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Description of document: Tennessee Valley Authority (TVA) records regarding treatment of TVA power system borrowings and funds as "on budget," 1988

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400 West Summit Hill Dr. WT 7D
Knoxville, TN 37902-1499
Fax: 865-632-6901

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Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1401

August 8, 2012

This responds to your letter dated July 6, 2012, requesting information under the Freedom of Information Act (FOIA) 5 U.S.C. § 552 (2006 & Supp. III 2009). You requested records regarding treatment of TVA power system borrowings and funds as "on budget."

Enclosed are ten pages of records responsive to your request. We are withholding 11 pages of records responsive to your request pursuant to the deliberative process and attorney-client privileges under FOIA exemption 5.

The deliberative process privilege protects, among other things, briefing materials that summarize issues and advise superiors and contain opinions and recommendations that are part of an agency's decision-making process. The attorney-client privilege protects confidential communications between attorneys and their clients who seek advice on legal issues.

For non-commercial requests, TVA's FOIA regulations (18 C.F.R. § 1301) provide that fees for the first two hours of search time and the first 100 pages of copying are waived. Since your request was processed within those guidelines there is no charge.

You may appeal this initial determination of your FOIA request by writing to Ms. Janet J. Brewer, Vice President, Communications, Tennessee Valley Authority, 400 W. Summit Hill Drive (WT 7C), Knoxville, TN 37902-1401. Any appeal must be received by Ms. Brewer within 30 days of the date of this letter.

Sincerely,

A handwritten signature in black ink that reads "Denise Smith". The signature is written in a cursive, flowing style.

Denise Smith
TVA FOIA Officer

Enclosures

OFF-BUDGET STATUS FOR TVA POWER PROGRAM

Submitted by the Tennessee Valley Authority to the National Economic Commission
August 3, 1988

I. Introduction

This is in response to the National Economic Commission's June 14 Federal Register request for comments with respect to the Commission's development of recommendations to the President and Congress under Public Law No. 100-203 on ways of reducing the Federal Budget deficit and promoting national economic growth. In particular, this paper addresses the issue raised in section 9(b) of the Concurrent Resolution on the Budget for fiscal year 1989--what the economic, budgetary, and programmatic effects would be of making Federal trust funds and self-supporting public enterprise programs "off-budget."

II. The TVA Power Program

The power program of the Tennessee Valley Authority is a self-supporting program that should be off-budget.

- The Tennessee Valley Authority was established in 1933 as a Government corporation. TVA currently operates the Nation's largest electric system, serving portions of seven States and approximately seven million consumers. TVA also separately conducts certain nonpower activities in the areas of navigation, flood control, and fertilizer development.

- In submitting the TVA Act to Congress in 1933, President Franklin D. Roosevelt stated that TVA should be "a corporation clothed with the power of Government but possessed by the flexibility and initiative of private enterprise." The Government Corporation Control Act of 1945 specifies that the budgetary process for Government corporations should recognize "the need for flexibility, including provision for emergency and contingencies, in order that the corporation may properly carry out its activities as authorized by law."
- The TVA power program is entirely self-supporting. With enactment of the 1959 Self-Financing Amendment (Section 15d of the TVA Act), Congress completed the financial separation of the power program from TVA's nonpower activities and provided for it to be supported exclusively by revenues from TVA's ratepayers.
- All power program expenditures are paid for only out of power revenues and borrowings, and such power funds may legally be used only for power program purposes.
- TVA borrowings (power bonds) are secured only by future power revenues. By law, such borrowings are not obligations of or guaranteed by the United States.
- The power program may borrow up to \$30 billion outstanding at any one time. No further congressional approvals for TVA's borrowings are required.
- The TVA power program represents approximately 98 percent of TVA's total annual obligations. Appropriations for TVA's nonpower activities make up the remaining 2 percent.
- Power accounts are legally required to be kept in accordance with the Federal Energy Regulatory Commission's uniform system of accounting for public utilities.

- ° Despite the power program's self-financing status, it continues to be shown in the Budget by OMB as adding to the calculation of the national deficit that portion of power expenditures which are funded with proceeds from power revenue bond sales (less TVA's annual Treasury payments), even though those bonds are statutorily neither obligations of nor guaranteed by the United States. For fiscal year 1989, this presentation will add about \$605 million to the national deficit figure. This distorts the calculation of the Federal deficit because it makes no distinction between the transactions of the self-financing power program and those of taxpayer-funded programs.

