

From: JShealA-Hearing Resource
Sent: Wednesday, February 17, 2021 8:24 AM
To: JShealA-HearingNPEm Resource
Subject: revised choice letters and panel script
Attachments: revised choice letters and panel script.pdf

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1301

Mail Envelope Properties (7e97c1b8e3894857b0e4261b95238291)

Subject: revised choice letters and panel script
Sent Date: 2/17/2021 8:24:25 AM
Received Date: 2/17/2021 8:24:27 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 8:24:27 AM
revised choice letters and panel script.pdf		256952

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

From: Thompson, Catherine
Sent: Thursday, February 13, 2020 4:38 PM
To: Solorio, Dave; Gifford, Ian
Subject: revised choice letters and panel script
Attachments: Overview for Panel 2-19-2020_OUO.docx; Choice Letter-TVA.docx; Choice Letter-Henderson.docx; Choice Letter-Shea.docx; Choice Letter-[REDACTED].docx

Ian, Dave,

Attached are revised choice letters and script.

Ian - You can edit the Watts Bar words as needed in the letters.

Thanks,
Kitty

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1237

Mail Envelope Properties (DM6PR09MB533416D35A23DCB8CCE005008C1A0)

Subject: revised choice letters and panel script
Sent Date: 2/13/2020 4:37:58 PM
Received Date: 2/13/2020 4:38:00 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: DM6PR09MB5334.namprd09.prod.outlook.com

Files	Size	Date & Time
MESSAGE	151	2/13/2020 4:38:00 PM
Overview for Panel 2-19-2020_OUO.docx		42199
Choice Letter-TVA.docx	38585	
Choice Letter-Henderson.docx	36138	
Choice Letter-Shea.docx	34475	
Choice Letter-████████.docx	35432	

Options

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

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**Enforcement Panel
February 19, 2020**

Sequoyah Discrimination Case (2-2018-033)

Overview:

This investigation was initiated on August 22, 2019, to determine whether a former Tennessee Valley Authority (TVA) Site Licensing Manager (CI) employed at Sequoyah was discriminated against for engaging in protected activity.

By report dated October 3, 2019, the Office of Investigations (OI) substantiated the allegation.

Case background:

- Between 2015 and 2018, the former TVA Site Licensing Manager was involved with ongoing communications with Corporate Nuclear Licensing (CNL), which included the VP of Regulatory Affairs and the former Director of CNL, about how to respond to two non-cited violations (NCVs) issued by the NRC during an inspection. The CI attempted to address the NCVs but was unable to get them resolved with CNL in a timely manner, leaving Sequoyah in non-compliance for years. Raising concerns about regulatory non-compliance is a protected activity.
- During this time, the CI was also involved with several complaints and investigations involving the Employee Concerns Program (ECP), Human Resources (HR), and the TVA Office of General Counsel (OGC). In 2017, the CI filed two ECP complaints against the former Director of CNL. On March 9, 2018, the former Director of CNL submitted a formal complaint of harassment against the CI to stop his actions and behaviors regarding the NCVs and ECP complaints. In 2018, a draft TVA OGC report stated that the CI misused the ECP and said that this was a form of retaliation against the former Director of CNL. Using the ECP is considered a protected activity.
- On May 25, 2018, based on the draft TVA OGC report, the CI was placed on paid administrative leave, as recommended by the Senior VP of Engineering and Operations Support, and on August 16, 2018, the CI resigned from TVA.

Prima Facie Element Details

Element 1: Did the Employee Engage in Protected Activity? Yes

- The CI attempted numerous times to respond appropriately to the NCVs and raised concerns about regulatory non-compliance, which are considered protected activities.
- The CI filed ECP complaints against the former Director of CNL, which are considered protected activities.

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Element 2: Was an Adverse Action Taken Against the Employee? Yes

- On March 9, 2018, the former Director of CNL submitted a formal complaint against the CI. The formal complaint resulted in an investigation by TVA OGC.
- On May 25, 2018, the CI was put on paid administrative leave based on the draft TVA OGC report. He resigned on August 16, 2018.

