



UNITED STATES
NUCLEAR REGULATORY COMMISSION
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March 2, 2020

EA-20-06

EA-20-07

Mr. Jim Barstow
Vice President Nuclear Regulatory Affairs
& Support Services
Tennessee Valley Authority
1101 Market Street, LP 4A-C
Chattanooga, TN 37402-2801

SUBJECT: APPARENT VIOLATIONS OF EMPLOYEE PROTECTION REQUIREMENTS
(OFFICE OF INVESTIGATIONS REPORT NOS. 2-2018-033 and 2-2019-015)

Dear Mr. Barstow:

This letter refers to two investigations completed on October 3, 2019, and January 21, 2020, by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) related to the Tennessee Valley Authority (TVA).

The purpose of the NRC OI investigation 2-2018-033 was to determine whether a former Sequoyah employee was the subject of employment discrimination in violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, "Employee Protection." The NRC determined that the former employee was first subject to a harassment investigation and then placed on paid administrative leave on May 25, 2018, and constructively discharged, in part, for engaging in protected activities. Between 2015 and 2018, the former employee raised concerns numerous times to Corporate Nuclear Licensing (CNL), which included a senior manager and corporate manager, about TVA's regulatory non-compliance regarding two NRC non-cited violations (NCV): 1) the Molded Case Circuit Breaker Service Life NCV; and 2) the Removal of Kirk Key Interlocks NCV. In addition, the former employee raised numerous concerns about a chilled work environment to both the ECP and other TVA employees.

The purpose of the NRC OI investigation 2-2019-015 was to determine whether a former corporate employee was the subject of employment discrimination for participating in a protected activity in violation of the NRC's "Employee Protection" regulation, specifically, 10 CFR 50.7. The NRC determined that the former employee was subject to a harassment investigation, then placed on paid administrative leave on October 15, 2018, and terminated on January 14, 2019, in part, for engaging in protected activities. Between 2016 and 2017, the former employee raised numerous safety concerns, including: violations of the Part 26 Fatigue Rule requirements at Watts Bar 2; failure to adhere to the Fukushima requirements at

Sequoyah; concerns regarding a Watts Bar 2 surveillance extension request; and failure to meet NRC commitments in Information Notice 2017-3 to identify Anchor Darling double disc gate valve susceptibility to failure at Browns Ferry. The former employee also raised concerns regarding a chilled work environment.

NRC staff reviewed the evidence gathered during these NRC OI investigations and determined that the actions taken against these former employees were in apparent violations of 10 CFR 50.7, and that the apparent violations were willful. These apparent violations are being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy can be found on the NRC's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

Since the NRC has not made a final determination in this matter, no Notice of Violations are being issued at this time. In addition, please be advised that the characterization of the apparent violations, and the number of violations, may change as a result of further NRC review.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either:

- (1) request to participate in a closed predecisional enforcement conference (PEC); or
- (2) request to participate in an alternative dispute resolution (ADR) session. These options are discussed in the paragraphs that follow. Please contact Catherine Thompson at 301-287-9515 or email catherine.thompson@nrc.gov, or Ian Gifford at 301-287-9216 or email ian.gifford@nrc.gov within 10 days of the date of this letter to notify the NRC of your intended response.

If you choose to request a PEC, the conference will afford you the opportunity to provide your perspective on these matters and any other information that you believe the NRC should take into consideration before making an enforcement decision. This may include information to determine whether a violation occurred, information to determine the significance of the violation, information related to the identification of the violation, and information related to any corrective actions taken or planned. The decision to hold a PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference would be conducted to obtain information to assist the NRC in making an enforcement decision. If a PEC is held, it will be transcribed, and the NRC may issue a public meeting notice to announce the time and date of the conference; however, the PEC will be closed to public observation since information related to an OI report will be discussed, and the report has not been made public. A PEC should be held within 30 days of the date of this letter.

The NRC's Enforcement Policy permits the individuals who were the subject of the alleged employment discrimination to participate in the conference. Accordingly, those individuals would be invited to attend the PEC and may participate by observing the conference. Following your presentation, the individuals may, if desired, present their views on why they believe the discrimination occurred and comment on your presentation. You would then be afforded an opportunity to respond and the NRC may ask some clarifying questions. Under no

circumstances would the NRC staff permit you or the former employees to cross-examine or question each other.

