

other legal proceeding, a TVA employee is served with a demand to provide testimony concerning information acquired in the course of performing official duties or because of official status and/or to produce official information and/or records.

§ 1301.52 Definitions.

The following definitions apply to this part:

(a) *Appearance* means testimony or production of documents or other material, including an affidavit, deposition, interrogatory, declaration, or other required written submission.

(b) *Demand* means a subpoena, order, or other demand of a court of competent jurisdiction, or other specific authority (e.g. an administrative or State legislative body), for the production, disclosure, or release of TVA records or information or for the appearance of TVA personnel as witnesses in their official capacities.

(c) *Employee* means any members of the Board of Directors, officials, officers, directors, employees or agents of TVA, except as TVA may otherwise determine in a particular case, and includes former TVA employees to the extent that the information sought was acquired in the performance of official duties for TVA.

(d) *General Counsel* means the General Counsel of TVA or a person to whom the General Counsel has delegated authority under this part.

(e) *Legal proceeding* means any and all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature.

(f) *Records or official records and information* means all information in the custody and control of TVA, relating to information in the custody and control of TVA, or acquired by a TVA employee in performance of his or her official duties or because of his or her official status while the individual was employed by TVA.

(g) *Testimony* means any written or oral statements, including depositions, answers to interrogatories, affidavits,

declarations, interviews, and statements made by an individual in connection with a legal proceeding.

§ 1301.53 General.

(a) No employee shall appear, in response to a demand for official records or information, in any proceeding to which this part applies to provide testimony and/or produce records or other official information without prior authorization as set forth in this part.

(b) This part is intended only to provide procedures for responding to demands for testimony or production of records or other official information, and is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable by any party against TVA and the United States.

§ 1301.54 Requirements for a demand for records or testimony.

(a) *Service of demands.* Only TVA's General Counsel or his/her designee is authorized to receive and accept demands sought to be served upon TVA or its employees. All such documents should be delivered in person or by United States mail to the Office of the General Counsel, Tennessee Valley Authority, 400 W. Summit Hill Drive, Knoxville, Tennessee 37902.

(b) *Time limit for serving demands.* The demand must be served at least 30 days prior to the scheduled date of testimony or disclosure of records, in order to ensure that the General Counsel has adequate time to consider the demand and prepare a response, except in cases of routine requests for personnel and payroll records located on-site in Knoxville, where service 15 days prior will normally be considered sufficient. The General Counsel may, upon request and for good cause shown, waive the requirement of this paragraph.

(c) *Form of Demand.* A demand for testimony or production of records or other official information must comply with the following requirements:

(1) The demand must be in writing and submitted to the General Counsel.

(2) The demand must include the following information:

(i) The caption of the legal proceeding, docket number, and name and

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address of the court or other authority involved.

(ii) If production of records or other official information is sought, a list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the records sought.

(iii) If testimony is sought, a description of the intended use of the testimony, a detailed description of how the testimony sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony sought.

(iv) A statement as to how the need for the information outweighs any need to maintain the confidentiality of the information and outweighs the burden on TVA to produce the documents or testimony.

(v) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than a TVA employee, such as a retained expert.

(vi) The name, address, and telephone number of counsel to each party in the case.

(d) *Additional information.* TVA reserves the right to require additional information to complete the request where appropriate or to waive any of the requirements of this section at its sole discretion.

§ 1301.55 Responding to demands.

Generally, authorization to provide the requested material or testimony shall not be withheld unless their disclosure is prohibited by law or for other compelling reasons, provided the request is reasonable and in compliance with the requirements of this part, and subject to the following conditions:

(a) *Demands for testimony.* TVA's practice is to provide requested testimony of TVA employees by affidavit only. TVA will provide affidavit testimony in response to demands for such testimony, provided all requirements of this part are met and there is no compelling factor under paragraph (c) of this section that requires the testimony to be withheld. The General

Counsel may waive this restriction when necessary.

(b) *Demands for production of records or official information.* TVA's practice is to provide requested records or official information, provided all requirements of this part are met and there is no compelling factor under paragraph (c) of this section that requires the records or official information to be withheld.

(c) *Factors to be considered in determining whether requested testimony or records or official information must be withheld.* The General Counsel shall consider the following factors, among others, in deciding whether requested testimony or materials must be withheld:

(1) Whether production is appropriate in light of any relevant privilege;

(2) Whether production is appropriate under the applicable rules of discovery or the procedures governing the case or matter in which the demand arose;

(3) Whether the material requested is relevant to the matter at issue;

(4) Whether allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;

(5) Whether disclosure would violate a statute, Executive Order, or regulation, including, but not limited to, the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

(6) Whether disclosure would impede or interfere with an ongoing law enforcement investigation or proceeding, or compromise constitutional rights or national security interests;

(7) Whether disclosure would improperly reveal trade secrets or proprietary confidential information without the owner's consent;

(8) Whether disclosure would unduly interfere with the orderly conduct of TVA's functions;

(9) Whether the records or testimony can be obtained from other sources;

(10) Whether disclosure would result in TVA appearing to favor one litigant over another;

(11) Whether the demand or request is within the authority of the party making it; and

(12) Whether a substantial Government interest is implicated.