Element 3: Was the Employer Aware of the Protected Activity at the Time of the Adverse Action? Yes

- The CI raised awareness of his concerns about non-compliance with the former Director of CNL and VP for Regulatory Affairs. The CI was also involved with several ECP complaints with the former Director of CNL. On March 9, 2018, the former Director of CNL submitted a formal complaint against the CI.
- The Senior VP of Engineering and Operations Support, TVA, said he was aware of the Service Life NCV issue, and was also aware of the ECP complaints. On May 25, 2018, he recommended that the CI be placed on paid administrative leave based on the TVA OGC report.

Element 4: Was the Adverse Action Taken, at least in part, because of the Protected Activities?
Yes

- On March 9, 2018, the former Director of CNL submitted the formal complaint of harassment against the CI to stop his actions and behaviors regarding the NCVs and ECP complaints. This complaint was ultimately investigated by TVA OGC. The draft TVA OGC report stated that the CI misused the ECP and was the basis for the CI being placed on paid administrative leave.
- On May 25, 2018, the Senior VP of Engineering and Operations Support, TVA, recommended that the CI be placed on paid administrative leave based on the draft TVA OGC report. The CI was placed on administrative leave on May 25, 2018, and ultimately resigned on August 16, 2018.

Preliminary Conclusion:

- The preponderance of the evidence indicated that the deliberate misconduct of the former Director of CNL and the Senior VP of Engineering and Operations Support, in violation of 10 CFR 50.5, caused TVA to be in violation of 10 CFR 50.7, the employee protection regulation.

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TVA Corporate Discrimination Case (2-2019-015)

Overview:

This investigation was initiated to determine whether a former Manager of Emerging Regulatory Issues employed by the TVA at the TVA Corporate Office in Chattanooga, TN, was the subject of discrimination for participating in a protected activity.

By report dated January 22, 2019, OI substantiated the allegation, including deliberate misconduct by two individuals.

Case background:

- Between 2016 and 2017, the CI was under the direct supervision of the former Director of CNL. During this time, the CI raised numerous safety concerns and submitted an allegation to the NRC regarding a chilled work environment.
- The CI contacted the VP of Regulatory Affairs with concerns that the former Director of CNL was creating a hostile work environment by retaliating against the individuals that raised safety concerns. Three previous ECP investigations within CNL confirmed a “work environment that could be found to be chilled” and a “perception of retaliation.”
- On March 9, 2018, the former Director of CNL filed a complaint with TVA accusing several employees, including the CI, of creating a hostile workplace and engaging in insubordinate conduct. In the complaint, the former Director of CNL specifically cited assertions made to the NRC about a chilled work environment as an example of retaliatory behavior imposed by the CI.
- The CI was placed on paid administrative leave on October 15, 2018 and terminated on January 14, 2019. The Notice of Termination cited the CI’s concerns of retaliation made to the Senior Attorney during the investigative interview and the CI’s statements to the VP of Regulatory affairs as contributing factors to the CI’s termination.

Prima Facie Element Details

Element 1: Did the Employee Engage in Protected Activity? Yes

- The CI raised numerous safety concerns and submitted an allegation to the NRC regarding a chilled work environment (RII-2017-A-0114) on July 24, 2017.
- The CI raised concerns of retaliation to the VP of Regulatory Affairs and the Senior Attorney during an investigation.

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Element 2: Was the Employer Aware of the Protected Activity at the Time of the Adverse Action? Yes

- The former Director of CNL believed that the CI was responsible for filing an allegation of a chilled work environment to the NRC and cited that as an example of retaliatory behavior in the formal complaint filed with TVA.
- The CI raised concerns of retaliation directly to the VP of Regulatory Affairs. The VP of Regulatory Affairs was also aware of concerns of retaliation made by the CI to the Senior Attorney during the investigation. The VP of Regulatory Affairs testified to the OI agent that the CI had raised these concerns on several occasions, verbally and in writing.

Element 3: Was an Adverse Action Taken Against the Employee? Yes

- The former Director of CNL filed a formal complaint with TVA accusing the CI of creating a hostile work environment. The formal complaint resulted in an investigation by TVA OGC that contributed to the CI's termination.
- The CI was placed on paid administrative leave by the VP of Regulatory Affairs on October 15, 2018 and terminated on January 14, 2019.

Element 4: Was the Adverse Action Taken, at least in part, because of the Protected Activities? Yes

- The formal complaint filed by the former Director of CNL cited assertions made to the NRC about a chilled work environment as an example of the CI's retaliatory behavior. The formal complaint resulted in an investigation by TVA OGC that contributed to the CI's termination.
- The Notice of Termination stated that the CI was being terminated, in part, for derogatory statements made about the former Director of CNL during an investigative interview with the Senior Attorney. These statements made by the CI related to concerns of retaliation.

