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VOLPE, BOSKEY AND LYONS

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WASHINGTON, D. C. 20006

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DOCKETED  
JSNRC

August 6, 1984

'84 AGO -6 P4:43

OFFICE  
DOCKET  
BRANCH

Mr. Frederick M. Bernthal  
Commissioner  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

DOCKET NUMBER  
PROD. & UTIL. FAC.

50-348/364A

Dear Mr. Bernthal:

We are in receipt of Herzel H. E. Plaine's letter of July 26, 1984 (copy attached), responding to our request dated July 2, 1984, (copy also attached) for any notes or memoranda or transcripts which have been made, or are being made, of any of the meetings between yourself and representatives of Alabama Power Company near the end of June, 1984, as referred to in Chairman Palladino's Memorandum For the Files dated June 26, 1984, and docketed June 28, 1984, in Docket Nos. 50-348A and 50-364A (Alabama Power Company: Antitrust).

Mr. Plaine in his letter suggests that "it may be best" if we make direct request to you for such notes, etc., of the meeting or meetings referred to in the Chairman's memorandum. While we were under the impression that the copy of our July 2, 1984, letter which was sent to you was sufficient to constitute a request to you for such notes, etc., now, in view of what Mr. Plaine's letter states, we are separately requesting from you the same matters originally requested in our July 2, 1984, letter with respect to any meetings.

Without regard to whether the ex parte meetings did or did not comply with the letter and spirit of the NRC regulations, it still appears to us that elemental considerations of fairness call for such information to be furnished to AEC. As we have previously stated in a recent filing with the Commission (July 18, 1984, p. 5), the fact that Alabama Power

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Company has been so eager to persuade the Commissioners not to make such disclosures to Alabama Electric Cooperative, Inc. regarding Alabama Power Company's ex parte efforts 'underscores the reasons why, in the interests of fairness, such disclosures ought to be made.

Sincerely yours,

*Bennett Boskey*  
Bennett Boskey  
*D. Biard MacGuineas*  
D. Biard MacGuineas

cc: As per attached  
Certificate of Service

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July 2, 1984



Mr. Nunzio J. Palladino  
Chairman  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Chairman Palladino:

In this morning's mail we received a copy of your three-page "Memorandum for Files," dated June 26, 1984, "Subject: Meeting with Representatives of Alabama Power Company," which had been mailed to us on June 28 by the Commission.

This is the first knowledge we have had of the apparently very extensive and well attended meeting which took place between you and representatives of Alabama Power Company on June 26, 1984. Naturally, as counsel to Alabama Electric Cooperative we are interested in learning from your Memorandum that such a meeting did take place and the substance of what was said.

We are, however, somewhat surprised to learn from your Memorandum that such an extensive meeting with Alabama Power Company was held on an ex parte basis, without notice to Alabama Electric Cooperative or its counsel, and that the meeting was permitted to continue even after, according to what is indicated in your Memorandum, it was stated by Alabama Power Company rather early in the meeting that "AEC informed Alabama Power that AEC is contemplating an enforcement petition and may file a paper with NRC this week."

For your information, Alabama Electric Cooperative did on June 29, 1984, file with the Commission a formal request for enforcement, and mailed copies of it to Mr. Farley, President of Alabama Power Company, and to Mr. Buettner, one of its counsel. At that time, as indicated above, we were wholly unaware of the meeting which Alabama Power Company had had

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with you on June 26, and of any representations which Alabama Power Company may have made to you in connection with this matter. A copy of the Alabama Electric Cooperative formal request (not including the various Tabs which are attached to the copies filed on June 29), together with a copy of our letter of transmittal, is enclosed herewith for your information. As you will see from the Alabama Electric Cooperative request for enforcement, the manner in which Alabama Power Company has been conducting itself since the date on which the license conditions became final has led Alabama Electric Cooperative to conclude that prompt enforcement action should be sought from, and taken by, the Commission at this time. Your Memorandum does not indicate that in the meeting of June 26, 1984, Alabama Power Company representatives even alluded to most of the specific items which form the basis of Alabama Electric Cooperative's request for enforcement.

In the event that anything of substance was said at the meeting on June 26, 1984, which is not reflected in your Memorandum of that date, we request that such be communicated to us. If a transcript of the meeting was made or is being made, we likewise request that that be furnished to us.

We are furnishing copies of this letter to those persons to whom your Memorandum shows you sent copies of your Memorandum (other than Commissioner Gilinsky whose term has meanwhile expired), and also to Messrs. Farley and Buettner.

On page 1 of your Memorandum, at the top of paragraph 2, it is stated that "At the meeting, Alabama Power representatives told me the following information: -- They met previously in separate meetings with Commissioners Asselstine and Bernthal and with Mr. Dircks to discuss the points presented to me." We hereby request that we be furnished with copies of any notes or memoranda or transcripts which have been made, or are being made, of any of those meetings.

Sincerely yours,

*Bennett Boskey*  
Bennett Boskey

*D. Blard MacGuineas*  
D. Blard MacGuineas

Enclosures

cc: Commissioner Roberts  
Commissioner Asselstine  
Commissioner Bernthal  
Herzel H. E. Plaine  
SECY Docketing & Service (Docket No.s 50-348A, 50-364A)  
Joseph M. Farley  
Robert A. Buettner, Esq.

CERTIFICATE OF SERVICE

It is hereby certified that service of the attached document has been made by mailing or delivering\* copies to the following on the 6th day of August, 1984.

DOCKETED  
USNRC

'84 AUG -6 P4:44

*Bennett Boskey*  
BENNETT BOSKEY

- \*Nunzio <sup>OFFICE</sup> ~~DOCK~~ Palladino, Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555
- \*Frederick M. Bernthal, Commissioner  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555
- \*James K. Asselstine, Commissioner  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555
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- \*Dr. Richard C. DeYoung, Director  
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- \*William J. Dircks  
Executive Director for Operations  
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