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June 4, 2019

(By Fax: 301-415-2700 and
Email: Margaret.Doane@nrc.gov)

Margaret Doane
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: 10 C.F.R. 2.206 Petition Regarding Tennessee Valley Authority
Changes to Employee Concerns Program Structure

Dear Ms. Doane:

On May 14, 2019 the Tennessee Valley Authority (TVA) took action that has completely eviscerated its Employee Concerns Program (ECP), [REDACTED], announcing fundamental changes to the program structure itself that undermine the entire concept of an independent alternative avenue, and destroying whatever shred of program credibility was left. While TVA's words pay lip-service to the "vital role" played by the ECP, if TVA really understood the necessity and significance of the ECP program in its own strong safety culture, it would not have taken this outrageous action .

It is no secret to the workforce that the TVA ECP program has been at the forefront of identifying the numerous departments throughout the corporation, across the sites, that have "chilled work environments," responding to employee concerns about retaliation for raising concerns, and disclosing significant management and safety culture weaknesses to TVA and the TVA Inspector General's office. The ECP's actions have often been the only honest insight into the dysfunctional organization and TVA's repeated, persistent inability to develop a strong safety culture and eliminate HIRD from its workplaces. Notwithstanding the NRC's recognition of this weakness and the regulatory history in this performance area, TVA's actions in destroying the independence of the ECP requires immediate regulatory intervention. To be blunt, if a TVA employee identifies a serious safety concern today, who are they going to call – ghostbusters?

Following the tragic loss of the *Columbia* shuttle, the Columbia Accident Investigation Board (CAIB) found that a significant cause of the accident was the organizational failure to maintain an independent avenue for employees to raise concerns. The report stated that:

“... The safety personnel present in the [oversight teams] were largely silent during the events leading up to the loss of *Columbia*. That silence was not merely a failure of safety, but a failure of the entire organization.”

(See, Columbia Accident Investigation Board Report, Vol. 1, at p. 192 (Aug. 2003). This CAIB finding is prescient for TVA’s historical and persistent lack of a safety culture.

[REDACTED] However, the purpose of this letter is to publicly protest the TVA actions being proposed, and request that the NRC immediately intervene and itself provide a viable alternative avenue to the TVA employees who have safety or retaliation concerns. While I realize that the NRC has its standard forms posted throughout all nuclear facilities, that is inadequate under these circumstances and should be supplemented by an equally public announcement to the workforce comparable to that of the meetings and communications from TVA management last month about the future “restructuring” of the ECP.

For the purposes of processing this request, you may consider it as notice of a Petition pursuant to 10 CFR 2.206 for a license amendment, if necessary; however, as you know, time is of the essence and immediate mitigation is required.

Relevant Background

On May 30, 2019, TVA issued an ECP Update to the nuclear workforce providing “clarifications” to the original May 14th announcement, again stressing the importance of the ECP in “providing an avenue for employees to raise safety or quality concerns.” The Notice to the workforce misrepresents “Employees have told us – through surveys, focus groups and discussions – that change is necessary in order to build the desired confidence that ECP is a viable avenue for raising nuclear concerns,” while the actual information received by the ECP staff who conducted the pulsing surveys, is that 90% of employees stated they have confidence in the ECP as it now exists. TVA’s representation is not based in any fact that the ECP staff is aware of. This is demonstrative of the same false representations as discussed above – choosing the right words for regulatory communications does not substitute for the truth about the status of employee confidence in the program. TVA’s current senior management, in particular in the nuclear regulatory affairs and licensing department, is simply incapable of accepting truthful feedback about its work environment. Its focus, for years, has been to remove those individuals who try to tell management that it is their behaviors and conduct that is at the core of the problem. The current TVA senior regulatory affairs and licensing staff must be removed if there is ever going to be a change in TVA’s safety culture.

Just prior to posting the Notice to the nuclear workforce, on May 30, 2019, Greg Boerschig, Vice President of Nuclear Oversight, made a presentation at a Sequoyah Leadership Forum, regarding the New ECP Structure, stating that the ECP program was being turned into a line management program that essentially expects, if not requires, that employees take their concerns through their chain of command. (See Attachment 1) Notably, the program makes the point that:

“The goal for success is not found in ECP enabling employees to use them as the preferred source of resolving concerns. Success is defined by employees understanding that their leadership is the one solving their issues and that their management is the primary path for getting their issues resolved. ECP is truly a secondary path.”

