UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

William J. Froehlich, Chairman
Michael M. Gibson
Dr. Gary S. Arnold

In the Matter of	Docket No. IA-20-008-EA
JOSEPH SHEA	ASLBP No. 20-968-04-EA-BD01
(Order Prohibiting Involvement In NRC-Licensed Activities Immediately Effective)	November 3, 2020

MEMORANDUM AND ORDER
(Granting Motion to Set Aside the Immediate Effectiveness)

Before the Board is Joseph Shea's September 22, 2020 motion to set aside the immediate effectiveness of the Nuclear Regulatory Commission (NRC) Office of Enforcement's Order banning Mr. Shea from NRC-licensed activities.[1] For the reasons set forth below, the Board grants the motion.

I. BACKGROUND

The Tennessee Valley Authority (TVA) holds multiple licenses issued by the NRC pursuant to Part 50 of Title 10 of the Code of Federal Regulations.[2] These licenses authorize the operation of TVA's nuclear facilities in accordance with the conditions specified in the

[1] Joseph Shea's Motion to Set Aside the Immediate Effectiveness of an Order Banning Him from Engaging in NRC-Licensed Activities, Answer, and Request for Hearing (Sept. 22, 2020) [hereinafter Shea's Motion]. Mr. Shea also filed a Motion for Leave to Reply. The Board grants Mr. Shea's Motion for Leave to Reply. See Joseph Shea's Motion for Leave to Reply to the NRC Staff Answer (Oct. 5, 2020) [hereinafter Shea's Reply].

[2] Order Prohibiting Involvement in NRC-Licensed Activities Immediately Effective (Aug. 24, 2020) (ADAMS Accession No. ML20219A676) [hereinafter Enforcement Order].

individual licenses and the Commission's regulations. Mr. Shea was employed as Vice President of Nuclear Technology Innovation at TVA until August 24, 2020.[3] When the events that gave rise to the Enforcement Order took place, Mr. Shea was serving as TVA's Vice President of Regulatory Affairs and Support Services.[4] He is currently in a Rotational Management Development position reporting to TVA's Chief Operating Officer and, in this capacity, has no interaction with TVA's NRC-licensed activities.[5]

From April 2019 until January 2020, the NRC Office of Investigations (OI) conducted an investigation into whether Mr. Shea knowingly terminated a TVA employee (Beth Wetzel) for engaging in protected activity, which would be a deliberate misconduct violation. The OI concluded that Mr. Shea placed Ms. Wetzel on administrative leave and subsequently terminated her employment with TVA, in part, because she engaged in a protected activity (raising concerns about a chilled work environment).[6] By these actions, the NRC Staff (Staff) alleges, Mr. Shea engaged in deliberate misconduct (contrary to 10 C.F.R. § 50.5(a)(1)), which caused TVA to violate the NRC's Employee Protection Rule (contrary to 10 C.F.R. § 50.7).

While Mr. Shea was the Vice President of Regulatory Affairs at TVA, Ms. Wetzel was the Manager of Emerging Regulatory Issues and reported to Erin Henderson, who was the Director of Corporate Nuclear Licensing (CNL) and reported to Mr. Shea.[7] On March 9, 2018, Ms. Henderson filed a complaint with Mr. Shea in which she accused five TVA employees of "harassment."[8] Ms. Wetzel was one of the employees whom Ms. Henderson accused of

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[3] Id.

[4] Shea's Motion at 6.

[5] Id., attach., Aff. of Joseph Shea (Sept. 22, 2020).

[6] Enforcement Order at 2.

[7] NRC Staff Answer to Motion to Set Aside the Immediate Effectiveness of the Order and Answer to the Request for a Hearing (Sept. 28, 2020) at 7 [hereinafter Staff's Answer]; Tr. at 85 (Kirkwood).

[8] Staff's Answer at 6.

harassment.[9] Ms. Wetzel, in an email to Mr. Shea concerning her travel expenses, expressed her own concerns with Ms. Henderson:

> 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.[10]

The Staff seeks to characterize Ms. Wetzel's complaint detailing Ms. Henderson's alleged retaliatory harassment as the protected activity that resulted in her termination.[11]

After Mr. Shea received this complaint from Ms. Wetzel, he consulted with the TVA Executive Review Board (ERB), whose purpose is to ensure personnel action is consistent with company practices, and is not based on retaliation for protected activities.[12] The ERB concluded Ms. Wetzel could be terminated for non-discriminatory reasons.[13] At the time of Ms. Wetzel's email, the TVA Office of General Counsel (OGC) was investigating a different allegation concerning Ms. Wetzel. After Mr. Shea forwarded the email to the OCG, it separately concluded that Ms. Wetzel's "pattern of making base[less] assertions of unethical behavior . . . constituted [] violations of TVA's ethical policy."[14] Mr. Shea subsequently caused Ms. Wetzel's employment to be terminated.

Based on this series of events, on August 24, 2020, the Staff issued an order, effective immediately, banning Mr. Shea from involvement in NRC-licensed activities for five years.[15]

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[9] Id.

[10] Staff's Answer, Report of Investigation (ROI), Ex. 11, Emails between Shea and Wetzel, dated May 7 and 14, 2018 at 14.

[11] Staff's Answer at 7–8.

[12] Shea's Motion at 12; Tr. at 74 (Walsh).

[13] Shea's Motion at 13.

[14] See Staff's Answer, ROI, Ex. 30, Interview of Joseph Shea at 29, 31; Tr. at 111–12 (Walsh).

[15] Enforcement Order at 1, 4.

The Staff made the Enforcement Order "immediately effective" because of "the significance of the underlying issues, Joseph Shea's position within TVA that has a very broad sphere of influence, and the deliberate nature of the actions."[16] The Enforcement Order also stated that "the NRC lacks the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Shea were permitted at this time to be involved in NRC-licensed activities."[17]

On September 22, 2020, Mr. Shea filed a response to the Enforcement Order, both requesting a hearing on whether the Enforcement Order should be sustained, and moving to set aside the Enforcement Order's immediate effectiveness.[18] Mr. Shea argues the Staff has failed to meet its burden to provide adequate evidence of deliberate misconduct and that his due process rights have been violated.[19] On September 28, 2020, the Staff submitted an answer to Mr. Shea's Motion to set aside the Enforcement Order's immediate effectiveness.[20] The Staff argues it presented adequate evidence of Mr. Shea's deliberate misconduct by showing his awareness of both the regulations and his awareness of Ms. Wetzel's involvement in protected activities.[21]

An Initial Pre-Hearing Conference was held telephonically on September 30, 2020.[22] At the prehearing conference, Mr. Shea requested, and was granted, the opportunity to file a

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[16] Id. at 3.

