

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

MEMORANDUM

Pursuant to the Board's Order¹ requesting clarification from the parties on the significance of the memorandum of understanding (MOU) between the Nuclear Regulatory Commission and the Department of Labor (DOL), the NRC Staff hereby provides its view.

Under the MOU between the NRC and DOL,² the practice of both agencies is to coordinate when documents supplied by the other agency are subject to public disclosure. In this case, the Staff had several communications with DOL regarding the release of relevant DOL documents in the Staff's possession that were subject to public disclosure under the Staff's discovery obligations (absent an exemption). The Staff directly informed DOL that the Staff was obligated to publicly disclose this information to comply with its disclosure requirements under 10 C.F.R. § 2.709(a)(6)(i)(A). Further, the Staff informed DOL that, other than home addresses and personal cell phone numbers, it did not identify other information in the documents exempt from disclosure but would consider protecting additional information at DOL's request. DOL neither expressed disagreement with the Staff's determination nor identified additional

¹ Order (Request for Clarification) (Mar. 17, 2021) (ADAMS Accession No. ML21076A244).

² Notice of Signing of a Revised Memorandum of Understanding Between the NRC and the Department of Labor (DOL), 63 Fed. Reg. 57,324 (Oct. 27, 1998); see Memorandum of Understanding Between NRC and Department of Labor, Employee Protection, 47 Fed. Reg. 54,585 (Dec. 3, 1982); see Nuclear Regulatory Commission Enforcement Manual, Rev. 11, Change 7 § 1.3.14 (Dec. 1, 2020) (ML20329A339).

information for withholding, and the Staff subsequently included these documents in its initial public disclosures in this case on February 18, 2021.

The adjudicatory context under which this information was released pursuant to NRC's discovery regulations is distinguishable from a request (and agency response) pursuant to the Freedom of Information Act (FOIA). Had the NRC received a FOIA request for these DOL case files, including the settlement agreement, the NRC would have referred such a request for DOL's documents to DOL. However, in the discovery context, and consistent with the NRC's MOU with DOL, the Staff informed DOL that it would publicly disclose the information pursuant to its disclosure responsibilities.

As discussed in the Staff's Answer, it is consistent with NRC's long-standing policy of openness in NRC proceedings and with NRC regulations to provide public access to relevant documents and hold hearings in public.³ Because the settlement agreement includes information relevant to this case, the Staff publicly disclosed it in compliance with its regulations. In doing so, the Staff acted in accordance with the NRC MOU with DOL while conducting its responsibilities in an open and transparent manner.

Respectfully submitted,

/Signed (electronically) by/

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³ NRC Staff Answer to the Tennessee Valley Authority's Motion Regarding Disclosures (Mar. 11, 2021), at 11-12 (ML21070A361).

Executed in Accord with 10 CFR 2.304(d)

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Dated in Washington, DC
this 24th day of March 2021

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Certificate of Service

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing "Memorandum," dated March 24, 2021, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the captioned proceeding, this 24th day of March 2021.

/Signed (electronically) by/

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Dated in Washington, DC
this 24th day of March 2021