



OFFICE OF THE
GENERAL COUNSEL

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 16, 2021

BY ELECTRONIC MAIL

Greg Berlin, Esq.
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Re: *Five Point Holdings, LLC et al. v. Tetra Tech, Inc. et al.*
No. 3:20-cv-1481-JD (N.D. Cal.)
TR-21-02

Dear Mr. Berlin:

We are in receipt of a subpoena issued by your firm to the U.S. Nuclear Regulatory Commission, accompanied by a letter from your colleague, Jeffrey Dintzer, Esq.. This letter confirms that the NRC has accepted service of the subpoena via email, effective today. This office has assigned the processing number of "TR-21-02" to your correspondence. Please refer to that number in all future communications regarding this matter.

Mr. Dintzer asserts in his letter that the subpoena is not subject to NRC's *Touhy* regulations, set forth at 10 C.F.R. § 9.200 *et seq.*, "because the United States is a plaintiff and defendant in several cases" to which the *Five Point* case is related. We disagree. The regulations apply, by their terms, to subpoenas for the production of NRC records in cases "to which the NRC is not a party." 10 C.F.R. § 9.200(a). The fact that *Five Point*, to which neither the NRC nor the United States is a party, is related to other cases to which the United States is a party, does not render the regulation inapplicable to this case.

We are in the process of determining whether and under what conditions we can provide you with materials that are responsive to your requests, including whether the materials sought are covered by any applicable privileges, and we are prepared to work cooperatively with you to accommodate your request. To that end, and consistent with 10 C.F.R. § 9.202(b)(2)'s grant of authority to the General Counsel to request parties seeking discovery from the agency to submit a discovery plan, please provide a statement that includes (1) the nature of the information sought; (2) the issues in dispute in the case; (3) the relevance of the information sought to the issues in dispute in the case; and (4) why that information is not available elsewhere.

Greg Berlin, Esq.

With respect to component 4 described above, please note that a significant portion of the documents you have requested appears to be publicly available through the agency's searchable ADAMS database (<https://adams.nrc.gov/wba/>), which includes the agency's response to FOIA request 2018-000531. That request sought "[a]ll NRC records between 2011 and the present day (May 9, 2018) involving safety concerns raised by workers at the Hunters Point Shipyard in San Francisco, California. This request includes, but is not limited to, complaints, emails, records of phone calls, faxes, memos, and reports. This request also includes all records related to the interactions of Susan Andrews and Elbert Bowers with the NRC." Given that requests that require more than 50 hours of NRC employee time are subject to hourly fees in accordance with 10 C.F.R. Part 170.12(d), narrowing your requests to materials that are not already publicly available will reduce both the burden on the agency as well as the fees that the agency is required to charge your firm for its search and review time.

Should you have any questions, please feel free to call me at (301) 415-1956 or to contact me via email at andrew.averbach@nrc.gov.

Sincerely,

Andrew P. Averbach
Solicitor