

August 16, 2021

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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

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**TENNESSEE VALLEY AUTHORITY'S MOTION FOR SUMMARY  
DISPOSITION OF VIOLATION 4  
(LACK OF NUCLEAR SAFETY-RELATED PROTECTED ACTIVITY)**

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Pursuant to 10 C.F.R. § 2.710, the April 2, 2021 Order Granting Joint Motion for Schedule Extension<sup>1</sup> and the July 29, 2021 Order Providing Case Management Instructions,<sup>2</sup> Tennessee Valley Authority (“TVA”) hereby moves the Atomic Safety and Licensing Board (the “Board”) for summary disposition of Violation 4 set forth in the October 29, 2020 Order Imposing a Civil Penalty against TVA.<sup>3</sup> TVA is entitled to summary disposition of Violation 4 because, on the undisputed facts, the NRC Staff cannot demonstrate, as required by 10 C.F.R. § 50.7 (“Section 50.7”) and Section 211 of the Energy Reorganization Act, 42 U.S.C. § 5851 (“ERA Section 211”), that Beth Wetzel engaged in nuclear safety-related protected activity for which she was placed on paid administrative leave and terminated.<sup>4</sup>

<sup>1</sup> Order, Granting Joint Motion for Schedule Extension (Apr. 2, 2021) (ADAMS Accession No. ML21092A057).

<sup>2</sup> Order, Providing Case Management Instructions (July 29, 2021) (ADAMS Accession No. ML21210A093).

<sup>3</sup> TVA Order for Civil Penalty (Oct. 29, 2020) (ADAMS Accession No. ML20297A544) (“Order”); Appendix to the TVA Order (Oct. 29, 2020) (ADAMS Accession No. ML20297A552) (“Order Appendix”).

<sup>4</sup> This Motion is supported by (1) a Statement of Undisputed Material Facts as to which TVA asserts there is no genuine dispute (Attachment 1) and (2) additional supporting Attachments 2 through 21. TVA has moved for

Because TVA seeks summary disposition as a matter of law and undisputed fact, and because resolution of Violation 4 in TVA’s favor would streamline the issues to be litigated at hearing and expedite this proceeding, TVA respectfully requests that the Board direct the Staff to respond to this Motion in accordance with 10 C.F.R. § 2.710(a).<sup>5</sup> Summary disposition is particularly appropriate here because (among other reasons) the conduct for which Ms. Wetzel’s employment was terminated—disparaging statements about her supervisor, Erin Henderson—has no tie to nuclear safety and is therefore not protected activity under Section 50.7. In fact, when confronted with those statements in depositions, staff from the NRC Office of Investigations and Office of Enforcement could not identify any nuclear safety concern in them.<sup>6</sup> Absent any connection “*directly* related to environmental or radiological harm,” there is no NRC jurisdiction over TVA’s determination to terminate Ms. Wetzel’s employment,<sup>7</sup> and thus no basis to hold a hearing on that determination.

## **I. Introduction**

The NRC Enforcement Staff issued Violation 4 based on the Staff’s erroneous assumption that the conduct that led to terminating Ms. Wetzel’s employment constituted

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summary disposition on Violations 1, 2, and 3 in a separate motion on the distinct legal ground that those Violations can be resolved without hearing because they fail to allege an adverse employment action cognizable under applicable law. *See* Tennessee Valley Authority’s Motion for Summary Disposition of Violations 1, 2, and 3 (Lack of Adverse Employment Action) (Aug. 16, 2021).

<sup>5</sup> Order, Providing Case Management Instructions at 4–5 (July 29, 2021) (ADAMS Accession No. ML21210A093). *See also* Transcript of TVA Pre-Hearing Teleconference July 21, 2021 at 138:25–139:10 (ADAMS Accession No. ML21207A251).

<sup>6</sup> *See infra* Section IV.A.1.

<sup>7</sup> *See Tennessee Valley Authority* (Denying Erin Henderson’s Hearing Request), LBP-21-03, 93 NRC \_\_, \_\_ (slip op. at 11) (Mar. 25, 2021) (ADAMS Accession No. ML21084A736) (emphasis in original) (quoting *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-02-16, 55 NRC 317, 336 (2002)). Likewise, the Staff has previously argued before this Board that the Commission’s jurisdiction does not extend “to general workplace civility concerns, and the Commission has made clear that 10 C.F.R. § 50.7 protects an employee from raising nuclear safety concerns, not generalized workplace concerns.” NRC Staff Answer to Erin Henderson’s Request for a Hearing at 7 (Dec. 23, 2020) (ADAMS Accession No. ML20358A146) (citing Final Safety Culture Policy Statement, 76 Fed. Reg. 34,773, 34,777 (June 14, 2011)). That’s the case here: Ms. Wetzel’s statements had no tie to nuclear safety, and how TVA addressed them is confined to TVA’s discretion.

protected activity under Section 50.7 and ERA Section 211. As a matter of law and undisputed fact, the Staff is wrong. Ms. Wetzel was let go from TVA for “a sustained campaign of disrespectful conduct”<sup>8</sup> directed towards Ms. Henderson, 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.”<sup>9</sup> Such vague and disrespectful allegations were not (and are not) protected for many reasons: they did not definitively and specifically raise a nuclear safety concern—an absolute prerequisite for protected activity under Section 50.7—nor were they even recognizably expressing *any* “safety” concerns; they were inappropriate and insubordinate behavior; and they were not raised in good faith.

Indeed, three different reviewers within TVA determined that Ms. Wetzel’s activities were not protected: Mr. Joseph Shea (then TVA’s Vice President of Regulatory Affairs and Support Services); TVA’s Office of General Counsel; and TVA’s Executive Review Board. And, as TVA’s depositions of Staff members revealed, there is no evidence that those determinations by TVA were made in bad faith or, as the Staff baldly alleged in a related proceeding, that the OGC and ERB reviews were “window dressing” for management action.

Because the conduct for which Ms. Wetzel was terminated (even as alleged by the NRC) has no tie to nuclear safety, there is no violation of Section 50.7 as a matter of law. Moreover, TVA’s good faith determination to terminate Ms. Wetzel’s employment should not be disturbed based on the Staff merely evaluating the case and coming up “with a different conclusion based

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<sup>8</sup> Attach. 2 at 6 (Wetzel Executive Review Board Package (held Sept. 19, 2018)) (“Wetzel ERB Package”). Ms. Wetzel’s conduct at issue in this proceeding is included in the following: Attach. 5 (Email from Beth Wetzel to Joe Shea (May 7, 2018)); Attach. 7 (Email from Beth Wetzel to Joe Shea (June 9, 2018)); Attach. 8 (Text Messages from Beth Wetzel to Joe Shea (June/July 2018)); and Attach. 14 (Email from Beth Wetzel to Joe Shea (Mar. 29, 2018)).

<sup>9</sup> Attach. 2 at 6 (Wetzel ERB Package).

on the facts of the case” from TVA personnel.<sup>10</sup> As the Commission has previously stated, its “approach toward management personnel decisions in whistleblower cases” refuses to look at the merits of those decisions.<sup>11</sup> The Commission “do[es] not look behind those decisions, even if they strike us as ill-advised, so long as they do not have the effect of intentionally discriminating based on an employee’s whistleblower activity.”<sup>12</sup> Because the undisputed facts confirm that there was no such discrimination here, Violation 4 should be summarily dismissed.

## **II. Background**

On March 9, 2018, Ms. Erin Henderson, then TVA’s Director of Corporate Nuclear Licensing, submitted a formal, written complaint to her supervisor (Mr. Joseph Shea, then TVA’s Vice President of Regulatory Affairs and Support Services), and Ms. Amanda Poland, (TVA’s Corporate Nuclear Human Resources Director).<sup>13</sup> Ms. Henderson’s Complaint alleged that several individuals in the Corporate Nuclear Licensing organization (including Ms. Beth Wetzel) and one individual in the site licensing organization at the Sequoyah Nuclear Power Plant (“Sequoyah”) (Mr. Michael McBrearty) were creating a hostile work environment for her.

Specifically, Ms. Henderson alleged that these individuals “have either directly or indirectly acted in [an] attempt to intimidate and undermine me in my role as a senior regulatory leader.”<sup>14</sup> In particular, Ms. Henderson explained in her Complaint her belief that Mr. McBrearty (the Sequoyah Site Licensing Manager) had “intentionally targeted” Ms. Henderson because she, “in conjunction with [her] leadership and HR, initiated an investigation” nearly two

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<sup>10</sup> Attach. 3 (Wilson Depo. Tr. at 136:16–24) (Q: “Do you think the members of the ERB performed their jobs in good faith?” A: “They came up to the conclusions that they came up in the conclusions, Mr. Lepre. We evaluated this on our own and we came up with a different conclusion based on the facts of the case. So they could have did their job to the best of their ability. We came up with a different conclusion than what they did.”).

<sup>11</sup> *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3), CLI-04-24, 60 NRC 160, 214 (2004).

<sup>12</sup> *Id.*

<sup>13</sup> Attach. 6 (Formal Complaint of Erin Henderson (Mar. 9, 2018)).

<sup>14</sup> *Id.* at 1.

years prior in April 2016 into Mr. McBrearty's relationship with a member of Corporate Nuclear Licensing.<sup>15</sup> Ms. Henderson further alleged that due to these individuals' behaviors Ms. Henderson's "ability to fully perform the responsibilities outlined in her job description ha[d] been impacted."<sup>16</sup>

TVA determined that its Office of General Counsel ("OGC") would investigate Ms. Henderson's Complaint. The investigation was then carried out by an OGC attorney, Mr. John Slater. In addition to Mr. McBrearty, Mr. Slater reviewed the conduct of several additional individuals, including Ms. Wetzel, one of Ms. Henderson's direct reports and one of the individuals identified in Ms. Henderson's Complaint.

On May 7, 2018—nearly two months after Ms. Henderson filed her Complaint, approximately two weeks after Mr. Slater interviewed Ms. Wetzel, and approximately one week after Ms. Wetzel began an 18-month "loanee" assignment at the Nuclear Energy Institute in Washington, DC—Ms. Wetzel sent an email to Mr. Shea making assertions about Ms. Henderson.<sup>17</sup> Specifically, Ms. Wetzel alleged that Ms. Henderson had "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."<sup>18</sup>

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<sup>15</sup> *Id.* at 8.

<sup>16</sup> *Id.* at 1.

<sup>17</sup> Attach. 5 at 3 (Email from Beth Wetzel to Joe Shea (May 7, 2018)).

<sup>18</sup> *Id.* Several of these allegations related to a 2016 concern Ms. Henderson raised to TVA Human Resources regarding a potential inappropriate relationship between one individual and Mr. McBrearty, where the one individual had oversight responsibilities over Mr. McBrearty. As described in TVA's Motion for Summary Disposition on Violations 1, 2, and 3, Ms. Henderson's 2016 concern was nuclear safety-related protected activity. *See* Tennessee Valley Authority's Motion for Summary Disposition of Violations 1, 2, and 3 (Lack of Adverse Employment Action) at 20–21 (Aug. 16, 2021).

Mr. Shea provided Ms. Wetzel's May 7, 2018 email to TVA Human Resources and OGC for further investigation.<sup>19</sup> Following her May 7, 2018 email, Ms. Wetzel made additional statements to Mr. Shea about Ms. Henderson in an email dated June 9, 2018,<sup>20</sup> and in text messages in late June or early July 2018.<sup>21</sup> During a phone call on July 2, 2018, Mr. Shea asked Ms. Wetzel to elaborate on her statements about Ms. Henderson but Ms. Wetzel provided nothing further.<sup>22</sup>

Mr. Slater reviewed Ms. Wetzel's May 7, 2018 email as part of his investigation, though he did not address that email in his initial report, which issued on May 25, 2018.<sup>23</sup> Mr. Slater subsequently addressed this May 7 email in his final investigation report, which issued on August 10, 2018.<sup>24</sup> The August 10 Slater Report stated that Ms. Wetzel had made two of the allegations in her May 7, 2018 email to Mr. Shea also during her April interview with Mr. Slater; found those two allegations to be unsubstantiated; determined the other allegations in Ms. Wetzel's May 7 email to be "more of the same, with no details, and do not warrant further follow

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<sup>19</sup> Attach. 6 (Email from Joe Shea to Human Resources and OGC (May 7, 2018)).

<sup>20</sup> In her June 9, 2018 email, Ms. Wetzel claimed "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." Attach. 7 (Email from Beth Wetzel to Joe Shea (June 9, 2018)). When asked to elaborate, Ms. Wetzel inexplicably stated, "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." *Id.*

<sup>21</sup> In her text message to Mr. Shea, Ms. Wetzel stated in part, "Can you help push my May voucher through? [The Executive Assistant] did a wonderful job adding details to the spreadsheet I sent her 2 weeks ago, but it appears she may be getting different directions from management that could be hanging things up . . ." Mr. Shea replied, "What are you referring to as different direction from management? Since Carla and I are actively engaged in your May package, what is leading you to believe there is such different direction?" Ms. Wetzel replied, "Past experience." Mr. Shea further asked Ms. Wetzel to provide "a factual basis for [her] assertion regarding different direction," to which request Ms. Wetzel did not respond. See Attach. 8 (Text Messages from Beth Wetzel to Joe Shea (June/July 2018)).

<sup>22</sup> Attach. 2 at 6 (Wetzel ERB Package) (The ERB package states "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.").

<sup>23</sup> Attach. 9 (Report of Investigation of Erin Henderson's Allegations of Harassment and Hostile Work Environment (May 25, 2018)).

<sup>24</sup> Attach. 10 at 19-20 & n.69 (Report of Investigation of Erin Henderson's Allegations of Harassment and Hostile Work Environment (Aug. 10, 2018)) ("August 10 Slater Report").

up”; and concluded that “[e]vidently, 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” in the report.<sup>25</sup>

On August 30, 2018, TVA OGC provided Mr. Shea with a memorandum (authored by TVA attorneys other than Mr. Slater) evaluating Ms. Wetzel’s conduct and recommending 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.”<sup>26</sup> OGC also recommended that TVA management could determine, at its discretion, how to terminate Ms. Wetzel’s employment, such as by no-fault separation agreement. Mr. Shea determined to separate Ms. Wetzel from her employment at TVA.

On September 19, 2018, Mr. Shea presented a proposed disciplinary action regarding Ms. Wetzel to a TVA Executive Review Board (“ERB”). The purpose of the ERB is to ensure that a proposed personnel action is consistent with company practices, and not based on retaliation for protected activities.<sup>27</sup> The ERB consists of TVA personnel independent of the underlying proposed action and typically includes a Senior Vice President (who serves as ERB Chair); representatives from Human Resources, OGC, and the Employee Concerns Program; and the Chairperson of TVA’s Nuclear Safety Culture Monitoring Panel.<sup>28</sup> Here, the proposed action was first to provide Ms. Wetzel “[a]n offer of a no fault separation agreement” (“NFSA”), but “[i]f not accepted, termination will be implemented.”<sup>29</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> Attach. 11 at 1 (Investigation into Harassment and Hostile Work Environment Allegations in Nuclear Licensing Organization – Involvement of Beth Wetzel (Aug. 30, 2018)).

<sup>27</sup> Attach. 2 at 4 (Wetzel ERB Package).

<sup>28</sup> *Id.* at 10–12.

<sup>29</sup> *Id.* at 1.

In response to the question “[d]oes it appear the individual’s involvement in a protected activity contributed in any way to the proposed action recommendation?” the ERB answered “No.”<sup>30</sup> The ERB also found that terminating Ms. Wetzel’s employment was “based on legitimate, non-retaliatory reasons” and “compliant with TVA policies, procedures and/or past practices.”<sup>31</sup>

On October 15, 2018, TVA placed Ms. Wetzel on paid administrative leave, and on October 25, 2018, offered her a NFSA. Ms. Wetzel signed a negotiated NFSA on December 5 but rescinded her signature on December 11, 2018. An ERB update was held on December 18, 2018, which again did not raise any objection to the proposed personnel action.<sup>32</sup> TVA terminated Ms. Wetzel’s employment on January 14, 2019.

On March 2, 2020, the NRC issued a Notice of Apparent Violation to TVA, and separate notices of apparent violations to three TVA employees, including Ms. Henderson and Mr. Shea. TVA and the three employees disputed the apparent violations in pre-decisional enforcement conferences (“PEC”) held on June 23–25 and June 30, 2020. TVA explained in its PEC that Ms. Wetzel was terminated for her part in creating and perpetuating a hostile work environment for Ms. Henderson. Despite this explanation, on August 24, 2020, the NRC issued a Notice of Violation (“NOV”) to TVA that alleged, inter alia, that

the former corporate employee engaged in protected activity by raising concerns of a chilled work environment to the former Vice President of Regulatory Affairs and a TVA attorney during a TVA Office of the General Counsel investigation. After becoming aware of this protected activity, the former Vice President of Regulatory Affairs played a significant role in the decisionmaking process to

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<sup>30</sup> *Id.* at 8.

<sup>31</sup> *Id.* at 23.

<sup>32</sup> Attach. 12 (Wetzel Executive Review Board Package Update (held Dec. 18, 2018)).



place the former employee on paid administrative leave and terminate the former employee.<sup>33</sup>

On September 23, 2020, TVA replied to the NOV denying all four violations. With respect to Violation 4, TVA disagreed that the adverse action was taken because of protected activity.<sup>34</sup>

On October 29, 2020, the NRC issued an Order to TVA assessing a Civil Penalty of \$606,942 as well as an Appendix to the Order responding to TVA's denial.<sup>35</sup> With respect to Violation 4, the Order Appendix restated the two bases for Violation 4 provided in the August NOV, and added a new basis regarding alleged contact with the NRC, stating in relevant part:

[T]he NRC staff determined that the former corporate employee's 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 within CNL are protected activities.<sup>36</sup>

On November 30, 2020, TVA timely filed a request for hearing on the Order, which request was assigned to this Board.<sup>37</sup> During discovery, TVA and the Staff took the depositions of 19 relevant individuals. TVA deposed six current and former Staff, including the Office of Investigations and the Office of Enforcement personnel responsible for investigating the McBrearty and Wetzel cases and issuing the Order to TVA.

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<sup>33</sup> Notice of Violation and Proposed Imposition of Civil Penalty to TVA (EA-20-006 & EA-20-007) at 2 (Aug. 24, 2020) (ADAMS Accession No. ML20232B803) ("TVA NOV"). The Staff also issued a notice of violation to Ms. Henderson and an order banning Mr. Shea from NRC-licensed activities for a period of five years. Both enforcement actions were for alleged deliberate misconduct. The Staff has since unilaterally withdrawn those enforcement actions after a different Atomic Safety and Licensing Board issued a ruling lifting the immediate effectiveness of the order against Mr. Shea, which ruling the Commission unanimously affirmed. *See, e.g.*, Cover Letter to Ms. Erin Henderson re: Rescission of August 24, 2020, Notice of Violation (IA-20-009) (Jan. 22, 2021) (ADAMS Accession No. ML21021A368); Letter Rescinding August 24, 2020 Order Prohibiting Involvement in NRC-licensed Activities (IA-20-008) (Jan. 22, 2021) (ADAMS Accession No. ML21022A239).

<sup>34</sup> Tennessee Valley Authority Reply to Notice of Violation (EA-20-06 and EA-20-07) at 11 (Sept. 23, 2020) (ADAMS Accession No. ML20274A012).

<sup>35</sup> Order; Order Appendix.

<sup>36</sup> Order Appendix at 4.

<sup>37</sup> Tennessee Valley Authority's Answer and Request for Hearing (Nov. 30, 2020) (ADAMS Accession No. ML20335A574).

### III. Statement of the Law

#### A. **Summary Disposition Is Proper in NRC Proceedings Where the Moving Party Is Entitled to a Decision as a Matter of Law or When Based on Undisputed Facts**

In order to prevail on summary disposition, there must be “no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.”<sup>38</sup> The party opposing summary disposition must make a sufficient showing of each element of the case on which it has the burden of proof.<sup>39</sup> Moreover, “[w]hen a motion for summary disposition is made and supported as described in our regulations, ‘a party opposing the motion may not rest upon . . . mere allegations or denials,’ but must state ‘specific facts showing that there is a genuine issue of fact’ for hearing.”<sup>40</sup> Indeed, in the face of well-pled undisputed material facts, an opponent must provide something more than suspicions or bald assertions as the basis to establish the existence of a material factual dispute,<sup>41</sup> and witness testimony that lacks an adequate basis will not suffice to preclude summary judgment.<sup>42</sup> In addition, irrelevant or unnecessary factual disputes are not enough to create a genuine material litigable issue of fact.<sup>43</sup> “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.”<sup>44</sup>

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<sup>38</sup> *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 297 (2010) (quotations omitted); *Advanced Med. Sys., Inc.*, CLI-93-22, 38 NRC 98, 102–03 (1993), *reconsid. denied*, CLI-93-24, 38 NRC 187 (1993).

<sup>39</sup> *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 & 2; Browns Ferry Nuclear Plant, Units 1, 2, & 3), LBP-02-10, 55 NRC 236, 239 (2002) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

<sup>40</sup> *Pilgrim*, CLI-10-11, 71 NRC at 297.

<sup>41</sup> *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-40, 54 NRC 526, 536 (2001).

<sup>42</sup> *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-4, 61 NRC 71, 81 (2005).

