

From: JSheaIA-Hearing Resource
Sent: Wednesday, February 17, 2021 2:31 AM
To: JSheaIA-HearingNPEm Resource
Subject: For review: TVA letters and comm plan - OOU attachments
Attachments: ML21042A018_Redacted.pdf

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1300

Mail Envelope Properties (d659621765844a52a3001d98e28929ed)

Subject: For review: TVA letters and comm plan - OJO attachments
Sent Date: 2/17/2021 2:31:23 AM
Received Date: 2/17/2021 2:31:39 AM
From: JShealA-Hearing Resource

Created By: JShealA-Hearing.Resource@nrc.gov

Recipients:
"JShealA-HearingNPEM Resource" <JShealA-HearingNPEM.Resource@nrc.gov>
Tracking Status: None

Post Office: HQPWMSMRS02.nrc.gov

Files	Size	Date & Time
MESSAGE	3	2/17/2021 2:31:39 AM
ML21042A018_Redacted.pdf	2536410	

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

From: JShealA-Hearing Resource
Sent: Tuesday, February 9, 2021 6:00 PM
To: JShealA-HearingNPEm Resource
Subject: For review: TVA letters and comm plan - OOU attachments
Attachments: ML21040A239_Redacted.pdf

Hearing Identifier: JShea_IA_NonPublic
Email Number: 786

Mail Envelope Properties (22a2e1b231834b28b7af8cce7be5df21)

Subject: For review: TVA letters and comm plan - OOU attachments
Sent Date: 2/9/2021 5:59:34 PM
Received Date: 2/9/2021 5:59:35 PM
From: JShealA-Hearing Resource

Created By: JShealA-Hearing.Resource@nrc.gov

Recipients:
"JShealA-HearingNPEM Resource" <JShealA-HearingNPEM.Resource@nrc.gov>
Tracking Status: None

Post Office: HQPWMSMRS02.nrc.gov

Files	Size	Date & Time
MESSAGE	3	2/9/2021 5:59:35 PM
ML21040A239_Redacted.pdf	654734	

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

From: Gifford, Ian
Sent: Thursday, February 27, 2020 12:31 PM
To: Wilson, George; Hilton, Nick; Solorio, Dave
Cc: Thompson, Catherine
Subject: For review: TVA letters and comm plan - OOU attachments
Attachments: TVA 2020 Discrimination Communication Plan_Final.docx; Choice Letter-TVA_Final.docx; PEC Letter-[REDACTED]_Final.docx; PEC Letter-Henderson_Final.docx; PEC Letter-Shea_Final.docx

Attachments are OOU – Predecisional Enforcement Information
George, Nick, and Dave:

The attached letters all have an NLO from OGC. In addition, the attached communications plan incorporates all feedback received (Region II and OPA).

I will work to get the documents formatted correctly and placed in ADAMS. Once the ROI redactions are finalized, we should be ready to schedule the phone calls.

Thanks,
Ian

Ian A. Gifford, Ph.D.
Differing Views Program Manager
Office of Enforcement
U.S. Nuclear Regulatory Commission
Telephone: 301-287-9216
Ian.Gifford@nrc.gov

Attachments are OOU – Predecisional Enforcement Information

Hearing Identifier: JShea_IA_NonPublic
Email Number: 515

Mail Envelope Properties (BL0PR0901MB4499D59FA8A1A463EAC1F3A6EAEBO)

Subject: For review: TVA letters and comm plan - OUO attachments
Sent Date: 2/27/2020 12:30:41 PM
Received Date: 2/27/2020 12:30:44 PM
From: Gifford, Ian

Created By: Ian.Gifford@nrc.gov

Recipients:

"Thompson, Catherine" <Catherine.Thompson@nrc.gov>
Tracking Status: None
"Wilson, George" <George.Wilson@nrc.gov>
Tracking Status: None
"Hilton, Nick" <Nick.Hilton@nrc.gov>
Tracking Status: None
"Solorio, Dave" <Dave.Solorio@nrc.gov>
Tracking Status: None

Post Office: BL0PR0901MB4499.namprd09.prod.outlook.com

Files	Size	Date & Time
MESSAGE	658	2/27/2020 12:30:44 PM
TVA 2020 Discrimination Communication Plan_Final.docx		46383
Choice Letter-TVA_Final.docx	40788	
PEC Letter-████████_Final.docx	35399	
PEC Letter-Henderson_Final.docx		36278
PEC Letter-Shea_Final.docx	34677	

