

**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)	Notice
Chattanooga, Tennessee)	
)	

**Tennessee Valley Authority Notice to Clarify the Record
Regarding the Board’s Memorandum & Order Denying TVA’s Motion for
Return and Protection of Privileged and Confidential Documents**

Tennessee Valley Authority (“TVA”) hereby submits this notice regarding the Board’s April 2, 2021 Memorandum & Order Denying TVA’s Motion for Return and Protection of Privileged and Confidential Documents (“Memorandum & Order”).¹ To be very clear, TVA is not requesting reconsideration of the Board’s Memorandum & Order. Instead, TVA files this notice to clarify the record regarding the circumstances under which the NRC obtained the OGC Memorandum and Quirk Letter.²

Specifically, the Board asks in the Memorandum & Order:

How, one wonders, could TVA not know that these two documents—both seemingly critical to explaining what happened to Ms. Wetzel and to Mr. McBrearty—had been produced to the NRC? Did TVA not keep a log of documents it produced? Did TVA’s lawyers not review its production to the NRC when preparing TVA employees for, and accompanying them to, interviews with NRC investigators?³

¹ Memorandum & Order (Apr. 2, 2021) (ADAMS Accession No. ML21092A076).

² These documents are referred to herein as defined in the Memorandum & Order. *See id.* at 2.

³ *Id.* at 5.

As explained in TVA’s Motion,⁴ Ms. Fults, on her own—*without consulting TVA and without anyone at TVA or its outside counsel’s knowledge or consent*—transmitted the OGC Memorandum and Quirk Letter to NRC Special Agent Scott Luina via email on May 23, 2019.⁵ TVA did not “produce” these documents and therefore the documents could not have appeared on any TVA production log.⁶

Moreover, TVA did not prepare Ms. Fults for, or accompany her to, her interview with Special Agent Luina. Special Agent Luina conducted Ms. Fults’s interview on May 23, 2019 at Ms. Fults’s home outside the presence and without the knowledge of TVA, its Office of General Counsel (“OGC”), or its outside counsel. Ms. Fults did not notify TVA’s OGC of the interview and did not request that TVA represent her. Instead, she was represented in the interview by her personal counsel.⁷ Fults’s counsel has no association whatsoever with TVA or its outside counsel. TVA, therefore, was not aware of the requests Special Agent Luina made during Ms. Fults’s interview, and was not aware that Ms. Fults provided the documents at issue to Special Agent Luina later that day.

For these reasons, TVA attorneys had no way to know that the NRC possessed these documents until the NRC (i) attempted to use the OGC Memorandum during its November 20, 2019 interview of TVA attorney John Slater and (ii) disclosed the Quirk Letter on February 18, 2021 with its initial disclosures in this matter.⁸ As explained in TVA’s Motion, upon first learning of the unauthorized disclosure, TVA immediately notified the NRC staff that the documents were privileged.⁹

⁴ TVA’s Motion for Return and Protection of Privileged and Confidential Documents (March 1, 2021) (ADAMS Accession No. ML21060B598) (“Motion”).

⁵ *See id.* at 2–3.

⁶ *See* Memorandum & Order at 5.

⁷ *See* Interview of Deanna Leigh Fults at 2 (May 23, 2019) (ADAMS Accession No. ML21048A404).

⁸ *See* Motion at 3–4.

⁹ *See id.* at 11–12.

Again, TVA does not request reconsideration of the Board's Memorandum & Order.

Instead, TVA respectfully submits this notice to clarify the record before the Board.

Dated: Washington, DC
April 7, 2021

Respectfully submitted,

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

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice have been served through the E-Filing system in the above-captioned proceeding this 7th day of April, 2021.

/Electronically signed by Alexander Duran/
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