In lieu of a PEC, TVA may request ADR with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts using a neutral third party. The ADR process that the NRC employs is mediation. In mediation, a neutral mediator with no decisionmaking authority helps parties clarify issues, explore settlement options, and evaluate how best to advance their respective interests. The mediator's responsibility is to assist the parties in reaching an agreement. However, the mediator has no authority to impose a resolution upon the parties. Mediation is a confidential and voluntary process. If the parties (the NRC and TVA) agree to use ADR, they select a mutually agreeable neutral mediator and share equally the cost of the mediator's services. Additional information concerning the NRC's program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Scheinman's Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR. An ADR mediation session should be held within 45 days of the date of this letter.

Enclosed are the redacted Reports of Investigation (ROI) 2-2018-033 and 2-2019-015. The OI reports provide an overview of the evidence gathered during these investigations. Because the NRC has not made a final decision regarding the apparent violations, the NRC will not make the OI reports available to the general public and we request that you also refrain from doing so. If a PEC is held, the other PEC participants will be sent a copy of the relevant redacted OI report.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

/RA/

George A. Wilson, Director
Office of Enforcement

Docket Nos.: 05000259, 05000260
05000296, 05000327
05000328, 05000390
05000391

License No.: DPR-33, DPR-52,
DPR-68, DPR-77,
DPR-79, NPF-90,
NPF-96

Enclosures:

1. Apparent Violations
2. Report of the Office of
Investigation No. 2-2018-033
(EXEMPT FROM PUBLIC DISCLOSURE)
3. Report of the Office of
Investigation No. 2-2019-015
(EXEMPT FROM PUBLIC DISCLOSURE)
4. NUREG/BR-0317 Enforcement ADR Program

SUBJECT: APPARENT VIOLATIONS OF EMPLOYEE PROTECTION REQUIREMENTS
(OFFICE OF INVESTIGATIONS REPORT NOS. 2-2018-033 and 2-2019-015)
DATED: 3/2/2020

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Apparent Violations

10 CFR 50.7 (a) states, in relevant part, that discrimination by a Commission licensee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment.

Apparent Violations for 2-2018-033:

Apparent Violation 1: Contrary to the above, on March 9, 2018, Tennessee Valley Authority (TVA) corporate management discriminated against a former Sequoyah employee for engaging in a protected activity. Specifically, the former Sequoyah employee engaged in a protected activity by raising concerns regarding a chilled work environment, filing complaints with the Employee Concerns Program, and by raising concerns regarding the response to two non-cited violations. After becoming aware of this protected activity, a corporate manager filed a formal complaint against the former employee. The formal complaint initiated an investigation by the TVA Office of the General Counsel that resulted in the former employee being placed on paid administrative leave for nearly three months until, at which point, the former employee was constructively discharged. This action was based, at least in part, on the former employee engaging in a protected activity.

Apparent Violation 2: Contrary to the above, on May 25, 2018, TVA corporate management discriminated against a former Sequoyah employee for engaging in a protected activity. Specifically, the former Sequoyah employee engaged in a protected activity by filing complaints with the Employee Concerns Program. After becoming aware of this protected activity, a senior manager recommended that the former employee be placed on paid administrative leave for nearly three months until, at which point, the former employee was constructively discharged. This action was based, at least in part, on the former employee engaging in a protected activity.

Apparent Violations for 2-2019-015:

Apparent Violation 3: Contrary to the above, on March 9, 2018, TVA corporate management discriminated against a former corporate employee for engaging in a protected activity. Specifically, the former corporate employee engaged in a protected activity by raising concerns of a chilled work environment. After becoming aware of this protected activity, a corporate manager filed a formal complaint against the former employee. The formal complaint initiated an investigation by the TVA Office of the General Counsel that resulted in the former employee being placed on paid administrative leave followed by termination. This action was based, at least in part, on the former employee engaging in a protected activity.

Apparent Violation 4: Contrary to the above, between October 15, 2018, and January 14, 2019, TVA corporate management discriminated against a former corporate employee for engaging

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in protected activities. Specifically, the former corporate employee engaged in a protected activity by raising concerns of a chilled work environment to a senior manager and a TVA attorney during a TVA Office of the General Counsel investigation. After becoming aware of this protected activity, the senior manager placed the former employee on paid administrative leave and played a significant role in terminating the former employee. These actions were based, at least in part, on the former employee engaging in a protected activity.