Options

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

STATUS OF AGENCY ACTIONS FOR TVA DISCRIMINATION CASES

Key messages

- A letter will be issued to the Tennessee Valley Authority (TVA) identifying significant potential enforcement actions involving two Office of Investigation (OI) cases for alleged discrimination of two TVA licensing employees in 2018. The letter will be public and provide TVA with the option of either attending a Predecisional Enforcement Conference (PEC) or Alternative Dispute Resolution (ADR).
- In addition, [REDACTED] individual managers will receive non-public letters requesting their attendance at a PEC due to apparent deliberate misconduct associated with retaliation for employees engaging in protected activity.
- The NRC staff is reviewing a number of TVA-related issues, including other enforcement actions, these two separate discrimination issues, and potential closure of a Chilling Effect Letter. The staff understands the interrelationship of the issues and will continue to assess, coordinate, and respond with a broad and integrated approach.
- TVA's nuclear plants continue to operate safely. This is based on insights gained from NRC assessments, including the NRC's Reactor Oversight Process and Performance Indicators. The NRC conducts more than 2,000 hours of safety and security inspections every year at each TVA nuclear plant. The NRC's resident inspectors maintain an onsite presence and have been focused on understanding the status of TVA's safety culture. Additional information about plant safety can be found in the "Status of Agency Actions for TVA January 2020" communication plan.
- All communications involving pending enforcement actions at TVA will be closely coordinated through the Office of Enforcement (OE) and Region II to ensure proper messaging to internal and external stakeholders.

Background

- One OI substantiated discrimination case (2-2018-033) issued in October 2019. The investigation was initiated to determine whether a former Site Licensing Manager employed at TVA Sequoyah Nuclear Plant, was discriminated against for engaging in protected activity. Based on the evidence developed during the investigation, the allegation was substantiated. The preponderance of the evidence indicated that the deliberate misconduct of the former Director of Corporate Nuclear Licensing and the [REDACTED], in violation of 10 CFR 50.5, caused the TVA to be in violation of 10 CFR 50.7, the employee protection regulation.
- A second OI substantiated discrimination case (2-2019-015) was issued in January 2020. The investigation was initiated to determine whether a former Manager of Emerging Regulatory Issues employed at the TVA Corporate Office in Chattanooga, TN, was the subject of discrimination for participating in a protected activity. Based on the evidence developed during the investigation, the allegation was substantiated. The preponderance of the evidence indicated that the deliberate misconduct of the former Director of Corporate Nuclear Licensing and the Vice President of Regulatory Affairs, in violation of 10 CFR 50.5, caused the TVA to be

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in violation of 10 CFR 50.7, the employee protection regulation. In addition, the Department of Labor substantiated discrimination in August 2019 (which is a public process). After appealing the finding, TVA and the individual subsequently settled the DOL complaint.

- The pertinent requirements are:
 - 10 CFR 50.7(a), states, in part, that discrimination by a Commission licensee or a contractor or subcontractor of a Commission licensee against an employee for engaging in certain protected activities is prohibited.
 - 10 CFR 50.5(a) states, in part, that any employee of a licensee or any contractor, may not engage in deliberate misconduct that causes a licensee to be in violation of any regulation of the Commission.

- Apparent Violations
 - a. TVA:
 - Four apparent violations total (SLI and SLII for Sequoyah related to ROI 2-2018-033, and SLI and SLII for TVA Corporate related to ROI 2-2019-015).
 - Each apparent violation carries a civil penalty of up to \$300,000 which results in a total civil penalty to TVA of \$1,200,000. The \$300,000 civil penalty is the maximum civil monetary penalty for a violation per the Enforcement Policy (ML19352E921). Corrective action credit could lower the civil penalty and will be determined as more information is gathered during the enforcement process.
 - b. Individual Actions:
 - SLI apparent violation for the [REDACTED] with a 5-year ban.
 - SLI apparent violation for the Vice President of Regulatory Affairs with a 5-year ban.
 - SLII apparent violation for the former Director of Corporate Nuclear Licensing with a 1-year ban.

