



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION II  
245 PEACHTREE CENTER AVENUE N.E., SUITE 1200  
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December 2, 2019

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

SUBJECT: RESPONSE TO MODIFICATION REQUEST FOR US NRC CONFIRMATORY  
ORDERS EA-09-009, 203 AND EA-17-022 ISSUED TO TENNESSEE VALLEY  
AUTHORITY

Dear Mr. Barstow:

This letter refers to your request to combine Confirmatory Orders EA-09-009, 203 and EA-17-022 issued to Tennessee Valley Authority (TVA). The purpose of your request was to seek clarifications to the requirements in the Orders and to address potentially overlapping requirements.

We have completed our initial review of your proposed combined Order and we have identified at least three potential relaxations of Confirmatory Orders EA-09-009, 203 and EA-17-022 in your submittal. The first potential relaxation involves section 2.b.iii of the proposed combined Order, which identifies adverse actions that require executive review board (ERB) review prior to implementation. The clause only lists two adverse actions against contractors (suspensions without pay and terminations for cause) that would trigger an ERB review. Confirmatory Order EA-17-022, Section V.1.c.1, requires an ERB review for involuntary reductions in force and no-fault terminations in addition to the two actions captured in section 2.b.iii. of the proposed combined order. No exceptions were provided in the original Order for contractors regarding ERB reviews. Therefore, proposed Section 2.b.iii. appears to be a relaxation.

The second potential relaxation involves Section 3.d.i.5 of the proposed combined Order, which lists items required to be reviewed during the audit of the adverse employment action program. The proposed combined order limits the audit scope to only those adverse employment actions that required an ERB. However, EA-17-022, Section V.1.d.1 states that the audit shall include reviewing all adverse employment actions. No exception is given to adverse employment actions that did not require an ERB. Therefore, proposed Section 3.d.i.5 appears to also be a relaxation.

The third potential relaxation involves Section 2.b.ii.1 of the proposed combined order, which requires managers to document their review of Non-ERB adverse actions and their potential effects on the safety conscious work environment, including mitigative actions. The proposed combined order does not specify whether a manager's review needs to occur

before the actions are taken and whether the review verifies that the proposed actions comport with employee protection regulations. However, EA-09-009, 203, Section 1, states, in part, that TVA shall implement a process to review proposed adverse employment actions at TVA's nuclear plant sites before actions are taken and to determine whether the proposed action comports with employee protection regulations. Therefore, proposed Section 2.b.ii.1 appears to also be a relaxation.

Recognizing that TVA has already agreed to the terms in the original Orders, no changes to the Orders are necessary, and TVA is required to meet all the requirements as listed unless good cause is demonstrated. Our initial review of the proposed combined Order identified that TVA did not demonstrate good cause for the proposed relaxations described above. Specifically, TVA did not justify whether these proposed relaxations to the adverse employment actions process will continue to provide the same level of assurance to ensure TVA employees and contractors are free to raise nuclear safety concerns without fear of retaliation.

Based on this feedback and as you requested, we would like to arrange a public meeting to provide you the opportunity to discuss future actions regarding the orders (if any). During the meeting, we would like you to address the relaxations that we identified. In addition, we request that you highlight specific challenges that you feel require modifications to the existing Orders.

This letter, its enclosure, and your response (if any) will be made available for public inspection and copying at <http://www.nrc.gov/reading-rm/adams.html> and at the NRC Public Document Room in accordance with 10 CFR 2.390, "Public Inspections, Exemptions, and Requests for Withholding."

Please contact me at (404) 997-4500 with any questions you may have regarding this letter.

Sincerely,

**/RA/**

Mark S. Miller, Director  
Division of Reactor Projects

cc: Distribution via Listserv

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AUTHORITY

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