

From: Thompson, Catherine
Sent: Thursday, February 6, 2020 1:46 PM
To: Gifford, Ian
Cc: Solorio, Dave
Subject: draft choice letters
Attachments: Choice Letter-Henderson.docx; Choice Letter-Shea.docx; Choice Letter-TVA.docx

Ian,

Attached are the three draft choice letters. They are all mostly identical. Paragraph 4 for Henderson and Shea is a different from TVA's, and rest of letter is boilerplate. We can discuss at 3:00

Thanks,
Kitty

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1010

Mail Envelope Properties (MN2PR09MB345600652770CCAF32EAC18D8C1D0)

Subject: draft choice letters
Sent Date: 2/6/2020 1:45:39 PM
Received Date: 2/6/2020 1:45:41 PM
From: Thompson, Catherine

Created By: Catherine.Thompson@nrc.gov

Recipients:

"Solorio, Dave" <Dave.Solorio@nrc.gov>

Tracking Status: None

"Gifford, Ian" <Ian.Gifford@nrc.gov>

Tracking Status: None

Post Office: MN2PR09MB3456.namprd09.prod.outlook.com

Files	Size	Date & Time
MESSAGE	224	2/6/2020 1:45:41 PM
Choice Letter-Henderson.docx	38146	
Choice Letter-Shea.docx	38508	
Choice Letter-TVA.docx	39008	

Options

Priority: Normal

Return Notification: No

Reply Requested: No

Sensitivity: Normal

Expiration Date:

[Date]

IA-2020-009

Ms. Erin Henderson

/ADDRESS

SUBJECT: APPARENT VIOLATIONS OF EMPLOYEE PROTECTION REQUIREMENTS
(OFFICE OF INVESTIGATIONS REPORT NOS. 2-2018-033 and 2-2019-15)

Dear Mr. Shea:

This letter refers to two investigations by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) related to Tennessee Valley Authority (TVA). The first investigation is related to TVA Sequoyah Nuclear Plant (Sequoyah), completed on October 3, 2019 (2-2018-033). The second investigation is related to TVA Watts Bar I Nuclear Plant (Watts Bar I), completed on January 21, 2020 (2-2019-15).

The purpose of the NRC OI investigation 2-2018-033 was to determine whether a former Site Licensing Manager employed by TVA at Sequoyah was the subject of employment discrimination in violation of the NRC's "Employee Protection" regulation, specifically, 10 CFR 50.7. The NRC determined that the former employee was placed on paid administrative leave on May 25, 2018 and resigned from TVA on August 16, 2018 believing that he would be terminated, in part, for engaging in protected activities. Between 2015 and 2018, the former employee raised concerns numerous times to Corporate Nuclear Licensing (CNL), which included the Vice President (VP) of Regulatory Affairs and the former Director of CNL, about TVA's regulatory non-compliance regarding two NRC non-cited violations (NCV): 1) the Molded Case Circuit Breaker Service Life NCV, and 2) the Removal of Kirk Key Interlocks NCV. In addition, the former employee used the TVA Employee Concerns Program (ECP): 1) in April 2017, the former employee filed a complaint with ECP against the former Director of CNL of harassment and creating an environment that could negatively impact SCWE, and 2) in July 2017, the former employee filed a complaint with ECP against the former Director of CNL for mentioning his first ECP complaint in a staff meeting. In March 2018, the former Director of CNL, encouraged by the VP of Regulatory Affairs, submitted a formal complaint against the former employee to stop the former employee's communications and actions, which led to a TVA Office of General Council (OGC) investigation. A subsequent draft report from the TVA OGC investigation stated that the former employee used the ECP as a form of retaliation against the former Director of CNL. The former employee was placed on paid administrative leave the same day the draft TVA OGC report was given to TVA management, and resigned a few days later, believing that he would soon be terminated. Raising concerns about regulatory non-compliance and using the ECP are protected activities.

The purpose of the NRC OI investigation 2-2019-15 was to determine whether a former Manager of Emerging Regulatory Issues employed by TVA at Watts Bar I was the subject of

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employment discrimination for participating in a protected activity in violation of the NRC’s “Employee Protection” regulation, specifically, 10 CFR 50.7. The NRC determined that the former employee was placed on paid administrative leave on October 15, 2018 and terminated on January 14, 2019, in part, for engaging in protected activities. Between 2016 and 2017, the former employee raised numerous safety concerns, including: violations of the Part 26 Fatigue Rule requirements at Watts Bar 2; failure to adhere to the Fukushima requirements at Sequoyah; concerns regarding a Watts Bar 2 surveillance extension request; and failure to meet NRC commitments in Information Notice 2017-3 to identify Anchor Darling double disc gate valve susceptibility to failure at Brown Ferry. On July 24, 2017, the former employee submitted an allegation to the NRC (RII-2017-A-0114) raising concerns that the former Director of CNL was creating a chilled work environment, among other issues. The former employee also wrote condition reports and discussed safety issues during meetings. The former employee believed that the former Director of CNL was retaliating against other TVA employees that had raised safety concerns and was concerned about retaliatory actions from the former Director of CNL. The former employee reported concerns of retaliation and a hostile work environment to the VP of Regulatory Affairs. Contacting the NRC and raising concerns of a chilled work environment are protected activities.