[17] Id.

[18] Shea's Motion at 1.

[19] Id. at 4, 15, 18, 23.

[20] NRC Staff Answer to Motion to Set Aside the Immediate Effectiveness of the Order and Answer to the Request for a Hearing (Sept. 28, 2020) [hereinafter Staff's Answer].

[21] Id. at 8–10.

[22] Licensing Board Order (Scheduling Initial Prehearing Teleconference) (Sept. 29, 2020) at 2 (unpublished).

response to the Staff's Answer. On October 5, 2020, Mr. Shea filed a response[23] and on October 13, 2020 the Staff replied to Mr. Shea's response.[24]

At the initial pre-hearing conference, the Staff and Mr. Shea agreed to bifurcate this proceeding with the first phase addressing the motion to set aside the immediate effectiveness of the Enforcement Order, and the second phase a Subpart G hearing that will address whether the Enforcement Order should be sustained. The Subpart G hearing will be held at a later date.[25]

II. LEGAL STANDARDS

A. NRC Enforcement Authority

Under 10 C.F.R. § 2.202, the Commission may issue an order to a licensee or to an individual subject to NRC jurisdiction. Specifically, pursuant to 10 C.F.R. § 2.202(a)(5), the NRC is authorized to issue immediately effective enforcement orders if it "finds that the public health, safety, or interest so requires or that the violation or conduct causing the violation is willful."[26] When the immediate effectiveness of an order has been challenged, "[t]he NRC staff bears the burden of persuading the presiding officer that adequate evidence supports the grounds for the immediately effective order and immediate effectiveness is warranted."[27] Application of this evidentiary standard in the context of immediately effective orders "strikes a reasonable balance between the Commission's ability to protect the public health, safety, or

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[23] Shea's Reply at 1–2.

[24] NRC Staff Reply to Mr. Shea's Motion for Leave to Respond and Mr. Shea's Response to NRC Staff Answer (Oct. 13, 2020) [hereinafter Staff Reply to Shea's Reply].

[25] Tr. at 1–43. The Board notes that its determination today regarding the adequacy of the evidence presented for the immediate effectiveness determination is separate from, and has no bearing on, a future Board decision whether the Enforcement Order should be sustained.

[26] 10 C.F.R. § 2.202(a)(5).

[27] Id. § 2.202(c)(2)(vi); see Advanced Med. Sys., Inc. (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 301–02 (1994) (comparing "adequate evidence" to the probable cause standard).

interest on the basis of reasonably trustworthy information while still providing affected parties with a measure of protection against arbitrary enforcement action by the Commission."[28]

B. Burden of Proof for Immediately Effective Orders

In response to an immediately effective order, a licensee or any other person adversely affected may move the presiding officer to set aside the immediate effectiveness of the order[29] and may demand a hearing on the merits of the order.[30] In a motion to set aside the immediate effectiveness of the order, an alleged wrongdoer bears the burden of going forward with evidence that the order is "not based on adequate evidence but on mere suspicion, unfounded allegations, or error."[31] Moreover, the motion "must state with particularity the reasons why the order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on."[32]

Ultimately, however, the Staff bears the burden of persuasion to show that the order is based on adequate evidence.[33] When an immediate effectiveness determination is challenged, "the [NRC S]taff must satisfy a two-part test: It must demonstrate that adequate evidence — i.e., reliable, probative, and substantial evidence — supports a conclusion that (1) the [alleged wrongdoer] violated a Commission requirement, and (2) the violation was 'willful,' or the violation poses a risk to 'the public health, safety, or interest' that requires immediate action."[34]

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[28] Advanced Med. Sys., CLI-94-6, 39 NRC at 301–02 (quoting Revisions to Procedures to Issue Orders: Challenges to Orders That Are Made Immediately Effective, 57 Fed. Reg. 20,194, 20,196 (May 12, 1992)).

[29] 10 C.F.R. § 2.202(a)(3), (c)(2)(i).

[30] Id. § 2.202(c).

[31] Id. § 2.202(c)(2)(i).

[32] Id.

[33] Id. § 2.202(c)(2)(vi).

[34] Safety Light Corp. (Bloomsburg, Pa. Site), LBP-05-2, 61 NRC 53, 61 (2005) (citing 10 C.F.R. § 2.202(a)(1), (a)(5)). See Hearings on Challenges to the Immediate Effectiveness of Orders,

Adequate evidence is not an onerous burden, but merely requires a showing that the order is based on more than "mere suspicion, unfounded allegations, or error."[35] The Commission likens the adequate evidence standard to one of probable cause.[36] Because probable cause "deals with probabilities and depends on the totality of the circumstances,"[37] it is "a fluid concept" that is "not readily, or even usefully, reduced to a neat set of legal rules."[38] It "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity."[39] Probable cause "is not a high bar."[40]

C. Deliberate Misconduct

The Staff alleges Mr. Shea's actions violated 10 C.F.R. § 50.5, "Deliberate Misconduct," and caused TVA to violate 10 C.F.R. § 50.7, "Employee Protection"[41] when he terminated Ms. Wetzel. At this juncture, the Board must answer the limited question of whether the Staff provided adequate evidence of Mr. Shea's deliberate misconduct, in contravention of 10 C.F.R. § 50.5.

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80 Fed. Reg. 63,409, 63,411 (Oct 20, 2015). The Commission quoted Safety Light as the two-part test that must be met by the Staff.

[35] 10 C.F.R. § 2.202(c)(2)(i).

[36] Probable cause exists where "the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that [an offense has been or is being committed]." Carroll v. United States, 267 U.S. 132 (1925). Adequate evidence, as defined by the Commission, is found when "facts and circumstances within the NRC Staff's knowledge, of which it has reasonably trustworthy information, are sufficient to warrant a person of reasonable caution to believe that the charges specified in the order are true and that the order is necessary to protect the public health, safety or interest." 57 Fed. Reg. at 20,196; see Advanced Med. Sys., CLI-94-6, 39 NRC at 285.

