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Sent: Monday, March 8, 2021 6:18 PM
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Subject: TVA Imposition Order Appendix revision DRAFT
Attachments: TVA Imposition Order Appendix revision DRAFT.docx

Hearing Identifier: JShea_IA_NonPublic
Email Number: 1328

Mail Envelope Properties (270f7bbada384f41911828b36c5984ce)

Subject: TVA Imposition Order Appendix revision DRAFT
Sent Date: 3/8/2021 6:17:54 PM
Received Date: 3/8/2021 6:17:55 PM
From: JShealA-Hearing Resource

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

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Tracking Status: None

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APPENDIX

EVALUATION AND CONCLUSION

On August 24, 2020, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for four violations identified during two NRC investigations: Report of Investigation (ROI) No. 2-2018-033, completed on October 3, 2019, and ROI No. 2-2019-015, completed on January 21, 2020. Tennessee Valley Authority (TVA) (Licensee) responded to the Notice on September 23, 2020. The Licensee denied all four violations and stated that if the NRC continues to believe that the violations occurred, then at a minimum the NRC should reduce the severity levels of the alleged violations and commensurately reduce the civil penalty. An Order Imposing Civil Monetary Penalty was issued to the Licensee by letter dated October 29, 2020, and Commission Order, CLI-21-03, was issued on January 15, 2021. The NRC's evaluation and conclusion in light of the Commission Order is as follows:

Restatement of Disputed Violation 1

Title 10 of the *Code of Federal Regulations* (10 C.F.R.) § 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.”

Contrary to the above, on March 9, 2018, TVA discriminated against a former Sequoyah employee for engaging in protected activity. Specifically, the former Sequoyah employee engaged in protected activity by raising concerns regarding a chilled work environment, filing complaints with the Employee Concerns Program (ECP), and by raising concerns regarding the response to two non-cited violations. After becoming aware of this protected activity, the former Director of Corporate Nuclear Licensing (CNL) filed a formal complaint against the former employee. The filing of a formal complaint triggered an investigation by the TVA Office of the General Counsel (TVA OGC). This action was based, at least in part, on the former employee engaging in protected activity.

Restatement of Disputed Violation 2

10 C.F.R. § 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.”

Contrary to the above, on May 25, 2018, TVA discriminated against a former Sequoyah employee for engaging in a protected activity. Specifically, the former Sequoyah employee engaged in protected activity by raising concerns about a chilled work environment, filing complaints with the ECP, and raising concerns about the regulatory response the Kirk Key and Service Life non-cited violations. After becoming aware of this protected activity, TVA placed the former employee on paid administrative leave until the former employee resigned in August 2018. This action was based, at least in part, on the former employee engaging in protected activity.

Restatement of Disputed Violation 3

10 C.F.R. § 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.”

Contrary to the above, on March 9, 2018, TVA discriminated against a former corporate employee for engaging in protected activity. Specifically, the former corporate employee engaged in protected activity by raising concerns of a chilled work environment. After becoming aware of this protected activity, the former Director of CNL filed a formal complaint against the former employee. The filing of a formal complaint triggered an investigation by the TVA OGC 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.

Restatement of Disputed Violation 4

10 C.F.R. § 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.”

Contrary to the above, on January 14, 2019, TVA discriminated against a former corporate employee for engaging in protected activity. Specifically, the former corporate employee engaged in protected activity by raising concerns of a chilled work environment to the former Vice President of Regulatory Affairs and a TVA attorney during a TVA OGC investigation. After becoming aware of this protected activity, the former Vice President of Regulatory Affairs played a significant role in the decisionmaking process to place the former employee on paid administrative leave and terminate the former employee. These actions were based, at least in part, on the former employee engaging in a protected activity.

NRC Evaluation of Licensee's Request for Mitigation of Civil Penalty Amount

In light of the Commission Order, the NRC staff determined that a reduction of the severity levels for violations 1, 3, and 4 is appropriate. The NRC staff determined that the severity level for violation 2 should remain as Severity Level II.

By letter dated January 22, 2021, the NRC staff rescinded the Notice of Violation related to deliberate misconduct associated with violations 1 and 3. Absent the deliberate misconduct escalating factor, the NRC staff reduced the severity levels of violations 1 and 3 from Severity Level II to Severity Level III. In making its determination for violations 1 and 3, the NRC staff used example c.1 from Section 6.10 of the NRC Enforcement Policy, which provides that a Severity Level III violation involves, for example “[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 employment action is relatively less adverse to the employee’s terms, conditions, compensation, or privileges of employment (e.g., verbal counseling); and no escalating factor is present.”

By letter dated January 22, 2021, the NRC staff rescinded the Order related to deliberate misconduct associated with violation 4. Absent the deliberate misconduct escalating factor, the NRC staff reduced the severity level of violation 4 from Severity Level I to Severity Level II. In making its determination for violation 4, the NRC staff used example b.1 from Section 6.10 of the NRC Enforcement Policy, which provides that a Severity Level II violation involves, for example “[a]n 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.”

Civil Penalty

Because these changes result in two Severity Level II problems, each with a Civil Penalty of \$303,471, the total amount of the Civil Penalty of \$606,942 remains as stated in the October 29, 2020, Order Imposing Civil Penalty.

NRC Conclusion

Based on its evaluation, the NRC staff determined that a reduction of the severity levels for violations 1, 3, and 4 is appropriate. The NRC staff determined that the severity level for violation 2 should remain as Severity Level II. The civil penalty in the amount of \$606,942 should be imposed.

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