- Alternative Dispute Resolution
 - a. One Choice Letter will be sent to TVA offering ADR or a PEC.
 - b. The individuals will be sent Conference Letters without the option for ADR, and the plan is to hold their conferences before the TVA ADR/PEC.

- Previous TVA Discrimination Cases: In 2009, the NRC issued a confirmatory order (CO) (EA-09-009; ML093510993) to TVA to address safety conscious work environment (SCWE) issues related to adverse actions taken against employees for raising concerns at Browns Ferry, including a contractor. In 2017, the NRC issued another CO (EA-17-022; ML17208A647) to TVA, in part, to address deficiencies noted in TVA's implementation of the 2009 CO. TVA has submitted formal requests to the NRC since January 2018 to combine these two COs into one.

- NRC Integrated Approach:

The NRC staff (e.g., OE, Office of the General Counsel (OGC), Region II, OI) identified potential common themes related to the issues above. The recommended approach is to evaluate the above issues in parallel and in accordance with existing processes (i.e., enforcement, inspection, assessment, allegations, investigations). Continued dialogue between OE, OGC,

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Region II, and OI is warranted to assess and respond with a broad and integrated view when practical (i.e., identification of common causes and concerns, leveraging NRC processes and regulatory oversight).

Audience

Internal Stakeholders	External Stake holders
<ul style="list-style-type: none"> • Commission • OEDO • OE • OI • OPA • OCA • NRR • Region II • TVA Tiger Team • 2.206 Petition Review Board 	<ul style="list-style-type: none"> • Public • Specific Congressional/Senate members and staff as determined by OCA • Tennessee State Liaison Officer • Media representatives

Communication Team

Title	Names/Numbers
Region II	Tom Stephen (Acting BC) 404-997-4703
Office of Investigation Point of Contact (POC) RII	Alex Echavarria 404-997-4698
Tiger Team	Ken O'Brien 630-829-9700
NRR	Brian Hughes 301-415-6582
Office of the Executive Director of Operations	Steve West 301-415-1713 Chris Cook 301-415-6397
Office of General Counsel	Sara Kirkwood 301-287-9187
RII Regional Counsel	Sarah Price 404-997-4414
Office of Enforcement	Catherine Thompson 301-287-9515 Ian Gifford 301-287-9216 Lisamarie Jarriel 301-287-9006 Dori Willis 301-287-9423
Public Affairs Officer/RII	Roger Hannah 404-997-4417 Joey Ledford 404-997-4416
Public Affairs HQ	Scott Burnell 301-415-8204
State Liaison Office/RII	John Pelchat 404-997-4427
Office of Congressional Affairs	Lynnea Wilkins 301-415-1377

Communication Tools

Questions and Answers are provided in the attachment. The Communication Team will use available tools on an as-needed basis depending on stakeholder involvement and inquiry type.

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Next Steps:

Step	Action	Responsible Organization	Date	Status
1	Panel – Both Discrimination Case	OE	2/19/2020	Complete
2	Notification calls to TVA and individuals	OE	2/28/2020	
3	Issue non-public conference letter to TVA individuals	OE	3/2/2020	
4	Issue Choice Letter to TVA	OE	3/2/2020	
5	Confirm Conference Date for TVA individuals	OE (I. Gifford/C. Thompson)	TBD	
6	Conduct PEC for TVA individuals	OE (Lead), OGC, NRR and Region II	TBD	
7	Potentially Conduct ADR with TVA	OE (Lead), OGC, NRR and Region II	TBD	
6	Final Caucus	OE (Lead), OGC, NRR and Region II	TBD	
7	Develop / Refine final action documents	OE (I. Gifford/C. Thompson)	TBD	
8	Route final action documents for review	OE (Lead), OGC, NRR and Region II	TBD	
9	Inform OPA and other internal stakeholders of proposed date to issue final actions	OE (I. Gifford/C. Thompson)	TBD	
10	Issue Enforcement Notifications	OE (I. Gifford/C. Thompson)	TBD	
11	Issuance of final actions to TVA and individuals	OE (G. Wilson)	TBD	

Questions & Answers

Q1. *How did the discrimination concern come to the attention of NRC?*

The individuals who were the subject of the alleged retaliations contacted the NRC and the individuals' concerns were handled through the NRC's allegation process.