[37] Maryland v. Pringle, 540 U.S. 366, 370 (2003).

[38] Illinois v. Gates, 462 U.S. 213, 232 (1983).

[39] Id. at 243–44, n.13.

[40] Kaley v. United States, 571 U.S. 320, 338 (2014).

[41] Enforcement Order at 2.

When the Commission promulgated the deliberate misconduct rule in 1991, it envisioned that deliberate misconduct would only be found in "a very few significant or egregious cases[.]"[42] Deliberate misconduct within the meaning of 10 C.F.R. § 50.5 is more than "careless disregard" or "deliberate ignorance."[43] Instead, it requires "an intentional act or omission" that the person knows would cause a licensee to be in violation of any rule.[44] Also in that 1991 rulemaking, the Commission explained that "[a]n individual acting in this manner has the requisite intent to act in a wrongful manner"[45] and that it "is necessary that the person recognize that the action was improper."[46] Indeed, the Commission stated the range of actions that would subject an individual to action under the deliberate misconduct rule "does not differ significantly from the range of actions that might subject the individual to criminal prosecution."[47]

Not only must the element of "actual knowledge" be present,[48] but a 10 C.F.R. § 50.5 violation requires a showing that it was deliberate. Therefore, insofar as an immediately effective order is based on deliberate misconduct,[49] the Staff must also show adequate

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[42] Revisions to Procedures to Issue Orders; Deliberate Misconduct by Unlicensed Persons, 56 Fed. Reg. 40,664, 40,670, 40,675 (Aug. 15, 1991).

[43] Hearings on Challenges to the Immediate Effectiveness of Orders, 80 Fed. Reg. 63,409, 63,409 (Oct 20, 2015).

[44] 10 C.F.R. § 50.5(c).

[45] Id. at 40,679.

[46] Id. at 40,681; see id. (stating "it would be an erroneous reading of the final rule on deliberate misconduct to conclude that conscientious people may be subject to personal liability for mistakes. The Commission realizes that people may make mistakes while acting in good faith. Enforcement actions directly against individuals are not to be used for activities caused by merely negligent conduct. These persons should have no fear of individual liability under this regulation, as the rule requires that there be deliberate misconduct before the rule's sanctions may be imposed.").

[47] Id. at 40,675. In this regard, the Supreme Court has implied that probable cause of a specific intent crime requires evidence of intent. See D.C. v. Wesby, 138 S. Ct. 577, 586–88 (2018).

[48] David Geisen, LBP-09-24, 70 NRC 676, 701 (2009).

[49] Policy and Procedure for Enforcement Actions; Deliberate Misconduct Rule, 63 Fed. Reg. 1982, 1984 (1998).

evidence of intent to act in a wrongful manner[50] to satisfy the first requirement of the Commission's two-part test.

In other words, to uphold the immediate effectiveness of a 10 C.F.R. § 50.5 violation, the Staff must present adequate evidence that the alleged wrongdoer (1) knowingly (2) engaged in deliberate misconduct.[51] This "knowingly" requirement needed to support an immediately effective order is to be distinguished from mere "willfulness," which can be established by showing merely an act of careless disregard. In fact, the NRC's own Enforcement Policy States: "A showing of willfulness is insufficient because a willful violation is defined "as one that involves either a deliberate violation of NRC requirements or careless disregard of NRC requirements,"[52] and does not require a demonstration that the violation was knowing, as is required in 10 C.F.R. § 50.5. Further, adequate evidence of an "intentional act or omission" that causes a Commission violation is insufficient to demonstrate adequate evidence of a 10 C.F.R. § 50.5 violation if the Staff does not also show that the alleged wrongdoer "knowingly" engaged in deliberate misconduct. Knowledge of a rule is not the same as knowledge that one is engaging in conduct contrary to that rule.[53]

III. ANALYSIS

For the reasons explained below, we grant Mr. Shea's motion to set aside the immediate effectiveness of the Enforcement Order because the Staff failed to meet the first requirement of

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[50] Staff Guidance emphasizes the difficulty in establishing intent for a 10 C.F.R. § 50.5 violation by stating that determining "the state of mind and intent of the individual" for a deliberate misconduct violation may "be difficult to prove." SECY-02-0166, Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues, at 92 (Sept. 2002) (ADAMS Accession No. ML022120479).

[51] 10 C.F.R. § 50.5(a), (a)(1).

[52] NRC Enforcement Policy at 84 (Jan. 15, 2020) (ADAMS Accession No. ML19352E921).

[53] See Bryan v. United States, 524 U.S. 184, 184 (1998) (holding a defendant need not be aware of a specific law violated but must only have knowledge that his/her actions were unlawful).

the two-part test[54]—that there must be adequate evidence of an intentional violation of a Commission requirement.

Because the alleged violation is deliberate misconduct, the Staff must provide adequate evidence that Mr. Shea "knew" and had "actual knowledge"[55] that his actions would cause TVA to violate 10 C.F.R. § 50.7. Stated otherwise, "intent is the touchstone."[56] More specifically, a showing of deliberate misconduct requires adequate evidence—"reliable, probative, and substantial evidence"[57]—of "the state of mind and intent of [Mr. Shea],"[58] of "the requisite intent [of Mr. Shea] to act in a wrongful manner,"[59] and that "[Mr. Shea] recognize[d] that [his] action was improper."[60] Because the range of actions that would penalize an individual for violating the deliberate misconduct rule "does not differ significantly from the range of actions that might subject the individual to criminal prosecution,"[61] the Staff must show the Enforcement Order is based on more than "mere suspicion, unfounded allegations, or error."[62]

We emphasize that resolution of the instant motion comes down to one central question, as articulated by the Staff, "whether there is adequate evidence to conclude that Mr. Shea, with the knowledge that his actions were prohibited, deliberately terminated Ms. Wetzel because she expressed her concerns on numerous occasions, that there was a chilled work environment . . .

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[54] See supra note 34 and accompanying text.

[55] Geisen, LBP-09-24, 70 NRC at 701.

[56] Tr. at 118 (Walsh).

[57] Safety Light Corp., LBP-05-2, 61 NRC at 61.

[58] 56 Fed. Reg. at 40,679.

[59] Id.

[60] Id.

[61] Id. at 40,675.