<sup>43</sup> *Safety Light Corp.* (Bloomsburg Site Decommissioning and License Renewal Denials), LBP-95-9, 41 NRC 412, 449 n.167 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

<sup>44</sup> *Id.*

Finally, whether certain conduct is protected activity is a matter of statutory interpretation and a legal question, not a question of fact.<sup>45</sup> If the Board agrees that the activities that the Staff alleged were “protected” were not legally protected under the Energy Reorganization Act, TVA is entitled to summary disposition. TVA is also entitled to summary disposition where the Staff has failed to provide “‘specific facts showing that there is a genuine issue of fact’ for hearing.”<sup>46</sup>

**B. Discrimination Claims Must Adhere to the ERA Section 211 Statutory Framework**

The Commission made explicit in CLI-04-24<sup>47</sup> that an evaluation of discrimination under Section 50.7 must adhere to the statutory language set forth in the ERA and specific interpretations of that language. Indeed, in CLI-04-24, the Commission vacated the underlying Atomic Safety and Licensing Board decision because it “did not follow [ERA] section 211’s full evidentiary framework.”<sup>48</sup> The Licensing Board in that case had attempted to apply an evidentiary framework borrowed from Department of Labor cases.<sup>49</sup> Instead, the Commission ordered that “authoritative judicial decisions” from federal courts interpreting the ERA would govern the Commission’s ERA cases, rather than “the byzantine doctrines of traditional employment discrimination law.”<sup>50</sup>

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<sup>45</sup> *Sanders v. Energy Nw.*, 812 F.3d 1193, 1197 (9th Cir. 2016) (reviewing de novo whether employee’s conduct is protected); see also *Indiana Michigan Power Co. v. U.S. Dep’t of Labor*, 278 F. App’x 597, 603 (6th Cir. 2008) (unpublished) (“The Court reviews the DOL’s legal decision that the ERA protected [the employee’s] activity de novo; however, the question of whether [the employee] actually engaged in such activity is fact-based.”); *Tennessee Valley Authority*, CLI-04-24, 60 NRC at 207 (explaining that interpretation of the term protected activity is a legal question).

<sup>46</sup> *Pilgrim*, CLI-10-11, 71 NRC at 297.

<sup>47</sup> *Tennessee Valley Authority*, CLI-04-24, 60 NRC 160.

<sup>48</sup> *Id.* at 192-94 (2004); see also *id.* at 194 (“Here, section 211 . . . is the obvious place to look for guidance on litigating whistleblower enforcement cases at the NRC.”).

<sup>49</sup> *Id.* at 191.

<sup>50</sup> *Id.* at 191-92.

**C. Activity Protected Under Section 50.7 Must Definitively and Specifically Implicate Nuclear Safety and Insubordinate Conduct Is Not Protected**

To find discrimination under Section 50.7, the Staff must show that an NRC licensee employee engaged in protected activity.<sup>51</sup> Section 50.7 defines protected activities as those “established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.”<sup>52</sup> Under Section 211 of the ERA, the employer must also be aware of the employee’s engagement in protected activity for discrimination to occur.<sup>53</sup>

According to the Sixth Circuit (which includes Tennessee), to constitute a protected activity under ERA Section 211, an employee’s acts “must implicate safety definitively and specifically.”<sup>54</sup> Other federal Circuit Courts have similarly found that the acts must have “a sufficient nexus to a concrete, ongoing safety concern.”<sup>55</sup> While it is appropriate to give broad interpretations to statutes with a remedial purpose,<sup>56</sup> the Federal courts are clear that “[t]he ERA does not protect every incidental inquiry or superficial suggestion that somehow, in some way, may possibly implicate a safety concern.”<sup>57</sup> In cases where an employee’s acts were considered

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<sup>51</sup> James Luehman; Denial of Petition for Rulemaking, 76 Fed. Reg. 12,295 (Mar. 7, 2011) (employees “must demonstrate by a preponderance of the evidence that the protected activity ‘was a contributing factor in the unfavorable personnel action alleged in the complaint’”).

<sup>52</sup> 10 C.F.R. § 50.7(a).

<sup>53</sup> See *Bartlik v. U.S. Dep’t of Labor*, 73 F.3d 100, 103 n.6 (6th Cir. 1996) (articulating the elements of a *prima facie* case of retaliatory discrimination under the ERA); *Doyle v. U.S. Sec’y of Labor*, 285 F.3d 243, 250 (3d Cir. 2002); *Macktal v. U.S. Dep’t of Labor*, 171 F.3d 323, 327 (5th Cir. 1999); *Couty v. Dole*, 886 F.2d 147, 148 (8th Cir. 1989).

<sup>54</sup> *Am. Nuclear Res., Inc. v. U.S. Dep’t of Labor*, 134 F.3d 1292, 1295 (6th Cir. 1998); see also *Hoffman v. Nextera Energy, Inc.*, ARB No. 12-062, ALJ No. 2010-ERA-011, 2013 WL 6979709, at \*6 (Dec. 17, 2013) (noting that courts have construed the ERA’s “catch-all” provision “as requiring, in light of the ERA’s overarching purpose of protecting acts implicating nuclear safety, that an employee’s actions must implicate safety ‘definitively and specifically’ to constitute whistleblower protected activity under subsection (F)”).

<sup>55</sup> *Sanders*, 812 F.3d at 1198 (citing *Am. Nuclear Res., Inc.*, 134 F.3d at 1296).

<sup>56</sup> *Bechtel Constr. Co. v. Sec’y of Labor*, 50 F.3d 926, 932 (11th Cir. 1995).

<sup>57</sup> *Am. Nuclear Res., Inc.*, 134 F.3d at 1295.

protected, “the employee typically alleged a safety concern that was both concrete and continuing.”<sup>58</sup> “For example, in *Stone & Webster*, the employee held weekly meetings about fire safety; in *Bechtel*, the employee complained about the procedures for handling radioactive tools; and in *Pogue*, the employee had prepared seven internal reports identifying specific safety problems.”<sup>59</sup>

The protected activity must also be sufficiently understandable such that an employer can identify the safety concern. For example, the Eleventh Circuit found an employee engaged in protected activity where he “raised particular, repeated concerns about safety procedures for handling contaminated tools.”<sup>60</sup> The Tenth Circuit similarly found an employee had engaged in protected activity where the employee was terminated after filing internal reports on safety concerns.<sup>61</sup> On the other side of the coin, the Sixth Circuit affirmed a decision finding no protected activity where an employee’s complaint about coworkers did not “include an allegation that the employer was ‘violating nuclear laws or regulations[,] . . . [or] ignoring safety procedures or assuming unacceptable risks.’”<sup>62</sup>

Moreover, even if some activity implicates nuclear safety, it is nevertheless not “protected activity” under the ERA if the activity also constitutes inappropriate, disruptive, or

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<sup>58</sup> *Id.* at 1296.

<sup>59</sup> *Id.* (citing *Stone & Webster Eng’g Corp. v. Herman*, 115 F.3d 1568, 1574 (11th Cir. 1997); *Bechtel Constr. Co. v. Sec’y of Labor*, 50 F.3d 926, 931 (11th Cir. 1995); *Pogue v. U.S. Dep’t of Labor*, 940 F.2d 1287 (9th Cir. 1991)).

<sup>60</sup> *Bechtel Constr. Co.*, 50 F.3d at 931.

<sup>61</sup> *Kansas Gas & Elec. Co. v. Brock*, 780 F.2d 1505, 1506 (10th Cir. 1985).

<sup>62</sup> *Ma v. Am. Elec. Power, Inc.*, 123 F. Supp. 3d 955, 963 (W.D. Mich. 2015), *aff’d*, 647 F. App’x 641 (6th Cir. 2016) (unpublished) (citing *Am. Nuclear Res., Inc.*, 134 F.3d at 1295). Several Department of Labor cases have also found a lack of protected activity where employees’ complaints did not specifically implicate nuclear safety. *See, e.g., Hoffman*, 2013 WL 6979709, at \*5 (finding a complaint that “neglect of shift managers was adversely affecting morale was not protected activity because it was simply another staffing concern and therefore did not definitively and specifically implicate nuclear safety”); *Carpenter v. Bishop Well Servs. Corp.*, ARB No. 07-060, ALJ No. 2006-ERA-035, 2009 WL 3165851, at \*4 (Sept. 16, 2009) (finding a complaint about “handrails and hoses did not implicate any concerns related to nuclear safety”); *Backus v. Indiana Michigan Power Co.*, 2005-ERA-008, 2008 WL 4462984, at \*5 (Sept. 30, 2008) (finding an employee’s refusal to work both a midnight and day shift, calling it “unsafe” and “unreasonable” was not a protected activity because “these words by themselves do not, in the context of this case, implicate nuclear safety”).

disobedient behavior. Indeed, the Sixth Circuit has held that “[a]n employer may terminate an employee who behaves inappropriately, even if that behavior relates to a legitimate safety concern.”<sup>63</sup> The Seventh Circuit has “consistently held that an employee’s insubordination toward supervisors and coworkers, even when engaged in a protected activity, is justification for termination.”<sup>64</sup> The Fifth Circuit has also found that an employee was appropriately terminated “on the spot” for insubordination despite having raised concerns regarding protective coatings.<sup>65</sup>

In 2016, the Sixth Circuit affirmed a District Court finding in *Ma v. American Electric Power, Inc.*<sup>66</sup> that an employee with a history of interpersonal conflict issues was terminated for legitimate reasons even when she refused to work on a certain proposal, claiming it was unsafe.<sup>67</sup> A vice president at the employer, believing the engineer’s actions were “rooted not in safety concerns, but insubordination,” recommended her termination to leadership.<sup>68</sup> Thus, the Sixth Circuit found justification for termination where the employee had “enduring difficulties with coworkers,” regardless of her protected activity.<sup>69</sup>

#### **IV. Argument**

##### **A. TVA Is Entitled to Summary Disposition of Violation 4 Because the Activities Alleged in that Violation Are Not Protected Activities as a Matter of Law**

The August 24, 2020 Notice of Violation alleges in Violation 4 that Ms. Wetzel engaged in the following “protected activity”: “[T]he former corporate employee engaged in protected activity by raising concerns of a chilled work environment to the former Vice President of

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<sup>63</sup> *Am. Nuclear Res., Inc.*, 134 F.3d at 1295–96 (citing *Dunham v. Brock*, 794 F.2d 1037, 1041 (5th Cir. 1986) (“[A]n ‘otherwise protected ‘provoked employee’ is not automatically absolved from abusing his status and overstepping the defensible bounds of conduct.”)); see also *Ma v. Am. Elec. Power, Inc.*, 647 F. App’x 641, 644 (6th Cir. 2016) (unpublished).

<sup>64</sup> *Kahn v. U.S. Sec’y of Labor*, 64 F.3d 271, 279 (7th Cir. 1995), as modified (Sept. 7, 1995).

<sup>65</sup> *Dunham*, 794 F.2d at 1041.

<sup>66</sup> *Ma*, 647 F. App’x at 642.

<sup>67</sup> *Ma v. Am. Elec. Power, Inc.*, 123 F. Supp. 3d 955, 961 (W.D. Mich. 2015), *aff’d*, 647 F. App’x 641 (6th Cir. 2016).

<sup>68</sup> *Id.*

<sup>69</sup> *Ma*, 647 F. App’x at 643.

Regulatory Affairs and a TVA attorney during a TVA OGC investigation.”<sup>70</sup> However, the undisputed evidence shows that these actions were not protected because (1) they did not “definitively” or “specifically” implicate nuclear safety, (2) they were disrespectful and inappropriate, and (3) TVA reasonably believed that they were not protected. TVA is entitled to summary disposition on Violation 4 for each of these independent reasons.

**1. As a Matter of Law, Ms. Wetzel’s Statements to Mr. Shea and to the OGC Investigator Were Not Nuclear Safety-Related Protected Activity**

As described previously, in order to be protected, concerns that are raised must be “concrete,”<sup>71</sup> and must “definitively” or “specifically” implicate nuclear safety or other protected concerns<sup>72</sup> (such as those “*directly* related to radiological or environmental harms”).<sup>73</sup>

Ms. Wetzel’s statements to Mr. Shea fall far wide of this mark.

The communications that form the basis for the NRC’s allegation that Ms. Wetzel raised “concerns of a chilled work environment to the former Vice President of Regulatory Affairs”<sup>74</sup> are emails from Ms. Wetzel to Mr. Shea on March 29, 2018,<sup>75</sup> May 7, 2018, and June 8–9, 2018, provided in Attachments 5, 7, and 14. In these emails, Ms. Wetzel claimed that Ms. Henderson:

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<sup>70</sup> TVA NOV at 2 (Aug. 24, 2020). Although the Notice of Violation itself only included two protected activities, the Staff added a third protected activity for the first time in the Order Appendix. Order Appendix at 4. That third activity is addressed in Section IV.B, *infra*.

<sup>71</sup> *Am. Nuclear Res. v. U.S. Dep’t of Labor*, 134 F.3d 1292, 1296 (6th Cir. 1998).

<sup>72</sup> *Id.* at 1295.

<sup>73</sup> The Atomic Safety and Licensing Board in this case has already ruled that, for a “chilling effect” to be tied to nuclear safety, it must be “‘*directly* related to environmental or radiological harm.’” *Tennessee Valley Authority*, LBP-21-03, slip op. at 11 (Mar. 25, 2021) (ADAMS Accession No. ML21084A736) (emphasis in original) (quoting *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-02-16, 55 NRC 317, 336 (2002)).

<sup>74</sup> TVA NOV at 2.

<sup>75</sup> The March 29 email is not identified by the Staff in their OI report as protected activity. *See* Report of Investigation Case No. 2-2019-015, Watts Bar 1, at pp. 42-43 (January 21, 2020) (provided in two sections as ADAMS Accession Nos. ML21043A296 and ML21043A294) (“Wetzel OI Report”). While the March 29, 2018 email was discussed in the Wetzel OI Report, the Report does not mention this email anywhere in the discussion of Ms. Wetzel’s alleged protected activities or otherwise identify it as one of her protected activities. However, this email was considered by Mr. Shea in determining to terminate Ms. Wetzel, as noted in the ERB package. *See*

- was “going to be unreasonable” and “effectively block” Ms. Wetzel’s loanee assignment;<sup>76</sup>
- “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 [Ms. Wetzel was] not aware of”;<sup>77</sup>
- “demonstrated a longstanding pattern of using TVA processes as punitive and retaliatory tools”;<sup>78</sup>
- would “us[e] [Ms. Wetzel’s] travel vouchers as an investigative tool”;<sup>79</sup> and
- “never gives up,” even though Ms. Wetzel simultaneously acknowledged not “even try[ing] to understand my boss and why she does what she does.”<sup>80</sup>

Subsequently, Ms. Wetzel also texted Mr. Shea an allegation that his Executive Assistant was getting “different direction from management”<sup>81</sup> on how to handle Ms. Wetzel’s expense vouchers—a thinly veiled reference to Ms. Henderson. But when Mr. Shea asked Ms. Wetzel for the bases of these concerns, Ms. Wetzel failed to provide an explanation.<sup>82</sup>

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Attach. 2 at 6 (Wetzel ERB Package) (Answer to Question 4). Unlike the March 29, 2018 Wetzel email, the Wetzel OI Report does discuss Ms. Wetzel’s May 7, 2018 and June 9, 2018 emails as examples of her alleged protected activity. *See* Wetzel OI Report at 42. In addition, the OI Senior Special Agent who conducted the investigation claimed that the May 7 and June 9 emails were protected activity. *See* Attach. 18 (Luina Depo. Tr. at 154:4–14; 158:3–14).

<sup>76</sup> *See* Attach. 14 (Email from Beth Wetzel to Joe Shea (March 29, 2018)). Contrary to this email, Ms. Wetzel’s contract was finalized, and she started her NEI loanee assignment on time. Attach. 15 (Joe Shea Pre-decisional Enforcement Conference Tr. at 53:20–55:3).

<sup>77</sup> *See* Attach. 7 (Email from Beth Wetzel to Joe Shea (May 7, 2018)). It is notable that several of these activities that Ms. Wetzel alleges are generally considered protected activities.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *See* Attach. 7 (Email from Beth Wetzel to Joe Shea (June 9, 2018)).

<sup>81</sup> Attach. 8 (Text Messages from Beth Wetzel to Joe Shea (June/July 2018)).

<sup>82</sup> Attach. 7 (Mr. Shea asks, “What are you referring to ‘does what she does’ and ‘never gives up’? Is there something beyond your last email” which Ms. Wetzel does not address in her reply); *see also* Attach. 8 (June/July 2018) (Mr. Shea asks, “What are you referring to as different direction from management?” to which Ms. Wetzel responds, “Past experience.” Mr. Shea again asks, “In addition, if you have a factual basis for your assertion regarding different direction, please provide that.”); Attach. 15 (Joe Shea Pre-decisional Enforcement Conference



Critically, none of Ms. Wetzel’s statements in these emails or text messages “directly related to radiological or environmental harms,” and none “definitively” or “specifically” implicate nuclear safety or other protected concerns.<sup>83</sup> Ms. Wetzel does not mention nuclear plant safety. Nor do her emails or texts even imply that somehow her claims relate to the safe operation of TVA’s nuclear plants. Ms. Wetzel’s emails also do not claim or imply that Ms. Wetzel felt that she or others believed they were chilled from raising safety concerns to Ms. Henderson. Instead, these statements reflect Ms. Wetzel asserting and repeating baseless, malicious, and negative views regarding Ms. Henderson, and all in the context of processing her expense vouchers while on a loanee assignment at an industry trade group.

In fact, Ms. Wetzel’s claims in these statements are so untethered from anything resembling a nuclear safety concern that, during their depositions, members of the Office of Enforcement and Office of Investigations had difficulty identifying nuclear safety concerns or protected activity in these emails. When asked about Ms. Wetzel’s May 7 email, George Wilson, the former Office of Enforcement Director and senior member of the NRC enforcement staff who was the chair of the enforcement panel that issued the Order,<sup>84</sup> admitted that the email does not mention nuclear safety.<sup>85</sup> When asked about the March 29 email, Ian Gifford, the enforcement specialist who participated in drafting the Order, concurred with the Order,<sup>86</sup> and who was the lead for preparing the NRC’s enforcement action worksheet in Ms. Wetzel’s case,<sup>87</sup> admitted that the email contained no nuclear safety concerns or chilled work environment

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Tr. at 69:1–4) (describing a July 2, 2018 phone call wherein Mr. Shea asked Ms. Wetzel for clarification regarding her allegations and she “provided nothing further”); *id.* at 88:13–89:2 (noting prior to the July 2, 2018, phone call, Mr. Shea had “twice before . . . given Ms. Wetzel the opportunity to elaborate on her allegations against Ms. Henderson to me alone”).

<sup>83</sup> *Am. Nuclear Res. v. U.S. Dep’t of Labor*, 134 F.3d 1292, 1295–96 (6th Cir. 1998).

<sup>84</sup> Attach. 3 (Wilson Depo. Tr. at 65:19–66:2).

<sup>85</sup> *Id.* at 151:15–152:1.

<sup>86</sup> Attach. 16 (Gifford Depo. Tr. at 12:21).

<sup>87</sup> *Id.* at 29:19–30:13.

concerns.<sup>88</sup> Nick Hilton, an Office of Enforcement program manager who participated in developing the Order,<sup>89</sup> reviewed the March 29, 2018, May 7, 2018, and June 8–9, 2018 emails in his deposition and could not identify any protected activity or nuclear safety concerns in the emails.<sup>90</sup> Scott Luina, the Office of Investigations Special Agent who conducted the investigation in this case, and Alejandro Echavarria, the Special Agent In Charge who also signed the investigation report, were the agents responsible for this case in the Office of Investigations. Both Mr. Luina and Mr. Echavarria were unable to point towards specific nuclear safety concerns in Ms. Wetzel’s emails.<sup>91</sup>

As more specific examples, with respect to Ms. Wetzel’s March 29 email, Mr. Gifford stated that Ms. Wetzel did not raise any nuclear safety concerns, “does not” state that she has a chilled work environment concern, and Mr. Gifford was only “curious as to why she believes her supervisor would be effectively blocking a loanee opportunity.”<sup>92</sup> Mr. Gifford “would not conclude that there was a chilled work environment based on this email.”<sup>93</sup> When asked if Ms. Wetzel raised a nuclear safety issue in that email, David Solorio, the branch chief in the Office of Enforcement’s Concerns Resolutions Branch who concurred with the Order,<sup>94</sup> responded, “Not that I can see,”<sup>95</sup> and when asked if Ms. Wetzel was raising a chilled work environment concern he responded, “No, I don’t think she’s raising a chilled work environment issue.”<sup>96</sup> When asked

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<sup>88</sup> *Id.* at 59:18–60:14.

<sup>89</sup> Attach. 17 (Hilton Depo. Tr. at 153–156).

<sup>90</sup> *Id.* at 88:2–9 (regarding March 29 email); *id.* at 98:3–14 (regarding May email thread); *id.* at 100:6–17 (regarding June emails).

<sup>91</sup> *See* Attach. 18 (Luina Depo. Tr. at 155–60); Attach. 19 (Echavarria Depo. Tr. at 138:20–139:20, 140:22–142:18).

<sup>92</sup> Attach. 16 (Gifford Depo. Tr. at 59:18–60:14).

<sup>93</sup> *Id.*

<sup>94</sup> Attach. 20 (Solorio Depo. Tr. at 15:1).

<sup>95</sup> *Id.* at 109:18–109:20.

<sup>96</sup> *Id.* at 109:21–110:1.

to identify protected activity, Mr. Hilton responded, “I don’t know that there is any protected activity in this e-mail alone as it stands.”<sup>97</sup>

With respect to the May 7, 2018 email, Mr. Luina stated that, “[N]o, there is not a specific, like, technical concern if that’s what you are referring to.”<sup>98</sup> Likewise, Mr. Echavarria stated “I don’t see any reference to nuclear safety, no.”<sup>99</sup> When asked if he saw any protected activity in the email, Mr. Hilton stated, “Not in the email.”<sup>100</sup> When asked about whether the May 7 email raised nuclear safety concerns, Mr. Wilson admitted that, “No, it does not. It just says a lot of actions but it could put a chill – you’re correct, there’s nothing out there. It just has the intention of other issues that could have an impact . . .”<sup>101</sup> When asked if the May 7 email raised a chilled work environment concern, Mr. Wilson stated, “No. You know, there’s not a lot super specific there. It just makes you -- it leads to a perception that there’s issues there . . .”<sup>102</sup> When asked if the May 7 email regarding travel vouchers pointed to a protected activity, Mr. Solorio stated, “Not -- I don’t believe it would be.”<sup>103</sup>

When asked about Ms. Wetzel’s June 8–9, 2018 emails, both Mr. Luina and Mr. Echavarria did not see any ties to nuclear safety.<sup>104</sup> Additionally, while looking at the email, Mr. Echavarria was unable to explain how the email was related to Ms. Wetzel’s protected

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<sup>97</sup> Attach. 17 (Hilton Depo. Tr. 88:2–5).