The NRC staff reviewed the evidence gathered during these NRC OI investigations and determined that the action taken against these former employees were in apparent violations of the NRC’s rule prohibiting deliberate misconduct, 10 CFR 50.5 (a). Based on the evidence developed during the investigations and subsequent staff analysis, it appears that you, as the former Director of CNL engaged in deliberate misconduct that caused an NRC licensee (TVA) to be in violation of 10 CFR 50.7, “Employee Protection.” These apparent violations are being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy can be found on the NRC’s Web site at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

The apparent violations, which are based on the NRC’s OI investigations and staff’s analysis of the evidence, were discussed with [name] during a [date] telephone conversation.

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

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

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

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

The NRC's Enforcement Policy permits the individual who was the subject of the alleged employment discrimination to participate in the conference. Accordingly, that individual would be invited to attend the PEC and may participate by observing the conference. Following your presentation, the individual may, if desired, present his views on why he believes the discrimination occurred and comment on your presentation. You would then be afforded an opportunity to respond and the NRC may ask some clarifying questions. Under no circumstances would the NRC staff permit you or the employee to cross-examine or question each other.

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

Enclosed are the redacted Reports of Investigation (ROI) 2-2018-033 and 2-2019-15. The OI reports provide an overview of the evidence gathered during these investigations. Because the NRC has not made a final decision regarding the apparent violations, the NRC will not make the OI reports available to the general public and we request that you also refrain from doing so. If a PEC is held, the other PEC participants will be sent a copy of the relevant redacted OI report.

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Sincerely,

George Wilson, Director
NRC Office of Enforcement

Docket Nos.: 5000327, 5000328, 5000390
License No.: DPR-77, DPR-79, NPF-90

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DISTRIBUTION: WITHOUT ENCLOSURES

P. Moulding, OGC
D. Castelveter, OPA
M. Kowal, RII
S. Sparks, RII
M. Doane, EDO
OE R/F.

Apparent Violations

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10 CFR 50.5 (a) states that any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

- (1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission.

Contrary to the above, the former Director of Corporate Nuclear Licensing (CNL) engaged in deliberate misconduct, in violation of 10 CFR 50.5, which caused TVA to be in violation of 10 CFR 50.7:

1. 2-2018-033: The former Director of CNL submitted a formal complaint against the former employee to stop the former employee's communications and actions (raising concerns about regulatory non-compliance and using the ECP), which are protected activities. This ultimately led to the TVA OGC investigation and the former employee being placed on administrative leave and ultimately resigning, believing that he would be terminated.
2. 2-2019-15: The former Director of CNL filed a formal complaint against the former employee based, in part, for contacting the NRC with concerns of a chilled work environment, which is a protected activity. The former employee believed that the former Director of CNL was retaliating against other TVA employees that had raised safety concerns and was concerned about retaliatory actions from the former Director of CNL.

[Date]

IA-2020-008

Mr. Joseph Shea

/ADDRESS

SUBJECT: APPARENT VIOLATIONS OF EMPLOYEE PROTECTION REQUIREMENTS
(OFFICE OF INVESTIGATIONS REPORT NOS. 2-2018-033 and 2-2019-15)

Dear Mr. Shea:

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Sincerely,

George Wilson, Director
NRC Office of Enforcement

Docket Nos.: 5000327, 5000328, 5000390
License No.: DPR-77, DPR-79, NPF-90

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10 CFR 50.5 (a) states that any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

- (1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission.

Contrary to the above, the VP of Regulatory Affairs engaged in deliberate misconduct, in violation of 10 CFR 50.5, which caused TVA to be in violation of 10 CFR 50.7:

1. 2-2018-033: Between 2015 and 2018, the former employee at Sequoyah raised concerns numerous times about TVA's regulatory non-compliance regarding two NRC non-cited violations to the VP of Regulatory Affairs and the former Director of CNL. In addition, the former employee used the TVA ECP in April 2017 and July 2017 to file complaints against the former Director of CNL. In March 2018, The VP of Regulatory Affairs encouraged the former Director of Corporate Nuclear Licensing to submit a formal complaint against the former employee to stop the former employee's communications and actions (raising concerns about regulatory non-compliance and using the ECP). This led to a TVA OGC investigation. A subsequent draft report from the TVA OGC investigation stated that the former employee used the ECP as a form of retaliation against the former Director of CNL. The former employee was placed on paid administrative leave on May 25, 2018, the same day the draft TVA OGC report was given to TVA management. The former employee resigned on August 16, 2018, believing that he would soon be terminated. Raising concerns about regulatory non-compliance and using the ECP are protected activities.
2. 2-2019-15: The former Director of CNL filed a formal complaint against the former employee based, in part, for contacting the NRC with concerns of a chilled work environment, which is a protected activity. The VP of Regulatory Affairs placed the former employee on paid administrative leave and played a significant role in terminating the former employee. As contributing factors for these adverse actions, the VP of Regulatory Affairs cited the former employee's statements made during the TVA OGC investigation and fear of retaliation communicated by the employee to the VP of Regulatory Affairs, which are protected activities.

