

From: Gifford, Ian
Sent: Wednesday, February 3, 2021 11:51 AM
To: Wilson, George
Cc: Thompson, Catherine; Solorio, Dave; Hilton, Nick
Subject: revised TVA letter with CP discussion
Attachments: TVA letter revision DRAFT 2.3.21.docx

George,

As requested, the attached draft letter to TVA adds additional discussion on the CP calculation and impact of rescinding deliberate misconduct. Specifically, these two paragraphs were added:

In accordance with the NRC's Enforcement Manual, a problem should be assigned the severity level of the most significant violation within the problem. The NRC staff grouped Violations 1 and 2 into a Severity Level II problem. Because Violation 2 was not originally escalated for deliberate misconduct and remains at Severity Level II, the problem remains at Severity Level II as outlined in the October 29, 2020, Order Imposing Civil Penalty. The NRC staff grouped Violations 3 and 4 into a Severity Level II problem. Because Violation 4 was reduced from Severity Level I to Severity Level II, the problem is reduced from its original Severity Level I in the October 29, 2020, Order Imposing Civil Penalty to Severity Level II.

In accordance with the NRC's Enforcement Policy, each Severity Level II problem is assessed a base civil penalty of \$240,000. When the NRC determines that credit for identification and corrective action is not warranted, as in this case, the base civil penalty is doubled. Therefore, the civil penalty for each Severity Level II problem is \$480,000. For comparison, the civil penalty for the Severity Level I problem outlined in the October 29, 2020, Order Imposing Civil Penalty was \$600,000. However, the maximum civil monetary penalty for a single day violation is limited to \$303,471 in 10 C.F.R. § 2.205, "Civil penalties." This maximum cap results in the same maximum civil penalty for Severity Level I and Severity Level II problems without credit for identification and corrective action. Therefore, the assessed civil penalty for each Severity Level II problem is \$303,471, resulting in a total civil penalty of \$606,942.

Please let me know if you have any questions or comments. Once we agree on the content, I will send it to Sara for OGC review.

Thanks,
Ian

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From: Gifford, Ian

Created By: Ian.Gifford@nrc.gov

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Tracking Status: None

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February XX, 2021

EA-20-006

EA-20-007

Mr. Jim Barstow
Vice President Nuclear Regulatory Affairs
& Support Services
Tennessee Valley Authority
1101 Market Street, LP 4A-C
Chattanooga, TN 37402-2801

SUBJECT: REDUCTION OF SEVERITY LEVELS IN THE OCTOBER 29, 2020, ORDER
IMPOSING CIVIL PENALTY – TENNESSEE VALLEY AUTHORITY

Dear Mr. Barstow:

This letter refers to the U.S. Nuclear Regulatory Commission's (NRC) October 29, 2020, "Order Imposing Civil Penalty - \$606,942 – Tennessee Valley Authority." The Order regarded four violations of Title 10 of the *Code of Federal Regulations* (10 C.F.R.) § 50.7, "Employee Protection," identified during two investigations completed on October 3, 2019, and January 21, 2020, by the NRC's Office of Investigations (OI) relating to activities at the Tennessee Valley Authority (TVA).

In light of the Commission Order in CLI-21-03, 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.”

In accordance with the NRC’s Enforcement Manual, a problem should be assigned the severity level of the most significant violation within the problem. The NRC staff grouped Violations 1 and 2 into a Severity Level II problem. Because Violation 2 was not originally escalated for deliberate misconduct and remains at Severity Level II, the problem remains at Severity Level II as outlined in the October 29, 2020, Order Imposing Civil Penalty. The NRC staff grouped Violations 3 and 4 into a Severity Level II problem. Because Violation 4 was reduced from Severity Level I to Severity Level II, the problem is reduced from its original Severity Level I in the October 29, 2020, Order Imposing Civil Penalty to Severity Level II.

In accordance with the NRC’s Enforcement Policy, each Severity Level II problem is assessed a base civil penalty of \$240,000. When the NRC determines that credit for identification and corrective action is not warranted, as in this case, the base civil penalty is doubled. Therefore, the civil penalty for each Severity Level II problem is \$480,000. For comparison, the civil penalty for the Severity Level I problem outlined in the October 29, 2020, Order Imposing Civil Penalty was \$600,000. However, the maximum civil monetary penalty for a single day violation is limited to \$303,471 in 10 C.F.R. § 2.205, “Civil penalties.” This maximum cap results in the same maximum civil penalty for Severity Level I and Severity Level II problems without credit for identification and corrective action. Therefore, the assessed civil penalty for each Severity Level II problem is \$303,471, resulting in a total civil penalty of \$606,942.

In accordance with 10 C.F.R. § 2.390 of the NRC’s “Rules of Practice,” a copy of this letter will be made available electronically for public inspection in the NRC Public Document Room and from the NRC’s Agencywide Document Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

George A. Wilson, Director
Office of Enforcement

SUBJECT: REDUCTION OF SEVERITY LEVELS IN THE OCTOBER 29, 2020,
ORDER IMPOSING CIVIL PENALTY – TENNESSEE VALLEY
AUTHORITY Dated: 02/XX/2021

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