<sup>98</sup> Attach. 18 (Luina Depo. Tr. at 157:9–16) (Q: “Is there a specific nuclear safety concern in this [May 7, 2018] email?” A: “I would say, no, there is not a specific, like, technical concern if that’s what you are referring to.” Q: “Okay. Does the email specify what the alleged fear of retaliation would be for?” A: “No, it does not.”).

<sup>99</sup> Attach. 19 (Echavarria Depo. Tr. at 139:7–14) (Q: “Does the [May 7, 2018] e-mail state a tie to nuclear safety?” A: “I don’t see any reference to nuclear safety, no.” Q: “Does the e-mail state that she felt recourse or potential recourse from Ms. Henderson for raising safety concerns?” A: “I don’t see a reference, no.”).

<sup>100</sup> Attach. 17 (Hilton Depo. Tr. at 98:7–10) (Q: “Do you see any protected activity in this [May 7, 2018] e-mail [from Wetzel to Shea]?” A: “Not in the e-mail.”).

<sup>101</sup> Attach. 3 (Wilson Depo. Tr. at 151:15–21).

<sup>102</sup> *Id.* at 152:2–7.

<sup>103</sup> Attach. 20 (Solorio Depo. Tr. at 116:15–17).

<sup>104</sup> Attach. 19 (Echavarria Depo. Tr. at 141:16–23); Attach. 18 (Luina Depo. Tr. at 160:2–8).

activity.<sup>105</sup> Mr. Hilton was unable to identify nuclear safety concerns, chilled work environment concerns, or protected activities in the email.<sup>106</sup>

In short, the Staff was unable to point to any specific or definitive nuclear safety concerns. At most, the Staff could point to a perception of issues,<sup>107</sup> but there was “not a lot super specific.”<sup>108</sup> This is no different than saying that Ms. Wetzel’s communications to Mr. Shea “somehow, in some way, may possibly implicate a safety concern,” an argument that has already been clearly rejected by the Sixth Circuit.<sup>109</sup>

Moreover, as noted in Mr. Slater’s report, Mr. Slater “interviewed the entire staff of Ms. Henderson [including Ms. Wetzel] on April 23 and 24 and May 3, 2018, and found that they do not fear raising issues and concerns.”<sup>110</sup> Thus, the NRC Staff should have been aware, prior to issuing this violation, that Ms. Wetzel was not raising a chilled work environment concern or alleging that Ms. Henderson was creating a chilled work environment at the time Ms. Wetzel sent her communications to Mr. Shea. Ms. Wetzel herself had denied the existence of such a chilled work environment in her interview with Mr. Slater.<sup>111</sup> Thus, there is no credible basis for the Staff to interpret Ms. Wetzel’s statements to Mr. Shea as raising chilled work environment concerns, particularly where those emails nowhere mention a chilled work environment. Indeed,

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<sup>105</sup> Attach. 19 (Echavarria Depo. Tr. at 142:11–143:6).

<sup>106</sup> Attach. 17 (Hilton Depo. Tr. at 100:6–17).

<sup>107</sup> Attach. 3 (Wilson Depo. Tr. at 152:2–10).

<sup>108</sup> *Id.* at 152:2–10.

<sup>109</sup> *Am. Nuclear Res., Inc. v. U.S. Dep’t of Labor*, 134 F.3d 1292, 1295 (6th Cir. 1998). This Board has similarly ruled in this case that one does not raise a claim of nuclear safety “through an extended chain of causation that is entirely conjectural.” See *Tennessee Valley Authority*, LBP-21-03, slip op. at 11 (Mar. 25, 2021) (ADAMS Accession No. ML21084A736).

<sup>110</sup> Attach. 10 at 8 (August 10 Slater Report).

<sup>111</sup> *Id.* (explaining that Mr. Slater interviewed Ms. Henderson’s staff (including Ms. Wetzel) and found that no one feared raising concerns). The fact that Ms. Wetzel stated to Mr. Slater that she was willing to raise concerns is another reason for finding that Ms. Wetzel’s alleged claims of a chilled work environment were not protected. As the Commission has previously explained, an employee needs to show they have a “reasonable belief” that their allegation is true or correct in order to be protected. *Tennessee Valley Authority*, CLI-04-24, 60 NRC at 213. No matter what Ms. Wetzel stated to Mr. Slater, she did not reasonably believe she was raising chilled work environment concerns.

the Board majority in the related proceeding involving Mr. Shea found these statements on an alleged chilled work environment to be “opaque.”<sup>112</sup>

The Notice of Violation also alleges that statements Ms. Wetzel made to “a TVA attorney during an investigation” are protected activity, referring to statements Ms. Wetzel made to Attorney Slater during his investigation into Ms. Henderson’s Complaint. The Staff is wrong again. Certain of those statements were substantially similar to statements Ms. Wetzel made in her emails to Mr. Shea. And these statements also did not explicitly or implicitly—and certainly not “definitively and specifically”<sup>113</sup>—implicate nuclear safety. Therefore, they are not protected statements. As documented in Mr. Slater’s August 10 report, “Ms. Wetzel made two of these allegations [about Ms. Henderson]—purportedly inappropriately having people investigated by HR and pulling of gate records—during her interview.”<sup>114</sup> The August 10 Slater report concluded that Ms. Wetzel’s “continu[ing] to make the same allegations regarding Ms. Henderson to Mr. Shea” had “rise[n] to the level of disrespectful conduct” prohibited by TVA policies.<sup>115</sup> In other words, the fact that Ms. Wetzel had repeated accusations about Ms. Henderson to Mr. Shea had crossed a line for TVA. Nothing in those statements themselves even remotely suggests a nuclear safety concern.

Ms. Wetzel’s other statements to Mr. Slater likewise are not protected activity under Section 50.7. There is no evidence suggesting that these statements were part of the basis for terminating Ms. Wetzel’s employment. But even if there were such evidence, it would not matter: not one of her statements was a protected nuclear safety concern. For example, in her

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<sup>112</sup> Joseph Shea (Order Prohibiting Involvement in NRC Licensed Activities Immediately Effective), LBP-20-11, slip op. at 12 (2020) (ADAMS Accession No. ML20308A739).

<sup>113</sup> *Am. Nuclear Res., Inc.*, 134 F.3d at 1295.

<sup>114</sup> Attach. 10 at 19–20 & n.69 (August 10 Slater Report).

<sup>115</sup> *Id.* at 20 & n.69.

interview with Mr. Slater, Ms. Wetzel described the Corporate Nuclear Licensing Department as “toxic” and said the Department “will ‘only work better if [Ms. Henderson] is moved out.’”<sup>116</sup> Ms. Wetzel said nothing directly related to environmental or radiologic harm, nor did she raise any definitive or specific chilled work environment concern, particularly where, in the very same interview with Mr. Slater, Ms. Wetzel herself stated she was not hesitant to raise nuclear safety concerns.<sup>117</sup>

In sum, not one of Ms. Wetzel’s statements about Ms. Henderson for which Ms. Wetzel’s employment at TVA was terminated was nuclear safety-related protected activity. TVA is entitled to summary judgement on this ground alone.

**2. Ms. Wetzel’s Statements Referenced in Violation 4 Were also Not Protected as a Matter of Law Because They Constituted Disrespectful and Inappropriate Behavior**

Even if Ms. Wetzel somehow believed that she was implicating nuclear safety, her statements were still not protected as a matter of law because they were inappropriate and disrespectful toward her supervisor. As described in detail above, legal precedent clearly holds that inappropriate, disruptive, or disobedient behavior is not protected under the ERA.<sup>118</sup> “[A]n employer may terminate an employee who behaves inappropriately, even if that behavior relates to a legitimate safety concern.”<sup>119</sup> Moreover, “an employee’s insubordination toward supervisors and coworkers, even when engaged in a protected activity, is justification for termination.”<sup>120</sup>

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<sup>116</sup> *Id.* at 19.

<sup>117</sup> *Id.* at 8.

<sup>118</sup> *See supra*, Section III.C.

<sup>119</sup> *Am. Nuclear Res., Inc.*, 134 F.3d at 1295; *see also Ma v. Am. Elec. Power, Inc.*, 647 F. App’x 641, 644 (6th Cir. 2016) (unpublished).

<sup>120</sup> *Kahn v. U.S. Sec’y of Labor*, 64 F.3d 271, 279 (7th Cir. 1995), *as modified* (Sept. 7, 1995).

As Ms. Wetzel's termination letter states:

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.<sup>121</sup>

Because insubordinate and disrespectful behavior are not protected activity, Ms. Wetzel's "*disrespectful and harassing conduct*" simply was not protected under the law.

### **3. TVA Reasonably Believed that Ms. Wetzel Did Not Engage in Protected Activity**

Even if Ms. Wetzel's statements for which she was terminated could be interpreted as nuclear safety related protected activity, Violation 4 should be summarily dismissed because there is no factual dispute whether TVA honestly believed that it was terminating Ms. Wetzel for statements that were not protected. Under statutory regimes with the same evidentiary standard as ERA Section 211,<sup>122</sup> such as the Federal Railroad Safety Act ("FRSA"),<sup>123</sup> courts have applied an honest belief standard to the identification of protected activity in recognition of the fact that there can be no discrimination when an employer honestly believes no protected activity

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<sup>121</sup> Attach. 2 at 6 (Wetzel ERB Package) (Answer to Question 5) (emphasis added).

<sup>122</sup> As described in detail in *Tennessee Valley Authority*, CLI-04-24, 60 NRC at 196–197, in the evidentiary standard for the ERA, "Congress established a lenient 'contributing factor' test, under which whistleblowers need show only that their protected activity affected the personnel action 'in any way.'" *Id.* at 196. "Mere employer (or supervisor) knowledge of the protected activity does not suffice as a contributing factor; nor does the equivalent of adding a drop of water into the ocean. The evidence, direct or indirect, must allow a reasonable person to infer that protected activities influenced the unfavorable personnel action to some degree." *Id.* at 197 (quotations omitted).

<sup>123</sup> Compare 49 U.S.C. § 20109(d)(2) (Federal Railroad Safety Act) (referring to 49 U.S.C. § 42121(b) for contributing factor test as burden of proof), with 42 U.S.C. § 5851(b)(3)(A) (setting forth contributing factor test as burden of proof in ERA).

occurred.<sup>124</sup> As the Ninth Circuit observed under the FRSA, when “the primary dispute” “was about whether the plaintiff had actually engaged in protected conduct in the first place, not whether the protected conduct was a contributing factor to the plaintiff’s discipline,” it is proper to consider whether the “employer may have honestly believed that the employee did not engage in protected activity.”<sup>125</sup> After all, “it would not be possible to show that an employer retaliated in response to an employee engaging in protected activity if the employer could demonstrate that it honestly believed no protected activity had occurred.”<sup>126</sup>

The good faith determinations by TVA’s OGC and the ERB should not be disturbed merely because the Staff came to a different conclusion.<sup>127</sup> Both TVA’s OGC and its ERB found that Ms. Wetzel’s termination was not due to her having engaged in nuclear safety-related protected activity.<sup>128</sup> Nor would they have any reason to believe that Ms. Wetzel’s statements—which nowhere mention a chilled work environment or any other matter concerning nuclear safety—raised nuclear safety concerns or concerns of a chilled work environment. Furthermore, as previously discussed, the most recent in time documentation addressing the subject—Mr. Slater’s investigation report, which was part of the documentation reviewed by the ERB<sup>129</sup>—found that personnel in Ms. Henderson’s department were willing to raise concerns and not chilled.<sup>130</sup>

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<sup>124</sup> *Armstrong v. BNSF Ry. Co.*, 880 F.3d 377 (7th Cir. 2018) (“If BNSF fired Armstrong because it honestly believed that he was lying about his complaint, then it necessarily follows that it did not retaliate against Armstrong for filing a good faith complaint.”); *Frost v. BNSF Ry. Co.*, 914 F.3d 1189, 1197 (9th Cir. 2019); *see also Addis v. Dep’t of Labor*, 575 F.3d 688, 691 (7th Cir. 2009) (requiring retaliatory intent under the ERA).

<sup>125</sup> *Frost*, 914 F.3d at 1197.

<sup>126</sup> *Id.*

<sup>127</sup> Attach. 3 (Wilson Depo. Tr. at 136:16–139:24) (stating that the Staff simply came to a different conclusion from the ERB and TVA OGC and did not have any reason to suspect bad faith on the part of the ERB or OGC).

<sup>128</sup> Attach. 11 (Investigation into Harassment and Hostile Work Environment Allegations in Nuclear Licensing Organization – Involvement of Beth Wetzel (Aug. 30, 2018)); Attach. 2 at 8 (Wetzel ERB Package) (Answer to Question 15).

<sup>129</sup> *See* Attach. 2 at 1 (Wetzel ERB Package).

<sup>130</sup> *See* Attach. 10 at 8 (August 10 Slater Report).



And while the Staff counsel previously alleged that the ERB and OGC processes were mere window dressing for Mr. Shea’s decision to fire Ms. Wetzel,<sup>131</sup> depositions revealed that the Staff has no evidence to support that bare assertion. Mr. Wilson stated that neither the ERB nor the OGC investigation was window dressing.<sup>132</sup> In fact, he had no reason to believe that they did not perform their jobs in good faith,<sup>133</sup> or based on their honest belief.<sup>134</sup> Instead, he said the Staff just had a “difference of opinion” with their conclusions.<sup>135</sup> Mr. Gifford stated that he did not evaluate whether the ERB was in good faith, but instead merely “relied upon” the (alleged) fact “that Ms. Wetzel engaged in protected activity.”<sup>136</sup> Finally, Mr. Hilton was unable to point to any evidence supporting the claim that OGC’s role in the process was window dressing or performed in bad faith.<sup>137</sup> He also was unable to point to any evidence supporting the claim that the ERB was window dressing or performed in bad faith.<sup>138</sup>

As the Staff’s depositions revealed, there is no genuine dispute that TVA concluded in good faith that it was terminating Ms. Wetzel for legitimate reasons. The Staff has no evidence to the contrary. Accordingly, even if the Board believes that the actions for which Ms. Wetzel was terminated could be protected, the Board should grant summary disposition on Violation 4

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<sup>131</sup> *Joseph Shea*, Docket IA-20-008-EA, Oral Argument, Tr. at 109:10–24 (Oct. 16, 2020) (“JUDGE GIBSON: Okay. And again, not getting into the merits, but I realize we have a limited engagement here to focus on immediate effectiveness. But it sounds like it is your position that this OGC and ERB process was just sort of window dressing to justify the firing of Ms. Wetzel. Is that right? That it wasn’t really a legitimate process, it was just window dressing in order to enable [Mr.] Shea to fire Ms. Wetzel. Is that what you’re saying? MS. KIRKWOOD: Yes. I think that the OGC investigation -- Ms. Wetzel was not the only employee fired. There’s another case involving another employee. So, I wouldn’t say it was only to fire Ms. Wetzel. But yes, I would say it was window dressing.”) (ADAMS Accession No. ML20293A172); *see also* Order, Providing Case Management Instructions at 3 (July 29, 2021) (ADAMS Accession No. ML21210A093).

<sup>132</sup> Attach. 3 (Wilson Depo. Tr. at 136:16–139:24).

<sup>133</sup> *Id.* at 137:3–5; 139:17–20.

<sup>134</sup> *Id.* at 137:6–12; 139:21–24.

<sup>135</sup> *Id.* at 138:22–139:1.

<sup>136</sup> Attach. 16 (Gifford Depo. Tr. at 176:9–177:11).

<sup>137</sup> Attach. 17 (Hilton Depo. Tr. at 200:15–203:15).

<sup>138</sup> *Id.* at 206:4–207:15.

because there is no genuine dispute that TVA honestly believed that it was taking action for non-prohibited reasons because Ms. Wetzel's activities were not protected.

**B. There Is No Evidence that Ms. Wetzel's "Alleged Contact" with the NRC Contributed to Her Termination**

The Appendix attached to the Order references a third alleged protected activity of Ms. Wetzel's, an instance in which Ms. Wetzel made "alleged contact with the NRC."<sup>139</sup> This justification is not in Violation 4 as issued on August 24, 2020. Rather, this justification appeared in the Appendix to the Order, which was issued after TVA challenged the Violation, and which provided the "NRC's evaluation and conclusion regarding the Licensee's requests" to reduce the severity levels of the alleged violations and commensurately reduce the civil penalty even "if the NRC continues to believe that violations occurred."<sup>140</sup> Critically, the Appendix also provides a "Restatement"<sup>141</sup> of Violation 4 that is the same as the initial NOV and does not mention this new alleged protected activity. Yet, it seems that the Staff added a further basis for Violation 4, after TVA's response, to explain why the severity level and civil penalty associated with that violation should not be reduced.

In any event, the Staff's belated effort to rehabilitate the Violation fails. Ms. Wetzel's "alleged contact" with the NRC played no role in TVA's decision to take an adverse action in this case, and the Staff has identified no evidence demonstrating that it did.<sup>142</sup> In his deposition, Mr. Gifford was asked what evidence showed that Ms. Wetzel's "alleged contact" with the NRC was a contributing factor in the adverse action against her. Of all the members of the Staff, Mr. Gifford should have been able to provide evidence to support this assertion, given that he

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<sup>139</sup> Order Appendix at 4.

<sup>140</sup> *Id.* at 1.

<sup>141</sup> *See generally* Order Appendix (restating violations from NOV).

<sup>142</sup> The Staff appears to have tacked on this additional alleged protected activity, not because it was a contributing factor in the adverse action, but rather in an attempt to inoculate itself from TVA's prior valid argument that none of the alleged protected activities in Violation 4 as initially issued were actually protected.

submitted an affidavit under penalty of perjury in Mr. Shea's proceeding alleging that Mr. Shea based his decision to terminate Ms. Wetzel in part on her contact with the NRC.<sup>143</sup> Mr. Gifford's response to this request for evidence was to say that:

Mr. Shea referenced – when we asked Mr. Shea [during his Pre-decisional Enforcement Conference] about the sustained pattern of disrespectful behavior, he referenced Ms. Henderson's formal complaint, he referenced the OGC report, and he referenced communications that he had directly with Ms. Wetzel. And so the NRC reviewed those, and specifically for contacting the NRC regarding concerns of a chilled work environment, that was essentially the main complaint against Mr. Wetzel in the formal complaint.

So if Mr. Shea was stating that the formal complaint was evidence of the sustained pattern, and when we reviewed the formal complaint we saw that really the only behavior that was attributed to Ms. Wetzel was filing a complaint with the NRC, we understood that to mean that that was what Mr. Shea was referring to as a sustained pattern of disrespectful behavior.

Because there really wasn't other discussion of Ms. Wetzel's activities in that formal complaint.<sup>144</sup>

What Mr. Gifford represents in the quote above as Ms. Henderson's "main complaint" against Ms. Wetzel is actually just one sentence at the end of one paragraph of an 8-page complaint that mentions Ms. Wetzel seven times.<sup>145</sup> And that sentence does not specifically state that Ms.

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<sup>143</sup> Joseph Shea, IA-20-008, NRC Staff Answer to Motion to Set Aside the Immediate Effectiveness of the Order and Answer to the Request for Hearing, Gifford Aff. ¶ 7 (Sept. 28, 2020) ("In the Motion and during the [Pre-decisional Enforcement Conference], Mr. Shea attributes the decision to terminate Ms. Wetzel to a 'sustained pattern of disrespectful behavior' made directly to him and outlined in a report by the TVA Office of General Counsel (OGC) (TVA OGC Report). Based on an evaluation of the ROI, the formal complaint filed by Ms. Henderson, exhibits and statements by Mr. Shea during the PEC, and the TVA OGC Report, the Staff determined that what Mr. Shea claimed was a 'sustained pattern of disrespectful behavior' by Ms. Wetzel consisted primarily of contacting the NRC regarding concerns of a chilled work environment (ROI, Exhibit 10), verbal and written statements by Ms. Wetzel to Mr. Shea regarding concerns of retaliation by Ms. Henderson, and statements Ms. Wetzel made to a TVA attorney (Mr. Slater) during an investigation about the work environment within Corporate Nuclear Licensing (CNL) (ROI, Exhibit 14).") (ADAMS Accession No. ML20272A298 at 34).

<sup>144</sup> Attach. 16 (Gifford Depo. Tr. 174:5–24). The NRC Enforcement Staff's (including Mr. Gifford's) only opportunity to ask this information of Mr. Shea was at his PEC.

<sup>145</sup> Attach. 4 at 7 (Formal Complaint of Erin Henderson (Mar. 9, 2018)). The paragraph in question states in part: "9/11/17: Received feedback from a direct related to a discussion with a [Sequoyah] employee, during which the [Sequoyah] 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 [McBrearty] in the past couple of months . . . . The [Sequoyah] employee said he though they (Mike and Beth) are the reason for the NRC SCWE inspection in my organization." Ms. Henderson included this in her Complaint as one of many examples where other

Wetzel contacted the NRC “regarding concerns of a chilled work environment” as alleged in Mr. Gifford’s affidavit.<sup>146</sup> In any event, Mr. Gifford’s theory appears to be that Mr. Shea read Ms. Henderson’s March 9, 2018 Complaint, and proceeded to terminate Ms. Wetzel’s employment several months later because of a single statement in the Complaint. However, there is no evidence supporting this theory.

