

April 1, 2021

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

TENNESSEE VALLEY AUTHORITY
(Enforcement Action)

Docket Nos. EA-20-006, EA-20-007

NRC STAFF INTERROGATORIES AND REQUEST FOR PRODUCTION

Pursuant to 10 C.F.R. §§ 2.706(b) and 2.707 the NRC Staff (Staff) hereby requests that the Tennessee Valley Authority (TVA) respond to the following interrogatories and request for production of documents below. Responses or objections to interrogatories are due within 14 days, pursuant to 10 C.F.R. § 2.706(b)(2).

Each interrogatory shall be answered separately and fully, in writing, and under oath or affirmation and shall include all pertinent information available to TVA, its counsel and individuals assisting TVA in the challenge to the NRC enforcement order imposing a civil penalty captioned above, based upon their personal knowledge, unless it is objected to, in which event the reasons for objection shall be stated in full. The answers shall be signed by the person making them, and the objections by the attorney making them. The production of documents requested herein shall take place electronically, unless other arrangements are made, by agreement, in this regard.

GENERAL INSTRUCTIONS

1. To the extent that TVA does not have specific, complete, and accurate information with which to answer any interrogatory, TVA should so state, and the interrogatory should be answered to the extent information is available, identifying each person who has this information.

2. Each interrogatory shall be deemed to be continuing, and TVA is required reasonably to correct or supplement answers with additional facts, documents, information, and names of witnesses which become known, in accordance with 10 C.F.R. § 2.705(e).

3. The words "and" and "or" shall be construed either conjunctively or disjunctively so as to bring within the scope of these discovery requests any information that might otherwise be construed to be outside their scope.

4. Wherever appropriate, the singular form of a word shall be interpreted in the plural, and vice versa, so as to bring within the scope of these discovery requests any information that might otherwise be construed to be outside their scope.

5. Please produce a copy of each document requested in the form and condition in which it exists on the date of service of this request, including all comments, notes, remarks, and other material that may have been added to the document after its initial preparation.

6. If TVA objects to or claims a privilege (*e.g.*, attorney-client, work product, or other) with respect to any interrogatory or document request, in whole or in part, or seeks to withhold documents or information because of the alleged proprietary or other nature of the data, please set forth all reasons and the underlying factual basis for the objection or claim of privilege in sufficient detail to permit the NRC Staff to evaluate the objection or claim of privilege. This description by TVA should include, with respect to any document:

- a. authors and recipients of the document together with their employer;
- b. date of document;
- c. title of document or a summary of the purpose for which the document was prepared; and
- d. the nature of the privilege or objection asserted.

7. For any document or part of a document that was at one time, but is no

longer, in TVA's possession, custody or control, or which is no longer in existence, or which cannot be located or produced, identify the document, state where and how it passed out of existence or why it can no longer be located or produced and the reasons therefore, and identify each person having knowledge concerning such disposition or loss and the contents of the document, and identify each document evidencing its prior existence and/or any fact concerning its nonexistence or loss.

DEFINITIONS AND GUIDELINES TO BE USED IN RESPONDING TO THESE DISCOVERY REQUESTS

1. "Communication" shall mean correspondence, contact, discussion, or any other kind of written or oral exchange between two or more persons or entities including, but not limited to, all telephone conversations, face-to-face meetings or conversations, visits, conferences, and internal and external discussions, and exchange of a document or documents.

2. "Computer file" means all digital files of whatever type without regard to the manner or medium in which the file is stored.

3. "Concerns," "Concerning," or any other derivative thereof, includes referring to, responding to, relating to, pertaining to, in connection with, comprising, memorializing, commenting on, regarding, discussing, showing, describing, reflecting, analyzing, supporting, contradicting, and constituting.

4. "Document" or "writing" as used herein shall mean any written matter, whether produced, reproduced or stored on paper, cards, tapes, disks, belts, charts, film, digital file, computer storage devices or any other medium and shall include, without limitation, matter in the form of books, reports, studies, statements, speeches, notebooks, agreements, appointment calendars, working papers, manuals, memoranda, notes, procedures, orders, instructions, directions, training materials, records, correspondence, electronic mail, diaries, plans, diagrams, drawings, periodicals, lists, telephone logs, minutes, photographs, and any

published materials and shall also include, without limitation, originals, copies (with or without notes or changes thereon) and drafts.

5. "Identify" when used in reference to a natural person means to set forth the following:

- a. his/her name;
- b. his/her current employer (if no current employer, his/her last employer);
- c. his/her employer at the time relevant to the interrogatory;
- d. his/her title or position;
- e. his/her area of responsibility;
- f. If any of the information is changed subsequent to the time period referenced in a particular interrogatory, then set forth in the answer, and label appropriately, current information as well as the information applicable to the time period referenced in the interrogatory.

