and others. The exhibits that I reference in this section are at Exhibits 45 to 365.

The NRC Office of Investigation report asserts, on page 48, that it is reasonable to assume that I filed my complaint in an effort to impede or stop Mike's actions or behaviors, part of which were protected activity, i.e. address the NCVs to restore regulatory compliance with the NRC. This is not true.

There was absolutely no basis for me wanting to impede attempts to restore regulatory compliance, because at the time I filed my complaint, there was nothing left for TVA to do. The service life backfit and denial had already been under review with the NRC for months, and from what I knew at that time,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Attachment 59

Exhibit 37

Exhibit 37

2-2018-033

OFFICIAL USE ONLY - OI INVESTIGATION INFORMATION

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF INVESTIGATIONS

INTERVIEW REPORT WITH MICHAEL W. MCBREARTY

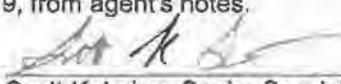
Michael W. MCBREARTY, former Site Licensing Manager, Sequoyah Nuclear Plant (Sequoyah) Tennessee Valley Authority (TVA), was interviewed on August 30, 2019, telephonically to obtain clarifying information, by Senior Special Agent (SSA) Scott K. Luina. MCBREARTY related the following information in substance:

OI:Rll explained to MCBREARTY a telephonic interview was warranted because OI needed to obtain limited clarifying information and MCBREARTY was currently living in the United Arab Emirates (UAE). MCBREARTY was reminded that he was still under oath and agreed to be voluntarily interviewed by OI.

MCBREARTY stated to OI that he recalled being interviewed in approximately April 2018, by the TVA Office of General Counsel (OGC). MCBREARTY stated he was interviewed on just this one occasion by the TVA OGC. The TVA OGC attorney mentioned to MCBREARTY the interview was related to a "harassment allegation." At the time, MCBREARTY assumed the interview was related to his allegation mentioned in his March 2018 text message to Jim POLICKOSKI. MCBREARTY thought this because Inza HAGINS-DYER (Employee Concerns Program Manager) had told MCBREARTY that the ECP had received the allegation from MCBREARTY's text message which referenced a potential chilling effect in corporate nuclear licensing (CNL). HAGINS-DYER had mentioned to MCBREARTY the issue would be referred to a third party to investigate. MCBREARTY learned later when he reviewed documents submitted by TVA to the Department of Labor (DOL) that the interview with TVA OGC was related to an investigation into MCBREARTY for harassment of HENDERSON.

MCBREARTY related that the general questions asked by the TVA OGC were related to CNL and the relationships with the site licensing. The only specifics he was asked were related to his opinions on how Joseph SHEA and Erin HENDERSON did business and their relationships with the sites. MCBREARTY does not recall being asked any questions about leaving HENDERSON off emails or about the text message to POLICKOSKI. MCBREARTY provided his opinion to the TVA OGC when asked about SHEA and HENDERSON and how there is a lack of trust from him towards them. MCBREARTY was also asked about his relationship with Ed SCHRULL, Beth WETZEL and others. MCBREARTY was not provided an advisement or acknowledgement of what the interview was about and had no indication that the interview was related to an investigation into his actions. MCBREARTY and others thought the interview was a safety conscious work environment (SCWE) type of interview.

This report was prepared on August 30, 2019, from agent's notes.



Scott K. Luina, Senior Special Agent
Region II Field Office
Office of Investigations, USNRC

OFFICIAL USE ONLY - OI INVESTIGATION INFORMATION

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

TENNESSEE VALLEY AUTHORITY

(Enforcement Action)

Docket Nos. EA-20-006
EA-20-007

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing “NRC Staff’s Consolidated Response in Opposition to TVA’s Motions for Summary Disposition,” dated September 15, 2021, have been served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the captioned proceeding, this 15th day of September 2021.

/Signed (electronically) by/

Joe I. Gillespie
Counsel for NRC Staff
Mail Stop: O-14-A44
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Telephone: (301) 287-9184
E-mail: Joe.Gillespie@nrc.gov

Dated in Rockville, Maryland
this 15th day of September 2021