

From: JSheaIA-Hearing Resource
Sent: Wednesday, February 17, 2021 8:22 PM
To: JSheaIA-HearingNPEm Resource
Subject: TVA discrimination letters - OOU attachments
Attachments: ML21041A380_Redacted.pdf

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1315

Mail Envelope Properties (0a18379c229848d294841bd987cc1459)

Subject: TVA discrimination letters - OUO attachments
Sent Date: 2/17/2021 8:22:14 PM
Received Date: 2/17/2021 8:22:15 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	2/17/2021 8:22:15 PM
ML21041A380_Redacted.pdf	232110	

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

From: Gifford, Ian
Sent: Tuesday, February 25, 2020 8:17 AM
To: Kowal, Mark; Sparks, Scott; Jackson, Donna
Cc: Wilson, George; Thompson, Catherine; Solorio, Dave
Subject: TVA discrimination letters - OUO attachments
Attachments: Choice Letter-TVA_2-24-2020.docx; [REDACTED].docx; PEC Letter-Henderson_2-24-2020.docx; PEC Letter-Shea_2-24-2020.docx

Attachments are OUO – Predecisional Enforcement Information

Good morning Mark, Scott, and Donna:

Here are the draft letters that we sent to OGC this morning for the TVA discrimination cases. The attachments include:

- Choice Letter to TVA offering PEC or ADR
- [REDACTED] (PEC only)
- Conference Letter to VP of Regulatory Affairs (PEC only)
- Conference Letter to Director of CNL (PEC only)

We plan to send out a draft communication plan later this afternoon. As I discussed with Mark this morning, the exact date for sending the letters is still being scheduled (likely this Friday or early next week). Once I get definitive word from George Wilson, I will let you know.

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 OUO – Predecisional Enforcement Information

Hearing Identifier: JShea_IA_NonPublic
Email Number: 766

Mail Envelope Properties (BL0PR0901MB449985BDC53055304F6A7F45EAED0)

Subject: TVA discrimination letters - OUO attachments
Sent Date: 2/25/2020 8:16:30 AM
Received Date: 2/25/2020 8:16:30 AM
From: Gifford, Ian

Created By: Ian.Gifford@nrc.gov

Recipients:

"Wilson, George" <George.Wilson@nrc.gov>
Tracking Status: None
"Thompson, Catherine" <Catherine.Thompson@nrc.gov>
Tracking Status: None
"Solorio, Dave" <Dave.Solorio@nrc.gov>
Tracking Status: None
"Kowal, Mark" <Mark.Kowal@nrc.gov>
Tracking Status: None
"Sparks, Scott" <Scott.Sparks@nrc.gov>
Tracking Status: None
"Jackson, Donna" <Donna.Jackson@nrc.gov>
Tracking Status: None

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

Files	Size	Date & Time
MESSAGE	1031	2/25/2020 8:16:30 AM
Choice Letter-TVA_2-24-2020.docx	40204	
[REDACTED].docx	35972	
PEC Letter-Henderson_2-24-2020.docx	36779	
PEC Letter-Shea_2-24-2020.docx	35258	

Options

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

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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 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 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 for harassment and creating an environment that could negatively impact the safety conscious work environment (SCWE), and 2) in July 2017, the former employee filed a complaint with ECP against the former Director of CNL for mentioning the 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 to stop the former employee's communications and actions, which led to a TVA Office of General Council (OGC) investigation. On May 25, 2018, a draft report from the TVA OGC investigation was given to TVA management which stated that the former employee used the ECP as a form of retaliation against the former Director of CNL. On May 25, 2018, the former employee was placed on paid administrative leave at the recommendation of the [REDACTED]. The former employee was kept on paid administrative leave for an extended period before resigning on August 16, 2018, believing that

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they 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 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 placed on paid administrative leave on October 15, 2018, and terminated on January 14, 2019, in part, for engaging in protected activities. Between 2016 and 2017, the former employee raised numerous safety concerns, including: violations of the Part 26 Fatigue Rule requirements at Watts Bar 2; failure to adhere to the Fukushima requirements at Sequoyah; concerns regarding a Watts Bar 2 surveillance extension request; and failure to meet NRC commitments in Information Notice 2017-3 to identify Anchor Darling double disc gate valve susceptibility to failure at Brown Ferry. On July 24, 2017, the former employee submitted an allegation to the NRC raising concerns that the former Director of 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. On March 9, 2018, the former Director of CNL 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, 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 former employee. The former employee reported concerns of retaliation and a hostile work environment to the VP of Regulatory Affairs and the TVA attorney during the investigative interview. Contacting the NRC and raising concerns of a chilled work environment are protected activities.