Contrary to Mr. Gifford’s assertions, Mr. Shea did not reference Ms. Henderson’s formal Complaint as justification for the adverse action against Ms. Wetzel during his PEC. Instead, Mr. Shea specifically listed the events in the “sustained campaign of disrespectful conduct” leading to Ms. Wetzel’s termination,<sup>147</sup> clearly stating that there was nothing prior to the March 29, 2018 Wetzel email that he “would’ve considered part of evidence [he] had of a pattern of disrespectful and harassing conduct.”<sup>148</sup> In short, Mr. Gifford’s “evidence” is based on an inaccurate recitation of Mr. Shea’s presentation at his PEC. Such mischaracterization of the record does not create a genuine dispute on a material issue sufficient to withstand summary disposition.<sup>149</sup>

Moreover, it is undisputed that neither OGC nor TVA’s ERB considered any alleged contact with the NRC when OGC recommended Ms. Wetzel’s termination from employment and the ERB reviewed that personnel action. Mr. Slater’s August 10, 2018 report and the August 30,

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individuals “may potentially be contributing to this environment or colluding with each other to facilitate creating a hostile work environment” for Ms. Henderson. *Id.* at 6.

<sup>146</sup> *Joseph Shea*, IA-20-008, NRC Staff Answer to Motion to Set Aside the Immediate Effectiveness of the Order and Answer to the Request for Hearing, Gifford Aff. ¶ 7 (Sept. 28, 2020) (ADAMS Accession No. ML20272A298 at 34).

<sup>147</sup> Attach. 15 (Joe Shea Pre-decisional Enforcement Conference Tr. at 144:16–146:24).

<sup>148</sup> *Id.* at 146:11–14.

<sup>149</sup> *Advanced Medical Systems, Inc.* (One Factor Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102 (1993) (“the party opposing the motion may not rest upon ‘mere allegations or denials,’ but must set forth specific facts showing there is a genuine issue. Bare assertions or general denials are not sufficient”) (footnote omitted); *Private Fuel Storage*, LBP-01-40, 54 NRC at 536 (a summary disposition opponent must provide “something more than suspicions or bald assertions as the basis for a material factual dispute”).

2018 OGC supplemental recommendation do not mention Ms. Wetzel having contacted the NRC or filing a complaint with the NRC.<sup>150</sup> In addition, the undisputed facts show that the ERB was unaware that Ms. Wetzel had allegedly contacted the NRC, stating that “[i]t is not known specifically whether [Ms. Wetzel] raised concerns to HR, Legal Department or ECP, NRC DOL or other external agency.”<sup>151</sup> Also, as previously discussed, the Staff has no evidence that either OGC or the ERB acted in bad faith.

In light of these undisputed facts, OGC recommended Ms. Wetzel’s termination, and the ERB did not object to it, regardless of Ms. Wetzel’s alleged prior contact with the NRC. The Staff has offered absolutely no evidence otherwise. Thus, the undisputed fact is that Ms. Wetzel’s alleged contact with the NRC did not contribute to the adverse action here.

#### **V. Conclusion**

For the reasons set forth above, TVA is entitled to summary disposition on Violation 4 because the undisputed facts show that the actions for which Ms. Wetzel was terminated, as identified by both the Staff and TVA, were not nuclear safety-related protected activities.

#### **VI. Certification**

Undersigned counsel hereby certifies that counsel has made a sincere effort to contact the Staff and to resolve the question raised in this motion, pursuant to 10 C.F.R. § 2.323(b), and that counsel’s efforts to resolve the issue have been unsuccessful. The NRC Staff counsel represented that the Staff opposes TVA’s filing of this Motion “because there are genuine issues of material fact with respect to each cited violation.”

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<sup>150</sup> See generally Attach. 10 (August 10 Slater Report); Attach. 11 at 1 (Investigation into Harassment and Hostile Work Environment Allegations in Nuclear Licensing Organization – Involvement of Beth Wetzel (Aug. 30, 2018)).

<sup>151</sup> Attach. 2 at 5 (Wetzel ERB Package).

Dated: Washington, DC  
August 16, 2021

Respectfully submitted,

*/Electronically signed by Anne R. Leidich/*

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**TENNESSEE VALLEY AUTHORITY’S LIST OF ATTACHMENTS IN SUPPORT OF  
MOTION FOR SUMMARY DISPOSITION OF VIOLATION 4**

No.	Attachment Title	ADAMS Accession No. / Bates No.
1	Statement of Undisputed Material Facts	N/A
2	Wetzel Executive Review Board Package (held Sept. 19, 2018) (Exhibit 16 to OI Investigation 2-2019-015) <sup>1</sup>	ML21048A391 at PDF pgs. 6–29
3	Excerpts from Deposition of George Wilson <sup>2</sup>	N/A
4	Formal Complaint of Erin Henderson (Mar. 9, 2018) (Exhibit 10 to OI Investigation 2-2019-015)	ML21044A069 at PDF pgs. 4–11
5	Email from Beth Wetzel to Joe Shea (May 7, 2018) (Exhibit 11 to OI Investigation 2-2019-015)	ML21044A069 at PDF pgs. 34–35
6	Email from Joe Shea to Human Resources and OGC (May 7, 2018) (Shea PEC Exhibit JS12) <sup>3</sup>	N/A
7	Email from Beth Wetzel to Joe Shea (June 9, 2018) (Exhibit 12 to OI Investigation 2-2019-015)	ML21044A069 at PDF pg. 13
8	Text Messages from Beth Wetzel to Joe Shea (June/July 2018) (Shea PEC Exhibit JS21)	N/A
9	Report of Investigation of Erin Henderson’s Allegations of Harassment and Hostile Work Environment (May 25, 2018) (Exhibit 17 to OI Investigation 2-2018-033) (May 25 Slater Report)	ML21042A026 at PDF pgs. 31–62
10	Report of Investigation of Erin Henderson’s Allegations of Harassment and Hostile Work Environment (Aug. 10, 2018) (Exhibit 18 to OI Investigation 2-2018-033) (August 10 Slater Report)	ML21042A026 at PDF pgs. 64–101
11	Investigation into Harassment and Hostile Work Environment Allegations in Nuclear Licensing Organization – Involvement of Beth Wetzel (Aug. 30, 2018) (Exhibit 17 to OI Investigation 2-2019-015)	ML21048A391 at PDF pgs. 38–40
12	Wetzel Executive Review Board Package Update (held Dec. 18, 2018) (Exhibit 16 to OI Investigation 2-2019-015)	ML21048A391 at PDF pgs. 30–32

<sup>1</sup> Attachments 2, 4, 5, 7, and 9–14 are authenticated by the Declaration of Timothy J.V. Walsh. *See* Attach. 21. Note Attachment 11 appears to include handwritten notes from Ms. Deanna Fults, as submitted in her transmission e-mail to Mr. Scott Luina, that were not part of the original document. *See Tennessee Valley Authority* (Denying TVA’s Motion for Return and Protection of Privileged and Confidential Documents) (slip op. at n.5) (ADAMS Accession No. ML21092A076) (noting the OGC Memorandum was transmitted in an email from Ms. Fults to Mr. Luina). However, the document is attached to this motion as it was produced to TVA.

<sup>2</sup> Attachments 3, and 16–20 are self-authenticating sworn deposition testimony.

<sup>3</sup> Attachments 6, 8, and 15 were authenticated by TVA in its April 22, 2021, response to the NRC Staff’s Interrogatories and Request for Production.



13	Notice of Termination to Beth Wetzel (Jan. 14, 2019)	ML21042B963 at PDF pgs. 27-28
14	Email from Beth Wetzel to Joe Shea (Mar. 29, 2018) (Exhibit 11 to OI Investigation 2-2019-015)	ML21044A069 at PDF pg. 21
15	Excerpts from Joe Shea's Pre-Decisional Enforcement Conference Transcript (June 25, 2010)	N/A
16	Excerpts from Deposition of Ian Gifford	N/A
17	Excerpts from Deposition of Nick Hilton	N/A
18	Excerpts from Deposition of Scott Luina	N/A
19	Excerpts from Deposition of Alejandro Echavarria	N/A
20	Excerpts from Deposition of David Solorio	N/A
21	Declaration of Timothy J.V. Walsh	N/A

# Attachment 1

August 16, 2021

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

**STATEMENT OF UNDISPUTED MATERIAL FACTS**

Tennessee Valley Authority (“TVA”) submits this statement of undisputed material facts in support of its Motion for Summary Disposition of Violation 4 (Lack of Nuclear Safety-Related Protected Activity).

The relevant material facts underlying this motion not in dispute are the following:

1. Ms. Henderson filed her formal Complaint on March 9, 2018.<sup>1</sup>
2. On May 25, 2018, Mr. Slater’s initial investigation report did not recommend that TVA take any action with respect to Ms. Wetzel.<sup>2</sup>
3. On March 29, May 7, and June 9, 2018, Ms. Wetzel sent statements about Ms. Henderson to Mr. Shea via e-mail.<sup>3</sup>
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.<sup>4</sup>

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<sup>1</sup> Attach. 4 (Formal Complaint of Erin Henderson (Mar. 9, 2018)).  
<sup>2</sup> Attach. 9 (Report of Investigation of Erin Henderson’s Allegations of Harassment and Hostile Work Environment (May 25, 2018)).  
<sup>3</sup> Attach. 5 (Email from Beth Wetzel to Joe Shea (May 7, 2018)); Attach. 7 (Email from Beth Wetzel to Joe Shea (June 9, 2018)); Attach. 14 (Email from Beth Wetzel to Joe Shea (Mar. 29, 2018)).  
<sup>4</sup> Attach. 8 (Text Messages from Beth Wetzel to Joe Shea (June/July 2018)); Attach. 2 at 6 (Wetzel ERB Package); Attach. 15 (Joe Shea Pre-decisional Enforcement Conference Tr. at 69:1–4).

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.<sup>5</sup>
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.”<sup>6</sup>
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.”<sup>7</sup>
8. TVA placed Ms. Wetzel on paid administrative leave on October 15, 2018.<sup>8</sup>
9. Ms. Wetzel signed a negotiated No Fault Separation Agreement on December 5 but rescinded her signature on December 11, 2018.<sup>9</sup>
10. A subsequent Executive Review Board for Ms. Wetzel was held on December 18, 2018, and did not change its prior conclusion.<sup>10</sup>
11. TVA terminated Ms. Wetzel’s employment on January 14, 2019.<sup>11</sup>

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<sup>5</sup> Attach. 10 at 19–20 & n.69 (Report of Investigation of Erin Henderson’s Allegations of Harassment and Hostile Work Environment (Aug. 10, 2018)).

<sup>6</sup> Attach. 11 at 1 (Investigation into Harassment and Hostile Work Environment Allegations in Nuclear Licensing Organization – Involvement of Beth Wetzel (Aug. 30, 2018)).

<sup>7</sup> Attach. 2 at 23 (Wetzel ERB Package).

<sup>8</sup> Attach. 15 (Joe Shea Pre-decisional Enforcement Conference Tr. at 81:14–82:7).

<sup>9</sup> *Id.* at 82:19–83:16.

<sup>10</sup> Attach. 12 (Wetzel Executive Review Board Package Update (held Dec. 18, 2018)).

<sup>11</sup> Attach. 13 (Notice of Termination to Beth Wetzel (Jan. 14, 2019)).

12. The NRC issued Violation 4 to TVA on August 24, 2020,<sup>12</sup> and issued an Order imposing a Civil Penalty based on those violations on October 29, 2020.<sup>13</sup>

Dated: Washington, DC  
August 16, 2021

Respectfully submitted,

*/Electronically signed by Anne R. Leidich/*

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<sup>12</sup> Notice of Violation and Proposed Imposition of Civil Penalty to TVA (EA-20-006 & EA-20-007) (Aug. 24, 2020) (ADAMS Accession No. ML20232B803).

<sup>13</sup> TVA Order for Civil Penalty (Oct. 29, 2020) (ADAMS Accession No. ML20297A544) (“Order”); Appendix to the TVA Order (Oct. 29, 2020) (ADAMS Accession No. ML20297A552) (“Order Appendix”).

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Counsel for TVA

# Attachment 2

## 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	Söd	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	
<input type="checkbox"/> Coaching	<input type="checkbox"/> Verbal Warning
<input type="checkbox"/> Written Warning	<input type="checkbox"/> Suspension - Days _____
<input checked="" type="checkbox"/> Other	<input checked="" type="checkbox"/> Discharge
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

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 immediate actions were already taken?

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.

What was the employees rationale for the issue?

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 *advised 10/16/2019*  
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:	Title:	Date:	
JOSSEPH SHEAF	VP REG AFFAIRS + SS	10/16/2019	(ONB help 9/19/2019)
Supervisor Name:	Supervisor Signature:	Date:	
JOSSEPH SHEAF	<i>[Signature]</i>	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

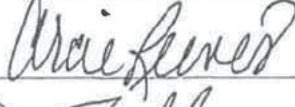
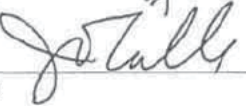
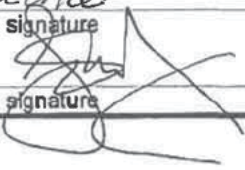
If "Yes", explain: The response of the work force is likely to split down several modes in which the reg affairs staff operates. One portion of the staff will be aware of Ms Wetzel's general tendencies to attempt to undermine her supervisor - these individuals have spoken to this in their interviews. 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)	_____ name (print) and signature	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 10/16/18	Deanna Fritts name (print) and signature	10/16/18 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 (ORIS led 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.

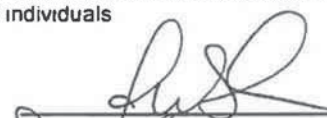
5. **Describe the actions that you intend to take to determine if the workforce understood and accepted your initial communications. Describe the timing associated with these efforts and other follow-up actions. Preliminarily identify steps that may be required to reinforce your original message or to 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

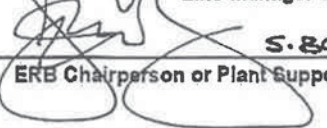
Further communications or mitigation would potentially be a direct recommendation of that assessment. Depending on the nature of the residual concern further actions might include focus group interaction within smaller groups of individuals

Prepared By:

  
 \_\_\_\_\_  
 Line-Manager or CTS Supervisor

10/19/2017  
 C.A.S. 402 9/15/2018  
 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 <sup>(2)</sup>
- 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:  S. B. 2016 10/19/18  
 ERB Chairperson or Plant Support Director/NSCMP Chairperson<sup>(1)</sup> Date

Acknowledged By:  10/19/2018  
 Manager Date

\* Will be signed by the Manager responsible for performing follow-up action<sup>(1)</sup>.

<sup>(1)</sup> 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).

<sup>(2)</sup> 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<sup>(1)</sup>).

Based on the outcome of the follow-up actions, are additional mitigation actions required?

Yes  No

Explain why.

**Safety Conscious Work Environment (SCWE) Mitigation Plan**

If yes, please repeat this form.

Approved By: \_\_\_\_\_ / \_\_\_\_\_  
~~ERB Chairperson or Plant Support Director/NSCMP Chairperson<sup>(1)</sup>~~ Date

- <sup>(1)</sup> 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).
- <sup>(2)</sup> 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]

## 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: ARCIE REYNOLDS  
Legal Counsel: RYAN DREKE  
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. Sullivan 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 \_\_\_\_\_

# Attachment 3





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# Transcript of George Wilson

**Date:** June 25, 2021

**Case:** Tennessee Valley Authority, In re:

**Planet Depos**

**Phone:** 888.433.3767

**Email:** [transcripts@planetdepos.com](mailto:transcripts@planetdepos.com)

[www.planetdepos.com](http://www.planetdepos.com)

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:

Paul S. Ryerson, Chairman

E. Roy Hawkens

Dr. Sue H. Abreu

----- x

In the Matter of :  
: Docket Nos.  
TENNESSEE VALLEY : EA-20-006 and EA-20-007  
AUTHORITY, : ASLBP  
(Enforcement Action) No. 21-969-01-EA-BD01

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Virtual Deposition of GEORGE WILSON  
Friday, June 25, 2021  
6:13 a.m. CST

Job No.: 379701  
Pages: 1 - 157  
Reported by: THERESA A. VORKAPIC,  
CSR, RMR, CRR, RPR

1 P R O C E E D I N G S

2 THE REPORTER: Will counsel please  
3 stipulate that in lieu of formally swearing in the  
4 witness, the reporter will instead ask the witness  
5 to acknowledge that their testimony will be true  
6 under the penalties of perjury, that counsel will  
7 not object to the admissibility of the transcript  
8 based on proceeding in this way, and that the  
9 witness has verified that he is, in fact, George  
10 Wilson.

11 MR. LEPRE: Yes.

12 MS. KIRKWOOD: That's fine.

13 THE REPORTER: Would you raise your right  
14 hand, please.

15 (The witness was duly sworn.)

16 GEORGE WILSON,  
17 called as a witness herein, having been first duly  
18 sworn, was examined and testified as follows:

19 EXAMINATION

20 BY MR. LEPRE:

21 Q Good morning. My name is Mike Lepre. I'm  
22 outside counsel for TVA. I'm with the law firm of  
23 Pillsbury Winthrop Shaw Pittman, and in the room  
24 with me are Tim Walsh, Brendan Hennessy, Sid  
25 Fowler from our law firm.

1     PECs would have happened we would have got back  
2     together with a panel and had another panel.  
3     After we evaluated all the additional data that  
4     came from the transcripts or any additional  
5     information that was added after the PECs, so  
6     there would be another set of panels after all  
7     that to weigh any of the evidence that we received  
8     from the PECs before the final decisions would  
9     have been made.

10         Q    The February 19, 2020 panel would have  
11     been the initial panel?

12         A    That would have been the of initial, that  
13     is correct.

14         Q    What was your role on the panel?

15         A    I listen to the panel, the outcome that  
16     comes, the evidence that's laid out, proposed  
17     enforcement actions, and that's my role in the  
18     panel.

19         Q    Is there a chairperson of the panel,  
20     somebody in charge?

21         A    Normally the lead enforcement specialist  
22     runs the panels. I would have been the senior  
23     person in the panel so by my title and my fact  
24     that I was in the panel, I would have been the  
25     senior person. So I would have been the chair

1 just because I would have been in the panel  
2 setting, but the enforcement panel is actually ran  
3 by the enforcement specialist and then there's  
4 questions asked. So who really runs the panel is  
5 the lead enforcement specialist.

6 Q Does the panel vote? How do you make a  
7 decision? Do you actually have a vote?

8 A You have to vote, yes. You actually have  
9 to have a vote. Everyone says I agree or you can  
10 say I disagree and if there is a disagree, you  
11 state reasons why and then have you to address the  
12 concerns of that panel member. So you have  
13 another panel to address the concerns of that  
14 panel member. If they still don't agree, then  
15 it's elevated.

16 Q I know we've been over this, but just for  
17 the record, everyone voted I agree in both of  
18 these enforcement --

19 A I do -- yes, I do not recall, Mr. Lepre,  
20 that these why elevated. I do not know if we had  
21 to have a repanel to address questions or  
22 concerns, but these were not elevated.

23 Q You don't recall if there was a repanel;  
24 is that correct?

25 A I just know that there was at least two

1 piece of the evidence. We still made an  
2 enforcement decision against Joe Shea so for that  
3 we said there was the discrimination based on the  
4 overall process so I would not have agreed with  
5 this full form.

6 Q That means that you did not agree with the  
7 agreement in the ERB; is that correct?

8 A That's correct. We would not agree with  
9 this full form and I'm just looking it has the  
10 action that we issued. I know we looked at this  
11 executive review board sheet and have we evaluated  
12 all the facts, we said there was discrimination  
13 that happened. So with that, I would tell you  
14 that based on what this sheet says, we were not in  
15 full alignment with this sheet as an agency.

16 Q Do you think the members of the ERB  
17 performed their jobs in good faith?

18 A They came up to the conclusions that they  
19 came up in the conclusions, Mr. Lepre. We  
20 evaluated this on our own and we came up with a  
21 different conclusion based on the facts of the  
22 case. So they could have did their job to the  
23 best of their ability. We came up with a  
24 different conclusion than what they did.

25 Q Do you have any reason to believe they did

1 not do their job to the best of their ability?

2 A At this time, no.

3 Q Do you have any reason to believe that  
4 they did their job in bad faith?

5 A No.

6 Q Do you have any reason to believe that  
7 they did not honestly believe that the proposed  
8 action is based on legitimate non-retaliatory  
9 reasons?

10 A I think based on what was before them they  
11 made that decision. Based on what was before us  
12 we made a different decision.

13 Q Do you have any reason to believe the ERB  
14 process for Ms. Wetzel was just window dressing?

15 A No.

16 Q Why do you think Ms. Kirkwood -- what do  
17 you think Ms. Kirkwood was referring to when she  
18 told the board in this proceeding that the ERB was  
19 window dressing?

20 A I do not know. I wasn't at that meeting  
21 and know what Ms. Kirkwood said. I do know that  
22 we came to a different conclusion based on the  
23 facts of the case. So that would go to challenge  
24 the outcome that came out of the ERB decision  
25 because the NRC's decision was different than the

1 ERB's decision based on the same facts.

2 Q When you say we, who is the we you're  
3 referring to?

4 A The board. Obviously when the enforcement  
5 panel or the board evaluated the case as a whole,  
6 and like I told you before, everything is done by  
7 consensus, the consensus of the board was that  
8 this -- there was discrimination happening, that  
9 happened here. So, therefore, we didn't agree  
10 with the assessment of the board.

11 Q Did anybody on the panel, the we that you  
12 were talking about, believe that the ERB was  
13 window dressing?

14 A I don't remember that being used. I think  
15 that we challenged the outcome of the ERB. And  
16 that was obvious by the fact that we issued the  
17 enforcement action so we looked at the facts  
18 different than what -- we looked at the facts  
19 different than what they did. I do not recall  
20 that term being used, no. We looked at this -- go  
21 ahead, I'm sorry.

