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August 12, 2021

Marian Zobler, General Counsel
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: *Five Point Holdings, LLC et al. v. Tetra Tech, Inc. et al.*, N.D. Cal. Case No. 3:20-cv-01481-JD

Dear Ms. Zobler:

We represent Five Point Holdings, LLC and CP Development Co., LLC (collectively, “Five Point”) in *Five Point Holdings, LLC et al. v. Tetra Tech, Inc. et al.*, N.D. Cal. Case No. 3:20-cv-01481-JD. The case is pending before The Honorable James Donato in the United States District Court for the Northern District of California. Five Point has served the attached Subpoena to Produce Documents on the General Counsel of the United States Nuclear Regulatory Commission (the “NRC”) in connection with this litigation pursuant to 10 CFR § 9.201(a). While Five Point contends that compliance with the NRC’s *Touhy* regulations (10 CFR § 9.200, *et seq.*) is not warranted because the United States is a plaintiff and defendant in several cases that have been related to the underlying litigation, we nevertheless write to provide a statement in support of Five Point’s subpoena in accordance with 10 CFR § 9.202(b).¹

If oral testimony is sought by the demand, a summary of the testimony desired must be furnished to the General Counsel by a detailed affidavit or, if that is not feasible, a

¹ The United States is a plaintiff and/or defendant in the following related cases: *United States of America ex rel. Arthur R Jahr, III, et al. v. Tetra Tech EC, Inc. et al.* N.D. Cal. Case No. 3:13-cv-03835-JD (related to N.D. Cal. Case Nos. 3:16-cv-01106-JD and 3:16-cv-01107-JD); *United States of America ex rel. Kevin McLaughlin v. Shaw Environment & Infrastructure, Inc., et al.*, N.D. Cal. Case No. 3:14-cv-01509-JD; *CPHP Development, LP, et al. v. Tetra Tech, Inc. et al.*, N.D. Cal. Case No. 3:20-cv-01485-JD; *Five Point Holdings, LLC, et al. v. United States of America*, N.D. Cal. Case No. 3:20-cv-01480-JD; and *Kevin Abbey, et al. v. United States of America, Department of the Navy, et al.*, N.D. Cal. Case No. 3:20-cv-06443-JD.

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detailed statement by the party seeking the testimony or the party's attorney (10 CFR § 9.202(b)(1))

Five Point is not seeking oral testimony at this time, but expressly reserves its right to request such testimony in the future.

The General Counsel may request a plan from the party seeking discovery of all demands then reasonably foreseeable, including but not limited to, names of all NRC personnel from whom discovery is or will be sought, areas of inquiry, length of time away from duty involved, and identification of documents to be used in each deposition, where appropriate (10 CFR § 9.202(b)(2))

The NRC records that Five Point seeks are identified and described in Attachment A to the subpoena. Five Point does not know the names of all NRC personnel who may possess responsive records. However, potential custodians of responsive NRC records include Richard J. Urban, Rick Munoz, and James M. Trapp. The remainder of 10 CFR § 9.202(b)(2) is not relevant because the subpoena does not seek deposition testimony.

We look forward to your prompt attention to this matter.

Sincerely,

/s/

Jeffrey D. Dintzer