

February 15, 2019

BY FAX: 865-632-6901

Denise Smith
Tennessee Valley Authority
400 West Summit Hill Dr. WT 7D
Knoxville, NB 37902-1401

Re: Freedom of Information Act Request

Dear Ms. Smith:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and Tennessee Valley Authority (“TVA”) regulations.

First, CREW requests copies of all communications between any TVA official and the White House, including anyone with the domain name eop.gov, concerning the TVA’s consideration of whether to close the Paradise #3 coal plant in Kentucky between January 20, 2017 and the present.

Second, CREW requests copies of all communications between any TVA official and anyone at or acting on behalf of Murray Energy concerning the TVA’s consideration of whether to close the Paradise #3 coal plant in Kentucky between January 20, 2017 and the present.

Third, CREW requests copies of all communications between any TVA official and anyone at or acting on behalf of Faegre Baker Daniels LLP or Faegre Baker Daniels Consulting concerning the TVA’s consideration of whether to close the Paradise #3 coal plant in Kentucky between January 20, 2017 and the present.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, as well as those who were cc’ed or bcc’ed on any emails.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the

requested records. *See* 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *See Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and TVA regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

On February 11, 2019, just days before the TVA's board was scheduled to vote on the future of the coal plant Paradise Unit 3, the TVA released an environmental assessment that concluded the proposed closure would cause "'no significant impact' on the environment."¹ In response, President Donald Trump pushed back against the anticipated closure, tweeting "Coal is an important part of our electricity generation mix and @TVANews should give serious consideration to all factors before voting to close viable power plants, like Paradise #3 in Kentucky!"² The Paradise plant gets most of its coal from a subsidiary of Murray Energy, the head of which is a major Trump donor and "VIP" customer of the Trump hotel in Washington, DC.³

The requested records will shed light on the extent to which the President's intervention impacted TVA's consideration of whether to close the Paradise #3 plant. This information is relevant to how TVA employees, if at all, were influenced by the President's efforts to accommodate one of his key supporters and to advance his pro-coal agenda notwithstanding coal's inability to compete with cheap gas and energy renewables. The public is entitled to know whether key decisions like this of the TVA, an independent agency, are dictated or influenced not by scientific evidence of the environmental impact of failing coal plants and economic realities but a desire to advance the president's political agenda.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities

¹ Alex Guillén and Eric Wolff, *Trump calls to save coal plan supplied by major supporter*, *Politico*, Feb. 11, 2019, available at <https://www.politico.com/story/2019/02/11/trump-coal-1163128>.

² *Id.*

³ *Id.* *See also* Steven Mufson, *Trump urges Tennessee Valley Authority to keep open 49-year-old coal plant*, *Washington Post*, Feb. 12, 2019, available at https://www.washingtonpost.com/business/economy/trump-urges-tennessee-valley-authority-to-keep-open-49-year-old-coal-plant/2019/02/12/6fa1810c-2ed9-11e9-813a-0ab2f17e305b_story.html?utm_term=.44f9fb2650ac.

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of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org, and through www.scribd.com. The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes blogposts that report on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts documents it receives under the FOIA on its website, and those documents have been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or aweismann@citizensforethics.org. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me either at aweismann@citizensforethics.org or at Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel