



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499

October 28, 1996

Mr. Stewart D. Ebnetter (**Federal Express**)
Regional Administrator
NRC Region II
United States Nuclear Regulatory Commission
101 Marietta Street, NW, Suite 2900
Atlanta, Georgia 30323

Dear Mr. Ebnetter:

This letter follows up the individual enforcement conference held on September 23, 1996, involving Joseph R. Bynum and addresses the disposition of the transcript of that conference. As I have discussed with Carolyn F. Evans of your staff, TVA requests that the entire transcript of Mr. Bynum's closed conference be withheld from public disclosure. Mr. Bynum and the other TVA participants in that conference prepared and made their statements to the NRC with the expectation and belief that the matters discussed in that conference would be fully considered by the NRC but would remain "closed" insofar as any public review was concerned. In particular, NRC's letter to Mr. Bynum dated August 26, 1996, expressly stated that the conference would be closed to the public. As discussed in further detail below, we believe that the entire transcript is exempt from disclosure under the applicable standards set forth in the Freedom of Information Act (FOIA).

As you know, on September 19, 1996, I submitted a letter on Mr. Bynum's behalf which we asked be considered as part of the September 23 conference. The contents of that letter were also discussed in detail during the conference. As you also know, I submitted a letter on October 1, 1996, providing the bases for withholding that September 19 letter from public disclosure. TVA believes that the same bases for withholding the entire September 19 letter from disclosure under Exemptions 5 and 6 of the FOIA (10 CFR § 2.790(a)(5) and (a)(6)), apply equally here as the bases for withholding the entire enforcement conference transcript from public disclosure.

Exemption 5 of the FOIA protects statements given by witnesses in government investigation settings, especially when there is an express expectation of confidentiality. As an agency of the United States Government, TVA has recognized the importance of protecting material obtained as part of the information gathering process. This is especially important during closed proceedings such as here where an agency must rely

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on a frank and open exchange of information in order to arrive at a correct and well considered result.

Exemption 6 of the FOIA protects against unwarranted invasions of personal privacy. As mentioned above, the statements of the TVA participants in the enforcement conference were made with the expectation that they were part of a closed proceeding. Though we were aware that the conference was being transcribed, it was our expectation and belief that the transcript would and should be fully considered within the NRC for enforcement purposes. However, the public disclosure of information obtained in the course of a closed personal enforcement conference would be contrary to the personal privacy interests of all of the TVA participants involved, as well as of the other individuals discussed in the closed conference, and would constitute an unwarranted invasion of personal privacy.

Though there are ample bases for withholding the entire enforcement conference transcript from public disclosure, I was recently afforded the opportunity to review the transcript in the NRC's Atlanta office for the purpose of marking any specific testimony for redaction. TVA strongly believes that those particular portions of the transcript which were marked for redaction are protected from disclosure under the FOIA. Specifically, the portion of the transcript on lines 19 through 21 on page 20, and from line 14 on page 56, through line 6 on page 60, are exempt from disclosure under Exemptions 5 and 6. The information contained in these transcript pages is personal and private to Mr. Bynum, is not a part of or in any way referenced in any public proceeding, and was provided under an express expectation of confidentiality during a closed information-gathering proceeding. Furthermore, the information contained in these transcript pages was in no way solicited by the NRC and was offered voluntarily by Mr. Bynum with the expectation that it would remain private and used to the extent that the NRC alone would deem its use probative to the issues at hand. Given its sensitive nature, Mr. Bynum's privacy interests in the information clearly outweigh any public interest in the release of the information. Accordingly, this is the type of information that TVA would customarily hold in strict confidence and protect from disclosure under the FOIA.

TVA also believes that the information contained in the transcript pages from line 16 on page 77, through line 6 on page 78, should be withheld from public disclosure under Exemptions 5 and 6 of the FOIA. This information addressed Mr. Bynum's personal, private thoughts which he expressed in a closed setting and in which he had a reasonable expectation of confidentiality. Also, this testimony is not a part of or in any way referenced in any public proceeding. Accordingly, it is a protected witness statement under Exemption 5. Furthermore, its disclosure would constitute an unwarranted invasion of Mr. Bynum's personal privacy interests and should be withheld under Exemption 6.

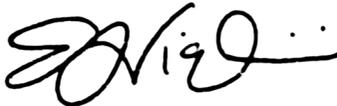
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Finally, the information contained in the transcript pages from lines 14 through 18 on page 78 should be withheld from public disclosure under Exemptions 5 and 6 of the FOIA. This information is related to sensitive settlement negotiations involving the government and is protected under the settlement negotiation privilege incorporated within Exemption 5. (See *Olin Corp. v. Insurance Co. of N. America*, 603 F Supp. 445, 449-50 (S.D.N.Y. 1985)). In addition, this is the type of personal information that is recognized as being withholdable under the FOIA's personal privacy Exemption 5.

In accordance with standard interagency FOIA practice, we also ask that in the event the NRC receives any requests by the public under FOIA for release of the transcript that the NRC consult with TVA prior to releasing any or all portions of the document.

If you have any questions, please call me at (423) 632-7317.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Vigluicci', with a stylized flourish at the end.

Edward J. Vigluicci
Senior Attorney