Preliminary Conclusion:

Based on the evidence, the allegation that the CI was discriminated against for engaging in protected activities was substantiated. The preponderance of the evidence indicated that the deliberate misconduct of the former Director of CNL and the VP of Regulatory Affairs, in violation of 10 CFR 50.5, caused TVA to be in violation of 10 CFR 50.7, the employee protection regulation.

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Proposed Actions

SLI for TVA (Sequoyah): two violations

- Violation 1: Enforcement Policy Example 6.10.b.1, Severity Level II violation of 10 CFR 50.7: An executive-level corporate manager is the decisionmaker.
- The TVA Senior VP of Engineering and Operations Support (executive level corporate manager) is the decisionmaker who caused the CI to be put on paid administrative leave and eventually resign.
- A unique factor is present: The Senior VP of Engineering and Operations Support, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7.
- SLII with escalating factor results in SLI.
- Base civil penalty of \$300,000 for SLI. 2X Base due to no ID or CA credits. However, civil penalty capped at statutory maximum of \$303,471 due to single day violation.
- Violation 2: Enforcement Policy Example 6.10.c.1, Severity Level III violation of 10 CFR 50.7: A mid- or senior-level plant manager (or equivalent) or a corporate-level line manager (or equivalent) is the decisionmaker or plays a significant role in the adverse action decisionmaking process.
- The former Director of CNL (corporate level line-manager) played a significant role in the adverse action process. She initiated the complaint, after years of ongoing communications with the CI and multiple ECP/HR investigations, that led to the TVA OGC investigation and the CI's suspension.
- A unique factor is present: The former Director of CNL, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7
- SLIII with escalating factor results in SLII.
- Civil Penalty of \$300,000 (Base civil penalty of \$300,000 for SL I. 2X Base due to no ID or CA credits. However, civil penalty capped at statutory maximum (\$303,471) due to single day violation.
- Proposed next action: Choice letter

SLI for TVA (Corporate) two violations

- Violation 1: Enforcement Policy Example 6.10.b.1, Severity Level II violation of 10 CFR 50.7: An executive-level corporate manager is the decisionmaker.

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- The TVA VP of Regulatory Affairs (executive level corporate manager), is the decisionmaker who put the CI on paid administrative leave and played a significant role in the decision to terminate the CI.
- A unique factor is present: The VP of Regulatory Affairs, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7.
- SLII with escalating factor results in SLI.
- Civil Penalty of \$300,000 (Base civil penalty of \$300,000 for SL I. 2X Base due to no ID or CA credits. However, civil penalty capped at statutory maximum (\$303,471) due to single day violation.
- Violation 2: Enforcement Policy Example 6.10.c.1, Severity Level III violation of 10 CFR 50.7: A mid- or senior-level plant manager (or equivalent) or a corporate-level line manager (or equivalent) is the decisionmaker or plays a significant role in the adverse action decisionmaking process.
- The former Director of CNL (corporate level line-manager) played a significant role in the adverse action process. She played a significant role initiating an investigation against the CI, with the expectation of an adverse action, by filing a formal complaint with TVA accusing the CI of retaliatory behavior for contacting the NRC with concerns of a chilled work environment.
- Two unique factors are present: 1) the former Director of CNL, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7 and 2) the adverse action was taken, in part, because the CI had contacted the NRC with concerns about a chilled work environment.
- SLIII with escalating factor results in SLII.
- Civil Penalty of \$300,000 (Base civil penalty of \$300,000 for SL I. 2X Base due to no ID or CA credits. However, civil penalty capped at statutory maximum (\$303,471) due to single day violation.
- Proposed next action: Choice letter

**One choice letter to TVA offering ADR or PEC,
Four violations, 4 X 303,471 = \$1,213,884**

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SLI - Individual Action for Senior VP of Engineering and Operations Support