22 Q I'm sorry. You just had a difference of  
23 opinion than the ERB based on the facts; is that  
24 correct?

25 A We had a difference of opinion when we



1 laid out the facts, that is correct.

2 Q Do you have any reason to believe that  
3 TVA's office of general counsel's role in the  
4 Wetzel termination decision was just window  
5 dressing?

6 A I think --

7 Q The TVA --

8 A TVA's general counsel did a follow-up  
9 investigation. We evaluated it as a whole. I  
10 don't think it was window dressing. They  
11 performed their job. Obviously we found holes in  
12 the overall case that was presented to us by TVA,  
13 and issued enforcement actions.

14 Q Do you have any reason to think that OGC  
15 did not perform their jobs or perform their --  
16 sorry.

17 Do you have any reason to believe that OGC  
18 performed their jobs in bad faith?

19 A No, I just don't think we came out to the  
20 same conclusion as they did.

21 Q Do you have any reason to believe that  
22 TVA's decisions in this case did not reflect TVA's  
23 attorneys honest beliefs about the case?

24 A No, I do not.

25 Q In the remaining minutes that we have

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

1 this fits the definition of 50.7.

2 Q Does it mention it anything -- I'm sorry.  
3 Does it mention anything about a chilled work  
4 environment?

5 A No. You know, there's not a lot super  
6 specific there. It just makes you -- it leads to  
7 a perception that there's issues there and we  
8 talked about -- this we talked about and evaluated  
9 and like I said, we rely upon OGC's determination  
10 for the impact on 50.7 and they set the panels.

11 Q If you were worried about two people in  
12 your organization having a relationship that could  
13 impact their ability to do their jobs in an  
14 independent manner, would you ask somebody to look  
15 into that?

16 A If the people were doing stuff and they  
17 were not doing it correctly within the procedures  
18 and it has an impact and they weren't doing that  
19 job, yes, I would have to look at that.

20 Q Would it have been unreasonable for  
21 Ms. Henderson to have done so?

22 MS. KIRKWOOD: That's a very vague  
23 question. I know we're rushing, but I'm not sure  
24 Mr. Wilson knows what you're talking about.

25 BY MR. LEPRE:

# Attachment 4

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

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



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 be able to aggressively resolve all of the performance challenges (Beth Wetzel and Ed Schrull). 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

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.

- 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'.
- 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.
- 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.
- 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.'
- 10/4/17: My supervisor noted that Mike was leaving me off of emails again related to security issue.
- 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.

Joe Shea  
Amanda Poland  
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- 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:
  - 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.
- 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.
  - 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.
  - 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.
  - 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.
  - 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  
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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 Schrull) 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 5

**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](http://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](mailto:ekwest@tva.gov)>  
**Date:** May 7, 2018 at 6:18:05 AM EDT  
**To:** "Wetzel, Beth A" <[bawetzel@tva.gov](mailto:bawetzel@tva.gov)>  
**Cc:** "Shea, Joseph W" <[jwshea@tva.gov](mailto:jwshea@tva.gov)>, "Wingo, Charles W" <[cwwingo@tva.gov](mailto: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



# Attachment 6



# **Joe Shea PEC Presentation**

## **Exhibit No. JS12**

---

**From:** Grace, Jennifer Lynn <jlgrace@tva.gov>  
**Sent:** Monday, May 07, 2018 11:56 AM  
**To:** Shea, Joseph W <jwshea@tva.gov>; Poland, Amanda Elizabeth <aepoland@tva.gov>  
**Cc:** Czufin, David Miller <dmczufin@tva.gov>  
**Subject:** RE: Wetzel NEI Loanee Confirmation 2018

Thank you, I will provide this to John. I was the person who interfaced with Wes on outlining her travel details, so I'm familiar with this.

**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](mailto:jlgrace@tva.gov)



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---

**From:** Shea, Joseph W  
**Sent:** Monday, May 07, 2018 11:46 AM  
**To:** Poland, Amanda Elizabeth; Grace, Jennifer Lynn  
**Cc:** Czufin, David Miller  
**Subject:** Fwd: Wetzel NEI Loanee Confirmation 2018

Amanda, Jennifer

Please read below. I propose that this be provided to Johnny within the scope of his current work. Please advise if you agree or see a different way to act on this. If you agree, please forward to Johnny.

I intend to respond to Beth today just letting her know that I received her email and will let her know if my plans in the near future....

Please advise.

Thanks

Joe

----- Forwarded message -----

**From:** WETZEL, Beth

**Date:** May 7, 2018 at 10:11:44 AM CDT

**Subject:** Wetzel NEI Loanee Confirmation 2018

**To:** Shea, Joseph W

**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,



E hwk#D #Z hw} ho  
Senior Project Manager  
1201 F Street, NW, Suite 1100 | Washington, DC 20004  
P: 202.739-8011 M: 423-290-8301  
[nei.org](http://nei.org)

---

**From:** Wetzel, Beth A [mailto:[bawetzel@tva.gov](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](mailto:ekwest@tva.gov)>  
**Date:** May 7, 2018 at 6:18:05 AM EDT  
**To:** "Wetzel, Beth A" <[bawetzel@tva.gov](mailto:bawetzel@tva.gov)>  
**Cc:** "Shea, Joseph W" <[jwshea@tva.gov](mailto:jwshea@tva.gov)>, "Wingo, Charles W" <[cwwingo@tva.gov](mailto: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](mailto: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](mailto:BAW@NEI.org)  
202-739-8011  
423-290-8301

# Attachment 7

**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 <[jwshea@tva.gov](mailto:jwshea@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](mailto: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 8





# **Joe Shea PEC Presentation**

## **Exhibit No. JS21**



Beth



Can you help push my May voucher through? Carla did a wonderful job adding details to the spreadsheet I sent her 2 weeks ago, but it appears she may be getting different directions from management that could be hanging things up. I've submitted 2 vouchers (May and 2 weeks in June). The big one is for

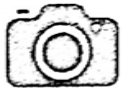




Beth



hanging things up. I've submitted 2 vouchers (May and 2 weeks in June). The big one is for May and is \$3700 OOP. TVA took \$500 out of my check to pay SS tax (hotel bill was counted as income). I'd appreciate your help. This is not Carla's fault; she's doing a great job.



iMessage





Beth



What are you referring to as different direction from management? Since Carla and I are actively engaged in your May package, what is leading you to believe there is such different direction?





Beth



Past experience.

Please elaborate specifically regarding travel. I told Carla I would review your May package over the weekend.





Beth



It was my understanding that my travel was going to be approved earlier. I submitted 2 travel vouchers on June 16. Since they were the first, we had work to clean them up. Carla asked for a utility bill but they haven't billed me yet. Before I came to DC, I told Carla that I would submit monthly vouchers, but she said I

.. . . . .





Carla provided me the hard copy package for the complex May package yesterday. I know the two of you worked hard to get it right including work through this week. I will review today and indicate to Carla so that she can approve. I know you submitted stuff for the first part of June and now that Carla is finished

with the May part of



with the May review,  
she is looking at that  
one.

Thanks

No problem. Carla  
is being diligent to  
ensure you receive  
what is due to you  
under the travel  
policy, fitr, etc in as  
timely a fashion as  
you provide the  
supporting info.  
Please ensure you  
follow Carla's  
feedback/lea

timely a fashion as you provide the supporting info. Please ensure you follow Carla's feedback (eg putting rent on corporate card, etc) to achieve timely processing. In addition, if you have a factual basis for your assertion regarding different direction, please provide that.

Delivered

# Attachment 9

IN RE THE COMPLAINT OF )  
ERIN HENDERSON )  
REPORT BY THE TENNESSEE )  
VALLEY AUTHORITY )

Misc. No. \_\_\_\_\_ )  
)  
)

**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 (b)(6) 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."<sup>1</sup> 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

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<sup>1</sup> Complaint at 1.

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

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 Schroll, Manager, Fleet Licensing; and Alesia Cox Justice, Management Analyst—contributed to the hostile work environment.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> Ms. Connor now reports to Daniel P. Stout, Senior Manager, SMR Technology.<sup>6</sup> 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.<sup>7</sup>

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<sup>2</sup> Henderson PD.

<sup>3</sup> Complaint at 1.

<sup>4</sup> 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.

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

<sup>6</sup> Org Chart; interviews of Henderson and Shea.

<sup>7</sup> Interviews of Wetzel, Henderson, and Edmondson.



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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. Schroll, 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.

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**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.<sup>8</sup> 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)."<sup>9</sup> 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

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<sup>8</sup> 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

<sup>9</sup> 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.<sup>10</sup>

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."<sup>11</sup> It should be noted that, except for Mr. Schrull, these staffers did not apply for the position of Manager, Corporate Nuclear Licensing.<sup>12</sup> 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."<sup>13</sup> 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

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<sup>10</sup> Nuclear Licensing ECP Pulsing Survey Results (February 2017).

<sup>11</sup> E.g., Interviews of Thompson, Rescheske, Wetzel, Schrull, and Riedl.

<sup>12</sup> Interviews of Shea, Schrull, and McBrearty.

<sup>13</sup> Interview of Rescheske.

and organized person" with "excellent structured organizational skills."<sup>14</sup> Furthermore, Mr. Riedl stated Ms. Henderson "may intimidate some but does not do so intentionally" and he "gives Joe Shea credit for hiring" her.<sup>15</sup> 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."<sup>16</sup> 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.<sup>17</sup>

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."<sup>18</sup> Mr. McBrearty further stated that the other interviewees, including Gordon Arent, Gene Cobey, and Mr. Schroll, had far more experience than Ms. Henderson.<sup>19</sup> 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,

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<sup>14</sup> 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.

<sup>15</sup> Interview of Riedl.

<sup>16</sup> Interview of Thompson.

<sup>17</sup> Interviews of Thompson, Wetzel, and Schroll.

<sup>18</sup> Interview of McBrearty.

<sup>19</sup> Interview of McBrearty.

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in his view, "the depth of regulatory experience."<sup>20</sup> 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.<sup>21</sup> However, as discussed further below, the SQN Licensing Manager--Mr. McBrearty--does not have a healthy, professional working relationship with Ms. Henderson.<sup>22</sup>

**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.<sup>23</sup> 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

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<sup>20</sup> Interview of Paul.

<sup>21</sup> 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.

<sup>22</sup> Interviews of McBrearty, Polickoski, and Henderson.

<sup>23</sup> Henderson PD; Interviews of Shea and Henderson.



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

#### 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.<sup>26</sup> However, ECP investigated the concern and the concern was not substantiated.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> ECP investigated, but "could

<sup>24</sup> Interview of Paul.

<sup>25</sup> E.g., Interview of Hess; Complaint at 3.

<sup>26</sup> Complaint at 3.

<sup>27</sup> Complaint at 3.

<sup>28</sup> Complaint at 3.

<sup>29</sup> 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.

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

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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.<sup>31</sup>

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.<sup>32</sup> 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.<sup>33</sup>

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

<sup>31</sup> Final Investigation Report (ECP No. NEC-17-00683) at 1.

<sup>32</sup> 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.

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



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environment at TVA Nuclear corporate.<sup>34</sup> All members of Ms. Henderson's staff were interviewed.<sup>35</sup> "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."<sup>36</sup>

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.

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<sup>34</sup> 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.

<sup>35</sup> Complaint at 3-4.

<sup>36</sup> 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."<sup>37</sup> The undersigned agrees with ECP's assessment that "[s]ome of that was a general bias that sites might have about Corporate oversight."<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> Even though Ms. Conner was not interviewed, other interviewees provided insight into

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<sup>37</sup> Interview of Hess.

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

<sup>39</sup> Complaint at 1.

<sup>40</sup> Complaint at 2.

<sup>41</sup> 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.<sup>42</sup> Mr. Wells also informed the undersigned that Ms. Conner had an "abrasive personality."<sup>43</sup> Similarly, Ms. Wetzel indicated that Ms. Henderson had a problem with Ms. Conner's performance and had Ms. Conner (and Mr. McBrearty) investigated.<sup>44</sup>

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."<sup>45</sup> 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).<sup>46</sup> 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.<sup>47</sup> Moreover, Ms. Wetzel describes Corporate Licensing as "toxic" and will "only work better if [Ms. Henderson] is moved out."<sup>48</sup>

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<sup>42</sup> Interview of Wells.

<sup>43</sup> Interview of Wells.

<sup>44</sup> Interview of Wetzel.

<sup>45</sup> Interview of Wetzel.

<sup>46</sup> Interview of Wetzel.

<sup>47</sup> Interview of Wetzel.

<sup>48</sup> Interview of Wetzel.

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

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.”<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup>

As to Ms. Justice, while she is “buddies” with Ms. Conner and Ms. Wetzel,<sup>53</sup> 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.<sup>54</sup> Nevertheless, Ms. Justice described Ms. Henderson as “a good manager.”<sup>55</sup> Ms. Justice states that she and Ms. Wetzel do not talk much about

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<sup>49</sup> Interview of Wetzel.

<sup>50</sup> Interview of Wetzel.

<sup>51</sup> Interview of Wetzel.

<sup>52</sup> Interview of McBrearty.

<sup>53</sup> Interview of Edmondson.

<sup>54</sup> Interview of Justice.

<sup>55</sup> Interview of Justice.

work.<sup>56</sup> 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.<sup>57</sup>

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."<sup>58</sup>

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."<sup>59</sup> Mr. Schrull also applied for the Senior Manager position and felt that he was far more qualified than Ms. Henderson.<sup>60</sup> Moreover, Mr. Schrull's working relationship with Ms. Henderson was strained because he is being performance managed by Ms. Henderson.<sup>61</sup> Mr. Schrull further believes that he is being marginalized by Ms. Henderson and she is not utilizing his experience.<sup>62</sup> Mr. Schrull describes himself

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<sup>56</sup> Interview of Justice.

<sup>57</sup> Interview of Justice.

<sup>58</sup> Interview of Justice.

<sup>59</sup> Interview of Schrull.

<sup>60</sup> Interview of Schrull.

<sup>61</sup> Interview of Schrull.

<sup>62</sup> Interview of Schrull.



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

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

#### **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."<sup>66</sup> 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.<sup>67</sup> However, none of the ECP concerns has been substantiated.<sup>68</sup> 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

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<sup>63</sup> Interview of Schull.

<sup>64</sup> Interview of McBrearty.

<sup>65</sup> Interview of Wetzel.

<sup>66</sup> Interview of McBrearty.

<sup>67</sup> Complaint at 3-4.

<sup>68</sup> 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."<sup>69</sup>

Moreover, Mr. McBrearty stated "[Ms. Henderson] had me investigated" and "had his gate records pulled."<sup>70</sup> 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.<sup>71</sup> (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,<sup>72</sup> 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

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

<sup>70</sup> Interview of McBrearty.

<sup>71</sup> HR Investigation Report at 1; Complaint at 1.

<sup>72</sup> 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."<sup>73</sup>

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.<sup>74</sup> 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.<sup>75</sup> Moreover, HR did not interview any of Mr. McBrearty's direct reports<sup>76</sup> 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.<sup>77</sup> 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."<sup>78</sup> Moreover, [i]nterviews further confirmed the belief that [Mr. McBrearty] has not

<sup>73</sup> HR Investigation Report at 3, emphasis added).

<sup>74</sup> April 29, 2016, Rental Agreement (Enterprise Rent A Car).

<sup>75</sup> April 29, 2016, Rental Agreement (Enterprise Rent A Car).

<sup>76</sup> HR Investigation Report at 1.

<sup>77</sup> Interview of Polickoski.

<sup>78</sup> 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]."<sup>79</sup> 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.<sup>80</sup>

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."<sup>81</sup> 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.<sup>82</sup>

<sup>79</sup> 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.

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

<sup>81</sup> Complaint at 2.

<sup>82</sup> HR Investigation Report at 1.

Mr. McBrearty incorrectly believes Ms. Henderson “had his gate records pulled.”<sup>83</sup> 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.<sup>84</sup> As one of Ms. Henderson’s direct reports stated during his interview, the pulling of “gate records pushed [Mr. McBrearty] over the edge”<sup>85</sup> and he blames Ms. Henderson<sup>86</sup> and has asserted to others that Ms. Henderson had his gate records pulled.<sup>87</sup>

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.<sup>88</sup>

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<sup>83</sup> Interview of McBrearty.

<sup>84</sup> HR Investigation Report at 1

<sup>85</sup> Interview of Polickoski.

<sup>86</sup> Interview of McBrearty.

<sup>87</sup> Interview of Wetzel.

<sup>88</sup> 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."<sup>89</sup> 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.<sup>90</sup> 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.<sup>91</sup> Mr. Polickoski has "had discussions with [Mr. McBrearty] to cut out the high school bullshit."<sup>92</sup> 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

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

<sup>90</sup> Interview of Polickoski.

<sup>91</sup> Interview of Polickoski.

<sup>92</sup> Interview of Polickoski.



site Licensing Managers."<sup>93</sup> This step was unsuccessful and ineffective as Mr. McBrearty's conduct and behavior continued.<sup>94</sup> 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"<sup>95</sup> (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."<sup>96</sup>

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

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<sup>93</sup> 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.

<sup>94</sup> Complaint at 1, 3, 8; Interviews of Henderson and Shea.

<sup>95</sup> Henderson PD.

<sup>96</sup> Interview of Henderson

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

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.<sup>99</sup> Settling with [Ms. Conner] was done, in part, to alleviate some of the challenges [Ms. Henderson] faced with both [Ms. Conner] and [Mr. McBrearty].<sup>100</sup> This step too did not stop Mr. McBrearty's conduct and behavior.<sup>101</sup>

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*.

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<sup>97</sup> 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.

<sup>98</sup> Interviews of Shea and Henderson; Complaint at 3.

<sup>99</sup> Complaint at 2; Org Chart; Interviews of Henderson and Shea.

<sup>100</sup> Complaint at 2; Interviews of Henderson and Shea.

<sup>101</sup> 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. *Thornton 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.

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."<sup>102</sup> 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).

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<sup>102</sup> Interview of Paul.



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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."<sup>103</sup> 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."<sup>104</sup> 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."<sup>105</sup> This shows that there is no dispute that Mr. McBrearty was/is aware of the concern that Ms. Henderson raised to HR.<sup>106</sup> 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."<sup>107</sup> 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

<sup>103</sup> Interview of McBrearty.

<sup>104</sup> HR Investigation Report at 1.

<sup>105</sup> HR Investigation Report at 1.

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

<sup>107</sup> 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."<sup>108</sup> 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]."<sup>109</sup> 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

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<sup>108</sup> Interview of Wetzel.

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

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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.<sup>110</sup> 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

<sup>110</sup> 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,<sup>111</sup> 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.

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<sup>111</sup> 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.

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**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  
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Date: May 25, 2018

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# Attachment 10

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."<sup>1</sup> 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

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<sup>1</sup> Complaint at 1

authority in nuclear regulatory issues, and provides strategic guidance to senior corporate and site leaders on range of nuclear regulatory issues.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> Ms. Connor now reports to Daniel P. Stout, Senior Manager, SMR Technology.<sup>6</sup> 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.<sup>7</sup>

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<sup>2</sup> Henderson PD.

<sup>3</sup> Complaint at 1.

<sup>4</sup> 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.

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

<sup>6</sup> Org Chart; Interviews of Henderson and Shea.

<sup>7</sup> Interviews of Wetzel, Henderson, and Edmondson.



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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.<sup>6</sup> 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)."<sup>9</sup> 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

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<sup>6</sup> 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.

<sup>9</sup> 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.<sup>10</sup>

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."<sup>11</sup> It should be noted that, except for Mr. Schrull, these staffers did not apply for the position of Manager, Corporate Nuclear Licensing.<sup>12</sup> 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."<sup>13</sup> 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

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<sup>10</sup> Nuclear Licensing ECP Pulsing Survey Results (February 2017).

<sup>11</sup> E.g., Interviews of Thompson, Rescheske, Wetzel, Schrull, and Riedl.

<sup>12</sup> Interviews of Shea, Schrull, and McBrearty.

<sup>13</sup> Interview of Rescheske.

and organized person" with "excellent structured organizational skills."<sup>14</sup> Furthermore, Mr. Riedl stated Ms. Henderson "may intimidate some but does not do so intentionally" and he "gives Joe Shea credit for hiring" her.<sup>15</sup> 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."<sup>16</sup> 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.<sup>17</sup>

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."<sup>18</sup> Mr. McBrearty further stated that the other interviewees, including Gordon Arent, Gene Cobey, and Mr. Schrull, had far more experience than Ms. Henderson.<sup>19</sup> 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,

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<sup>14</sup> 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.

<sup>15</sup> Interview of Riedl.

<sup>16</sup> Interview of Thompson.

<sup>17</sup> Interviews of Thompson, Wetzel, and Schrull.

<sup>18</sup> Interview of McBrearty.

<sup>19</sup> Interview of McBrearty.



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in his view, "the depth of regulatory experience."<sup>20</sup> 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.<sup>21</sup> However, as discussed further below, the SQN Licensing Manager--Mr. McBrearty--does not have a healthy, professional working relationship with Ms. Henderson.<sup>22</sup>

**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.<sup>23</sup> 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

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<sup>20</sup> Interview of Paul.

<sup>21</sup> 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.

<sup>22</sup> Interviews of McBrearty, Polickoski, and Henderson.

<sup>23</sup> Henderson PD; Interviews of Shea and Henderson.

plus because it peeled off at least one layer of review.<sup>24</sup> Other than the additional signing authority, staff did not see much of a change in the operation of the group.<sup>25</sup>

### 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.<sup>26</sup> 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.<sup>27</sup> In these text messages, Mr. McBrearty **also** disparages Ms. Henderson who purportedly "blow[s] off procedures" and sweeps "issues . . . under the rug,"<sup>28</sup> 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

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<sup>24</sup> Interview of Paul.

