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Subject: XXXXXX EAW NRC 1260 2-19-2020
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Priority: Normal
Return Notification: No
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ENFORCEMENT ACTION WORKSHEET

EA#:	EA-2020-013
Date of Panel:	February 19, 2020
Licensee:	Senior VP of Engineering and Operations Support, TVA
Facility/Location:	Sequoyah
Licensee Type:	Individual
Docket No(s):	
Inspection Report No(s):	
Date of Exit Meeting:	
Date of IR or Choice Letter Issuance:	
ML Number of case documents (if known):	
OI Report No:	2-2018-033
OI Report Date:	October 3, 2019
Inspector:	

1. Summary of Issues Considered for Escalated Enforcement:

This investigation determined whether a former TVA Site Licensing Manager employed at Sequoyah was discriminated against for engaging in protected activity, in violation of 10 CFR 50.5, the deliberate misconduct regulation, which caused the licensee to be in violation of 10 CFR 50.7, the employee protection regulation. Summary attached

- 2. Is willfulness involved?** Yes
- OI's determination: Deliberate
 - OGC's determination: Deliberate
 - Regional determination: N/A

3. Regional Recommendation:

OE recommends the escalated enforcement process for the Senior VP of Engineering and Operations Support, TVA.

- Number of Apparent Violations (AV): 1

ENFORCEMENT ACTION WORKSHEET (continued)

Apparent Violation #: 1

Brief statement of violation (e.g. inadequate survey, 10 CFR 20.1501):

The CI at TVA Sequoyah was discriminated against for engaging in protected activity, in violation of 10 CFR 50.5 and 10 CFR 50.7.

Background information:

Between 2015 and 2018, the Concerned Individual (CI), the former TVA Site Licensing Manager, was involved with ongoing communications with Corporate Nuclear Licensing (CNL), which included the former Director of CNL and the Vice President (VP) of Regulatory Affairs, about how to respond to two non-cited violations (NCVs) issued by the NRC during an inspection. In addition, the CI was involved with several complaints and investigations involving the Employee Concerns Program (ECP), Human Resources (HR), and the TVA Office of General Counsel (OGC). On May 25, 2018, the CI was placed on paid administrative leave and on August 16, 2018, the CI resigned from TVA:

Between 2015 and 2018 the CI was involved in numerous discussions, disagreements and meetings with CNL regarding the Service Life NCV and the Kirk Key NCV. These violations were identified by the NRC during an inspection and required a response, either submit a denial letter or implement corrective actions, within 30 days. However, CNL told the CI to provide only informational letters, which was out of process for both TVA and the NRC. The CI told CNL on numerous occasions, via phone discussions, meetings, emails, texts, and a CAP, that they were in non-compliance and needed to deny the NCV or implement corrective actions. Sequoyah did not provide an appropriate response until 2017 and 2018, leaving them in non-compliance for over two years. The CI's numerous inquiries and attempts to respond appropriately to these NCVs and to raise concerns about regulatory non-compliance are considered protected activities.

The CI was involved in several ECP complaints. In 2017, the CI filed two ECP complaints against the former Director of CNL. In March 2018, with full support of the VP of Regulatory Affairs, the former Director of CNL submitted a formal complaint to HR and the VP of Regulatory Affairs of harassment against the CI. This complaint was investigated by TVA OGC. On May 25, 2018, the 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. The draft TVA OGC report was used as a basis for placing the CI on administrative leave. Using the ECP is considered protected activity.

On May 25, 2018, the CI was placed on paid administrative leave as recommended by the Senior VP of Engineering and Operations Support, based on the draft TVA OGC report, and knowing that the CI had used the ECP. For the next three months the CI attempted to return to work by submitting a recovery plan and maintaining contact with his management. The CI was given inconsistent information on the status of his employment during this time and remained on paid administrative leave until he resigned in August 2018, believing that he was ultimately going to be terminated from employment.

