



OFFICE OF THE
GENERAL COUNSEL

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

December 21, 2022

BY ELECTRONIC MAIL

Eden Brown Gaines, Esq.
Brown Gaines, LLC
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Re: *Global Incite, LLC v. Government Business Solutions, LLC*
No. 2022 CA 003608 B (D.C. Superior Court)
TR-22-03

Dear Counsel:

We are in receipt of a subpoena issued by your firm to the U.S. Nuclear Regulatory Commission. This office has assigned the processing number of "TR-22-03" to your request. Please refer to that number in all future communications regarding this matter.

While you have served a state court subpoena on a federal agency, state court subpoenas cannot be enforced against federal agencies unless the agency has explicitly waived its sovereign immunity. See, e.g., *Boron Oil Company v. Downie*, 873 F.2d 67, 70 (4th Cir. 1989). Here, the NRC has not waived that immunity; thus, the subpoena is not enforceable against the NRC. However, the General Counsel can exercise her discretion to provide documents in response to a state court subpoena if the requester can satisfy the requirements of 10 C.F.R. § 9.200 *et seq.* See generally *United States ex rel Touhy v. Ragen*, 340 U.S. 462 (1951). Such requests must be approved by the General Counsel for a decision. *Id.* § 9.201(a).

The General Counsel will consider whether to provide materials that are relevant to the above-referenced case, provided that such production comports with applicable laws and privileges. To this end, please be aware that we cannot release information that has been designated as proprietary absent the consent of the owner of such information. Finally, please note that you will be charged fees for the processing of this request if the agency expends more than 50 hours of work in response to it. 10 C.F.R. § 9.201(b).

E. Gaines, Esq.

Please feel free to contact me by e-mail or at (301) 415-1956 should you have any questions.

Sincerely,

Andrew P. Averbach
Solicitor