6. "Identify" when used in reference to a document shall mean to set forth the following:

- a. its title;
- b. its subject matter;
- c. its date;
- d. its author;
- e. its addressee;
- f. its file designation or other identifying designation; and
- g. its present location and present custodian.

7. "Identify" with respect to a contact or communication shall set forth the following:

- a. the date of the communication;
- b. the place of the making and the place of receipt of the communication;
- c. the type and means of communication;

- d. the substance of the communication;
- e. each person making the communication, and his/her location at the time the communication was made;
- f. each person to whom the communication was made, and his/her location at the time the communication was made;
- g. all other persons present during, participating in, or receiving the communication and the location of each such person at the time;
- h. each document concerning such communication; and
- i. each document upon which the communication is based or which is referred to in the communication.

8. Documents produced in compliance with this request are to be accompanied with a specific indication as to the particular paragraph(s) of the Staff's discovery request under which the particular document(s) are being produced.

INTERROGATORIES

INTERROGATORY 1

Identify all individuals likely to have discoverable information relative to disputed issues and who were not included in the list of current and former TVA employees in TVA's initial disclosures dated February 18, 2021.

INTERROGATORY 2

With respect to TVA0008976-0001, identify the following:

- a. Who is the author of this document?
- b. When was this document prepared?
- c. For what purpose was this document prepared?
- d. Provide the attachments referenced in the document.

INTERROGATORY 3

With respect to TVA0009056-0001, provide the following:

- a. Was this email sent in response to a written or verbal request? If written, provide the incoming document. If verbal, identify the request.
- b. There are several attachments to the email which do not appear to have been provided. Provide the attachments, or identify where the attachments have previously been provided.
- c. Explain why the two individuals who were copied on the email were copied.

INTERROGATORY 4

With respect to TVA 0009130-0001: This document references a planned discussion with Ms. Wetzel for "Friday" (presumably Friday Aug. 24th). Did this discussion take place on that Friday, or was it moved to a later date? If the discussion was moved to a later date, please explain why the date was changed. Did this discussion take place at all? If so, please provide the content of what was discussed and who was present at the meeting. If the discussion was cancelled please explain the reasons for the cancellation.

INTERROGATORY 5

With respect to TVA0009132-0001, why was this document forwarded to Ms. Henderson?

INTERROGATORY 6

At her pre-decisional enforcement conference, Ms. Henderson made the statement that she raised a potential ethics concern to "Mike's supervisor and HR." (Henderson PEC Tr. at 26.).

- a. Which supervisor did Ms. Henderson raise this concern to, and how was the concern raised?
- b. How was the concern raised to HR, was there a written complaint?
- c. Provide any documentation, not already provided, regarding how Ms. Henderson raised the referenced concern.

INTERROGATORY 7

TVA alleges that Mr. McBrearty openly disparaged and openly berated Ms. Henderson. For each time TVA alleges that Mr. McBrearty openly disparaged or berated Ms. Henderson, provide:

- a. The date this occurred;
- b. Who was present;
- c. The content of the alleged disparagement, (e.g. written/verbal, etc.);
- d. Whether there was any follow-up with Mr. McBrearty after this occurred.
- e. The date the follow-up occurred;
- f. Who was present for the follow-up;
- g. The content of the follow-up interaction.

INTERROGATORY 8

TVA alleges that Mr. McBrearty left Ms. Henderson out of communications on key regulatory decisions and key meetings on regulatory compliance. For each instance where this occurred identify:

- a. The date this occurred;
- b. Who was the recipient of the communications;
- c. What was the regulatory decision/regulatory compliance at issue;
- d. Whether there was any follow-up with Mr. McBrearty after this occurred;
- e. The date the follow-up occurred;
- f. Who was present for the follow-up;
- g. The content of the follow-up interaction.

INTERROGATORY 9

TVA alleges that a portion of Ms. Henderson's job duties were removed, and she was no longer doing portions of her job that required interactions with Sequoyah licensing (SQN Licensing).

Identify:

- a. Who was responsible for removing these duties from Ms. Henderson?
- b. Was this reduction in job duties for Ms. Henderson or its basis ever communicated to anyone at SQN Licensing or otherwise documented? If so, explain when and how it was communicated or documented.
- c. What was the timeframe in which Ms. Henderson was not performing her duties with respect to SQN Licensing?
- d. Specifically, what duties was Ms. Henderson no longer responsible for? In the absence of Ms. Henderson performing them, who was responsible for those duties?

INTERROGATORY 10

TVA alleges that Mr. McBrearty "admitted to his misbehaviors" regarding his behavior toward Ms. Henderson. (TVA Answer at 10).