[62] 10 C.F.R. § 2.202(c)(2)(i).

at TVA."[63] The key issue before us, then, is "about Mr. Shea's actions in terminating Ms. Wetzel for her protected activity,"[64] and nothing else.[65]

While the Staff concedes it does not have direct evidence of Mr. Shea's intent, it maintains that it provided circumstantial evidence of Mr. Shea's intent sufficient to infer the requisite intent.[66]

The Staff's circumstantial evidence largely focuses on Ms. Wetzel's actions and whether her actions constituted protected activity.[67] The Staff describes a convoluted history of

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[63] Tr. at 84 (Kirkwood); Tr. at 119 (Walsh) ("The key here is Joe Shea's intent, and whether or not he knew what he was doing was wrong.").

[64] Tr. at 85 (Kirkwood) (emphasis added).

[65] Whether TVA, as a licensee, violated 10 C.F.R. § 50.7 is beyond the scope of this proceeding. NRC issued a separate enforcement order to TVA for a 10 C.F.R. § 50.7 violation with regards to Ms. Wetzel's termination. See Notice of Violation and Proposed Imposition of Civil Penalty (Aug. 24, 2020) (ADAMS Accession No. ML20232B803).

[66] Staff Reply to Shea's Reply at 12–13.

[67] Staff's Answer at 7–8; Staff Reply to Shea's Reply at 15–16 (summarizing Ms. Wetzel's protected activities and assuming Mr. Shea's "awareness" of those activities means he deliberately terminated her for those specific activities, without supporting evidence). Section 50.7 does not require a showing of intent or deliberate misconduct, but it puts a lower evidentiary burden on the Staff to show, through adequate evidence, the elements of a prima facie employee discrimination case (1) that the individual engaged in protected activity, (2) that an adverse employment action was taken, and (3) that the individual's protected activity was a contributing factor in the adverse employment action. Tenn. Valley Auth. (Watts Bar Nuclear Plant, Unit 1), CLI-04-24, 60 NRC 160, 183 (2004). Further, the standards for 10 C.F.R. § 50.7 permit the Staff to infer whether a protected activity is a contributing factor to an adverse personnel action if it shows a reasonable person could infer that protected activities influenced the unfavorable personnel action to some degree. Id. at 197. Unlike the adequate evidence required in 10 C.F.R. § 50.5, to establish adequate evidence for a violation of 10 C.F.R. § 50.7, the Staff need not show any evidence of intent, "actual knowledge," or that the alleged wrongdoer knew his actions would cause a licensee to violate a Commission regulation. Rather, the Staff is permitted to draw inferences based on the "reasonable person" standard. The standards for 10 C.F.R. § 50.5 do not permit "reasonable" inferences, but require actual knowledge, and there is no burden on the alleged wrongdoer to refute anything with "clear and convincing evidence." In sum, the two regulations require significantly different types of evidence, such that it would constitute clear error to equate the lower burden of a 10 C.F.R. § 50.7 (Employee Protection) violation with a 10 C.F.R. § 50.5 (Deliberate Misconduct) violation.

allegations between employees and supervisors,[68] involving opaque statements regarding chilled work environments, and several examples of protected activity,[69] but it fails to establish the requisite connection between these allegations and Mr. Shea's decision to terminate Ms. Wetzel.[70] Based only on the record before us now, we find that the Staff has not presented adequate circumstantial evidence of deliberate misconduct to warrant the immediate effectiveness of the Enforcement Order.[71]

Mr. Shea satisfied the initial burden of going forward by presenting evidence he had non-discriminatory reasons to terminate Ms. Wetzel because both the ERB and OGC indicated it was the proper course of action.[72] Although the Staff has asserted that the ERB and OGC

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[68] See Staff's Answer at 7. For example, the Staff stated that "Ms. Wetzel engaged in protected activity when she participated in a DOL proceeding, such that statements she had made were reported in Ms. Connor's DOL complaint, which also identified in Ms. Henderson's complaint." Id. This is convoluted and the Board cannot make a determination of who said, or submitted, what in this statement.

[69] Id.

[70] The Staff incorrectly phrases the issue here as whether the "Staff has shown adequate evidence such that a person of reasonable caution would believe that Mr. Shea had in fact terminated Ms. Wetzel based, in part, on her protected activity." Staff Reply to Shea's Reply at 16. The Staff must show through adequate evidence that Mr. Shea had "actual knowledge" that his actions would cause TVA to violate 10 C.F.R. § 50.7. The question is not whether "he should have known" or whether a "reasonable person" would have known. See Geisen, LBP-09-24, 70 NRC at 701.

[71] Whether TVA, as a licensee, violated 10 C.F.R. § 50.7 is beyond the scope of this proceeding. NRC issued a separate enforcement order to TVA for a 10 C.F.R. § 50.7 violation with regards to Ms. Wetzel's termination. See Notice of Violation and Proposed Imposition of Civil Penalty (Aug. 24, 2020) (ADAMS Accession No. ML20232B803).

[72] Staff's Answer, ROI, Ex. 7, Review of TVA's ECP Investigation at 3 (stating a legitimate business reason existed for each of the actions taken by CNL management in addressing performance issues with the "concerned individual" and that TVA policy and procedure also governed the actions taken by management); see Echavarria Aff. ¶ 13 (stating that in a questionnaire to the ERB members asking "[d]oes it appear the individual's involvement in a protected activity contributed in any way to the proposed recommendation?" The answer is marked "No."); see also Shea's Motion at 11 ("On August 30, 2018, OGC recommended that [Ms. Wetzel] be separated from the company, either by a no-fault separation agreement or termination, because it found that [Ms. Wetzel]'s pattern of behaviors towards Ms. Henderson as described above violated multiple TVA policies and federal law." (citing Ex. 14, TVA OGC Report)). Exhibit 14 should contain the "TVA OGC Supplemental Report," but it is not included

reports were merely "window dressing" to "cover" Mr. Shea's deliberate misconduct,[73] it has not presented adequate evidence to meet its burden of persuasion that these reports served as cover for Mr. Shea's intent.[74] At this stage, the Staff has presented nothing more than "mere suspicion [and] unfounded allegations."[75] In fact, the Staff admitted so by stating it "will show how that [OGC] investigation was not at all independent[.]"[76] An admission that the Staff "will" do something implies it has not yet done so. As such, the Staff has not provided adequate evidence to justify the accusation that the ERB and OGC acted as cover.

