

**From:** Coleman, Nicole  
**Sent:** Friday, February 21, 2020 1:02 PM  
**To:** Solorio, Dave  
**Cc:** Thompson, Catherine  
**Subject:** RE: revised choice letters  
**Attachments:** ngc\_Choice Letter-Shea\_IAG 2-20-2020.docx

Second letter with comments.

---

**From:** Solorio, Dave  
**Sent:** Friday, February 21, 2020 9:28 AM  
**To:** Coleman, Nicole  
**Cc:** Thompson, Catherine  
**Subject:** FW: revised choice letters  
**Importance:** High

GM Nicole

Before going off clock today would you have time to give us feedback on these letters? Since you may have not read all the ROIs it's a peer review at best, but you know process best.

Also I want to say in advance that the reason the NOV's are attachments is because Kitty used her prior SNC work as model and obviously shared with Ian. Also, apparently Ian got recent feedback from Paul and David F. about labeling the NOV's on that page. You would have to ask him how that came about, but that was the day I went to you saying Ian's getting conflicting guidance and I understand you even went over to his office to settle things for him a bit (thanks very much for doing that). I would have preferred we get back to following the manual template, but given George wants this out yesterday we don't have time to go back and rework things.

I removed the TVA CL because Kitty was making changes to it.

Dave

---

**From:** Thompson, Catherine <[Catherine.Thompson@nrc.gov](mailto:Catherine.Thompson@nrc.gov)>  
**Sent:** Thursday, February 20, 2020 4:34 PM  
**To:** Solorio, Dave <[Dave.Solorio@nrc.gov](mailto:Dave.Solorio@nrc.gov)>; Gifford, Ian <[Ian.Gifford@nrc.gov](mailto:Ian.Gifford@nrc.gov)>  
**Subject:** revised choice letters

Dave,

Revisions based on Ian's comments on 2-20-2020

We would like to take one more day to review and send them to Region on Monday.

Thanks,  
Kitty

**Hearing Identifier:** JShea\_IA\_NonPublic  
**Email Number:** 1190

**Mail Envelope Properties** (MN2PR09MB480916FFDB9DBDAAF63738BC9E120)

**Subject:** RE: revised choice letters  
**Sent Date:** 2/21/2020 1:01:46 PM  
**Received Date:** 2/21/2020 1:01:48 PM  
**From:** Coleman, Nicole

**Created By:** Nicole.Coleman@nrc.gov

**Recipients:**  
"Thompson, Catherine" <Catherine.Thompson@nrc.gov>  
Tracking Status: None  
"Solorio, Dave" <Dave.Solorio@nrc.gov>  
Tracking Status: None

**Post Office:** MN2PR09MB4809.namprd09.prod.outlook.com

<b>Files</b>	<b>Size</b>	<b>Date &amp; Time</b>
MESSAGE	1600	2/21/2020 1:01:48 PM
ngc_Choice Letter-Shea_IAG 2-20-2020.docx		38933

**Options**  
**Priority:** Normal  
**Return Notification:** No  
**Reply Requested:** No  
**Sensitivity:** Normal  
**Expiration Date:**

Official Use Only – Predecisional Enforcement Information

[Date]

IA-2020-008

Mr. Joseph Shea

ADDRESS REMOVED

SUBJECT: APPARENT VIOLATION OF EMPLOYEE PROTECTION REQUIREMENTS  
(OFFICE OF INVESTIGATIONS REPORT NO. 2-2019-015)

Dear Mr. Shea:

This letter refers to an investigation by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) related to Tennessee Valley Authority (TVA), completed on January 21, 2020 (2-2019-015). The purpose of the investigation was to determine whether a former Manager of Emerging Regulatory Issues employed by TVA Corporate was the subject of discrimination for participating in a protected activity in violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, "Employee Protection."

The NRC determined that the former employee was 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 raising concerns that the former Director of Corporate Nuclear Licensing (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 you. The former employee also raised concerns of retaliation to a TVA attorney during an investigative interview. Contacting the NRC and raising concerns of a chilled work environment are protected activities.

The NRC staff reviewed the evidence gathered during the NRC OI investigation and determined that the actions taken against the former employee were in apparent violation of the NRC's rule prohibiting deliberate misconduct, 10 CFR 50.5 (a). Based on the evidence developed during the investigation and subsequent staff analysis, it appears that you, as the Vice President of Regulatory Affairs, engaged in deliberate misconduct that caused an NRC licensee (TVA) to be in violation of 10 CFR 50.7, "Employee Protection." This apparent violation is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current

**Commented [CN1]:** Similar comments for this entire paragraph (provided in Czufin letter).

Placement and language within this sentence is awkward. Does this statement mean that the only protected activities we considered were that the CI contacted the NRC and raised chilling effect concerns?

**Commented [CN2]:** Some comments provided in Czufin letter.

Official Use Only – Predecisional Enforcement Information

Official Use Only – Predecisional Enforcement Information

Enforcement Policy can be found on the NRC's Web site at [www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html](http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html).

The apparent violation, which is based on the NRC's OI investigation and staff's analysis of the evidence, was discussed with you 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, a closed predecisional enforcement conference (PEC) will be held to discuss the apparent violation. The NRC will contact you to determine a mutually agreeable date, time, and location for the PEC. The PEC will be closed to public observation since it is associated with an OI report, and the results have not been publicly released. Additionally, the conference will be transcribed. This conference is being held to obtain information to assist the NRC in making an enforcement decision. This may include information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned. The conference will include an opportunity for you to provide your perspective on these matters and any other information that you believe the NRC should take into consideration in making an enforcement decision. 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 will be invited to attend the PEC and may participate by observing the conference. Following your presentation, the individual may, if desired, present their views on why they believe the discrimination occurred and comment on your presentation. You would then be afforded an opportunity to respond and the NRC may ask some clarifying questions. Under no circumstances would the NRC staff permit you or the former employee to cross-examine or question each other.

Enclosed is the redacted Report of Investigation (ROI) 2-2019-015. The OI report provides an overview of the evidence gathered during the investigation. Because the NRC has not made a final decision regarding the apparent violation, the NRC will not make the OI report available to the general public, and we request that you also refrain from doing so. Other PEC participants will also be sent a copy of the 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 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

Official Use Only – Predecisional Enforcement Information

Official Use Only – Predecisional Enforcement Information

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

Enclosures:

1. Apparent Violations
2. Report of the Office of Investigation No. 2-2019-015  
(EXEMPT FROM PUBLIC DISCLOSURE)

**DISTRIBUTION: WITHOUT ENCLOSURES**

P. Moulding, OGC  
D. Castelveter, OPA  
M. Kowal, RII  
S. Sparks, RII  
B. Hughes, NRR  
M. Doane, EDO  
OE R/F.  
Others – to be added

Official Use Only – Predecisional Enforcement Information

Official Use Only – Predecisional Enforcement Information

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, between October 15, 2018, and January 14, 2019, you engaged in deliberate misconduct that caused Tennessee Valley Authority (TVA), an NRC licensee, to be in violation of 10 CFR 50.7(a). Specifically, you placed a TVA employee on paid administrative leave and subsequently terminated the employee. As contributing factors for these adverse actions, you cited the employee's statements made during a TVA Office of the General Counsel investigation and fear of retaliation communicated to you by the employee, which are protected activities.

**Commented [CN3]:** Similar comments like within the other letter.

The contrary to should read independently of any background information/documents. This NOV needs to be revised to state what was violated, by whom and specifically how.

Also, I'm not sure why the last sentence was included, "As contributing factors for these adverse actions....." within this contrary to statement.