<sup>25</sup> E.g., Interview of Hess; Complaint at 3.

<sup>26</sup> 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.

<sup>27</sup> See TVA Standard Programs and Processes (TVA-SPP)-11.8.4 (12-03-2014, rev. 0008).

<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup>

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

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<sup>29</sup> Interview of Polickoski.

<sup>30</sup> Interview of Polickoski.

<sup>31</sup> 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.<sup>32</sup>

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”,<sup>33</sup> indeed, Mr. McBrearty has admitted to his management of engaging in this conduct.<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup> 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

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<sup>32</sup> Complaint at 4-5; Interview of Polickoski.

<sup>33</sup> June 13, 2017, Executive Summary (ECP No. NEC-17-00410) at 3.

<sup>34</sup> OGC Teleconference with Nuclear Management.

<sup>35</sup> 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.*

<sup>36</sup> February 17, 2017 email chain; Interview of Polickoski.

of the issue therein being discussed.<sup>37</sup> 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.<sup>38</sup> 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.<sup>39</sup> As a result, in February 2017, Mr. Polickoski "had discussions with [Mr. McBrearty] to cut out the high school bullshit."<sup>40</sup> 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.<sup>41</sup> On January 29, 2017, Mr. Polickoski forwarded to Ms. Henderson an email from Mr. McBrearty that also should be sent to

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<sup>37</sup> March 2, 2018 email chain; Interview of Polickoski.

<sup>38</sup> Interview of Polickoski.

<sup>39</sup> Interview of Polickoski.

<sup>40</sup> Interview of Polickoski.

<sup>41</sup> 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."<sup>42</sup> 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.<sup>43</sup> 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,<sup>44</sup> to "[d]iscuss [the] pros and cons of either requesting a Regulatory Conference or providing a written response to a pending Choice Letter"<sup>45</sup>—an issue on which Ms. Henderson was directly involved but was not included on the call.<sup>46</sup> 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

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<sup>42</sup> February 8, 2017 email chain.

<sup>43</sup> October 3 and 4, 2017 email chains.

<sup>44</sup> Henderson July 31, 2018 email; Henderson notes.

<sup>45</sup> October 4, 2017 email chain; Henderson July 31, 2018 email.

<sup>46</sup> Henderson July 31, 2018 email.

expectation that Ms. Henderson, as well as her peers, would take part in the meeting.<sup>47</sup> 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.”<sup>48</sup>

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

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<sup>47</sup> October 19, 2019 email chain.

<sup>48</sup> 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."<sup>49</sup> All members of Ms. Henderson's staff were

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<sup>49</sup> 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.<sup>50</sup> “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.”<sup>51</sup>

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.<sup>52</sup> However, ECP investigated the concern and the concern was not substantiated.<sup>53</sup> 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.<sup>54</sup> As

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<sup>50</sup> Complaint at 3-4.

<sup>51</sup> NRC Inspection Report at 22.

<sup>52</sup> Complaint at 3.

<sup>53</sup> Complaint at 3.

<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> 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.”<sup>57</sup>

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.<sup>58</sup>

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

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<sup>55</sup> 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.

<sup>56</sup> Complaint at 3; Final Investigation Report (ECP No. NEC-17-00683) at 1.

<sup>57</sup> Final Investigation Report (ECP No. NEC-17-00683) at 1.

<sup>58</sup> 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.<sup>59</sup> 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.<sup>60</sup> 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.<sup>61</sup> 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.<sup>62</sup> Mr. Wells also informed the undersigned that Ms. Conner had an "abrasive personality."<sup>63</sup> Similarly, Ms. Wetzel indicated that

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<sup>59</sup> Complaint at 1.

<sup>60</sup> Complaint at 2.

<sup>61</sup> Interview of Henderson.

<sup>62</sup> Interview of Wells.

<sup>63</sup> Interview of Wells.



Ms. Henderson had a problem with Ms. Conner's performance and had Ms. Conner (and Mr. McBrearty) investigated.<sup>64</sup>

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."<sup>65</sup> 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).<sup>66</sup> 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.<sup>67</sup> Moreover, Ms. Wetzel describes Corporate Licensing as "toxic" and will "only work better if [Ms. Henderson] is moved out."<sup>68</sup> Finally, Ms. Wetzel said that she took the NEI loan assignment to get away from Ms. Henderson.<sup>69</sup>

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<sup>64</sup> Interview of Wetzel.

<sup>65</sup> Interview of Wetzel.

<sup>66</sup> Interview of Wetzel.

<sup>67</sup> Interview of Wetzel.

<sup>68</sup> Interview of Wetzel.

<sup>69</sup> 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

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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."<sup>70</sup> 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.<sup>71</sup> 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.<sup>72</sup>

As to Ms. Justice, while she is "buddies" with Ms. Conner and Ms. Wetzel,<sup>73</sup> 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.<sup>74</sup> Nevertheless, Ms. Justice described Ms. Henderson as "a

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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.

<sup>70</sup> Interview of Wetzel.

<sup>71</sup> Interview of Wetzel.

<sup>72</sup> Interview of McBrearty.

<sup>73</sup> Interview of Edmondson.

<sup>74</sup> Interview of Justice.



good manager."<sup>75</sup> Ms. Justice states that she and Ms. Wetzel do not talk much about work.<sup>76</sup> 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.<sup>77</sup>

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."<sup>78</sup>

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."<sup>79</sup>

Mr. Schrull also applied for the Senior Manager position and felt that he was far more qualified than Ms. Henderson.<sup>80</sup> Moreover, Mr. Schrull's working relationship with Ms. Henderson was strained because he is being performance managed by Ms. Henderson.<sup>81</sup> Mr. Schrull further believes that he is being marginalized by

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<sup>75</sup> Interview of Justice.

<sup>76</sup> Interview of Justice.

<sup>77</sup> Interview of Justice.

<sup>78</sup> Interview of Justice.

<sup>79</sup> Interview of Schrull.

<sup>80</sup> Interview of Schrull.

<sup>81</sup> Interview of Schrull.

Ms. Henderson and she is not utilizing his experience.<sup>82</sup> Mr. Schrull describes himself as being frustrated, using the adage "bring me a rock," but whatever rock he brings "is not the right rock."<sup>83</sup>

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]."<sup>84</sup> 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.<sup>85</sup>

#### **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."<sup>86</sup> Mr. McBrearty has complained about Ms. Henderson, alleging that Ms. Henderson has harassed him and that her actions foster a chilled work environment.<sup>87</sup> However, none of those concerns has been substantiated.<sup>88</sup> In fact, as

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<sup>82</sup> Interview of Schrull.

<sup>83</sup> Interview of Schrull.

<sup>84</sup> Interview of McBrearty.

<sup>85</sup> Interview of Wetzel.

<sup>86</sup> Interview of McBrearty.

<sup>87</sup> Complaint at 3-4.

<sup>88</sup> Complaint at 3-4.



to the concern that Mr. McBrearty raised in April 2017, ECP found that the "motiv[at]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."<sup>89</sup>

Moreover, Mr. McBrearty stated "[Ms. Henderson] had me investigated" and "had his gate records pulled."<sup>90</sup> 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.<sup>91</sup> (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,<sup>92</sup> HR concluded "[i]t is apparent that **the parties have a very close**

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<sup>89</sup> June 13, 2017, Executive Summary (ECP No. NEC-17-00410) at 2.

<sup>90</sup> Interview of McBrearty.

<sup>91</sup> HR Investigation Report at 1; Complaint at 1.

<sup>92</sup> 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."<sup>93</sup>

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.<sup>94</sup> 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.<sup>95</sup> Moreover, HR did not interview any of Mr. McBrearty's direct reports<sup>96</sup> 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.<sup>97</sup> 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

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<sup>93</sup> HR Investigation Report at 3, (emphasis added).

<sup>94</sup> April 29, 2016, Rental Agreement (Enterprise Rent A Car).

<sup>95</sup> April 29, 2016, Rental Agreement (Enterprise Rent A Car).

<sup>96</sup> HR Investigation Report at 1.

<sup>97</sup> Interview of Polickoski.



friend.<sup>98</sup> 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]."<sup>99</sup> 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.<sup>100</sup>

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."<sup>101</sup> Given the nature of Ms. Conner's and McBrearty's "very

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<sup>98</sup> June 13, 2017, Executive Summary (ECP No. NEC-17-00410) at 3.

<sup>99</sup> 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.

<sup>100</sup> June 13, 2017, Executive Summary (ECP No. NEC-17-00410) at 3.

<sup>101</sup> Complaint at 2.

close friends[hip]," Ms. Conner's ability to provide independent, "unbiased oversight" of SQN Licensing, in my view, was compromised.<sup>102</sup>

Mr. McBrearty incorrectly believes Ms. Henderson "had his gate records pulled."<sup>103</sup> 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.<sup>104</sup> As one of Ms. Henderson's direct reports stated during his interview, the pulling of "gate records pushed [Mr. McBrearty] over the edge"<sup>105</sup> and he blames Ms. Henderson<sup>106</sup> and has asserted to others that Ms. Henderson had his gate records pulled.<sup>107</sup>

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.

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<sup>102</sup> HR Investigation Report at 1.

<sup>103</sup> Interview of McBrearty.

<sup>104</sup> HR Investigation Report at 1.

<sup>105</sup> Interview of Polickoski.

<sup>106</sup> Interview of McBrearty.

<sup>107</sup> 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."<sup>108</sup> This step was unsuccessful and ineffective as Mr. McBrearty's conduct and behavior continued.<sup>109</sup> 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"<sup>110</sup> (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."<sup>111</sup>

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<sup>108</sup> 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.

<sup>109</sup> Complaint at 1, 3, 8; Interviews of Henderson and Shea.

<sup>110</sup> Henderson PD.

<sup>111</sup> 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.<sup>112</sup> 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.<sup>113</sup> This step also failed, as Mr. McBrearty's conduct and behavior continued and, in my view, escalated.<sup>114</sup> (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.<sup>115</sup> Settling with [Ms. Conner] was done, in part, to alleviate some of the challenges [Ms. Henderson]

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<sup>112</sup> Interviews of Shea and Henderson; Complaint at 3.

<sup>113</sup> Interviews of Shea and Henderson; Complaint at 3.

<sup>114</sup> Interviews of Shea and Henderson; Complaint at 3.

<sup>115</sup> Complaint at 2; Org Chart; Interviews of Henderson and Shea.



faced with both [Ms. Conner] and [Mr. McBrearty].<sup>116</sup> This step too did not stop Mr. McBrearty's conduct and behavior.<sup>117</sup>

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

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<sup>116</sup> Complaint at 2; Interviews of Henderson and Shea.

<sup>117</sup> 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. *Thornton 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.

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."<sup>118</sup> Compromised oversight of Site Licensing upsets this dynamic and is a nuclear safety concern. This disclosure is thus protected activity under the WPA.

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<sup>118</sup> 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."<sup>119</sup> 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."<sup>120</sup> 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."<sup>121</sup> This shows that there is no dispute that Mr. McBrearty was/is aware of

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<sup>119</sup> Interview of McBrearty.

<sup>120</sup> HR Investigation Report at 1.

<sup>121</sup> HR Investigation Report at 1.

the concern that Ms. Henderson raised to HR.<sup>122</sup> 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."<sup>123</sup> 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."<sup>124</sup> Some members on his own staff have recognized "that [Mr. McBrearty] has not been able to move past actions that occurred to his friend

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<sup>122</sup> Moreover, Mr. McBrearty told Ms. Wetzel about the investigation and that his gate records were pulled. Interview of Wetzel.

<sup>123</sup> Complaint at 3.

<sup>124</sup> Interview of Wetzel.



[Ms. Conner] as the result of the friend's conflict with [Ms. Henderson].<sup>125</sup> 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.<sup>126</sup> 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

<sup>125</sup> June 13, 2017, Executive Summary (ECP No. NEC-17-00410) at 3.

<sup>126</sup> 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  
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Date: August 10, 2018

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# Attachment 11

CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION

**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" *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, OGC recommends that Ms. Wetzel be removed from TVA employment.

Corrected - not final

Correct - not final

Package to show pattern of behavior?



# Attachment 12

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 13



Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801

January 14, 2019

Beth A. Wetzel  


## 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

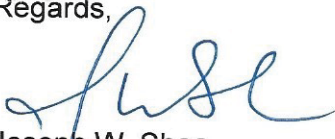
As an organization, TVA is committed to providing a professional and respectful work environment that is free from harassment and retaliation. The list below captures training and expectations you have been given to ensure that you are aware of your responsibilities as both a Manager and an employee:

- 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



**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

# Attachment 15

**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

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

+ + + + +

PRE-DECISIONAL ENFORCEMENT CONFERENCE

RE

JOE SHEA

(DOCKET NO. IA-2020-008)

+ + + + +

THURSDAY

JUNE 25, 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

SARA KIRKWOOD, Office of the General Counsel

SCOTT LUINA, Office of Investigations

CHRIS MILLER, Office of Nuclear Reactor  
Regulation (NRR), Division of Reactor  
Oversight



1 for events occurring up to this point, I would like to  
2 go through the specific statements Ms. Wetzel made  
3 during the NEI assignment contracting and travel  
4 voucher process, why they raised red flags to me, and  
5 how I addressed them.

6           Soon after Ms. Wetzel contacted me in  
7 Oregon, she sent me an email on March 29th, alleging  
8 that Ms. Henderson was trying to block her NEI loanee  
9 assignment.

10           I will read from the parts, relevant parts  
11 of the email, which is in Exhibit 7. In this email,  
12 Ms. Wetzel alleged that we were not using the same  
13 contract for her assignment that were used in previous  
14 loanee assignments and alleged that Ms. Henderson was  
15 attempting to block her loanee opportunity.

16           She alleged, if my boss is going to be  
17 unreasonable with NEI and effectively block my loanee  
18 opportunity, would you please tell me so I know what  
19 to do next?

20           I was struck by this allegation because it  
21 was so apparent that Ms. Henderson had been working  
22 diligently for Ms. Wetzel's loanee assignment and Ms.  
23 Wetzel had seen this same correspondence.

24           Indeed, a few hours after Ms. Wetzel's  
25 email, Ms. Henderson forwarded me the latest markup of

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1 the contract, as you can see in Exhibit 8.

2 It was also not true that Ms. Henderson  
3 had imposed the use of an inappropriate contract  
4 template. The contract template we were using was  
5 negotiated between TVA and NEI and had changed under  
6 purview of TVA and NEI attorneys since the prior  
7 examples Ms. Wetzel cited in her email.

8 I did not take any actions at this time,  
9 other than asking Ms. Wetzel to speak to Mr. Codevilla  
10 in OGC about her concerns. Again, it was Mr.  
11 Codevilla drafting the contract, not Ms. Henderson.

12 As you can see in Exhibit 6, Ms. Wetzel  
13 was copied on several subsequent iterations of the  
14 contract and had a few back and forth exchanges with  
15 Mr. Codevilla.

16 I did not do anything further with Ms.  
17 Wetzel's March 29 email.

18 Now, for just a few dates before I go onto  
19 the next email, Ms. Wetzel's contract with NEI was  
20 fully executed by all parties on April 13 and is  
21 provided in your Exhibit 9.

22 Ms. Henderson signed a loanee letter to  
23 Ms. Wetzel on April 27, 2018, notifying Ms. Wetzel  
24 that she would be in continuous travel status for the  
25 NEI assignment, with details as provided in your

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1 Exhibit 10.

2 Ms. Wetzel started her NEI loanee  
3 assignment on or about April 29.

4 From the best of my recollections, the  
5 initiation of Ms. Wetzel's NEI assignment had  
6 progressed smoothly from the time that she started on  
7 April 29.

8 However, on May 7, 2018, Ms. Wetzel sent  
9 an email to me expressing concern regarding the lack  
10 of detail in her travel reimbursement memorandum. She  
11 observed, in effect, that it was less detail than she  
12 desired.

13 Specifically, her email stated, I am  
14 concerned with the lack of commitment to write the  
15 details that we worked on as a team for my TVA  
16 reimbursements, and said she was shocked to see what  
17 Erin sent out.

18 It was, to a large degree, true that we  
19 had discussed providing a discussion of the treatment  
20 of likely expenses in her memo. However, I later  
21 learned from the Office of General Counsel that  
22 providing such a detailed explanation may put TVA at  
23 risk of violating the federal travel regulations if  
24 TVA's own memo conflicted with those regulations for  
25 Ms. Wetzel's reimbursements.

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1                   Finally, on July 2, I called Ms. Wetzel  
2                   from my office, in the presence of Carla Edmondson, to  
3                   further explain her allegations against Ms. Henderson,  
4                   but Ms. Wetzel provided nothing further.

5                   Ms. Wetzel discussed this phone call in  
6                   the NRC OI report, and I will address her  
7                   characterization of it later in this presentation.

8                   As you can see from these exhibits,  
9                   emails, and texts, Ms. Wetzel made a number of  
10                  unfounded accusations and unprofessional statements  
11                  towards Ms. Henderson.

12                  I will now turn to how I and our  
13                  organization addressed those statements.

14                  On August 10, 2018, a memorandum was  
15                  issued to me enclosing a final copy of the  
16                  investigation report prepared by the Office of General  
17                  Counsel into the allegations of harassment raised by  
18                  Erin Henderson. This report is provided in Exhibit  
19                  23.

20                  This memorandum was signed to me directly  
21                  by TVA's Executive Vice President and General Counsel.  
22                  The fact that not only had the Executive Vice  
23                  President and General Counsel signed it, but moreover,  
24                  the Executive Vice President and General Counsel  
25                  functions as TVA's designated agency ethics official,

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1 separation agreement had not yet been set.

2 Further, Ms. Wetzel's Department of Labor  
3 complaint and the December 18, 2018 ERB update both  
4 confirm that Ms. Wetzel was provided her first no-  
5 fault separation agreement on October 25, 2018.

6 An excerpted copy of the adverse action  
7 ERB procedure in place at that time is my Exhibit 28,  
8 which is excerpted on your screen. As you can see,  
9 no-fault separation agreements do require an ERB,  
10 while actions for paid administrative leaves are not  
11 specifically listed.

12 After vetting the action through the ERB  
13 process, I decided it was best to raise these issues  
14 with Ms. Wetzel at her performance review scheduled  
15 for October 15, 2018.

16 That morning, I emailed my talking points  
17 to Amanda Poland, of which you can find a copy in  
18 Exhibit 29. My talking points detailed the legal  
19 reasoning and conclusions from the August 30, 2018  
20 supplemental OGC memorandum.

21 I further stated that TVA was prepared to  
22 offer Ms. Wetzel a no-fault separation agreement in  
23 lieu of termination, but the terms of the no-fault  
24 separation agreement had not yet been set, so that Ms.  
25 Wetzel could have time to reflect on matters that may

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1 be of interest to her in negotiating such an  
2 agreement.

3 My talking notes also clearly stated that  
4 should you choose not to accept a no-fault separation  
5 offer, TVA is prepared to move to termination.

6 As of that meeting, Ms. Wetzel was placed  
7 on paid administrative leave.

8 Between October 15 and November 16, 2018,  
9 I have several documented discussions between myself  
10 and HR regarding the terms of Ms. Wetzel's no-fault  
11 separation agreement. One of those drafts is provided  
12 in Exhibit 30.

13 I recall that I was very conscious that  
14 Ms. Wetzel was close to her eligible retirement age,  
15 and I wanted to make her landing as soft as possible  
16 and wanted to ensure that whether it was paid or  
17 unpaid, she received creditable service from TVA up to  
18 her eligible retirement date.

19 As provided in Exhibit 31, Ms. Wetzel  
20 initially signed a no-fault separation agreement,  
21 which addressed her retirement concerns, on December  
22 5, 2018, but I believe, consistent with standard TVA  
23 no-fault separation terms, was given seven days to  
24 rescind her signature.

25 The next day, December 6, we received a

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1 letter from Ms. Wetzel's attorney indicating that Ms.  
2 Wetzel may be considering withdrawing her signature  
3 and making further demands for negotiation.

4 Then, on December 10, Ms. Wetzel, through  
5 her attorney, notified TVA that she had begun the  
6 process of mediating her issues through the NRC and  
7 requested an additional seven days within which to  
8 rescind the no-fault separation agreement.

9 TVA reviewed the request, but as it had  
10 been engaging in negotiation with Ms. Wetzel since  
11 mid-October and previously granted a two-week  
12 extension, TVA declined to offer a further  
13 counterproposal or grant the seven-day extension.

14 Ms. Wetzel then rescinded the no-fault  
15 separation on December 11, within the allotted seven  
16 days.

17 The ERB alternative to a no-fault  
18 separation agreement was to implement a contingency  
19 plan for termination, which was what was put into  
20 motion after Ms. Wetzel rejected the no-fault  
21 separation.

22 On December 18, an ERB update meeting was  
23 held to review additional information, after Ms.  
24 Wetzel rejected the no-fault separation agreement, as  
25 provided in Exhibit 32. Once again, the ERB had no

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1 harassing actions and, quote, probably a lot more  
2 actions that Ms. Wetzel was not aware of, unquote.  
3 Which in my mind crossed an unacceptable line.

4 There was then and is now, no intellectual  
5 or ethical construct I can conceive of on a broad  
6 sweeping indictment with no specificity, taken to be  
7 accurate or grounded in truthfulness when the words  
8 admit to no actual knowledge of the truth.

9 To extent that the NRC analysis ignores  
10 that particular statement in its analysis, it is  
11 difficult to understand what would ever be considered  
12 a non-prohibited grounds under 10 CFR 50.7(d).

13 Third, Ms. Wetzel is characterized in the  
14 OI report as saying that she did not provide any  
15 further details on the July 2nd phone call due to the  
16 presence of Carla Edmondson because she thought I was,  
17 quote, trying to catch her saying something negative  
18 about a management to subordinate, which is against  
19 TVA policy, unquote.

