



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499

January 25, 2001

Karen Cyr, Esq. (By Facsimile and Regular Mail)  
General Counsel  
U.S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852-2738

Attention: Grace H. Kim, Esq.

Re: Curtis C. Overall v. Tennessee Valley Authority - Case No. 1999-ERA-25

Dear Ms. Cyr:

This is in response to the January 17, 2001, letter from Grace H. Kim of your office (copy enclosed) regarding the subpoena duces tecum which was served upon you with my January 9, 2001, letter. Ms. Kim states that, with the exception of one document which her letter offers to make available, the NRC was not provided with the original of any of the documents identified in the subpoena. Her letter implies that the NRC is not producing other documents it may have which may be copies based on the assumption that TVA cannot perform a forensic analysis on copies of documents. Her letter also implies that TVA should obtain copies of the documents elsewhere since they are "presumably" obtainable through discovery in the DOL administrative process.

As stated in my December 14, 2000, and January 9, 2001, letters, we intend to have a forensic document examiner analyze and compare the documents. In a telephone conversation with Ms. Kim on January 19, 2001, I explained that the DOL subpoena which was served upon you was not limited to the production of only the originals of each described document, but that we were seeking to obtain the original documents in the NRC's possession regardless of whether they might be copies or originals. I further explained to Ms. Kim that it is my understanding that a copy of a document may be forensically examined, although it is preferable to examine the best version available.

With respect to Ms. Kim's suggestion during our telephone conversation that TVA obtain these documents from Mr. Overall, I noted that we have been unsuccessful in obtaining any of the identified documents. Even though this proceeding has been pending nearly two years and despite extensive discovery, we have not located these documents elsewhere. Finally, we do not understand how her assumption that the documents "are obtainable by [TVA] through discovery in the administrative process before the DOL" is a basis for the NRC's

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Karen Cyr, Esq.  
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reluctance to produce the identified documents. In fact, we are requesting the documents in the context of discovery in the administrative process before the DOL. The subpoena served upon you was issued by a DOL Administrative Law Judge in the very administrative process to which Ms. Kim referred.

Because this matter is in litigation and the hearing is scheduled to begin in April, we would appreciate it if you would process this request as expeditiously as possible. Please feel free to call me (865-632-4251) or Thomas F. Fine (865-632-2061) if you have any questions.

Thank you for your cooperation.

Sincerely,



Brent R. Marquand  
Senior Litigation Attorney

Enclosure

cc (Enclosure):

Lynne Bernabei, Esq.  
Bernabei & Katz, PLLC  
1773 T Street, NW  
Washington, D.C. 20009-7139

Carolyn Evans, Esq. (By Facsimile and Regular Mail)  
NRC Regional Counsel  
U.S. Nuclear Regulatory Commission  
Region II  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW, Suite 23T85  
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OFFICE OF THE  
GENERAL COUNSEL

January 17, 2001

Brent R. Marquand  
Senior Litigation Attorney  
Tennessee Valley Authority  
400 West Summit Hill Drive  
Knoxville, Tennessee 37902-1499

RE: Curtis C. Overall v. Tennessee Valley Authority, Case No. 1999-ERA-25; NRC  
File No. TR-00-10

Dear Mr. Marquand:

The Office of the General Counsel is in receipt of your letter dated December 14, 2000, requesting original documents in the NRC's possession for use in the above-captioned Department of Labor (DOL) discrimination proceeding under Section 211 of the Energy Reorganization Act, and your letter dated January 9, 2001, enclosing a subpoena duces tecum for the original documents you request issued by the administrative law judge in the DOL proceeding. This office has assigned the processing number "TR-00-10" to your request; please refer to that number in any future correspondence regarding this matter. As explained below, to the best of our knowledge, the NRC files contain one document responsive to your request.

You request that the NRC allow TVA to take custody of the originals of five particular documents that you identify as having been generated by Mr. Overall, as well as the originals of any other documents typewritten or handwritten by Mr. Overall which are in the NRC's custody. You state in your December 14 letter that it is "TVA's intent to have a forensic document examiner analyze and compare those documents with the anonymous [threatening and harassing] notes purportedly received by Mr. Overall."

The NRC staff has informed me that, to the best of their knowledge, the NRC was not provided with the originals of any of the listed documents except the one identified in your correspondence under item number four, i.e., a "February 11, 1999 prepared statement by Mr. Overall which is referenced in an April 27, 1999, letter from Mr. Ignatonis to Mr. Overall." Since your request is for the purpose of forensic analysis, it does not appear that the NRC files contain any other documents responsive to your request. Presumably, copies (or originals) of the documents you request are obtainable by you through discovery in the administrative process before the DOL. As you know, the NRC staff is holding open its enforcement case file until the DOL proceeding involving Mr. Overall is concluded.

With respect to the February 11, 1999 prepared statement by Mr. Overall, I approve your request for release of the original of this document, subject to your execution of the enclosed agreement specifying the conditions for the NRC's release of an original agency record. The purpose of the agreement is to ensure that original documents are returned to the NRC staff in their original form and condition within a reasonable period of time as well as to document the chain of custody. Please sign the enclosed agreement and return it to the NRC's Office of the General Counsel to the attention of Ms. Grace Kim of this Office. Once we have received the signed agreement, we will make arrangements through the Regional Counsel for the NRC's Region II Office, Ms. Carolyn Evans, to release the document to you.

This letter concludes NRC action on TR-00-10. If you have any questions about this matter, please feel free to contact me at (301) 415-3605.

Sincerely,



Grace H. Kim  
Senior Attorney

cc: Carolyn Evans, Esq.  
NRC Region II  
Lynn Bernabei, Esq.