- Enforcement Policy Example 6.10.b.1, Severity Level II violation of 10 CFR 50.7: An executive-level corporate manager the decisionmaker.
- The Senior VP of Engineering and Operations Support (executive level corporate manager) is the decisionmaker who caused the CI to be put on paid administrative leave and eventually resign because he, in part, used the ECP.
- A unique factor is present: The Senior VP of Engineering and Operations Support, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7.
- SLII with escalating factor results in SLI.
- Given the Senior VP of Engineering and Operations Support and the significance of these actions, a 5-year ban is proposed.
- Proposed next action: Letter - PEC

SLI - Individual Action for VP of Regulatory Affairs

- Enforcement Policy Example 6.10.b.1, Severity Level II violation of 10 CFR 50.7: An executive-level corporate manager is the decisionmaker.
- The TVA VP of Regulatory Affairs (executive level corporate manager), is the decisionmaker who put the CI on paid administrative leave and played a significant role in the decision to terminate the CI.
- A unique factor is present: The VP of Regulatory Affairs, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7.
- SLII with escalating factor results in SLI.
- Given the VP of Regulatory Affairs position and the significance of these actions, a 5-year ban is proposed.
- Proposed next action: Letter - PEC

SL II - Individual Action for the former Director of CNL (one violation, two examples)

- Enforcement Policy Example 6.10.c.1, Severity Level III violation of 10 CFR 50.7: A mid- or senior-level plant manager (or equivalent) or a corporate-level line manager (or

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equivalent) is the decisionmaker or plays a significant role in the adverse action decisionmaking process.

- Example 1: The former Director of CNL initiated the complaint, after years of ongoing communications with the CI and multiple ECP/HR investigations, that led to the TVA OGC investigation and the CI's suspension (Sequoyah).
- Example 2: The former Director of CNL played a significant role initiating an investigation against the CI, with the expectation of an adverse action, by filing a formal complaint with TVA accusing the CI of retaliatory behavior for contacting the NRC with concerns of a chilled work environment (Corporate).
- Two unique factors are present: 1) the former Director of CNL, in violation of 10 CFR 50.5, deliberately caused TVA to be in violation of 10 CFR 50.7 and 2) the adverse action was taken, in part, because the CI had contacted the NRC with concerns about a chilled work environment.
- SLIII with escalating factor results in SLII.
- Given the former Director of CNL's position and the significance of these actions, a 1-year ban is proposed.
- Proposed next action: Letter – PEC

One violation with two examples (Sequoyah and Corporate); 1-year ban

Next Steps:

- Conduct a call with Senior VP of Engineering and Operations Support, the VP of Regulatory Affairs, and the former Director of CNL, to offer PEC only.
- Conduct a call with TVA to offer ADR or PEC.
- Letters will be issued by HQ (OE has the lead). The drafts will be provided to the Region for review. The letters will be sent to OGC for NLO. Redacted OI reports will be included with these letters.
- OE will contact the CIs to offer them the opportunity to attend the PECs for the individuals.
- If the TVA chooses ADR, OE will contact the CIs to solicit any potential corrective actions; however, OE will not offer them the opportunity to participate in the actual ADR mediation session.
- Individual PECs to be held before TVA.

[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 2-2019-015)

Dear X:

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 (2-2019-015).

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, 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 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 2-2019-015 was to determine whether a former Manager of Emerging Regulatory Issues employed by TVA at Watts Bar I was the subject of employment discrimination for participating in a protected activity in violation of the NRC's

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“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 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 [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.

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

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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 2-2019-015. 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.

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

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<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
B. Hughes
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.

Violations for 2-2018-033:

Contrary to the above, on March 9, 2018, Tennessee Valley Authority (TVA) corporate management discriminated against a former Site Licensing Manager employed at Sequoyah Nuclear Plant for engaging in a protected activity. Specifically, the former Director of Corporate Nuclear Licensing filed a formal complaint against the employee based, in part, on filing ECP complaints, which is a protected activity. The formal complaint initiated an investigation by the TVA Office of the General Counsel that resulted in the employee being placed on paid administrative leave and eventually resign.

Contrary to the above, on May 25, 2018, Tennessee Valley Authority (TVA) corporate management discriminated against a former Site Licensing Manager employed at the TVA Sequoyah Nuclear Plant for engaging in protected activities. Specifically, the Senior Vice President of Engineering and Operations Support, TVA, recommended that the employee be placed on paid administrative leave which led to the employee's resignation, based, in part, on filing ECP complaints, which is a protected activity.