While the Staff purports to discredit the input of the ERB and OGC as "mere window dressing" for Mr. Shea's actions,[77] what the Staff is effectively asking of us is to weigh the evidence and entirely discredit contrary statements of the ERB and OGC. As the Staff itself stated, such a weighing of the evidence is inappropriate at this stage.[78] As such, we will not weigh the evidence and discredit both reports, but take the contents at face value. Nonetheless, in addressing this argument, the Staff points to no evidence that the ERB or OGC acted as "cover" or "mere window-dressing" for Mr. Shea's actions. While that may be a

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in the excerpted pages provided by the Staff in its response, although the Staff stated it provided the entire report. Tr. at 100 (Kirkwood); Shea's Motion at 11 n.37.

[73] Tr. at 111 (Walsh) (stating that the Staff's categorization that the OGC investigation and recommendation was a "cover" or "window dressing" is "clear admission by the Staff that [its] action is based on mere suspicion and not on evidence").

[74] In addition, Mr. Shea stated, in reference to the dispute between Ms. Henderson and Ms. Wetzel that he wanted "the organization's support to draw equally well-documented analysis and conclusions, whatever they might be[.]" Shea's Motion, attach. 4 at 3.

[75] 10 C.F.R. § 2.202(c)(2)(i).

[76] Tr. at 87–88 (Kirkwood).

[77] Tr. at 104 (Kirkwood) ("In terms of the ultimate question of whether or not the OGC Report caused Mr. Shea to think that the action was acceptable, I think that's better left for the merits, one, but two, I think that we will show that Mr. Shea was effectively using these various processes as a cover for his deliberate activities."); Tr. at 109 (Kirkwood).

[78] Staff Reply to Shea's Reply at 6.

legitimate line of inquiry at an evidentiary hearing,[79] there is no evidence[80] before us to suggest either the ERB or OGC did not fulfill its professional responsibilities and act truthfully. In fact, as argued by Mr. Shea,[81] these arguments amount to "mere suspicion [and] unfounded allegations."[82]

The relevant intents of either the ERB or OGC have no bearing on Mr. Shea's intent in terminating Ms. Wetzel. If either body had the requisite intent to act in a wrongful manner (for which we have no evidence before us) it would still not be indicative of Mr. Shea's intent. As noted, the only relevant inquiry is whether Mr. Shea engaged in deliberate misconduct, not whether the ERB or OGC did.[83]

The Staff suggests Mr. Shea's reading of the deliberate misconduct regulation would result in an impossible task for the Staff. Specifically, the Staff asserts it "could never establish deliberate misconduct so long as the [alleged wrongdoer] denied the violation."[84] But it is not Mr. Shea's denial of wrongdoing on which we rely here. Rather, we reviewed the totality of the circumstances and concluded that the Staff has not provided any evidence to support its

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[79] The Staff may rely on additional evidence not cited in the Enforcement Order, but it may not issue the order based merely on the hope that it will thereafter find the necessary quantum of evidence to sustain the order's immediate effectiveness. See Advanced Med. Sys., CLI-94-6, 39 NRC at 285.

[80] As stated above, the Staff admitted it has not provided evidence that the OGC investigation was not independent, but "will" do so. Tr. at 87–88 (Kirkwood).

[81] Tr. at 112–13 (Walsh).

[82] 10 C.F.R. § 2.202(c)(2)(vi). The Supreme Court stated, in the context of prosecutorial misconduct, that "[d]eliberate misconduct generally must be inferred from the objective evidence." Oregon v. Kennedy, 456 U.S. 667, 690 n.29 (1982). A subjective inference with no supporting evidence that the ERB or OGC are not independent cannot constitute objective evidence.

[83] Tr. at 84 (Kirkwood).

[84] Staff Reply to Shea's Reply at 12 ("Under the standard Mr. Shea asserts, the NRC Staff could never establish deliberate misconduct so long as the individual denied the violation.").

inference that the ERB and OGC acted as "cover" to hide deliberate misconduct by Mr. Shea.[85] Without such evidence, the ERB and OGC conclusions support Mr. Shea's assertions that he believed he was taking the proper action.[86] Mr. Shea, like the Staff, can rely on circumstantial evidence to support his position.[87] In any event, there is significantly more evidence before us indicating a lack of Mr. Shea's intent than just his denial of wrongdoing.

In sum, the Staff has not proffered adequate evidence to support a conclusion that Mr. Shea violated 10 C.F.R. § 50.5,[88] such that this Board could infer that Mr. Shea knew that by terminating Ms. Wetzel, he would cause TVA to violate 10 C.F.R. § 50.7.[89]

IV. CONCLUSION

We conclude that the Staff has failed to meet its burden to provide adequate evidence of a 10 C.F.R. § 50.5 violation by Mr. Shea. Accordingly, Mr. Shea's motion to set aside the immediate effectiveness of the Enforcement Order is granted. This ruling does not stay the immediate effectiveness of the Enforcement Order[90] and it "will not be effective" until this matter

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[85] See supra notes 77–82 and accompanying text.

[86] Tr. at 55–56 (Walsh).

[87] Staff Reply to Shea's Reply at 12 ("It is well established that evidence of a deliberate violation need not rely on a confession, but rather can be established through circumstantial evidence.").

[88] Safety Light Corp., LBP-05-2, 61 NRC at 61 (citing 10 C.F.R. § 2.202(a)(1), (a)(5)).

[89] Mr. Shea also asserted that this immediately effective order is violative of due process. We reject that claim in its entirety. When the Commission published its final rule on immediately effective orders, it acknowledged that "an immediately effective order may cause a person to suffer loss of employment while the order is being adjudicated" but recognized that the effects of health and safety violations are paramount over an individual's right of employment. The rule sets forth a process by which an individual may seek to set aside the immediate effectiveness of an order whose immediate effect was improperly imposed, and Mr. Shea has availed himself of that process here. Revisions to Procedures to Issue Orders: Challenges to Orders that are Made Immediately Effective, 57 Fed. Reg. 20,194, 20,195 (May 12, 1992).

