



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 24, 2020

IA-20-009

Ms. Erin Henderson
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390]

SUBJECT: NOTICE OF VIOLATION, NUCLEAR REGULATORY COMMISSION OFFICE OF INVESTIGATIONS REPORT NOS. 2-2018-033 AND 2-2019-015

Dear Ms. Henderson:

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) concerning your activities at the Tennessee Valley Authority (TVA). The purpose of these NRC OI investigations was to determine whether two former employees were the subject of employment discrimination in violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, "Employee Protection."

On June 23, 2020, a remote predecisional enforcement conference (PEC) was conducted with you to discuss the apparent violation, the significance, the root causes, and your corrective actions.¹

Based on the information developed during the investigations, statements at the PEC, exhibits, and supplemental information, the NRC has determined that a deliberate violation of NRC requirements occurred. This violation is cited in the enclosed Notice of Violation (Notice) (Enclosure 1).

NRC OI investigation 2-2018-033: The NRC determined that a former Sequoyah employee was subjected to an investigation, in part, for engaging in protected activity. The NRC determined that the former employee engaged in protected activity when raising concerns regarding the regulatory response to the Kirk Key and Service Life Non-Cited Violations (NCVs) and when filing Employee Concerns Program (ECP) complaints alleging that you created a chilled work environment. You were aware of the protected activities because: 1) the former employee expressed concerns regarding the NCVs directly to you and 2) you received direct communication from the ECP regarding those complaints.

The former employee suffered an adverse action when you filed a complaint, dated March 9, 2018, triggering an investigation as to whether the former employee harassed you. There is a nexus between the former employee raising concerns and your filing a complaint, which

¹ Due to the ongoing COVID-19 pandemic, the PEC was held remotely via video teleconference.

triggered the investigation. Specifically, the former employee raised concerns via emails and text messages about delays regarding the Kirk Key NCV, as well as a chilled work environment in Corporate Nuclear Licensing (CNL). On March 9, 2018, you filed a complaint against the former employee, triggering an investigation. As examples of alleged harassment, you cited the ECP concerns the former employee had filed as well as the emails and text messages wherein the former employee stated his concerns about a chilled work environment and his concerns about the resolution of the Kirk Key NCV.

NRC OI investigation 2-2019-015: The NRC determined that the former employee was subjected to an investigation, in part, for engaging in protected activity. The NRC determined that the former employee engaged in protected activity when expressing concerns regarding the chilled work environment that you were creating. The NRC determined that you were aware of the former employee's protected activity because you identified this activity in your formal complaint as an example of the former employee's harassing behavior.

The former employee suffered an adverse action when you filed a complaint, dated March 9, 2018, triggering an investigation into whether the former employee harassed you. There is a nexus between the former employee's protected activity of raising concerns about a chilled work environment and your filing a complaint, which triggered the investigation. In your complaint, you identify the former employee as the source of the allegation of a chilled work environment and cite this allegation against you as an example of an "act of harassment." Thus, the document that triggered the former employee's investigation, your complaint, demonstrates the nexus between the protected activity and the adverse action.

Your deliberate actions placed TVA in violation of 10 CFR 50.7, "Employee Protection," and you in violation of 10 CFR 50.5, "Deliberate Misconduct." Enclosure 2 includes a copy of the letter and Notice of Violation issued to TVA. Given the significance of the underlying issue and the deliberate nature of your actions, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level II.

In determining the appropriate sanction to be issued in this case, the NRC considered issuing an Order prohibiting your involvement in NRC-licensed activities as a result of your actions. However, because you were not the decisionmaker that placed the former employees on paid administrative leave or terminated the former corporate employee, I have decided to issue the enclosed Notice of Violation.

You should be aware that if you are involved in NRC-licensed activities in the future, additional deliberate violations could result in more significant enforcement action or criminal penalties.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made

available to the public without redaction. The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>). In addition, this letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. This system, which is not publicly-accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

If you have any questions concerning this matter, 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.

Sincerely,

George A.
Wilson

Digitally signed by George A.
Wilson
Date: 2020.08.24 11:58:22
-04'00'

George A. Wilson, Director
Office of Enforcement

Enclosures:

1. Notice of Violation
2. Notice of Violation to TVA

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

SUBJECT: NOTICE OF VIOLATION, NUCLEAR REGULATORY COMMISSION OFFICE OF INVESTIGATIONS REPORT NOS. 2-2018-033 AND 2-2019-015
DATED: 8/24/2020

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OFFICE	OE:CRB	OE:CRB	OE: CRB/BC	OGC/NLO	OE:D
NAME	IGifford	CThompson	DSolorio	SKirkwood	GWilson
DATE	8/20/2020	8/20/2020	8/20/2020	8/19/2020	8/24/2020

OFFICIAL RECORD COPY

NOTICE OF VIOLATION

Ms. Erin Henderson
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390]

IA-20-009

During U.S. Nuclear Regulatory Commission (NRC) investigations completed on October 3, 2019 (NRC OI 2-2018-033), and January 21, 2020 (2-2019-015), a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 50.5 (a) states, in relevant part, that any employee of a licensee may not:
(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission.

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

Contrary to the above, on March 9, 2018, you engaged in deliberate misconduct that caused the Tennessee Valley Authority (TVA), an NRC licensee, to engage in discrimination against a former Sequoyah employee and a former corporate employee for engaging in protected activities. Specifically:

- a.) a former Sequoyah employee engaged in 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, you, as the Director of Corporate Nuclear Licensing, filed a formal complaint against the former employee. The formal complaint triggered an investigation by the TVA Office of the General Counsel that ultimately resulted in the former employee being placed on administrative leave. Your action was based, at least in part, on the former employee engaging in protected activity.
- b.) a former corporate employee engaged in protected activity by raising concerns of a chilled work environment. After becoming aware of this protected activity, you, as the Director of Corporate Nuclear Licensing, filed a formal complaint against the former employee. The formal complaint triggered an investigation by the TVA Office of the General Counsel that ultimately resulted in the former employee being placed on administrative leave and then terminated. Your action was based, at least in part, on the former employee engaging in protected activities.

This is a Severity Level II violation.

Pursuant to the provisions of 10 CFR 2.201, Ms. Henderson is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, and marked "Open by Addressee Only," within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be

clearly marked as a "Reply to a Notice of Violation; IA-20-009" and should include: (1) the reason for the violation, or, if contested, the basis for disputing the violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an Order or a Demand for Information may be issued requiring information as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Your response will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's Agencywide Document Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21. This letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. This system, which is not publicly-accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Dated 24th day of August 2020