



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902

Ralph E. Rodgers
Executive Vice President and General Counsel

May 16, 2013

Loring E. Justice, Esq.
11911 Kingston Pike, Suite 201
Knoxville, Tennessee 37934

Dear Mr. Justice:

I am responding to your May 5, 2013, letter to TVA Director Neil McBride regarding 5 U.S.C. § 2302 and related statutory protections.

Over the years, our legal position has been outlined several times in exchanges of correspondence with Joseph Carson and you, and we are comfortable that 35 years of operations in accordance with that legal position demonstrate its reasonableness with regard to congressional, Office of Special Counsel (OSC), and Merit Systems Protection Board (MSPB) expectations.

With respect to 5 U.S.C. § 2302, TVA is subject only to subsection (b)(8) and also subsection (b)(9)(A)(i), (B), (C), and (D) (by virtue of the recently passed Whistleblower Protection Enhancement Act (Public Law No. 112-199)). This is clear from the language in section 2302(a)(2)(C)(i), which excludes "Government corporations."

Language in section 2302(a)(2)(A) further supports this conclusion, since it defines "'personnel action' . . . with respect to an employee in, or applicant for, a covered position in an agency, **and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation** . . . [emphasis added]." It would be unnecessary to specifically mention Government corporations in section 2302(a)(2)(A) if they were not treated separately from other executive agencies.

With respect to 5 U.S.C. § 2301, TVA fully complies with section 2301(c)(2) through its internal personnel policies and procedures, as described in my previous letter to you of August 8, 2012. Please note section 2301 also treats Government corporations separately from other executive agencies by reference to section 2302(a)(2)(C), as discussed above.

With respect to the Civil Service Reform Act of 1978 (CSRA), TVA's personnel system is separate and distinct from the personnel system applicable to the rest of the executive branch of the Government. This is clear from 16 U.S.C. § 831b(a), which allows the appointment of

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employees “. . . without regard to the provisions of the civil service laws applicable to officers and employees of the United States” In limited circumstances, parts of the CSRA apply to certain categories of TVA employees, in particular, preference eligible veterans (5 U.S.C. § 7511(a)(1)(B)).

With respect to your points regarding interpretations by employees of the OSC and the MSPB, TVA is not in a position to agree or disagree with reports about how employees of other agencies might be interpreting provisions of law applicable to their agencies.

I recognize that we have differing legal opinions as to the applicability to TVA of certain provisions of the CSRA. I hope this, in addition to the responses we have previously sent to Mr. Carson and you, adequately conveys TVA's perspectives on the questions and concerns set forth in your letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph E. Rodgers", with a long horizontal flourish extending to the right.

Ralph E. Rodgers