This statement reveals a fundamental misunderstanding of where the current TVA safety culture is. While a healthy safety culture does include employees trusting their management to resolve concerns, TVA is so far removed from having such a culture, that this decision is simply a strategic management move to eliminate employee concerns and any independent avenue to receive those concerns and investigate them. Significantly, no ECP staff received prior notice of this presentation, which provided more detail than they had been given about the new program.

Also significant, the PowerPoint presentation, at slide 6 is titled “Things will be different for management...” and stresses that all management “from the CNO to the First Line Supervisor” “has to understand that ECP is an investment in a healthy work environment” and , “If management does not respond to ECP-raised issues with a bias for action and a sense of urgency, we will gain no value.” The slide title assumes, correctly, that management has not taken ECP seriously in the past; but now assumes, incorrectly, [REDACTED] line managers, management, miraculously will act differently. There is simply no reason given why [REDACTED] if management is now going to be expected to act differently than it has in the past.

As you know, the courts have long held that employees must have the freedom to raise their concerns through any avenue they believe is necessary to ensure that a safety issue is addressed. *NLRB v. Scrivener*, 405 U.S. 117 (1972). TVA’s edict to the workforce is a direct violation of this principle. Moreover, while TVA has now fundamentally destroyed the program, [REDACTED]. There is no “new” ECP program, process, procedure or [REDACTED] to process concerns in accordance with this ridiculous PowerPoint management tool, and no processes set up to ensure that there is a management of change that comports with the basic principles of maintaining a Safety Conscious Work Environment (SCWE). This would be bad enough from a novice Licensee, but for TVA, a licensee which has had a history of complete inability to manage its workforce without fear or intimidation, it is beyond the pale.

For the sake of expediency, this letter does not include the lengthy history of regulatory compliance issues from TVA sites that raise serious 10 C.F.R. 50.7 considerations. The most recent publicly-available information regarding the NRC's assessment of TVA's compliance with the July 27, 2017 Confirmatory Order (CO) , and Chilling Effect Letter (CEL) issued to TVA in March 2016 regarding its Watts Bar nuclear plant, and a PI&R Inspection completed on January 31, 2019 and discussed with TVA Management in January and March 2019, concluded that:

“Watts Bar demonstrated a general positive trajectory in improving SCWE, but corrective actions had not been in place long enough to determine that SCWE issues were resolved and the corrective actions taken would prevent recurrence.”

More specifically, the NRC found:

“... the work environment in RP is improving and past improvements in the Operations department have been sustained. However, the team noted that the environment in RP is still fragile and in a state of flux due to recent personnel changes, the in-progress implementation of a work environment improvement plan, and a planned revision to the root cause analysis of the RP chilled work environment that could include additional causes and corrective actions. The corrective actions to improve the work environment in RP need more run time to assess the sustainability of changed.”

(See March 13, 2019 letter to Joseph Shea of TVA from Omar Lopez-Santiago of the NRC, at 1, and attached Inspection Report, at 7-8.)

Clearly, TVA is only paying lip service to the NRC's regulatory authority, if it assumes it can merely change the structure (independence) of the ECP program mid-stream, while the NRC is still monitoring its performance under the July 2017 Confirmatory Order.

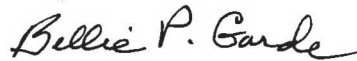
To be very clear, this letter is requesting that the NRC:

- 1) Immediately issue an announcement to all TVA employees, reiterating their rights and responsibilities to raise any safety-related concerns, that doing so is a legally-protected activity, and prominently provide the NRC's telephone number and email address to all employees. If there is a significant safety-related concern or complaint of retaliation, employees must know that there is a viable alternative avenue to raise it, instead of remaining silent in the face of this debacle.
- 2) Immediately require TVA to stop its ECP program conversion; until it can demonstrate to the NRC a management of change process that ensures any program change maintains the necessary independence of any process to honestly, without interference by TVA management, report the truth of any findings.

- 3) Demand that TVA present its alleged “new” program to the NRC and the public for review, hold a public meeting, and then provide feedback to TVA on whether its proposal is consistent with the expectations that have been established by the Confirmatory Orders and ECP best practices.

If you would like to discuss this matter further, I can be reached by phone: (Office: 202-280-6116) or (Cell: 202-255-9670), or by email: bpgarde@cliffordgarde.com.

Sincerely,



Billie Pirner Garde

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