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NEWMAN & HOLTZINGER, P. C.

1025 CONNECTICUT AVENUE, N.W.

WASHINGTON, D. C. 20003

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JACK R. NEWMAN
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THOMAS A. SCHMUTZ

ROBERT LOWENSTEIN
OF COUNSEL

WILLIAM E. BAER, JR.
E. GREGORY BARNES
DOUGLAS L. BERESFORD
JANET E. B. ECKER
STEVEN P. FRANTZ
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* ADM. VA.

Honorable Nunzio J. Palladino, Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chairman:

I have received a copy of a July 2, 1984, letter addressed to you, signed by Mr. Bennett Boskey and Mr. D. Biard MacGuineas, attorneys for Alabama Electric Cooperative, Inc. ("AEC"). The subject of their letter is a Memorandum, dated June 26, 1984, summarizing your meeting on that date with representatives of Alabama Power Company ("APCo"), myself included.

I am puzzled by Mr. Boskey's and Mr. MacGuineas' suggestion that this meeting and other meetings referred to in the Memorandum may have been held on an "ex parte basis," and by their expression of surprise that notice was not given to Alabama Electric Cooperative, Inc. or its counsel. As your June 26, 1984 Memorandum indicates, without contradiction from AEC's attorneys, the referenced meetings preceded the filing of AEC's June 29, 1984 Section 2.206 request for enforcement action against APCo, as well as Alabama Power Company's July 3, 1984 Petition for Declaratory Order. Moreover, even had AEC's filing preceded the meeting, the ex parte rules contained in the Administrative Procedure Act, 5 U.S.C. § 557, and in the NRC Rules of Practice and Procedure, 10 CFR § 2.780(a), apply only to formal proceedings on the record then pending before the agency, and such a proceeding is certainly not "pending" merely as a result of the Commission having received a letter requesting that it initiate enforcement proceedings.

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Hon. Nunzio J. Palladino, Chairman
July 5, 1984
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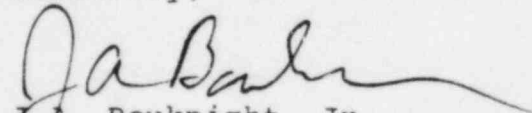
Therefore, the ex parte rules clearly are not applicable.

Thus, the meetings described in AEC's letter provide AEC with absolutely no basis for complaint or for a demand for the notes or memoranda, if any, of any Commissioner or NRC Staff member concerning those meetings. The experienced and sophisticated attorneys who wrote to you on behalf of AEC surely know that.

The meetings referred to in your Memorandum clearly involved no impropriety. APCo sought to discuss with you and other appropriate persons at the NRC alternative procedures for resolving a dispute that has the potential for occupying substantial resources of the Commission and the parties for many years. AEC's letter evidences the lengths to which AEC is apparently prepared to go to delay and complicate even the threshold procedural stages of this matter.

For these reasons, AEC's letter should be disregarded, and its maneuvers should not be permitted to delay the Commission's action on the Petition for Declaratory Order submitted by APCo on July 3, 1984.

Sincerely,



J.A. Bouknight, Jr.
Attorney for Alabama Power Company

JAB:cw

cc: Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Herzel H.E. Plaine, Esq.
Secretary, Docketing & Service
Bennett Boskey, Esq.
D. Biard MacGuineas, Esq.