Q2. *What is the NRC's threshold for investigating discrimination concerns?*

OI investigates cases that meet the prima facie threshold as determined during the allegation review process.

Q3. *What is the prima facie threshold for discrimination cases?*

To constitute a prima facie case, the complainant must assert that:

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- A. The individual engaged in a protected activity;
- B. Management had knowledge of the protected activity;
- C. An adverse action was taken (or threatened); and
- D. A nexus exists between the adverse action and the protected activity (i.e., the action was taken in part (contributing factor), or in close temporal proximity to, the protected activity).

Q4. *Did the individuals file a claim with the Department of Labor (DOL)?*

Yes, the individuals filed claims with DOL. For the first case (2-2018-033), the individual filed a claim with DOL, but the claim was never investigated by DOL because the individual settled with TVA in June 2019. For the second case (2-2019-015), DOL substantiated the case in August 2019 (which is a public process). TVA appealed the DOL determination and the case was settled between the parties involved in February 2020.

Q5. *How was the Severity Level determined in the discrimination case?*

Section 6.10 of the Enforcement Policy (ML19352E921) was used. The primary factors included:

- A. Whether the act was willful (i.e., deliberate)
- B. The positions (authority level) of the involved person(s)
- C. Whether the adverse action was more significant for the individual or had a widespread site impact

Q6. *What is a safety conscious work environment?*

A safety conscious work environment (SCWE) is an environment in which employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation.

Q7. *Will the conference letters to the individuals be publicly available?*

The conference letters to the individuals, which include the apparent violation and the redacted OI report (discrimination case only), will be issued as non-public. For the issuance of a final action, the conference letters will be re-classified as public. If no final action is taken, the conference letters will not be made public. The redacted OI report will not be made public at any point in the process, but would be re-evaluated under FOIA or a hearing, if requested.

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Q8. *What is a redacted OI Report?*

A redacted OI Report is copy of OI's Report of Investigation, with appropriate redactions (to protect witness identities and investigation techniques) and without the supporting documentation (exhibits or other referenced information). It is provided to discrimination case participants prior to a predecisional enforcement conference.

Q9. *How is the length of a ban be determined?*

Typically, bans are fixed at one, three, or five years. Factors considered when determining the length of a ban include, but are not limited to, the position of the individual in the organization and the significance (or potential significance) of the underlying violation. See "Action against the Individual", Section 1.4.6 of the Enforcement Manual (Part II).

Q10. *Given that TVA is already subject to two orders associated with employee protection, why are you offering them ADR yet again?*

This may be an opportunity to respond with a broad and integrated view. Specifically, TVA has identified lessons learned based on implementation of the previous two orders where modifications could improve the effectiveness of the required actions. Additionally, the current cases indicate that there are either gaps in the existing orders, or more significant actions need to be taken in addition to the existing requirements. The use of ADR provides an opportunity to enhance both effectiveness and clarity.

Q11. *Why wasn't ADR offered in the letter to the individuals?*

The reasons for not offering ADR at this point in the process included 1) the particularly egregious actions of the high-level officials (Section 2.4.3 of the Enforcement Policy), 2) the potential impact of ADR confidentiality agreements (e.g., information from a specific ADR session could not be used to determine actions for the other cases), and 3) the need for more information to determine if the discrimination had a widespread impact as described in Section 6.10 of the Enforcement Policy. The staff will determine whether ADR will be offered should final action letters be warranted.

Q12. *What is a Chilling Effect Letter?*

A Chilling Effect Letter (CEL) is a formal notification to the licensee and a regulatory tool that the NRC uses to ensure that licensees are taking appropriate actions to foster a workplace environment that encourages employees to raise safety concerns and to feel free to do so without fear of retaliation. The purpose of the CEL is to notify the licensee of the NRC's concern with the SCWE at its facility on the public record. NRC uses the CEL to obtain information about the licensee's assessment of its employees' willingness to raise safety concerns at the facility and the description of any remedial action the licensee has taken or plans to take to address any identified weakness because of its

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assessment. Specifically, in this case, the NRC inspectors noted an increase of operational issues that were of minor and very low safety significance.

Q13. Will there be a press release announcing the issuance of the letters to TVA and the individuals?