20 It is not true that I was trying to catch  
21 her. People don't get caught in being asked to  
22 amplify a previous remark. Even if there were some  
23 inadvertent confusion caused by my part, including Ms.  
24 Edmondson on that phone call, it should be noted that  
25 twice before I had given Ms. Wetzel the opportunity to

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1 elaborate on her allegations against Ms. Henderson to  
2 me alone.

3 The first time in my June 9, 2018 response  
4 to Ms. Wetzel's email the same day, and the second,  
5 through text messages where I asked her to elaborate  
6 on why she believed she was getting different  
7 directions from management.

8 Fourth, on Page 43 of the OI report it  
9 appears to read that I stated that Ms. Wetzel's  
10 claimed protected activities were a central and  
11 required function of her job and were not protected  
12 activity. That reference is not cited, and I have  
13 reviewed my notes and transcripts and am unable to  
14 find anywhere where I made such a statement. It seems  
15 quite odd and out of character that I would have said  
16 that.

17 Rather, I do believe that Beth and almost  
18 every person employed by the nuclear regulatory team  
19 engages in protected activity every day as part of  
20 their job.

21 Because protected activities were a  
22 central and required job function for Beth, it would  
23 have been an assumption of any discussion and decision  
24 on an adverse action that she had participated in  
25 protected activities and that absent clear evidence

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1 MR. SHEA: I did not.

2 MS. KIRKWOOD: Isn't the IG responsible  
3 for investigating concerns about violations of the  
4 law?

5 MR. SHEA: That is one of their functions.

6 MS. KIRKWOOD: Why did you not refer this  
7 to the IG?

8 MR. SHEA: I didn't reflect on that at the  
9 time. I mean, it is a lower level personnel matter to  
10 the extent that there's, I believe, discretion, at the  
11 levels of things that are referred. This was a  
12 finding that had been made, and there was a basis for  
13 us to assess it from a discipline policy standpoint.  
14 Normally, IG is, you know, an organization that is  
15 primarily waste, fraud, and abuse.

16 MS. KIRKWOOD: Also in that paragraph, it  
17 says, specifically, the investigation concluded that  
18 Ms. Wetzel had engaged in a sustained campaign of  
19 disrespectful conduct over a lengthy period of time.  
20 The disrespectful conduct included repeated  
21 insinuations by Ms. Wetzel that her supervisor had  
22 initiated inappropriate investigations of TVA  
23 employees for a vindictive purpose despite Ms. Wetzel  
24 having no reasonable basis or specific knowledge to  
25 support those insinuations. You told us about the May

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1 7th email that Ms. Wetzel sent you. Was there  
2 anything else that you considered part of this  
3 sustained campaign of disrespectful conduct?

4 MR. SHEA: There is.

5 MS. KIRKWOOD: Would you tell us what that  
6 is, please?

7 MR. SHEA: Yes, just a minute.

8 MS. KIRKWOOD: Sure.

9 MR. SHEA: The email in June 9th and the  
10 exchange at the end of June or July where Ms. Wetzel  
11 again raised challenges to Ms. Henderson's behavior  
12 and, you know, characterized them in ways that was --  
13 was casting aspersions, disrespectful of Ms.  
14 Henderson's obligations to discharge her job and how  
15 she did that. Let me pull up a June 9 email. In the  
16 June 9 email, Ms. Wetzel wrote, I have been afraid  
17 what will happen as soon as I started submitting my  
18 vouchers. I don't even try to understand my boss and  
19 why she does what she does.

20 But I know she never gives up. So there's  
21 no specificity to that assertion. And without any, it  
22 is -- if it has no basis, then it is disrespectful and  
23 harassing. And to the extent that there are a series  
24 of these, then that's what the investigation report  
25 refers to.

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1 MS. KIRKWOOD: Is there anything before  
2 May 7th?

3 MR. SHEA: There was an email on March  
4 29th with regard to the contract. I didn't, at that  
5 point, consider that. It was a -- it was a question  
6 she described potentially that Erin was blocking her  
7 contract.

8 But there was no motivations of  
9 vindictiveness or anything else associated with that.  
10 So I didn't view at that time as anything other than  
11 what I described this morning. And there was nothing  
12 prior to that that I would've considered part of  
13 evidence I had of a pattern of disrespectful and  
14 harassing conduct.

15 MS. KIRKWOOD: Do you have any evidence of  
16 a pattern of disrespect or harassing conduct of Ms.  
17 Wetzel toward Ms. Henderson other than emails or texts  
18 directed to you?

19 MR. SHEA: Those are the -- those are the  
20 evidence that I have and then what you see performed  
21 as an investigation and through its conclusions and  
22 its conclusion that a pattern was consistent with that  
23 specific evidence that experienced over those couple  
24 months.

25 MS. KIRKWOOD: Also on that same ERB



# Attachment 16



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# Transcript of Ian Gifford

**Date:** June 30, 2021

**Case:** Tennessee Valley Authority, In re:

**Planet Depos**

**Phone:** 888.433.3767

**Email:** [transcripts@planetdepos.com](mailto:transcripts@planetdepos.com)

[www.planetdepos.com](http://www.planetdepos.com)



1 DEPOSITION OF IAN GIFFORD

2 Wednesday, June 30 2021

3

4 STENOGRAPHER: The attorneys participating  
5 in this deposition acknowledge that I will be  
6 reporting this deposition remotely and that the  
7 witness has verified that he is Ian Gifford. In lieu  
8 of an oath administered in person, the witness will  
9 verbally declare his testimony in this matter is under  
10 penalty of perjury.

11 The parties and their counsel consent to  
12 this arrangement and waive any objections to this  
13 manner of reporting or admissibility of the  
14 transcript. Please indicate your agreement by stating  
15 your appearance and your agreement on the record,  
16 starting with scheduling counsel.

17 MR. HENNESSEY: Brendan Hennessy, we agree.  
18 Counsel for TGI.

19 MR. GILLESPIE: Joe Gillespie for the NRC,  
20 we also agree.

21 STENOGRAPHER: Mr. Gifford, would you  
22 please raise your right hand?

23 Do you swear or affirm the testimony you  
24 are about to give in this matter will be the truth,  
25 the whole truth, and nothing but the truth?



1 MR. GIFFORD: Yes.

2 STENOGRAPHER: Thank you. You may proceed.

3 IAN GIFFORD,

4 was thereupon called as a witness herein, and after  
5 having first been duly sworn to testify to the truth,  
6 the whole truth and nothing but the truth, was  
7 examined and testified as follows:

8 EXAMINATION

9 BY MR. HENNESSEY:

10 Q. So, Mr. Gifford, starting out, I'd like you to state  
11 the name of your employer and your job title.

12 A. The United States Nuclear Regulatory Commission. I'm  
13 a program manager.

14 Q. And have you ever testified under oath before?

15 A. I have not.

16 Q. Do you understand what it means to testify under oath?

17 A. I do.

18 Q. And I guess that means you haven't been deposed  
19 before; is that right?

20 A. That's correct.

21 Q. So I think it makes sense for us to go over some of  
22 the ground rules. I'm sure your counsel has talked to  
23 you a little bit about how this works, but I'd still  
24 like to go over the rules for today just so that we're  
25 on the same page.

1           because I find that's easier for you to sort of track  
2           on your end. If you could go to pdf page 5. Do you  
3           see the box above where it says "Official Record  
4           Copy"?

5           A. Yes.

6           Q. Can you explain to me what that box is and what the --  
7           it lists a bunch of names -- what those names  
8           represent?

9           A. The box is a concurrent block, and it indicates the  
10          individuals that reviewed the letter before it was  
11          issued. So their office and, in some cases, branch.  
12          Where they work is listed on the top line, the names  
13          of the individuals is on the second line, and the  
14          date that they provided their concurrence is on the  
15          third line.

16          Q. Okay. And the -- I guess it's the, sort of, second  
17          column there, is that your name there?

18          A. Yes, IGifford is me.

19          Q. Okay. And so you issued concurrence in this -- in the  
20          issuance of this letter; is that right?

21          A. Correct.

22          Q. Did you participate in the drafting of this order and  
23          its appendices?

24          A. I did.

25          Q. So you're familiar with the contents of the appendix

1 Q. Okay. And then after that, the fourth attachment is  
2 the "Enforcement Action Worksheet." Correct?

3 A. What page would that be on?

4 Q. Pdf page 15.

5 A. Yes.

6 Q. And this was created for the February 19th, 2020,  
7 enforcement panel; is that accurate?

8 A. I don't see the exact date the Enforcement Action  
9 Worksheet was generated.

10 Q. Okay. I'm looking -- if you look at the -- again, pdf  
11 page 15, it says -- the first row there, it says EA #,  
12 and then below that, it says Date of Panel, and it  
13 says February 19, 2020. Does that indicate that this  
14 form was used for that panel?

15 A. That just indicates that that is the date that the  
16 panel occurred.

17 Q. Do you have any recollection of -- well, let me strike  
18 that.

19 Did you create this Enforcement Action  
20 Worksheet?

21 A. I have to review. There were two enforcement  
22 specialists that were working on this case. We often  
23 collaborated on documents. Sometimes we would each  
24 individually write a document. I would have to  
25 review it more carefully to determine if this is one

1           that I wrote by myself or if it was in collaboration  
2           with another enforcement specialist or if the other  
3           enforcement specialists drafted this particular  
4           action worksheet.

5       Q.    Okay. Explain to me how that breakdown works between  
6           you and this other enforcement specialist.

7       A.    There were two OI reports related to this case. One  
8           was for McBrearty and one was for Wetzel. So two  
9           separate enforcement specialists were tasked as the  
10          lead for each respective OI report. I was the lead  
11          for the OI report related to Wetzel, and Catherine  
12          Thompson was the enforcement specialist with the lead  
13          for McBrearty.

14                    Because the two cases were so closely  
15                    intertwined with individuals involved, the Office of  
16                    Enforcement decided to combine those two OI reports  
17                    into a single case, and so we collaborated in  
18                    drafting those documents.

19       Q.    How long after beginning your work on this case was  
20           the decision made to make one -- combine the two  
21           investigations into one -- how did you put it -- case,  
22           I guess?

23       A.    From my involvement when I came onto this case, it  
24           appeared as if that discussion had already started,  
25           so I believe there are -- there had already been



1 "It appears this contract was written so NEI would  
2 reject it summarily."

3 Did I read that right?

4 A. Yes.

5 Q. And then she goes on to state, at the bottom, "If my  
6 boss is going to be unreasonable with NEI and  
7 effectively block my loanee opportunity, would you  
8 please tell me so I know what to do next?"

9 Did I read that correctly?

10 A. Yes.

11 Q. So would you agree that Ms. Wetzel's communication  
12 here is that she's expressing concern that her boss  
13 might block or interfere with her assignment to NEI?

14 A. Yes.

15 Q. Do you know whether Ms. Wetzel was blocked from her  
16 position at NEI?

17 A. I believe that she did go on assignment to NEI.

18 Q. Okay. Does Ms. Wetzel raise any nuclear safety  
19 concerns in this email?

20 A. No.

21 Q. And did Ms. Wetzel make reference to any chilled work  
22 environment concern?

23 A. You mean does Ms. Wetzel use -- specifically state  
24 that in the email? Is that the question?

25 Q. Well, why don't -- why don't you first answer that,

1           yes. Does Ms. Wetzel make reference -- does she  
2           specifically state that she has a chilled work  
3           environment concern?

4           A. No, she does not.

5           Q. Do you read this email as expressing a chilled work  
6           environment concern?

7           A. The email makes me curious as to why she believes her  
8           supervisor would be effectively blocking a loanee  
9           opportunity.

10          Q. But you don't read any information that allows you to  
11          conclude that there is a chilled work environment from  
12          this email; is that right?

13          A. Correct. I would not conclude that there was a  
14          chilled work environment based on this email.

15                         MR. HENNESSEY: Why don't we move on to  
16          Tab 7. That should be, I believe, Exhibit 7 now.

17          BY MR. HENNESSEY:

18          Q. I'll give you a sec to take a look at this,  
19          Mr. Gifford.

20          A. Thanks.

21                         So we have a Joe Shea PEC Exhibit 11; is  
22          that correct?

23          Q. That's right.

24                         MR. GILLESPIE: Mr. Hennessy, just for the  
25          record, the highlights that are on these documents,

1                   And so my question is, did Mr. Shea ever  
2                   say, during the PEC or otherwise, that Ms. Wetzel's  
3                   sustained pattern of disrespectful behavior included  
4                   contacting the NRC?

5           A.    I don't recall Mr. Shea saying that.

6           Q.    Is there any -- are you aware of any evidence to show  
7                   that Mr. Shea knew of Ms. Wetzel contacting the NRC?

8           A.    Mr. Shea was -- the formal complaint that  
9                   Ms. Henderson filed was addressed to Mr. Shea, and  
10                  that formal complaint discussed the possibility that  
11                  Ms. Wetzel was the source of that, or the belief by  
12                  some staff that Ms. Wetzel was the source or the  
13                  originator of that NRC Safety Conscious Work  
14                  Environment inspection. So I believe Mr. Shea was  
15                  aware that that was part of Ms. Henderson's basis for  
16                  filing her formal complaint.

17          Q.    What evidence did the NRC review that indicated that  
18                  Ms. Wetzel's sustained pattern of disrespectful  
19                  behavior included contacting the NRC?

20          A.    Are we speaking specifically to Mr. Shea's  
21                  involvement?

22          Q.    Right. I'm -- I'm referencing your statements here  
23                  that you say, "Mr. Shea attributes the decision to  
24                  terminate Ms. Wetzel to a 'sustained pattern of  
25                  disrespectful behavior.'"

1                   And so my question is, what evidence did  
2                   the NRC review to find that Mr. Shea was also  
3                   considering her contacting the NRC in that decision of  
4                   his?

5           A.   Mr. Shea referenced -- when we asked Mr. Shea about  
6                   the sustained pattern of disrespectful behavior, he  
7                   referenced Ms. Henderson's formal complaint, he  
8                   referenced the OGC report, and he referenced  
9                   communications that he had directly with Ms. Wetzel.  
10                  And so the NRC reviewed those, and specifically for  
11                  contacting the NRC regarding concerns of a chilled  
12                  work environment, that was essentially the main  
13                  complaint against Mr. Wetzel in the formal complaint.

14                         So if Mr. Shea was stating that the formal  
15                         complaint was evidence of the sustained pattern, and  
16                         when we reviewed the formal complaint we saw that  
17                         really the only behavior that was attributed to  
18                         Ms. Wetzel was filing a complaint with the NRC, we  
19                         understood that to mean that that was what Mr. Shea  
20                         was referring to as a sustained pattern of  
21                         disrespectful behavior.

22                                 Because there really wasn't other  
23                                 discussion of Ms. Wetzel's activities in that formal  
24                                 complaint.

25           Q.   Still in paragraph 7, further down, you say, "The NRC



1 appropriate reasons?

2 A. Yes, we considered the ERB package.

3 Q. And did you disagree with the ERB package?

4 A. Could we specifically point to -- I don't want to say  
5 I disagree with all of the ERB package. Can  
6 we narrow in perhaps on -- or at least -- could I  
7 look at the ERB package? I haven't reviewed it in  
8 quite some time.

9 Q. Well, we only have a few minutes left because --

10 A. Okay.

11 Q. -- of a deadline, so I don't really want to go reading  
12 through the ERB package, although we have it. I guess  
13 maybe we can short-circuit that by you can tell me  
14 whether you think that -- whether the ERB -- members  
15 of the ERB made their decisions in good faith.

16 MR. GILLESPIE: Objection. Form.

17 A. I don't want to speculate on the -- on whether the  
18 members of the ERB were acting in good faith. What  
19 we relied upon was the facts that Ms. Wetzel engaged  
20 in protected activity, TVA was aware of those  
21 protected activities, they took an adverse action by  
22 terminating her, and the protected activities were  
23 contributing factors in that decision.

24 So I don't -- I can't speak to the  
25 mentality of the -- of the individuals on the ERB, but

1 I can speak to how the NRC viewed this discrimination  
2 case.

3 BY MR. HENNESSEY:

4 Q. I see. So you did not evaluate whether the ERB made  
5 its decisions in good faith? It just wasn't a  
6 consideration?

7 MR. GILLESPIE: Objection. Form.

8 A. We reviewed the ERB package, but I -- I didn't -- I  
9 personally did not attempt to evaluate whether the  
10 ERB was in good faith or bad faith. I just looked at  
11 what was provided in the case file.

12 BY MR. HENNESSEY:

13 Q. Okay.

14 MR. HENNESSEY: We may be done, but give me  
15 a minute just to check my notes here and double-check.

16 MS. KIRKWOOD: That's fine.

17 (Off the record at 4:22 p.m.)

18 (Back on the record at 4:24 p.m.)

19 BY MR. HENNESSEY:

20 Q. You were involved in collaborating with Ms. Kitty  
21 Thompson on the investigation into the adverse action  
22 against Michael McBrearty. Correct?

23 A. Correct.

24 Q. And did you have the opportunity to review evidence of  
25 interactions between Mr. McBrearty and Ms. Henderson?

# Attachment 17



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# 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](mailto:transcripts@planetdepos.com)

[www.planetdepos.com](http://www.planetdepos.com)



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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 P R O C E E D I N G S

2 NICHOLAS DALE HILTON,

3 having been duly sworn, testified as follows:

4 MS. LEIDICH: I'm Anne Leidich with the  
5 law firm Pillsbury Winthrop Shaw Pittman, and I'm  
6 outside counsel for Tennessee Valley Authority, or  
7 TVA.

8 We are here for the deposition of  
9 Mr. Nick Hilton in a matter currently pending  
10 before the NRC Nuclear Regulatory Commission  
11 Atomic Safety and Licensing Board, Docket Numbers  
12 EA-20-006 and EA-20-007.

13 Joe, do you want to introduce yourself?

14 MR. GILLESPIE: Sure thing.

15 My name is Joe Gillespie. I'm  
16 representing the NRC staff, along with Kevin  
17 Roach. And that's G-I-L-L-E-S-P-I-E, and then  
18 R-O-A-C-H, and the deponent today is Mr. Nick  
19 Hilton.

20 EXAMINATION BY COUNSEL FOR DEFENDANT TENNESSEE

21 VALLEY AUTHORITY:

22 BY MS. LEIDICH:

23 Q Mr. Hilton, would you please state your  
24 full name, for the record.

25 A Nicholas Dale Hilton.

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     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 in this e-mail?

2 MR. GILLESPIE: Object to form.

3 A On June 9th she states that she has a  
4 concern that she doesn't know what's going to  
5 happen when she starts submitting vouchers.

6 Q Okay. Do you see any protected activity  
7 in this e-mail?

8 A Not in this e-mail proper.

9 Q Is there a nuclear safety concern in this  
10 e-mail?

11 MR. GILLESPIE: Objection to form.

12 A Not that I see. Not that I see in this  
13 e-mail.

14 Q Is there a claim of a chilled work  
15 environment in this e-mail?

16 MR. GILLESPIE: Objection. Form.

17 A Not in this e-mail.

18 Q Would you please read the e-mail above  
19 the bottom e-mail. And it's from Joe Shea to Beth  
20 Wetzal, at 8:23 a.m.

21 And Mr. Shea states, "Carla will be  
22 handling your voucher reviews and has approval  
23 authority for me."

24 Correct?

25 A That's correct.

1 anything that caused me concern in terms of  
2 objecting to it.

3 So, yes, it was when the statement was  
4 made this happened, I assumed that the people that  
5 made that statement, in this case mostly Ian, or  
6 when it was written down, that there -- there's  
7 evidence to support that. And then I participated  
8 in the discussion about going forward from that  
9 point in terms of what the appropriate action  
10 would be at that point.

11 Q Can you provide an example of some of the  
12 perspectives that you supplied in this case?

13 A The only thing that I -- that I -- well,  
14 as I mentioned earlier, there's one -- one piece.  
15 That there was a -- some discussion about  
16 Mr. Czufin and potential deliberate misconduct. I  
17 did read that. I did read his transcript a little  
18 more closely because I knew that was -- that was a  
19 little more later in the game, and we -- we looked  
20 at that a little closer at that point. So I did  
21 participate that -- in that a little bit more  
22 directly.

23 And then the other -- the other thing  
24 that I -- I know I participated in was the -- the  
25 formatting and the severity level and the

1 sanctions as applied in the policy.

2 Q Did you volunteer your perspectives, or  
3 did Ian Gifford ask for them throughout the  
4 proceeding?

5 A Both.

6 Q Can you provide any examples of what he  
7 may have asked you for?

8 A He may have sent me a draft and said,  
9 Does this look reasonable? And I would read it  
10 and -- you know, this is what I see, and he would  
11 take that.

12 Q Did he ask you to opine on the  
13 application of 10 CFR 50.7 to these cases?

14 A I don't recall the question exactly like  
15 that, or phrased that way. I guess that would be  
16 implicit in -- in the write-ups in terms of, you  
17 know, given -- given this -- given this summary  
18 that I have, does this look like the case.

19 That's not the language he used, of  
20 course, nor the specific question, but that was  
21 the fundamental discussion, yes.

22 Q What historical cases did you discuss  
23 with Mr. Gifford or Mr. Wilson?

24 A I don't -- my immediate reaction is, I  
25 don't believe we referenced any particular cases.

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                   Have you finished?

2                   A     Oh, I'm sorry. I read the restatement of  
3 the violation. How much more would you like for  
4 me to read?

5                   Q     Well, let's skip to the question, and  
6 then you can decide.

7                   A     Okay.

8                   Q     Are you aware there was a TVA OGC report  
9 regarding Ms. Wetzel that concluded she provided  
10 no reasonable basis or knowledge to support her  
11 claims that Ms. Henderson was being vindictive?

12                  A     I am aware that there was a -- there was  
13 a TVA OGC investigation. The exact contents I  
14 have never looked at or analyzed.

15                  Q     Do you have any reason to believe that  
16 the TVA OGC investigation was performed in bad  
17 faith?

