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

SERVED JUL 27 1984

July 26, 1984

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BRANCH

50-348/344A

Dear Sirs:

The Chairman has asked me to reply to your letter of July 2, 1984, expressing concern about a meeting between him and representatives of the Alabama Power Company on June 26, 1984, in which the company suggested a declaratory order procedure for dealing with a negotiating dispute that has arisen between the company and your client, Alabama Electric Cooperative.

Notwithstanding your intimation to the contrary, there was nothing improper about the meeting. The provisions of the Administrative Procedure Act (5 USC 557), and the Nuclear Regulatory Commission regulations (10 C.F.R. 2.780(a)), regarding ex parte communications, did not apply because there was no pending formal adjudication related to the meeting. Your 10 C.F.R. 2.206 petition, quite apart from the fact that it was filed later, did not initiate any formal adjudication, People of the State of Illinois v. NRC, 591 F.2d 12, 13-14 (C.A. 7, 1979).

The June 26, 1984 memorandum for the files by the Chairman, written by him and distributed to you and others immediately following the meeting that day, was prepared and distributed to inform you and your client and others interested in what had transpired, and to dispel even the slightest appearance of unfairness. As the memorandum indicated, the Chairman made neither comment nor commitment on the procedure suggested by the company representatives. No transcript of the meeting was made.

For your further information, Alabama Power Company representatives also met with Deputy General Counsel Malsch, on July 3, 1984, and orally presented their suggestion for a declaratory order. As you know, the proposal was formally filed the same day. This office made no commitment respecting the company's procedural proposal, and did not engage in discussion of the merits of the underlying controversy.

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Regarding your additional inquiry about notes or memoranda concerning meetings by the company representatives with Commissioners Asselstine or Bernthal or Executive Director Dircks, we have no information, but if you still wish to pursue the matter it may be best that you take it up directly with them.

Sincerely,



Herzel H. E. Plaine  
General Counsel

cc: Chairman Palladino  
Commissioner Roberts  
Commissioner Asselstine  
Commissioner Bernthal  
Commissioner Zech  
William J. Dircks  
Harold F. Reis, Esq.  
J. A. Bouknight, Jr., Esq.  
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