[90] 10 C.F.R. § 2.202(c)(2)(vii).

is addressed by the Commission.[91] As required by 10 C.F.R. § 2.202(c)(2)(viii), the Board refers this ruling to the Commission.[92]

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael M. Gibson
ADMINISTRATIVE JUDGE

/RA/

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 3, 2020

[91] Id. § 2.202(c)(2)(viii).

[92] Id.

Judge Froehlich, Dissenting

I write today to disassociate myself from the majority opinion. I disagree with the analysis and the legal standard that underlie the majority's conclusion. I believe that if the proper legal standard were applied, the Board would find that the NRC Staff has met its burden of presenting adequate evidence to support the immediate effectiveness of the Enforcement Order (Order).

For an order to be effective immediately "the NRC staff bears the burden of persuading the presiding officer that adequate evidence supports the grounds for the immediately effective order and immediate effectiveness is warranted."[93] The Commission's regulations provide that the Commission may, upon a finding that the public health, safety, or interest so requires or that the violation or conduct causing the violation is willful, make an order immediately effective.[94] When an immediate effectiveness determination is challenged, the NRC Staff "must satisfy a two-part test: It must demonstrate that adequate evidence — i.e., reliable, probative, and substantial evidence — supports a conclusion that (1) the [alleged wrongdoer] violated a Commission requirement, and (2) the violation was 'willful,' or the violation poses a risk to 'the public health, safety, or interest' that requires immediate action."[95]

The majority opinion commits fundamental legal error when it expands the showing that the NRC Staff must make. In the context of a charge that Mr. Shea violated 10 C.F.R. § 50.5, the NRC Staff must only allege "an intentional act or omission that the person knows would cause a licensee to be in violation of any rule or regulation or other NRC requirement."[96] The

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[93] 10 C.F.R. § 2.202(c)(2)(vi); see Advanced Med. Sys., CLI-94-6, 39 NRC 285, 301–02 (1994) (comparing "adequate evidence" to the probable cause standard).

[94] 10 C.F.R. § 2.202(a)(5).

[95] Safety Light, LBP-05-2, 61 NRC at 61 (2005) (citing 10 C.F.R. § 2.202(a)(1), (a)(5)).

[96] The Deliberate Misconduct Final Rule lists a number of deliberate misconduct violations. "Additional examples include a supervisor who discharges an employee for raising safety

majority proclaims, however, that the Staff must provide adequate evidence that Mr. Shea "knew" and had "actual knowledge" that his violations would cause TVA to violate 10 C.F.R. § 50.7.[97]

The majority would require that the NRC Staff present evidence of Mr. Shea's state of mind and his intent and that he recognized his actions were improper.[98] This is not the burden under the Commission's regulations. The issue is not what went on in Mr. Shea's head, but rather whether there is "adequate evidence" that supports a conclusion that (1) Mr. Shea violated a Commission requirement, and (2) the violation was 'willful,' or the violation poses a risk to 'the public health, safety, or interest' that requires immediate action.[99]

Federal statutes and Commission regulations prohibit the firing of an employee for engaging in protected activity. Individuals working for NRC licensees are protected from retaliation for reporting potential violations of the Energy Reorganization Act (ERA)[100] or the Atomic Energy Act (AEA)[101] to their employers or to the government. Under the ERA, employees of TVA, an NRC licensee, are protected from retaliation for engaging in protected

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concerns…" 56 Fed. Reg. 40664 at 40678, 40680. The final rule does not require an inquiry into the supervisor's mental processes.

[97] Majority at 8, 10, 12, 14. (References to Mr. Shea's state of mind and requisite intent).

[98] Id.

[99] Hamlin Testing Laboratories, Inc., 2 AEC 423, 428 (1964) (a licensee willfully violated a Commission requirement when it "knew what was required of it under the Commission's regulations and the terms and conditions of its license, and [failed] to comply therewith"); X-Ray Engineering Co., 1 AEC 553, 555 (1960). See also, 55 Fed. Reg. 12,374, 12,375 (Apr. 3, 1990) (in Federal Register notice of proposal to revise regulations to address willful misconduct by unlicensed individuals, Commission states that a "violation is willful if an individual either knew that the conduct was prohibited or showed a careless disregard for whether the conduct was prohibited").

[100] Energy Reorganization Act of 1974, § 211(a)(1), 42 U.S.C. § 5851(a)(1) (2018).

[101] Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq.

activity.[102] Federal law prohibits retaliation against employees who provide information they reasonably believe evidences violation of any law, rule, or regulation; abuse of authority, or creates a substantial and specific danger to public health and safety. Section 211 of the ERA protects employees who disclose concerns about nuclear safety or a violation of an NRC rule or regulation. The Enforcement Order charges Mr. Shea, as the Vice President of Regulatory Affairs at TVA, engaged in deliberate misconduct when he placed on paid administrative leave and later terminated Ms. Wetzel for engaging in protected activity by raising concerns about a chilled work environment."[103] All that is required to be shown is that Mr. Shea fully understood or should have understood his responsibility to comply with the ERA and Commission regulations. No party argued that these laws and regulations were unknown to Mr. Shea.

The majority decision cites the Safety Light case.[104] That case requires that there be 'adequate evidence' of a violation of a Commission requirement. In section 50.5(c), deliberate misconduct means "an intentional act or omission that the person knows: (1) [w]ould cause a licensee . . . to be in violation of any rule, regulation, or order." Thus, a necessary part of showing adequate evidence of a violation of § 50.5 is showing (1) that a regulation was violated and (2) that the violation was intentional.[105] What is required is that the NRC Staff be satisfied that the individual charged fully understood or should have understood his or her responsibility.[106] No reasonable argument can be made that Mr. Shea was not aware of the requirements of sections 50.5 and 50.7. The NRC Staff has presented "adequate evidence"

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[102] Protected activities include notifying an employer of an alleged violation of the ERA or the AEA, testifying, assisting or participating in any other actions to carry out the purposes of the ERA or the AEA. 42 U.S.C. § 5851.

[103] Enforcement Order at 2.

[104] Safety Light, LBP-05-2, 61 NRC at 61 (2005) (citing 10 C.F.R. § 2.202(a)(1), (a)(5)).

[105] The NRC Staff contends, "Retaliation in violation of 10 C.F.R. § 50.7 is, by its nature, an intentional act." Staff Answer at 11.