No, there will not be a press release accompanying issuance of the TVA choice letter or individual conference letters. The NRC may issue a public meeting notice to announce the time and date of a PEC with TVA; however, the PEC would be closed to public observation. News releases may be issued if the process results in ADR resolution or issuance of final actions.

Q14. Why is it safe to allow TVA plants to continue operating?

TVA's nuclear plants continue to operate safely. This is based on insights gained from NRC assessments, including the NRC's Reactor Oversight Process and Performance Indicators. The NRC conducts more than 2,000 hours of safety and security inspections every year at each TVA nuclear plant. The NRC's resident inspectors maintain an onsite presence and have been focused on understanding the status of TVA's safety culture. Additional information about plant safety can be found in the "Status of Agency Actions for TVA January 2020" communication plan.

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[Date]

EA-2020-06
EA-2020-07

Mr. Jim Barstow
Vice President Nuclear Regulatory Affairs & Support Services
Tennessee Valley Authority
1101 Market Street, LP 4A-C
Chattanooga, TN 37402-2801

SUBJECT: APPARENT VIOLATIONS OF EMPLOYEE PROTECTION REQUIREMENTS
(OFFICE OF INVESTIGATIONS REPORT NOS. 2-2018-033 and 2-2019-015)

Dear Mr. Barstow:

This letter refers to two investigations completed on October 3, 2019, and January 21, 2020, by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) related to the Tennessee Valley Authority (TVA).

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 Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, "Employee Protection." The NRC determined that the former employee was first subject to a harassment investigation and then placed on paid administrative leave on May 25, 2018, and constructively discharged, 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 raised numerous concerns about a negative chilled work environment to both ECP and other TVA employees.

The purpose of the NRC OI investigation 2-2019-015 was to determine whether a former Manager of Emerging Regulatory Issues employed by TVA in the Corporate Office was the subject of 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 subject to a harassment investigation, then 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

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Information Notice 2017-3 to identify Anchor Darling double disc gate valve susceptibility to failure at Browns Ferry. The former employee also raised concerns regarding a chilled work environment.

NRC staff reviewed the evidence gathered during these NRC OI investigations and determined that the actions 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.

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

Since the NRC has not made a final determination in this matter, no Notice of Violations are 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.

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 determine 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 individuals who were the subject of the alleged employment discrimination to participate in the conference. Accordingly, those individuals would be invited to attend the PEC and may participate by observing the conference. Following your presentation, the individuals may, if desired, present their views on why they believe the

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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 employees to cross-examine or question each other.

In lieu of a PEC, TVA 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 neutral third party. The ADR process that the NRC employs is mediation. In mediation, a neutral mediator with no decisionmaking 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 TVA) 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 2-2019-015. 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.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter 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 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.: 05000259, 05000260, 05000296, 05000327, 05000328, 05000390, 05000391

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License No.: DPR-33, DPR-52, DPR-68, DPR-77, DPR-79, NPF-90, NPF-96

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. 2-2019-015
(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.
Others – to be added

Apparent Violations

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

Apparent Violations for 2-2018-033:

Apparent Violation 1: Contrary to the above, on March 9, 2018, Tennessee Valley Authority (TVA) corporate management discriminated against a former Site Licensing Manager employed at the Sequoyah Nuclear Plant for engaging in a protected activity. Specifically, the former Site Licensing Manager engaged in a protected activity by raising concerns regarding a chilled work environment, filing complaints with the Employee Concerns Program, and by raising concerns regarding the response to two non-cited violations. After becoming aware of this protected activity, the former Director of Corporate Nuclear Licensing filed a formal complaint against the former employee. The formal complaint initiated an investigation by the TVA Office of the General Counsel that resulted in the former employee being placed on paid administrative leave for nearly three months, until at which point, the former employee resigned. This action was based, at least in part, on the former employee engaging in a protected activity.

Apparent Violation 2: Contrary to the above, on May 25, 2018, TVA corporate management discriminated against a former Site Licensing Manager employed at the Sequoyah Nuclear Plant for engaging in a protected activity. Specifically, the former Site Licensing Manager engaged in a protected activity by filing complaints with the Employee Concerns Program. After becoming aware of this protected activity, the [REDACTED] recommended that the former employee be placed on paid administrative leave for nearly three months, until at which point, the former employee resigned. This action was based, at least in part, on the former employee engaging in a protected activity.