- Proposed Severity Level (SL): Escalate to SL I for Willful

ENFORCEMENT ACTION WORKSHEET (continued)

● Basis for SL (Enf. Policy Violation Example):

Basis for SL (Enf. Policy Violation Example): In certain cases, the severity level of a violation may be escalated based on unique escalating factors such as whether the adverse action was taken because the employee had contacted the NRC or whether the applicable NRC employee protection regulation (e.g., 10 CFR 50.7 or similar NRC employee protection regulations) was deliberately violated.

Enforcement Policy Example 6.10.b.1, Severity Level II violation of 10 CFR 50.7: An executive-level corporate manager (or equivalent) (which for this definition includes a site vice president) is the decisionmaker or plays a significant role in the adverse action decisionmaking process regardless of the severity of the adverse action but without an escalating factor present.

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, in part, he used the ECP. The CI reported the adverse action to the NRC on August 13, 2018. 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.

● Actual Consequences: No

● Potential Consequences: Yes

● Impacting the Regulatory Process: No

● **If "Yes" was answered to any of the three preceding questions, Explain:**
Potential chilling effect on other employees.

● Willful: Yes

● Civil Penalty Warranted (explain):
no

● Identification Credit: No - NRC Identified

● Corrective Action Credit: No

● Describe/List Corrective Actions:

● Previous Escalated Enforcement (Last 2 yrs or 2 Inspections): Choose an item:

● Discretion to mitigate/escalate the CP: Choose an item:

● Explain Bases for discretion:

● Proposed next action: Choice letter (Written/PEC/ADR)

ENFORCEMENT ACTION WORKSHEET (continued)

Empty workspace for enforcement action worksheet.

ENFORCEMENT ACTION WORKSHEET (continued)

4. Individual Actions: Select One

Number of IAs:

Add IA

Delete IA

5. Is there a root cause, generic issues/communications, lessons learned, relevant similar cases, or other information that should be considered?

See attached Sequoyah case summary and Prima Facie Analysis, also Watts Bar 1.

6. Any Additional Information?

See other TVA cases (tiger team).

7. Draft NOV(s):

Title 10 of the Code of Federal Regulations (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 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 suspension of nearly three months until the employee resigned. This action was, based, in part, on filing ECP complaints, which is a protected activity.

ENFORCEMENT ACTION WORKSHEET (continued)

Guidance for completing the Enforcement Action Worksheet

* **NOTE:** All sections of the EAW are not required to be filled in. Only pertinent information is required to fully explain the issues.

EA: Issued by Enforcement Staff (Headquarters or Regional)

Date of Panel:

Licensee:

Facility/Location:

Licensee Type:

Docket No(s):

Program Code: **If known**

Inspection report No(s): **If known**

Date of Exit Meeting: **If known**

Date of IR or Choice Letter issuance: **If known**

ML Number of case documents: **If known**

OI Report No: **If known**

OI Report Date: **If known**

1. Provide a brief/concise description of the issue. Any information which is pertinent to the issue should be included. A summary of a draft inspection report or executive summary may also be included or attached. Attach a copy of the "Draft" NOV as Attachment 1 to the completed EAW.
2. If known, choose the appropriate response in the drop-down menu. OI's determination should be located in the OI synopsis; OGC's may or may not be known when the inspector is completing the EAW, Regional enforcement personal may be able to provide this information and choose the Regional determination of the issues.
3. Choose the appropriate number of Apparent Violations. For each AV beyond the first one, click the "Add Apparent Violation" button and a page will be added for the new AV. Choose the appropriate responses for each question.
4. Choose the appropriate response for Individual Actions (Yes, No) and specify the number of individual actions. If individual actions are warranted, complete the questions listed for the individual action. If more than one individual action is needed, click the "Add Individual Action" button and a section will be added for the next individual. Choose the appropriate responses for each question.
5. Explain as necessary (e.g. describe results of root cause, brief/concise listing of generic issues/communications, lessons learned, relevant similar cases, or other information that should be considered.
6. Provide any additional information needed to support the case that wasn't mentioned in any of the other sections in the EAW.
7. To print the EAW, click the "Print EAW" button. This will allow the form to be printed without the buttons and directions (this page) appearing in the final document.