[106] Deliberate Misconduct Rule -Final Rule 56 Fed Reg 40664 at 40673.

that Mr. Shea intentionally terminated Ms. Wetzel, in part, because she engaged in protected activity. Adequate evidence has been submitted to show (for purposes of an immediately effective order) that the termination of Ms. Wetzel was a deliberate violation. It is ironic that the majority began its analysis of what the NRC Staff must show by stating "that there must be adequate evidence of a violation of a Commission requirement".[107] They fail to recognize the fact that it is a "violation of a Commission requirement" for a licensee or one of its executives to terminate an employee for engaging in protected activities.[108]

The majority compounds its fundamental error by prematurely weighing the evidentiary value of select portions of the TVA ERB Report and an internal TVA OGC Report. These documents and others in the case contain conflicting accounts of the advice Mr. Shea was provided, including warnings that the personnel actions he was taking were related to protected activities.[109] The majority opines on how these two documents, among the dozens filed, may have affected Mr. Shea's decision-making process. The majority draws inferences that these two documents somehow show a lack of requisite intent.[110] Not only is such an analysis completely unnecessary for purposes of determining whether an order should be made immediately effective, it is premature. The probative value of these and other exhibits is an issue to be decided in the upcoming evidentiary hearing, not at this stage of the proceedings.

The majority is critical of the NRC Staff for not presenting evidence that would address the majority's premature conclusion that portions of the TVA-ERB Report and the TVA-OGC Report show that Mr. Shea's actions were based on non-protected actions. The majority struggles with the significance of and the weight to be accorded to these two reports-- are they

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[107] Majority at 10.

[108] Energy Reorganization Act of 1974, § 211(a)(1), 42 U.S.C. § 5851(a)(1) (2018).

[109] Exhibit 14, page 32 of 42 ("The Whistleblower Protection Act, 5 USC 2302 (2012) does apply."), Exhibit 17, page 34-35 (Concerns with Wetzel Adverse Employment Action).

[110] Majority at 13.

"window dressing" or are they evidence of Mr. Shea's non-retaliatory motives in terminating Ms. Wetzel? The part that these two reports played in Mr. Shea's personnel decisions is an issue that could be addressed at the evidentiary hearing. There is no need for the NRC Staff to counter or rebut inferences gleaned by the majority from documents the NRC Staff included in its probable cause submission.

The sole question to be decided at this stage is whether the NRC Staff has submitted "adequate evidence" to support the immediate effectiveness of its Order. The NRC Staff has submitted the affidavits of two Special Agents, together with the Report of Investigation conducted in this matter. The Report of Investigation reflects sworn statements of more than twenty individuals, and documentary evidence from the files of the TVA and the U.S. Department of Labor. It also includes the TVA-ERB Report[111] and the TVA-OGC Report.[112] The Report of Investigation concluded that a preponderance of the evidence indicated deliberate misconduct.[113] Among the evidence filed to show Mr. Shea knowingly engaged in unlawful employment discrimination against Ms. Wetzel include (1) a history of chilled work environment allegations in the Corporate Nuclear Licensing division while Ms. Henderson was its Director;[114] (2) allegations of a chilled work environment made internally to the TVA

[111] Staff's Answer, Ex.16.

[112] Staff's Answer, Ex. 14.

[113] ROI page 1 and page 49.

[114] Staff's Answer, attach. 2, Aff. of Ian A. Gifford ¶¶ 6, 7 (Sept. 28, 2020) [hereinafter Gifford Aff.]; Report of Investigation (ROI) at 14, 24, 42; Ex. 7, ROI; Ex. 10 ROI; Tr. at 10, 104–05, 107, 114.

Employee Concerns Program,[115] to the NRC,[116] and to the U.S. Department of Labor;[117] (3) multiple statements in Ms. Henderson's formal complaint to Mr. Shea that Ms. Wetzel (one of Ms. Henderson's subordinates) was harassing Ms. Henderson by alleging that Ms. Henderson had created a chilled work environment;[118] (4) the TVA-OGC Report (Slater Report) which identified Ms. Wetzel's retaliation concerns;[119] and (5) the TVA Executive Resources Board report which indicates Ms. Wetzel had engaged in protected activity.[120] The proximity in time between Ms. Wetzel's engagement in protected activities and her subsequent termination is additional evidence of Mr. Shea's deliberate misconduct.[121]

The "adequate evidence" standard is not onerous. It consists of more than uncorroborated suspicion or accusation, but it does not rise to the level of preponderance of the evidence. Adequate evidence exists "when the facts and circumstances within the NRC staff's knowledge, of which it has reasonably trustworthy information, are sufficient to warrant a person

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[115] Gifford Aff. ¶¶ 6, 7; Ex. 7, ROI at 11, 23. The TVA ECP had found that the "behaviors exhibited by [Ms. Henderson], including [the] perception that employees were written up after disagreeing with [Ms. Henderson], have the potential to create an work environment that is not conducive to raising safety concerns," and that Ms. Henderson's actions create a perception of retaliation. See Staff's Answer, attach. 1, Aff. of Alejandro Echavarria ¶¶ 13, 17, 23 (Sept. 28, 2020) [hereinafter Echavarria Aff.]; ROI at 48; ROI, Ex.10 at 1.

[116] Echavarria Aff. ¶¶ 12, 13: Ex. 10, ROI at 7; Gifford Aff. ¶ 7.

[117] Echavarria Aff. ¶ 13; ROI at 48; Ex. 10, ROI at 1.

[118] Echavarria Aff. ¶¶ 12, 13, 24; Gifford Aff. at ¶ 7; ROI at 14, 22, 24, 42; Ex. 10 ROI; Staff Answer at 8–9, Tr. 95, 104-105, 107.

[119] Echavarria Aff. ¶¶ 13, 20, 21: ROI at 32, 42–43; Ex. 20, ROI at 29; Echavarria Aff. ¶ 20; Ex.11, ROI at 13–14; Gifford Aff. ¶ 7.

[120] See Ex. 16, at 6; Echavarria Aff. ¶¶ 15–17, 20. Although the Executive Resources Board ultimately concluded Ms. Wetzel could be terminated for non-discriminatory reasons, it also acknowledged that Ms. Wetzel had engaged in protected activities.