Apparent Violations for 2-2019-015:

Apparent Violation 3: Contrary to the above, on March 9, 2018, TVA corporate management discriminated against a former Manager of Emerging Regulatory Issues employed at the TVA Corporate Office for engaging in a protected activity. Specifically, the former Manager of Emerging Regulatory Issues engaged in a protected activity by raising concerns of a chilled work environment. After becoming aware of this protected activity, the former Director of Corporate Nuclear Licensing filed a formal complaint against the former employee. The formal complaint initiated an investigation by the TVA Office of the General Counsel that resulted in the former employee being placed on paid administrative leave followed by termination. This action was based, at least in part, on the former employee engaging in a protected activity.

Apparent Violation 4: Contrary to the above, between October 15, 2018, and January 14, 2019, TVA corporate management discriminated against a former Manager of Emerging Regulatory

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Issues employed at the TVA Corporate Office for engaging in protected activities. Specifically, the former Manager of Emerging Regulatory Issues engaged in a protected activity by raising concerns of a chilled work environment to the 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 Vice President of Regulatory Affairs placed the former employee on paid administrative leave and played a significant role in terminating the former employee. These actions were based, at least in part, on the former employee engaging in a protected activity.

[Date]

[REDACTED]
[REDACTED]
[REDACTED]
ADDRESS REMOVED

SUBJECT: NUCLEAR REGULATORY COMMISSION OFFICE OF INVESTIGATIONS
REPORT NO. 2-2018-033

Dear [REDACTED]

This letter refers to an investigation completed on October 3, 2019, by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) concerning your activities at the Tennessee Valley Authority (TVA) Sequoyah Nuclear Plant (Sequoyah). The purpose of this investigation was to determine whether a former Site Licensing Manager employed by TVA Sequoyah was the subject of employment discrimination 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 May 25, 2018, which led to the former employee's constructive discharge, in part, for engaging in protected activities. Between 2015 and 2018, the former employee raised concerns to Corporate Nuclear Licensing (CNL), which included 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 raised numerous concerns about a chilled work environment to both ECP and other TVA employees.

The NRC staff reviewed the evidence gathered during the NRC OI investigation and determined that the action taken against the former employee was in apparent violation of the NRC's regulation 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 [REDACTED] engaged in deliberate misconduct that caused an NRC licensee to be in violation of 10 CFR 50.7, "Employee Protection." The apparent violation is 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 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 violation, and the number of violations, may change as a result of further NRC review.

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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) 2-2018-033. 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 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 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 Violation
2. Report of the Office of
Investigation No. 2-2018-033
(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

Apparent Violation

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

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

Contrary to the above, on May 25, 2018, you engaged in deliberate misconduct that caused Tennessee Valley Authority (TVA), an NRC licensee, to discriminate against a former TVA Site Licensing Manager for engaging in a protected activity. Specifically, the former employee engaged in a protected activity by filing complaints with the Employee Concerns Program. After becoming aware of this protected activity, you, as the [REDACTED] [REDACTED] recommended that the former employee be placed on paid administrative leave for nearly three months, until at which point, the former employee was constructively discharged. Your action was based, at least in part, on the former employee engaging in a protected activity.

[Date]

IA-2020-009

Ms. Erin Henderson

ADDRESS REMOVED

SUBJECT: NUCLEAR REGULATORY COMMISSION OFFICE OF INVESTIGATIONS
REPORT NOS. 2-2018-033 and 2-2019-015

Dear Ms. Henderson:

This letter refers to two investigations completed on October 3, 2019, and January 21, 2020, by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) concerning your activities at the Tennessee Valley Authority (TVA).

The purpose of 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 Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, "Employee Protection." The NRC determined that the former employee was subject to an investigation and then placed on paid administrative leave on May 25, 2018, in part, for engaging in protected activities. Between 2015 and 2018, the former employee raised concerns to Corporate Nuclear Licensing (CNL), which included you, 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 raised concerns regarding a chilled work environment, including filing two complaints against you. On March 9, 2018, you submitted a formal complaint against the former employee alleging that the former employee was harassing you, which triggered an investigation. The NRC determined that the complaint you filed, which triggered this investigation, was in part, for the former employee engaging in protected activities.