Violations for 2-2019-015:

Contrary to the above, between October 15, 2018, and January 14, 2019, Tennessee Valley Authority (TVA) corporate management discriminated against a former Manager of Emerging Regulatory Issues employed at the TVA Corporate Office for engaging in protected activities. Specifically, the Vice President of Regulatory Affairs placed the employee on paid administrative leave and played a significant role in terminating the employee. As contributing factors for these adverse actions, the Vice President of Regulatory Affairs cited the employee's statements made during a TVA Office of the General Counsel investigation and fear of retaliation communicated by the employee to the Vice President of Regulatory Affairs, which are protected activities.

Contrary to the above, on March 9, 2018, Tennessee Valley Authority (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 Director of Corporate Nuclear Licensing filed a formal complaint against the employee based, in part, for contacting the NRC with concerns of a chilled work environment, which is a protected activity. The formal complaint initiated an investigation by the TVA Office of the General Counsel that resulted in termination of the employee.

[Date]

IA-2020-009

Ms. Erin Henderson

ADDRESS REMOVED

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

Dear Ms. Henderson:

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 (2-2019-015).

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 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 used the TVA Employee Concerns Program (ECP), including filing two complaints against you. On March 9, 2018, you 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 draft TVA OGC report, provided to TVA management on May 25, 2018, stated that the former employee used the ECP as a form of retaliation against you. On May 25, 2018, based on this report, the former employee was placed on paid administrative leave at your recommendation. The NRC determined that the former employee was placed on paid administrative leave.

The purpose of the NRC OI investigation 2-2019-015 was to determine whether a former Manager of Emerging Regulatory Issues employed by TVA at Watts Bar I 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 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

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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 you were 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 you were retaliating against other TVA employees that had raised safety concerns and was concerned about retaliatory actions from you. 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 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 pre-decisional 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 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

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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 employee to cross-examine or question each other.

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.

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 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. 2-2019-15
(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.

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, on March 9, 2018, 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 filed a formal complaint against a former Manager of Emerging Regulatory Issues based, in part, for contacting the NRC with concerns of a chilled work environment, which is a protected activity. The formal complaint initiated an investigation by the TVA Office of the General Counsel that resulted in termination of the employee. In addition, you filed a formal complaint against a former TVA Site Licensing Manager based, in part, for filing concerns with the TVA Employee Concerns Program, which is a protected activity. The formal complaint initiated an investigation by the TVA Office of the General Counsel that resulted in the employee being placed on administrative leave.

[Date]

IA-2020-008

Mr. Joseph Shea

ADDRESS REMOVED

SUBJECT: APPARENT VIOLATIONS 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 at Watts Bar I was the subject of employment 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 (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 you. 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 action taken against the former employee was in apparent violations 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 VP of Regulatory Affairs, 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.

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The apparent violation, which is based on the NRC's OI investigation 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 pre-decisional 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 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.

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 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

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.

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.

[Date]

IA-2020-022

[REDACTED]
ADDRESS REMOVED

SUBJECT: APPARENT VIOLATION OF EMPLOYEE PROTECTION REQUIREMENT
(OFFICE OF INVESTIGATIONS REPORT NOS. 2-2018-033)

Dear [REDACTED]:

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) Sequoyah Nuclear Plant (Sequoyah), completed on October 3, 2019 (2-2018-033). 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, 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 used the TVA Employee Concerns Program (ECP), including filing two complaints against the former Director of CNL. You were aware of these ECP complaints. On March 9, 2018, the former Director of CNL 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 draft TVA OGC report, provided to TVA management on May 25, 2018, stated that the former employee used the ECP as a form of retaliation against the former Director of CNL. On May 25, 2018, based on this report, the former employee was placed on paid administrative leave at your recommendation. The NRC determined that the former employee was placed on paid administrative leave, in part, for engaging in protected activities.

The NRC staff reviewed the evidence gathered during the NRC OI investigation and determined that the action taken against the former employees was in apparent violations 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 Senior VP of Engineering and Operations Support, engaged in deliberate misconduct that caused an NRC licensee (TVA) 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.

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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 pre-decisional 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 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.

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 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 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
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B. Hughes, NRR
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OE R/F.

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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, on May 25, 2018, 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 recommended that the employee be placed on paid administrative leave which led to the employee's resignation, based, in part, on the employee's use of the Employee Concerns Program, which is a protected activity.