

Summary of the Licensee's Response to the Violation

The licensee provides three reasons for its denial of the violation. These are that: (1) there is no evidence of retaliatory intent; (2) legitimate performance evaluations were the basis for the decisions made regarding the SRO; and (3) objective performance evaluations which were the basis for the licensee's actions are not prohibited under 10 CFR §50.7.

NRC's Evaluation of Licensee's Response to the Violation

The licensee has not provided any new information that it had not provided before, or that was not considered by the NRC when it issued the Notice of Violation. As explained in the cover letter that forwarded the Notice of Violation to the licensee, notwithstanding the licensee's assertion that the actions taken against the SRO were for legitimate business reasons, the example of the SRO's performance weaknesses cited by the licensee as the basis for the employment actions were related to the raising of nuclear safety concerns, and were protected. Therefore, actions taken against the SRO on this basis were prohibited. In addition, although the licensee characterizes the decisions made by the SRO as examples of "performance weaknesses," in reality they were matters in which the SOS had the authority to act but failed to do so. The SOS was therefore equally responsible for the resolution of these matters, yet no adverse action was taken against him by the licensee. This fact supports the NRC's conclusion that the SRO was discriminated against because he had engaged in protected activity. In addition, the NRC disagrees with the licensee's assertion that there is no evidence of retaliatory intent. The NRC believes that there is an adequate evidentiary basis for a reasonable inference of some motivation relating to the protected activity that contributed to the decision to take the adverse action. Among other things, this inference can be drawn from the fact that one of the examples cited as a basis for the adverse action specifically involved a safety issue in which the SRO had disagreed with the SOS.

EJ
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