The purpose of the NRC OI investigation 2-2019-015 was to determine whether a former Manager of Emerging Regulatory Issues employed by TVA Corporate was the subject of employment discrimination for participating in a protected activity in violation of the NRC's "Employee Protection," specifically, 10 CFR 50.7. The NRC determined that the former employee was subject to an investigation 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 Browns Ferry. The former employee also raised concerns regarding a chilled work environment. On March 9, 2018, you filed a complaint with TVA accusing several employees, including the former employee, of creating a hostile workplace and engaging in insubordinate conduct. In the complaint, you specifically cited that

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you suspected that the former employee had made assertions to the NRC about a chilled work environment as an example of retaliatory behavior imposed by the former employee. 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 violation 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 to be in violation of 10 CFR 50.7, "Employee Protection." The apparent violation is 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 violation, which is based on the NRC's OI investigations and staff's analysis of the evidence, were 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 individuals who were the subject of the alleged employment discrimination to participate in the conference. Accordingly, those individuals will be invited to attend the PEC and may participate by observing the conference. Following your presentation, the individuals 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 employees to cross-examine or question each other.

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Enclosed are the redacted Reports of Investigation (ROI) 2-2018-033 and 2-2019-015. 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. The other PEC participants will be sent a copy of the relevant redacted OI reports.

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 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 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 Violation
2. Report of the Office of Investigation No. 2-2018-033
(EXEMPT FROM PUBLIC DISCLOSURE)
3. Report of the Office of Investigation No. 2-2019-015
(EXEMPT FROM PUBLIC DISCLOSURE)

DISTRIBUTION: WITHOUT ENCLOSURES

P. Moulding, OGC
D. Castelveter, OPA
M. Kowal, RII
S. Sparks, RII

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B. Hughes, NRR
M. Doane, EDO
OE R/F.
Others – to be added

Apparent Violation

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

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

Contrary to the above, on March 9, 2018, you engaged in deliberate misconduct that caused Tennessee Valley Authority (TVA), an NRC licensee, to discriminate against a former TVA Site Licensing Manager and a former Manager of Emerging Regulatory Issues for engaging in protected activities. Specifically, the former TVA Site Licensing Manager engaged in a protected activity by raising concerns regarding a chilled work environment, filing complaints with the Employee Concerns Program, and by raising concerns regarding the response to two non-cited violations. The former Manager of Emerging Regulatory Issues engaged in a protected activity by raising concerns of a chilled work environment. After becoming aware of these protected activities, you, as the Director of Corporate Nuclear Licensing, filed a formal complaint against the former employees. The formal complaint initiated an investigation by the TVA Office of the General Counsel that resulted in the former TVA Site Licensing Manager being placed on administrative leave and termination of the former Manager of Emerging Regulatory Issues. Your action was based, at least in part, on the former employees engaging in protected activities.

[Date]

IA-2020-008

Mr. Joseph Shea

ADDRESS REMOVED

SUBJECT: NUCLEAR REGULATORY COMMISSION OFFICE OF INVESTIGATIONS
REPORT NO. 2-2019-015

Dear Mr. Shea:

This letter refers to an investigation completed on January 21, 2020, by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) concerning your activities at the Tennessee Valley Authority (TVA) Corporate Office. 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 Browns Ferry. The former employee also raised concerns about a chilled work environment. The former employee also wrote condition reports and discussed safety issues during meetings. 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 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 Enforcement Policy can be found on the NRC's Web site at 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.

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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 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 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,

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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)

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P. Moulding, OGC
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Others – to be added

Apparent Violations

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

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

Contrary to the above, between October 15, 2018, and January 14, 2019, you engaged in deliberate misconduct that caused the Tennessee Valley Authority (TVA), an NRC licensee, to discriminate against a former Manager of Emerging Regulatory Issues for engaging in a protected activity. Specifically, the former employee engaged in a protected activity by raising concerns of a chilled work environment to you and a TVA attorney during a TVA Office of the General Counsel investigation. After becoming aware of this protected activity, you, as the Vice President of Regulatory Affairs, placed the former employee on paid administrative leave and played a significant role in terminating the former employee. Your actions were based, at least in part, on the former employee engaging in a protected activity.