

August 31, 2018

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VIA EMAIL AND REGULAR US MAIL

RE: *Entergy Nuclear Operations, Inc. v. United Government Security Officers of America, Local 29*, FMCS Case No. 180306-02193 (Arbitrator Chiesa);
NRC File No. TR-18-04.

Dear Ms. Terpsma:

The Office of the General Counsel at the Nuclear Regulatory Commission (“NRC”) has received your subpoena seeking the appearance of Mr. Joe Maynen, an NRC inspector, at the above-referenced Arbitration Proceeding. This office has assigned the processing number of “TR-18-04” to your request; please refer to that number in any future correspondence regarding this matter.

Your subpoena is a “demand for information” as defined in the NRC’s regulations. See 10 C.F.R. § 9.200, *et seq.* You have submitted a subpoena and a statement as required by 10 C.F.R. § 9.202(b)(1). After review, the General Counsel has approved your request to the extent described below.

Initially, we must note that the compliance required from an arbitration subpoena is different than that required from a judicial subpoena. For example, the Federal Arbitration Act (“FAA”) does not authorize an arbitrator to subpoena third parties during prehearing discovery, absent a showing of special circumstances. Instead, the FAA only authorizes subpoenas for an appearance at a hearing. *Comsat Corporation v. National Science Foundation*, 190 F.3d 269, 275-77 (4th Cir. 1999). Furthermore, the FAA does not authorize nation-wide service of process. Instead, the FAA only authorizes service of process in the judicial district where the arbitration is to be held, or within 100 miles of the hearing. *Dynegy Midstream Services, L.P. v. Trammochem*, 451 F.3d 89, 94-96 (2d Cir. 2006).

Here, the subpoena served on the NRC seeks the appearance of an NRC employee based in Lisle, Illinois, at a hearing in South Haven, Michigan. Thus, the NRC is not compelled to comply with the subpoena for that reason alone. However, our review indicates that Mr. Maynen, an NRC employee, has relevant, competent, and material information related to this event that he obtained in the course of his official duties. Moreover, it appears that the NRC (in the person of Mr. Maynen) is the only source of that information. In situations such as this, the NRC attempts to provide that information to the trier of fact in the manner least burdensome to the NRC.

Mr. Maynen has previously scheduled personal travel plans on the date of the hearing. Thus, the General Counsel has exercised her discretion to approve a deposition of Mr. Maynen to preserve his testimony under these special circumstances. That approval is subject to the conditions that (1) Mr. Maynen has the right to read and correct the deposition transcript; and (2) you agree to provide the NRC with a copy of the corrected transcript at no cost to the NRC.

The NRC will make Mr. Maynen available at the NRC Region III Office in Lisle, Illinois. NRC Regional Counsel will attend the deposition with Mr. Rey to represent the NRC. Please work with Ms. Emily Monteith, the Acting Regional Counsel to arrange a mutually satisfactory date and time for the deposition. You may reach Ms. Monteith at 630-829-9653.

If you (or other counsel in the case) have any questions about this matter, please feel free to call me at 301-287-9156, or email me at charles.mullins@nrc.gov. This letter is a public document and will be posted in the NRC's public Agencywide Document Access and Management System ("ADAMS").

Sincerely,

/RA/

Charles E. Mullins
Senior Attorney
Office of the General Counsel