18                  A     I don't personally have any. Again, I  
19 didn't read the evidence.

20                  Q     Are you aware of any evidence that would  
21 demonstrate that the OGC was performing their  
22 investigation in bad faith?

23                  A     I, personally, can't cite evidence, no.

24                  Q     Do you have any reason to believe that  
25 the OGC's role in the Wetzel termination decision

1 was just window dressing for a decision that had  
2 already been made?

3 A I understand that that's the basic idea  
4 of the issue, that there -- but, again, I haven't  
5 read the evidence to allow me to reach that  
6 conclusion by myself independently.

7 Q What leads you to understand that that's  
8 the basic idea of the issue there?

9 A I understand that there were  
10 conversations between Mr. Shea and -- and the  
11 investigation. And I understand that the  
12 investigation had some errors in it. And then --  
13 then I understand that Mr. Czufin had some  
14 notable -- oh, I'm sorry, I jumped the wrong --  
15 wrong portion. But Mr. Czufin had some questions  
16 with Mr. McBrearty's investigation as well.

17 But, so, I'm -- I'm just aware of some  
18 inconsistencies that were not obvious to -- and  
19 explainable.

20 Q So just to terms of the violation in  
21 front of us, which relates to Ms. Wetzel.

22 A Yes.

23 Q What is the evidence that supports your  
24 belief that OGC's role in the Wetzel termination  
25 decision was just window dressing for a decision

1 that had already been made?

2 A As I said, I don't personally know of  
3 exact evidence.

4 Q You said that you were aware of some  
5 inconsistencies. What are those inconsistencies?

6 A There is a discussion in the panel that  
7 there were what -- what was perceived as errors or  
8 misstatements or incomplete discussions or  
9 misleading statements that were not appropriate.  
10 And so there was a view that -- that the  
11 investigation was misleading in the end.

12 Q Are you able to provide me with any  
13 additional detail as to those perceived errors or  
14 misstatements or incomplete discussions or  
15 misleading statements?

16 A I can't. Like I said, I don't -- I don't  
17 even recall that there were specifics identified  
18 at the time that I don't remember. There was just  
19 the discussion had to do with that OGC  
20 investigation, and the belief that Mr. Shea had  
21 some notable involvement and -- and provided at  
22 least some desired direction out of it. But  
23 that's what I recall the discussion was.

24 Q But you are not aware of any evidence  
25 supporting that discussion. Correct?

1 A That's correct. Not that I recall.

2 Q Do you have any reason to question the  
3 motives of the OGC, TVA's OGC?

4 A I don't have any evidentiary reasons.

5 Q Do you have any other reasons to question  
6 the motives of TVA's OGC?

7 A Purely hypothetical.

8 Q Do purely hypothetical reasons form the  
9 basis of violations at the NRC?

10 A No.

11 Q So for our purposes, purely hypothetical  
12 reasons are irrelevant. Correct?

13 A That's correct. As I indicated  
14 originally, I have no evidence to -- I don't  
15 personally know of the evidence.

16 Q Do you disagree with the analysis of  
17 TVA's OGC?

18 A I didn't review it enough to reach a  
19 conclusion one way or the other personally.

20 Q Do you -- do you have an opinion as to  
21 whether or not TVA's OGC performed their jobs in  
22 good faith?

23 A I don't -- I don't know personally one  
24 way or the other. I don't have a strong opinion  
25 one way or the other.



1 decision based on the information they were  
2 presented. That's -- that's a fair statement.  
3 That's all I know.

4 Q Do you have any reason to believe that  
5 the ERB was just window dressing for a decision  
6 that had already been made?

7 A Again, I don't know of any of the  
8 evidence that supports it. I understand there is  
9 that possibility, that that is what occurred.

10 Q But you are aware of nothing that  
11 supports the idea that the ERB was window dressing  
12 for a decision that had already been made?

13 A That's correct, I can't cite any  
14 evidentiary evidence.

15 Q Do you have any opinion as to the  
16 professional integrity of the members of the ERB?

17 A None. No opinion.

18 Q Do you have any opinion as to the motives  
19 of the ERB?

20 A None. No opinion. Again, I don't know  
21 who they were.

22 Q Yeah. Do you have any opinion as to the  
23 analysis performed by the ERB?

24 A No opinion. I have no idea what they  
25 were provided even.

1 Q Do you have any opinion as to whether or  
2 not the ERB performed their jobs in good faith?

3 A I'll assume that they did provide their  
4 job in good faith, but I don't know. Again, I  
5 have no -- no evidence one way or the other.

6 Q And just for clarity of the record, did  
7 you intend to say, I will assume that they did  
8 perform their job in good faith?

9 A Yes.

10 Q Okay. Do you have any opinion as to  
11 whether or not a reasonable person would have  
12 agreed with the ERB?

13 MR. GILLESPIE: Objection. Form.

14 A Based on the information they were  
15 provided, I have no -- no reason to doubt that.

16 Q All right. One last document.

17 MS. LEIDICH: Can we pull up Tab 27. And  
18 I believe this is Exhibit 13.

19 A/V TECHNICIAN: Stand by.

20 (Hilton Deposition Exhibit 13 marked for  
21 identification and is attached to the transcript.)

22 Q Mr. Hilton, this is a document from the  
23 NRC's production. And as you can see, it is an  
24 e-mail from you to Ian Gifford and Catherine  
25 Thompson on August 10, 2020, at 11:28. And

# Attachment 18



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# Transcript of Scott Luina

**Date:** June 21, 2021

**Case:** Tennessee Valley Authority, In re:

**Planet Depos**

**Phone:** 888.433.3767

**Email:** [transcripts@planetdepos.com](mailto:transcripts@planetdepos.com)

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Paul S. Ryerson, Chairman  
E. Roy Hawkens  
Dr. Sue H. Abreu

\_\_\_\_\_ x  
In the Matter of :  
TENNESSEE VALLEY AUTHORITY :  
(Enforcement Action) : Docket Nos. EA-20-006 and  
: EA-20-007  
: ASLBP No. 21-969-01-EA-BD01  
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Deposition of SCOTT LIUNA  
Conducted Virtually  
Monday, June 21st, 2021  
9:00 a.m. (ET)

Job No.: 379693  
Pages: 1-209  
Stenographically reported by: Lisa M. Barrett, RPR, CRR,  
Also present: Brennan Plummer, Remote Technician





1           A     The -- the activity that Wetzel  
2 participated in that is considered protected as  
3 far as the NRC is concerned.

4           Q     Okay. Staying on this page, the third  
5 paragraph down, the page reference is a May 7th,  
6 2018 email that Ms. Wetzel sent to Mr. Shea and  
7 which is attached to the report in Exhibit 11.

8                     Is the -- is that email one of  
9 Ms. Wetzel's protected activities?

10          A     Yeah, it's a continuation of her  
11 concerns about Henderson, as I mention in here,  
12 expressing retaliatory behavior which could be --  
13 which could influence a -- you know, a chilled  
14 work environment in an -- in an office, so, yes.

15          Q     Okay. Let's go to tab 18, please,  
16 which if I have this one right should be  
17 Exhibit 11 to the OI report reference there in the  
18 ML accession No. 21044A069. And I know we're  
19 still working through some of these documents,  
20 Mr. Luina, but let me know when you have -- let me  
21 know when you have one pulled up too.

22                     --- (Off-record discussion re documentation)

23 BY MR. WALSH:

24          Q     It's still not coming up in my Google  
25 drive, Brennan. I have only got up through

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"

# Attachment 19



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# Transcript of Alejandro Echavarria

**Date:** June 23, 2021

**Case:** Tennessee Valley Authority, In re:

**Planet Depos**

**Phone:** 888.433.3767

**Email:** [transcripts@planetdepos.com](mailto:transcripts@planetdepos.com)

[www.planetdepos.com](http://www.planetdepos.com)



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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  
ALEJANDRO ECHAVARRIA  
Conducted Virtually  
Wednesday, June 23, 2021  
9:05 a.m. EDT

Job No.: 379697  
Pages 1 - 186  
Reported by: Debra A. Whitehead

1 P R O C E E D I N G S

2 ALEJANDRO ECHAVARRIA,

3 having been duly sworn, testified as follows:

4 MR. WALSH: All right. Thank you.

5 I am Tim Walsh, with the law firm of  
6 Pillsbury Winthrop Shaw Pittman, and I'm outside  
7 counsel for the Tennessee Valley Authority, or  
8 TVA.

9 We are here for a deposition of Mr.  
10 Alejandro Echavarria, in a matter currently  
11 pending before the Nuclear Regulatory Commission,  
12 Atomic Safety and Licensing Board, under Docket  
13 Number EA-20-006 and EA-20-007.

14 EXAMINATION BY COUNSEL FOR DEFENDANT TVA

15 BY MR. WALSH:

16 Q Mr. Echavarria, will you please state  
17 your full name for the record, please.

18 A My full name is Alejandro Echavarria, no  
19 middle name.

20 Q Thank you. Would you please state the  
21 name of your employer and your job title.

22 A Yes, sir. I'm employed by the United  
23 States Nuclear Regulatory Commission, Office  
24 Investigation -- Investigations, excuse me. I am  
25 the Acting Deputy Director of OI.

1 for identification and is attached to the  
2 transcript.)

3 MR. WALSH: And I will remind myself and  
4 everyone else to look for the exhibit out of order  
5 on the list in the document folder.

6 Juan, you marked it in the folder as  
7 Echavarria Exhibit 12. I think we are still on  
8 Echavarria Exhibit 11.

9 A/V TECHNICIAN: That's what I just  
10 fixed. Just give me a second.

11 MR. WALSH: No problem. Thank you. I  
12 see Echavarria Exhibit 11 in my folder now.

13 Q Mr. Echavarria, please let me know when  
14 you've had a chance to pull up the document and  
15 take a look.

16 MR. WALSH: Juan, when you get a moment,  
17 I want to go to PDF Page 15, which is included as  
18 part of Exhibit 11 here.

19 A Go ahead, Mr. Walsh.

20 Q Mr. Echavarria, the question is, what is  
21 the protected activity in this e-mail of May 7,  
22 2018, from Ms. Wetzel to Mr. Shea?

23 A It's my understanding that Ms. Wetzel was  
24 concerned about Ms. Henderson using TVA processes  
25 as punishment, i.e., her travel vouchers, and NEI

1 rotation employee in Washington, DC, as some type  
2 of recourse for raising safety concerns.

3 Q Does the e-mail -- go ahead.

4 A No. That's -- I'm paraphrasing, but  
5 that's -- off of memory, that's the -- that's  
6 definitely what it is.

7 Q Does the e-mail state a tie to nuclear  
8 safety?

9 A I don't see any reference to nuclear  
10 safety, no.

11 Q Does the e-mail state that she felt  
12 recourse or potential recourse from Ms. Henderson  
13 for raising safety concerns?

14 A I don't see a reference, no.

15 Q It states in the bottom, there is a  
16 reference to, you know, "using my travel vouchers  
17 as an investigative tool."

18 Is it inappropriate for a supervisor to  
19 scrutinize her subordinate's expense reports?

20 A No.

21 MR. WALSH: Juan, could you take us back  
22 to Echavarria Exhibit 4, please.

23 Right below the paragraph we were just  
24 on, Mr. Echavarria, states there was a June 9  
25 e-mail, too, June 9, 2018, Wetzel e-mailed Shea.

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

1 plant.

2 Q Does this e-mail state any concern that  
3 there would be recourse through the examination or  
4 submission of travel vouchers for engaging in  
5 protected activity related to Browns Ferry?

6 A No.

7 MR. WALSH: I want to go back to Exhibit  
8 4, Juan, please, if you could. And if you could  
9 go to PDF Page 49.

10 Q The e-mail -- or this -- this page of the  
11 OI report, in the third paragraph -- and it's a  
12 longer paragraph, so I will direct you to the  
13 bottom half of the paragraph. But of course  
14 please review the whole paragraph, if you like.

15 There's a statement in that paragraph  
16 that says, "The evidence obtained by OI  
17 demonstrated Wetzel's statements about Henderson's  
18 behavior which Wetzel believed were retaliatory  
19 were accurate and truthful to the best of Wetzel's  
20 knowledge. Wetzel's statements were rooted in  
21 truth in that the activities occurred but were  
22 arguably not based upon the reasons that Wetzel  
23 believed."

24 Let me know when you've reviewed that  
25 paragraph, and that portion that I've read,

# Attachment 20



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# Transcript of David Solorio

**Date:** July 2, 2021

**Case:** Tennessee Valley Authority, In re:

**Planet Depos**

**Phone:** 888.433.3767

**Email:** [transcripts@planetdepos.com](mailto:transcripts@planetdepos.com)

[www.planetdepos.com](http://www.planetdepos.com)



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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 DAVID SOLORIO  
CONDUCTED VIRTUALLY  
Friday, July 2, 2021  
6:13 a.m. PST

Job No.: 379705  
Pages: 1 - 174  
Reported By: Charlotte Lacey, RPR, CSR No. 14224

1 P R O C E E D I N G S

2 THE REPORTER: Will counsel please stipulate  
3 that in lieu of formally swearing in the witness, the  
4 reporter will instead ask the witness to acknowledge  
5 that their testimony will be true under the penalties of  
6 perjury, that counsel will not object to the  
7 admissibility of the transcript based on proceeding in  
8 this way, and that the witness has verified that he is,  
9 in fact, David Solorio.

10 MR. HENNESSEY: Brendan Hennessey for TVA.  
11 We -- we agree to the stipulation.

12 MR. STEINFELDT: Thomas Steinfeldt for the NR  
13 C. We agree as well.

14 THE REPORTER: Mr. Solorio, do you hereby  
15 acknowledge that your testimony will be true under the  
16 penalties of perjury?

17 THE WITNESS: Yes.

18 THE REPORTER: Thank you.

19 Proceed, Counsel.

20 EXAMINATION

21 BY MR. HENNESSEY:

22 Q Good morning, Mr. Solorio. Would you please  
23 state your full name for the record.

24 A David Leopold Solorio.

25 Q And what is the name of your employer and job

1 A Yeah, I concurred on it on October 29th, yeah.

2 Q And -- and what does it mean to have concurred  
3 on it?

4 A You've read it. You don't have any comments,  
5 and you agree with it.

6 Q Okay. When you concurred in this document,  
7 did you understand the contents of the letter and the  
8 order and the appendix to the order?

9 A Yeah. Yes.

10 Q And do you understand that today's deposition  
11 is related to this order and the violations contained in  
12 the order?

13 A I guess no. I didn't read all the documents  
14 you filed, so I wouldn't...

15 Q Sure. Okay. Well, when -- throughout the  
16 day --

17 A Yeah.

18 Q When I refer to the NRC's claims or the case  
19 or the violations, can we agree that I'm referring to  
20 the violations that are laid out in particular in the  
21 appendix to the order?

22 A Okay. Yes.

23 Q Just to make sure we're on the same page of  
24 what we're talking about today.

25 A Okay.

1           A     No, I don't. It feels like we might have seen  
2 it at the PEC, but...

3           Q     How would you describe the issues that  
4 Ms. Wetzel raises in this complaint?

5           A     She believes her supervisor is trying to find  
6 a way to nix her loan opportunity to NEI.

7           Q     And so you would agree that Ms. Wetzel is  
8 complaining about her boss potentially blocking or  
9 interfering with her assignment with NEI in this e-mail?

10          A     That's the way it reads to me.

11          Q     Do you know why --

12          A     Her boss, I guess, being Henderson, and she's  
13 complaining to Shea. Okay. Go ahead.

14          Q     Okay. Do you know whether Ms. Wetzel was  
15 blocked from her role at the NEI?

16          A     I don't believe she was. I think she did do  
17 it.

18          Q     Does Ms. Wetzel raise a nuclear safety issue  
19 in this e-mail?

20          A     Not that I can see.

21          Q     And can you see whether Ms. Wetzel raises a  
22 chilled work environment concern in this e-mail?

23          A     Let me read over it again. My first answer  
24 would have been no, but let me read it over again.

25                   No, I don't think she's raising a chilled work

1 environment issue.

2 Q Okay. And let's go to Exhibit 9, which we --  
3 which we reviewed earlier.

4 A Okay.

5 Q I had you read this one before, and you were  
6 thinking, why is he making me read this? It's -- so you  
7 don't have to read it again now.

8 A I gotcha. Okay. I'm trying to find 9. Well,  
9 I don't find a 9 point. I find a Solorio 9. Is that  
10 the one?

11 AV TECHNICIAN: Yes.

12 Q Yes. Yes. Exhibit Solorio 9, Exhibit 9.

13 A Okay. I'll make it bigger. There's noises  
14 going on outside our room. It startled me.

15 Okay. I'm in the e-mail, Joe Shea, May 7th to  
16 Wetzel.

17 Q Okay. And if you'd like, we did take a lunch  
18 break, so you may want to breeze through it, if you'd  
19 like.

20 A Okay. Yeah, I don't remember the details of  
21 this, but I remember opening it and looking at it. I  
22 can... This is her to Joe. Read through it.

23 All right. So I'm finishing up Henderson's  
24 e-mail with Wetzel. This is an e-mail from Wetzel.

25 Okay. Okay. I got through it.



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 21

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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In the Matter of )  
)  
)

Tennessee Valley Authority )  
Chattanooga, Tennessee )  
)

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

**DECLARATION OF TIMOTHY J. V. WALSH**

I, Timothy J. V. Walsh, hereby state and declare as follows:

1. I am a partner in the law firm Pillsbury Winthrop Shaw Pittman LLP. I represent the Tennessee Valley Authority (“TVA”) in this matter. I submit this declaration in support of TVA’s Motion for Summary Disposition of Violation 4 (“TVA’s Motion”).

2. Attachment 2 to TVA’s Motion is a true and correct copy of the Wetzel Executive Review Board Package held September 19, 2018, that was produced by the NRC Staff at ADAMS Accession No. ML21048A391 at PDF pgs. 6–29. This same copy was used by the NRC Staff as a portion of Exhibit 16 of Office Investigation Report 2-2019-015 (the Wetzel OI Report).

3. Attachment 4 to TVA’s Motion is a true and correct copy of the Formal Complaint of Erin Henderson dated March 9, 2018, that was produced by the NRC Staff at ADAMS Accession No. ML21044A069 at PDF pages 4–11. This same copy was used by the NRC Staff as Exhibit 10 of Office Investigation Report 2-2019-015 (the Wetzel OI Report).

4. Attachment 5 to TVA’s Motion is a true and correct copy of the email from Beth Wetzel to Joe Shea dated May 7, 2018, that was produced by the NRC Staff at ADAMS Accession No. ML21044A069 at PDF pages 34–35. This same copy was used by the NRC Staff as a portion of Exhibit 11 of Office Investigation Report 2-2019-015 (the Wetzel OI Report).

5. Attachment 7 to TVA's Motion is a true and correct copy of the email from Beth Wetzel to Joe Shea dated June 9, 2018, that was produced by the NRC Staff at ADAMS Accession No. ML21044A069 at PDF page 13. This same copy was used by the NRC Staff as a portion of Exhibit 12 of Office Investigation Report 2-2019-015 (the Wetzel OI Report).

6. Attachment 9 to TVA's Motion is a true and correct copy of the Report of Investigation of Erin Henderson's Allegations of Harassment and Hostile Work Environment, written by Mr. John Slater, dated May 25, 2018, and produced by the NRC Staff at ADAMS Accession No. ML21042A026 at PDF pages 31–62. This same copy was used by the NRC Staff as Exhibit 17 of Office Investigation Report 2-2018-033 (the McBrearty OI Report).

7. Attachment 10 to TVA's Motion is a true and correct copy of the Report of Investigation of Erin Henderson's Allegations of Harassment and Hostile Work Environment, written by Mr. John Slater, dated August 10, 2018, and produced by the NRC Staff at ADAMS Accession No. ML21042A026 at PDF pages 64–101. This same copy was used by the NRC Staff as Exhibit 18 of Office Investigation Report 2-2018-033 (the McBrearty OI Report).

8. Attachment 11 to TVA's Motion is a true and correct copy of the Investigation into Harassment and Hostile Work Environment Allegations in Nuclear Licensing Organization – Involvement of Beth Wetzel, dated August 30, 2018, and produced by the NRC Staff at ADAMS Accession No. ML21048A391 at PDF pages 38–40. This same copy was used by the NRC Staff as a portion of Exhibit 17 of Office Investigation Report 2-2019-015 (the Wetzel OI Report).

9. Attachment 12 to TVA's Motion is a true and correct copy of the Wetzel Executive Review Board Package Update held on December 18, 2018, and produced by the NRC Staff at ADAMS Accession No. ML21048A391 at PDF pages 30–32. This same copy was used by the



NRC Staff as a portion of Exhibit 16 of Office Investigation Report 2-2019-015 (the Wetzel OI Report).

10. Attachment 13 to TVA's Motion is a true and correct copy of Ms. Beth Wetzel's Notice of Termination dated January 14, 2019, and produced by the NRC Staff at ADAMS Accession No. ML21042B963 at PDF pages 27–28.

11. Attachment 14 to TVA's Motion is a true and correct copy of the email from Beth Wetzel to Joe Shea dated March 29, 2018, that was produced by the NRC Staff at ADAMS Accession No. ML21044A069 at PDF page 21. This same copy was used by the NRC Staff as a portion of Exhibit 11 of Office Investigation Report 2-2019-015 (the Wetzel OI Report).

I declare under penalty of perjury that the foregoing is true and correct.

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

Timothy J. V. Walsh

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Executed on August 16, 2021.

August 16, 2021

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Tennessee Valley Authority's Motion For Summary Disposition Of Violation 4 (Lack Of Nuclear Safety-Related Protected Activity) has been served through the E-Filing system in the above-captioned proceeding this 16th day of August, 2021.

/Electronically signed by Anne R. Leidich/  
Anne R. Leidich  
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