[Date]

EA-2020-06

EA-2020-07

NAME/ADDRESS

SUBJECT: APPARENT VIOLATIONS OF EMPLOYEE PROTECTION REQUIREMENTS
(OFFICE OF INVESTIGATIONS REPORT NOS. 2-2018-033 and 2-2019-15)

Dear X:

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

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violation, information related to the identification of the violation, and information related to any corrective actions taken or planned. The decision to hold a PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference would be conducted to obtain information to assist the NRC in making an enforcement decision. If a PEC is held, it will be transcribed, and the NRC may issue a public meeting notice to announce the time and date of the conference; however, the PEC will be closed to public observation since information related to an (OI) report will be discussed and the report has not been made public. A PEC should be held within 30 days of the date of this letter.

The NRC's Enforcement Policy permits the individual who was the subject of the alleged employment discrimination to participate in the conference. Accordingly, that individual would be invited to attend the PEC and may participate by observing the conference. Following your presentation, the individual may, if desired, present his views on why he believes the discrimination occurred and comment on your presentation. You would then be afforded an opportunity to respond and the NRC may ask some clarifying questions. Under no circumstances would the NRC staff permit you or the employee to cross-examine or question each other.

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

Enclosed are the redacted Reports of Investigation (ROI) 2-2018-033 and 2-2019-15. The OI reports provide an overview of the evidence gathered during these investigations. Because the NRC has not made a final decision regarding the apparent violations, the NRC will not make the OI reports available to the general public and we request that you also refrain from doing so. If a PEC is held, the other PEC participants will be sent a copy of the relevant redacted OI report.

A copy of this letter and its enclosures will not be made publicly available at this time. However, if the NRC subsequently issues an enforcement action to you, in accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's

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document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. In addition, this letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Sincerely,

George Wilson, Director
NRC Office of Enforcement

Docket Nos.: 5000327, 5000328, 5000390
License No.: DPR-77, DPR-79, NPF-90

Enclosures:

1. Apparent Violations
2. Report of the Office of Investigation No. 2-2018-033
(EXEMPT FROM PUBLIC DISCLOSURE)
3. Report of the Office of Investigation No. 2-2019-15
(EXEMPT FROM PUBLIC DISCLOSURE)
4. NUREG/BR-0317 Enforcement ADR Program

DISTRIBUTION: WITHOUT ENCLOSURES

P. Moulding, OGC
D. Castelveter, OPA
M. Kowal, RII
S. Sparks, RII
M. Doane, EDO
OE R/F.

Apparent Violations

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

10 CFR 50.5 (a) states that any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

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

Contrary to the above, the VP of Regulatory Affairs and the former Director of Corporate Nuclear Licensing (CNL) engaged in deliberate misconduct, in violation of 10 CFR 50.5, which caused TVA to be in violation of 10 CFR 50.7:

1. 2-2018-033: Between 2015 and 2018, the former employee at Sequoyah raised concerns numerous times about TVA's regulatory non-compliance regarding two NRC non-cited violations to the VP of Regulatory Affairs and the former Director of CNL. In addition, the former employee used the TVA ECP in April 2017 and July 2017 to file complaints against the former Director of CNL. In March 2018, the VP of Regulatory Affairs encouraged the former Director of CNL to submit a formal complaint against the former employee to stop the former employee's communications and actions. This led to a TVA OGC investigation. A subsequent draft report from the TVA OGC investigation stated that the former employee used the ECP as a form of retaliation against the former Director of CNL. The former employee was placed on paid administrative leave on May 25, 2018, the same day the draft TVA OGC report was given to TVA management. The former employee resigned on August 16, 2018, believing that he would soon be terminated. Raising concerns about regulatory non-compliance and using the ECP are protected activities.
2. 2-2019-15: The former Director of CNL filed a formal complaint against the former employee based, in part, for contacting the NRC with concerns of a chilled work environment, which is a protected activity. The VP of Regulatory Affairs placed the former employee on paid administrative leave and played a significant role in terminating the former employee. As contributing factors for these adverse actions, the VP of Regulatory Affairs cited the former employee's statements made during the TVA OGC investigation and fear of retaliation communicated by the employee to the VP of Regulatory Affairs, which are protected activities.