

February 18, 2021

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

_____)	
In the Matter of)	
)	
)	Docket Nos. EA-20-006, EA-20-007
Tennessee Valley Authority)	
Chattanooga, Tennessee)	
_____)	

Initial Discovery Disclosures of the Tennessee Valley Authority

Tennessee Valley Authority (“TVA”), pursuant to 10 C.F.R. §§ 2.704, 2.705, and this Board’s Initial Scheduling Order,¹ makes the following initial discovery disclosures in the above-captioned action:

I. Introduction

Pursuant to 10 C.F.R. § 2.704(a), TVA objects to, and is not hereby disclosing any information or documents relating to issues in the Order Imposing Civil Monetary Penalty and its underlying violations² dated October 29, 2020 (the “Order”) that were (a) not alleged with particularity in the pleadings (including the Order) or (b) reflect purely legal conclusions. TVA also objects to disclosing information or documents simply to prove the non-occurrence of events, communications, and conditions alleged in the pleadings (including the Order) for which the NRC Staff have not provided any factual basis or support.

¹ Initial Scheduling Order, Appendix A (Jan. 14, 2021) (ADAMS Accession No. ML21014A204).

² The Order was accompanied by an Appendix (hereinafter referred to as “Order Appendix”) providing the NRC Staff’s “Evaluation and Conclusion” of TVA’s responses to the initial proposed Order. See Appendix to the TVA Order (Oct. 29, 2020) (ADAMS Accession No. ML20297A552).

As required by 10 C.F.R. § 2.705(b)(4), TVA shall identify any potentially relevant information in its possession, custody, or control that is protected from disclosure by the attorney-client privilege, the attorney-work product doctrine, or other applicable statutory or common law privileges “within the time provided for the disclosure of the materials.” TVA is making these initial disclosures subject to and without waiving such privileges and/or work product protection.

At this time, TVA is not producing or specifically logging trial preparation materials, including but not limited to documents developed by, distributed to, created at the request of, or developed in coordination with attorneys after the issuance of the Notices of Apparent Violations related to the Order in this case. TVA believes that the act of logging such documents would reveal the mental impressions, opinions, and potentially the legal theories of the attorneys preparing for this case.

The disclosures herein are based on certain non-privileged information that is presently available for production at this time and are made without waiving any objections as to relevance, materiality, or admissibility of evidence in the above-captioned action. Continuing discovery may cause TVA to amend these initial disclosures by identifying other potentially relevant individuals and documents. TVA, therefore, reserves the right to correct, supplement or clarify the disclosures at any time, consistent with, and as required under 10 C.F.R. § 2.704(e).

In addition, as part of its ongoing disclosure obligation under 10 C.F.R. § 2.704, TVA is continuing to review for relevance, privilege, and confidentiality determinations certain of the voluminous emails and other documents it has collected in its search for discoverable information. Accordingly, TVA will produce additional documents, including a log of privileged documents, and a log of confidential documents, on or before February 25.

The identification of any persons or documents herein is not intended, and shall not be deemed or construed, as an assertion or admission by TVA that such persons actually have knowledge (or such documents are) relevant to disputed issues alleged with particularity in the pleadings in the above-captioned action. TVA expressly reserves any objections it may have to the admissibility of any testimony, documents, or other evidence at the hearing of this matter.

II. 10 C.F.R. § 2.704(a)(1) Disclosure

Attached hereto as Exhibit 1 are the names (including last known addresses and telephone numbers) of current and former employees of TVA and who may have discoverable information relevant to disputed issues alleged with particularity in the pleadings (including the Order).³ If a person has since left TVA, TVA has provided a phone number if available, as well as the individual's former department at TVA. Unknown phone numbers and addresses are marked "N/A."

III. 10 C.F.R. § 2.704(a)(2) Disclosure

TVA is providing to the NRC Staff copies of over 950 records comprising over 4,700 pages (Bates numbers TVADOC0000001 - TVADOC0004796) of non-privileged documents, data compilations, and tangible things in the possession, custody or control of TVA that may be relevant to disputed issues alleged with particularity in the pleadings (including the Order).⁴

In addition, in order to protect the privacy of its employees, TVA intends to withhold employment-related files such as employment, personnel, or other confidential files subject to the

³ Pursuant to the Protective Order, TVA is submitting (1) a public version of this pleading that excludes Exhibit 1 because Exhibit 1 contains personal privacy information under 10 C.F.R. § 2.390(a)(6), including unlisted telephone numbers; and (2) a non-public version of this pleading that includes Exhibit 1 on the non-public docket for this proceeding.

