



Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402

CNL-19-111

November 12, 2019

10 CFR 50.7

Mr. Mark Miller  
Director, Division of Reactor Projects  
U.S. Nuclear Regulatory Commission Region II  
Marquis One Tower  
245 Peachtree Center Avenue N.E., Suite 1200  
Atlanta, GA 30303

Subject: **TVA Response to Request for Information Regarding the U.S. Department of Labor Finding of Discrimination (EA-19-107)**

Reference: NRC letter to TVA, "Request for Information Regarding the U.S. Department of Labor Finding of Discrimination," dated September 24, 2019 (ML19267A144)

Dear Mr. Miller:

On September 24, 2019, the Nuclear Regulatory Commission (NRC) issued the referenced letter to Tennessee Valley Authority (TVA) requesting information regarding the August 20, 2019, United States Department of Labor (DOL) Occupational Safety & Health Administration (OSHA) finding of discrimination. The NRC expressed concern that the OSHA finding may cause the TVA workforce to be less willing to raise safety concerns. The NRC then asked TVA to provide TVA's position regarding whether the actions affecting the individual violated Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7 (or other requirement) and the basis for TVA's position, including the results of any investigations TVA may have conducted to determine whether a violation occurred. Additionally, the NRC requested TVA to provide the actions TVA has already taken or plan to take to assure that the OSHA finding is not having an adverse impact on the willingness of employees to raise safety concerns within its organizations. In response to the NRC's request, TVA is providing the information below.

TVA procedure NPG-SPP-01.7.4, Adverse Employment Actions [AEA] and the Executive Review Board [ERB], ensures that retaliatory discipline is not taken when an employee or contractor engages in activities protected by the employee protection of 10 CFR 50.7 as well as other NRC regulations. NPG-SPP-01.7.4 also evaluates whether proposed or taken Adverse Employment Actions, despite their legitimacy, could negatively affect the Safety Conscious Work Environment (SCWE) and screens and develops appropriate SCWE Mitigation Plans.

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The subject action taken by TVA complied with the guidance in NPG-SPP-01.7.4, with documentation of the action, results of related investigations, and the SCWE mitigation plan. This documentation was included in the files provided to the NRC during the 2018 and 2019 SCWE inspections. The NRC reviewed a sampling of the files and did not identify any finding or violation of the AEA process or the ERB process during these inspections, and the NRC concluded that the interviewed staff felt free to raise nuclear safety concerns without fear of retaliation (NRC Inspection Report 05000327, 328/2018013 (ADAMS Accession No. ML18338A404) and NRC Inspection Report 05000327, 328/2019011 (ADAMS Accession No. ML19204A190)).

After the DOL notified TVA and the DOL finding was reported in the news, TVA Nuclear issued a Fleet Focus communication about safety culture. This message provided some facts of the DOL case and reiterated the multiple avenues that TVA Nuclear employees have for raising safety or quality concerns.

Additionally, on September 18, 2019, TVA filed its objections to the DOL finding in accordance with 29 CFR 24.106 and requested a hearing. Since filing its objections, TVA and the complainant have agreed to a voluntary DOL mediation, currently scheduled to occur in the first quarter of 2020. TVA management initiated a discretionary SCWE mitigation plan in accordance with NPG-SPP-01.7.4, and discussed the referenced letter and TVA's position on the DOL finding with the Corporate Nuclear Regulatory Affairs staff in October 2019.

There are no new regulatory commitments associated with this submittal. As TVA continues to work through the DOL appeal process, TVA will supplement this letter to provide the NRC with additional information. If you have any questions regarding this letter, please contact me.

Respectfully,



James Barstow  
Vice President, Nuclear Regulatory Affairs and Support Services

cc:

NRC Regional Administrator - Region II  
Document Control Desk