[121] See Order Prohibiting (Thomas Summers) Involvement In NRC-Licensed Activities (Sept. 12, 2019) at 1, 6 (finding the temporal proximity of the individual's submission of the condition report and the initiation of the adverse action . . . deemed it a discriminatory act) (ADAMS Accession No. ML19234A336).

of reasonable caution to believe that the charges specified in the order are true."[122] Adequate evidence is not an onerous burden, but merely requires a showing that the order is based on more than "mere suspicion, unfounded allegations, or error."[123] It "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity."[124] Probable cause "is not a high bar."[125] The NRC Staff has demonstrated the need for an immediately effective order based on violations of the ERA and Commission regulations. The NRC Staff has presented adequate evidence (in the context of a motion to set aside) that a protected activity was a contributing factor to the adverse action.[126] The NRC Staff evidence presented is not mere suspicion, unfounded allegations or error.

I am also uncomfortable with the prospective effect of the majority's decision on the TVA workplace during the pendency of this proceeding. The Enforcement Order not only found Mr. Shea's actions to be deliberate, but also found that his actions had a negative impact on TVA employees' ability to raise safety concerns out of fear of retaliation. Section 2.202 permits the Commission to issue "an order . . . to an unlicensed person who willfully causes a licensee to be in violation of Commission requirements or whose willful misconduct undermines, or calls into question, the adequate protection of the public health and safety in connection with activities regulated by the NRC under the [AEA].[127] The Enforcement Order was made immediately

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[122] 57 Fed. Reg. at 20,196.

[123] 10 C.F.R. § 2.202(c)(2)(i).

[124] Id. at 243–44, n.13.

[125] Kaley v. United States, 571 U.S. 320, 338, (2014).

[126] See Energy Reorganization Act of 1974, as amended, § 211(b)(3)(c), 42 U.S.C. § 5851(b)(3)(C) (2018); see also Watts Bar, CLI-04-24, 60 NRC at 183. A prima facia showing of a violation of the ERA must show (1) that the individual engaged in protected activity, (2) that an adverse employment action was taken, and (3) that the individual's protected activity was a contributing factor in the adverse employment action. Id. at 187.

[127] 56 Fed. Reg. 40664 at 40665.

effective because of the (1) significance of the violation of NRC's employee protection regulations, (2) Mr. Shea's broad sphere of influence as Vice President of Nuclear Technology Innovation, (3) the deliberate nature of his misconduct,[128] and (4) the public health and safety consequences of Mr. Shea's continued involvement in NRC-licensed activities.[129]

When the NRC determines that the conduct that caused a violation was willful or when the Commission determines that the public health, safety, or interest requires immediate action, the Commission may make orders immediately effective.[130] Making enforcement orders ''immediately effective'' has been an integral part of 10 C.F.R. § 2.202 since 1962, and Section 9(b) of the Administrative Procedure Act (APA), 5 U.S.C. 558(c), expressly authorizes immediately effective orders. In this case, the NRC Staff has presented adequate evidence of the willfulness of Mr. Shea's action[131] and has shown that immediate effectiveness is necessary "to protect public health and safety or to minimize danger to life or property or to protect the common defense and security.''[132] The NRC must be able to rely on TVA and its senior employees to comply with NRC requirements, including the statutory requirement[133] prohibiting discrimination against an employee for engaging in protected activities.

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[128] Deliberate misconduct, by itself, raises a significant public health and safety concern. 56 Fed. Reg. at 40676.

[129] Enforcement Order at 3–4. "The NRC considers deliberate violations of 10 C.F.R. § 50.7 significant because of the potential that it may make others hesitant to raise safety issues for fear of retaliation." Section 4.1 of the NRC Enforcement Policy. "The Director of the [NRC] Office of Enforcement concluded that the NRC no longer has reasonable assurance that Mr. Shea would comply with the NRC's requirements and the public health and safety be protected." Gifford Aff. ¶ 9.

[130] 10 C.F.R. 2.202(b).

[131] Unlicensed persons are subject to immediate effective orders when it is "demonstrated that future control over their activities subject to the NRC's jurisdiction is deemed to be necessary or desirable to protect public health and safety or to minimize danger to life or property or to protect the common defense and security.'' 56 Fed. Reg. at 40,673.

[132] 50 Fed. Reg. 12370 at 12371.

[133] Energy Reorganization Act (ERA), 42 USC Section 5851, as amended by the Energy Policy Act of 2005, PL 109-58, August 8, 2005.

I conclude, and believe a person of 'reasonable caution' would also conclude, the NRC Staff has proffered adequate evidence to support a preliminary conclusion that (1) Mr. Shea violated a Commission requirement, and (2) the violation was either 'willful,' or poses a risk to 'the public health, safety, or interest' that requires immediate action."[134] The evidence submitted fully satisfies the requirement in 10 C.F.R. § 2.202(a)(5) for immediate effectiveness.

At the evidentiary hearing the parties will undoubtedly argue the weight to be given to the actions discussed in the majority opinion. I am confident there will be considerable testimony and cross-examination of witnesses as to the contents and significance of the TVA-OGC Report and the ERB Reports, as well as evidence and testimony yet to be filed. At this juncture, however, I find the NRC Staff has presented adequate evidence to justify the issuance of the immediately effective Enforcement Order for Mr. Shea's alleged violations of Section 211 of the Energy Reorganization Act and of NRC regulations.[135] At the evidentiary hearing the parties will have full opportunity to present testimony, exhibits and other evidence to sustain or refute the merits of the August 24, 2020 Enforcement Order.

I look forward to the evidentiary hearing on the facts and circumstances that prompted the issuance of the Order. The Board's ruling on the Order's immediate effectiveness and my dissent should not be taken as prejudgment of the merits of the Orders' issuance.

/RA/

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William J. Froehlich
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 3, 2020

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[134] Safety Light Corp., LBP-05-02, 61 NRC at 61 (citing 10 C.F.R. § 2.202(a)(1), (a)(5)).

[135] The Enforcement Order was issued pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. § 2.202, and 10 C.F.R. § 50.5.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
Mr. Joseph Shea	)	IA-20-008-EA
(Order Prohibiting Involvement in	)	
NRC-Licensed Activities)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Granting Motion to Set Aside the Immediate Effectiveness) (LBP-20-11)** have been served upon the following persons by Electronic Information Exchange.

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Clara I. Sola Digitally signed by Clara I. Sola
Date: 2020.11.03 15:27:35 -05'00'

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 3rd day of November 2020.