⁴ While 10 C.F.R. § 2.704(d) appears to contemplate the production of copies of these documents to the Board, we understand that production of copies of documents occurs primarily between the parties per 10 C.F.R. § 2.704(a)(2) and thus have only included a brief description of the documents in this filing. *See James Chaisson*, LBP-14-11, 80 NRC 125, 133 (2014) (noting that Mr. Chaisson was to provide his mandatory disclosures to the NRC Enforcement Director).

Protective Order. TVA will list those files in its confidential documents log pursuant to the Joint Motion on Disclosures and the Protective Order. As set forth in the Protective Order, TVA will make those files available to the NRC Staff, if requested.

TVA will, however, produce its less sensitive employee concerns-related files. While TVA expects the NRC to protect employee concerns-related files from further disclosure pursuant to the Protective Order and 10 C.F.R. § 2.390(a)(6), TVA will not list employee concerns-related files on its confidentiality log and is producing them, with the appropriate CONFIDENTIAL designation, subject to completing its review of collected documents on or before February 25, 2021.

TVA will not produce documents subject to attorney-client, attorney work product, or other privileges. As required by the Joint Motion on Disclosures, TVA will produce a log identifying such documents to the extent relevant to disputed issues alleged with particularity in the pleadings (including the Order).

Finally, during the above-captioned action, and as agreed by the parties, TVA shall not individually list or re-produce those documents provided as exhibits to the NRC Staff during the Predecisional Enforcement Conferences which took place on June 23 (EH1-EH95), June 24 (EX1-EX22), June 25 (JS1-JS33), and June 30 (TVA1-TVA12), 2020.

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

Timothy J. V. Walsh

PILLSBURY WINTHROP SHAW PITTMAN LLP

1200 Seventeenth Street NW

Washington, DC 20036

Telephone: 202-663-8455

Facsimile: 202-663-8007

E-mail: timothy.walsh@pillsburylaw.com

Executed in Accord with 10 C.F.R. § 2.304(d)

Michael G. Lepre
PILLSBURY WINTHROP SHAW PITTMAN LLP
1200 Seventeenth Street NW
Washington, DC 20036
Telephone: 202-663-8193
Facsimile: 202-663-8007
E-mail: michael.lepre@pillsburylaw.com

Executed in Accord with 10 C.F.R. § 2.304(d)

Anne R. Leidich
PILLSBURY WINTHROP SHAW PITTMAN LLP
1200 Seventeenth Street NW
Washington, DC 20036
Telephone: 202-663-8707
Facsimile: 202-663-8007
E-mail: anne.leidich@pillsburylaw.com

Executed in Accord with 10 C.F.R. § 2.304(d)

Mary Pat Brown
O'MELVENY & MYERS LLP
1625 Eye St., NW
Washington, DC 20006
Telephone: 202-383-5376
Facsimile: 202-383-5414
E-mail: mpbrown@omm.com

Executed in Accord with 10 C.F.R. § 2.304(d)

Laurel Loomis Rimon
O'MELVENY & MYERS LLP
1625 Eye St., NW
Washington, DC 20006
Telephone: 202-383-5335
Facsimile: 202-383-5414
E-mail: lrimon@omm.com

Dated: February 18, 2021

Counsel for TVA

February 18, 2021

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

)	
In the Matter of)	
)	
)	Docket Nos. EA-20-006, EA-20-007
Tennessee Valley Authority)	
Chattanooga, Tennessee)	
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Initial Discovery Disclosures of the Tennessee Valley Authority have been served through the E-Filing system in the above-captioned proceeding this 18th day of February, 2021.

/Electronically signed by Meghan Claire Hammond

Meghan Claire Hammond
PILLSBURY WINTHROP SHAW PITTMAN LLP
1200 Seventeenth Street NW
Washington, DC 20036
Telephone: 202-663-8189
Facsimile: 202-663-8007
E-mail: meghan.hammond@pillsburylaw.com