- a. Does this statement refer to one or multiple instances of Mr. McBrearty allegedly admitting to misbehaviors?
- b. Identify the documents or communications in which the admission(s) is documented or occurred.
- c. When and to whom did McBrearty make this admission(s)?
- d. Was the admission(s) made in writing or verbally?

INTERROGATORY 11

TVA alleges that TVA management counseled Mr. McBrearty regarding his behavior toward Ms. Henderson.

- a. Who provided this counseling? (Identify the individual(s) involved specific to each instance of counseling).
- b. Identify the date(s) when TVA management provided this counseling.

INTERROGATORY 12

TVA alleges there was a "consensus recommendation and decision to place Mr. McBrearty on paid administrative leave." (TVA Answer at 14-15).

- a. Name each individual directly involved in this recommendation?
- b. For each individual who agreed with this recommendation, identify where this view is documented.
- c. What does "consensus" mean in this context—*i.e.*, does it mean that everyone involved agreed or that a majority agreed?
- d. What was the process by which agreement was reached?
- e. What was the process by which agreement was assessed?
- f. Did anyone disagree or suggest alternative approaches at any stage of the process leading to the recommendation?
- g. What were the bases for disagreement?
- h. What was the process for addressing matters of disagreement?

INTERROGATORY 13

TVA alleges that Ms. Henderson believed Ms. Wetzel conspired with Mr. McBrearty against Ms. Henderson and that Ms. Wetzel was dishonest about what Ms. Henderson said in closed door meetings. For each instance where Ms. Wetzel acted in such a manner, identify:

- a. The date this occurred;
- b. Who was involved and/or present;
- c. The documented basis for Ms. Henderson's belief that Ms. Wetzel conspired against Ms. Henderson with Mr. McBrearty or made dishonest statements about her in meetings;
- d. The content of any follow up interaction with Ms. Wetzel.

INTERROGATORY 14

TVA alleged, in its termination notice to Ms. Wetzel, that Ms. Wetzel spread false information and pursued allegations known to be false and unfounded in an attempt to undermine Ms. Henderson, and persisted in harassing and retaliating against Henderson by spreading disproven theories to undermine and discredit Ms. Henderson. For each instance where this occurred, identify:

- a. The date the actions of harassment and retaliation occurred;
- b. Who was involved and/or present;
- c. How the harassment and retaliation was spread or carried out;
- d. If applicable, how the occurrence of the instances of harassment and retaliation were documented or communicated and who received this information;
- e. The content of any follow up interaction with Ms. Wetzel.

INTERROGATORY 15

Is the email dated June 21, 2018 from Meshelle Ferguson at Exhibit 22 of the June 24, 2020 PEC Presentation Exhibits (TVA HR Summary) considered the final documentation of HR's review of Ms. Henderson's allegations of a hostile work environment? If not, provide this final documentation (or if part of TVA disclosures, identify its document ID(s))?

- a. Who directed HR to conduct this review?
- b. Was anyone other than Meshelle Ferguson involved in this HR review? If so, identify these individuals by name/title.
- c. In the TVA HR Summary, Ferguson stated that she reviewed "the report written by OGC counsel, the complaint, and several emails/text messages." Identify the emails/texts reviewed by HR by their disclosure document ID or provide these documents.
- d. Was anyone interviewed for the TVA HR review? If so, for each person interviewed, provide their name/title/contact information.

INTERROGATORY 16

What is the "Report of Investigation prepared by Human Resources" referenced on page 3 of the TVA OGC Report dated Aug. 10, 2018? Identify and produce, if not already produced, this document.

INTERROGATORY 17

Ms. Henderson stated at her PEC that she received feedback in September 2016 from ECP as it related to her performance management, that she valued the insights, and took prompt action to modify her approach to better fit individual needs.

- a. What ECP investigation is referenced in this statement and what was its purpose?
- b. Was the ECP investigation opened in response to the feedback of a person or persons, and, if so, who?
- c. What were other initiating factors for the ECP investigation?
- d. What form did the ECP feedback take? If oral, please identify who provided the feedback and who was present for the conversation. If written, identify the document where the feedback was provided.
- e. What was the content of any follow up action following the ECP investigation? Please identify where this is documented and who provided it.

REQUEST FOR PRODUCTION OF DOCUMENTS

Produce all documents identified in response to the above interrogatories if not all already produced.

Respectfully submitted,

/Signed (electronically) by/

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Executed in Accord with 10 CFR 2.304(d)

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Dated in Falls Church, VA
this 1st day of April 2021

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Certificate of Service

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing "NRC Staff Interrogatories and Request for Production," dated April 1, 2021, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the captioned proceeding, this 1st day of April 2021.

/Signed (electronically) by/

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Dated Falls Church, VA
this 1st day of April 2021