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:

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(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 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 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.

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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. 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

Docket Nos.: 05000259, 05000260, 05000296, 05000327, 05000328, 05000390, 05000391
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. 2-2019-015
(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 part, 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.

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 filing complaints with the Employee Concerns Program. 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 contacting the NRC with allegations 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 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 retaliation 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]
ADDRESS REMOVED

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

[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 resignation, 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 former employee remained on paid administrative leave for an extended time period before resigning. 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 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

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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.

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 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

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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 part, 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, in part, 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 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], recommended that the former employee be placed on paid administrative leave for nearly three months, until at which point, the former employee resigned. 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 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, and remained on paid administrative leave for an extended time period before resigning. The NRC determined that the former employee was placed on paid administrative leave, in part, for 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 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

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valve susceptibility to failure at Brown Ferry. On July 24, 2017, the former employee submitted an allegation to the NRC 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. 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 assertions made 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

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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.

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 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. 2-2019-015
(EXEMPT FROM PUBLIC DISCLOSURE)

DISTRIBUTION: WITHOUT ENCLOSURES

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

Apparent Violation

10 CFR 50.7 (a) states, in part, 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, in part, 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 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 filing complaints with the Employee Concerns Program and the former Manager of Emerging Regulatory Issues engaged in a protected activity by contacting the NRC with allegations 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 Brown Ferry. On July 24, 2017, the former employee submitted an allegation to the NRC raising concerns that the former Director of Corporate Nuclear Licensing (CNL) was creating a chilled work environment, among other issues. The former employee also wrote condition reports and discussed safety issues during meetings. The former employee believed that the former Director of CNL was retaliating against other TVA employees that had raised safety concerns and was concerned about retaliatory actions from the former Director of CNL. The former employee reported concerns of retaliation and a hostile work environment to you. The former employee also raised concerns of retaliation to a TVA attorney during an investigative interview. Contacting the NRC and raising concerns of a chilled work environment are protected activities.

The NRC staff reviewed the evidence gathered during the NRC OI investigation and determined that the actions taken against the former employee were in apparent violation of the NRC's rule prohibiting deliberate misconduct, 10 CFR 50.5 (a). Based on the evidence developed during the investigation and subsequent staff analysis, it appears that you, as the Vice President of Regulatory Affairs, engaged in deliberate misconduct that caused an NRC licensee 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

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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 violations, and the number of violations, may change as a result of further NRC review.

Before the NRC makes its enforcement decision, a closed predecisional enforcement conference (PEC) will be held to discuss the apparent violation. The NRC will contact you to determine a mutually agreeable date, time, and location for the PEC. The PEC will be closed to public observation since it is associated with an OI report, and the results have not been publicly released. Additionally, the conference will be transcribed. This conference is being held to obtain information to assist the NRC in making an enforcement decision. This may include information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned. The conference will include an opportunity for you to provide your perspective on these matters and any other information that you believe the NRC should take into consideration in making an enforcement decision. A PEC should be held within 30 days of the date of this letter.

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

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

A copy of this letter and its enclosures will not be made publicly available at this time. However, if the NRC subsequently issues an enforcement action to you, in accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. In addition, this letter will be maintained by the

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Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Sincerely,

George Wilson, Director
NRC Office of Enforcement

Enclosures:

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

DISTRIBUTION: WITHOUT ENCLOSURES

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Apparent Violations

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10 CFR 50.5 (a) states, in part, 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 discriminate against a former TVA Manager of Emerging Regulatory Issues for engaging in a protected activity. Specifically, the former employee engaged in a protected activity by raising concerns of retaliation 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.