III. On-Budget Versus Off-Budget Status

If the Budget is to serve as an accurate working document on which Congress is to base budgetary decisions, it should be based exclusively upon those expenditures that are the responsibility of current and future taxpayers. It should not present financial transactions not made with general tax funds or that are not obligations of or guaranteed by the United States as adding to the national deficit. Budget presentations that so artificially inflate the deficit perform a disservice to Congress in its efforts to effectively address the Government's current and future financial condition.

- ° Making the TVA power program off-budget would not alter the real deficit (the responsibility of the Nation's taxpayers) because TVA's ratepayers statutorily have exclusive financial responsibility for the power program. The United States has no legal liability for the payment of TVA's power bonds or other power program debts. Moreover, power funds cannot legally be spent to finance the taxpayer-funded nonpower programs.

- Because no congressional approvals are required for the power program to conduct its affairs from year to year, the power program's inclusion in the Budget itself poses no threat under the routine processes of the Congressional Budget Act of 1974. However, continued inclusion in the Budget makes the power program vulnerable to "budget-cutting" or other congressional enactments that could impair TVA's authorities to finance and operate it as a business.

IV. The Nature of the TVA Power Program and Why it Should be "Off-Budget"

The power program must operate and compete in the commercial world in the same manner as a private utility business.

- The power program supplies an essential service--electric power--to about seven million persons and businesses which, if not supplied by TVA, would have to be supplied in the same amounts by other entities.
- TVA assesses the electric power needs of the area it serves and has the authority to plan, construct, and pay for the generating plants, transmission lines, and other facilities needed to meet those needs.
- The revenues and expenses of the power program are demand-driven, as are those of any electric power company. It is not policy-driven, as are most Federal programs.
- While subject to continuous congressional oversight (and legislative change should Congress so decide), TVA has statutory authority to set its own rates, determine its own level of expenditures, and collect and obligate its revenues without having to obtain specific congressional, presidential, or other approvals.

- The TVA power program is a large State and local "taxpayer." For example, in fiscal year 1987 the power program paid \$203 million of in-lieu-of-tax payments to 9 States and 151 counties.

The power program is financed from funds derived from TVA ratepayers and has been so since the 1959 Self-Financing Amendment.

- All power program expenditures are paid for only out of power revenues and borrowings, and such power funds may legally be used only for power program purposes.
- TVA borrowings (power bonds) are secured only by future power revenues. By law, such borrowings are not obligations of or guaranteed by the United States.
- TVA power program funds are accounted for separately from those for TVA's nonpower activities.

The TVA power program receives no subsidy from the Treasury or the taxpayers.

- The power program receives no appropriations from Congress.
- All power program personnel expenses--salaries, benefits, retirement, workmen and unemployment compensation, etc.--are paid for exclusively with power funds.
- Federal appropriations which were previously invested in the power program are carried separately on TVA's books as the Government's "equity" in the power program. This appropriation investment is statutorily required to be reduced by TVA each year by paying the Treasury \$20 million from power revenues (until \$1 billion is paid). TVA is also required to pay an annual dividend on the

outstanding balance of the appropriation investment based upon the average interest rates being currently paid by the Treasury on its own borrowings, thus always covering the "cost" of the Government's investment. Since 1959, the power program has paid the Treasury in excess of \$2.2 billion in repayments and dividends.

TVA's borrowing money from the Federal Financing Bank does not create a taxpayer subsidy to the power program.

- For nearly 15 years (1960-1974), TVA marketed all of its bonds to private investors. Those TVA bonds were assigned an "AAA" rating by bond rating firms. Approximately \$1.4 billion of those bonds are still outstanding, most of which are publicly traded on the New York Stock Exchange.
- Since 1974, TVA has sold all of its bonds to the FFB in keeping with its statutory responsibility to keep power rates as low as feasible because the interest rates offered by the FFB were lower than the alternatives.
- The interest rates charged by the FFB are set to cover the full cost of money to the FFB/Treasury/taxpayer, plus an annual fee of an extra 1/8 of one percent.
- TVA power program revenue bonds are good investments for taxpayers. The 1/8 of one percent annual fee on all outstanding TVA bonds currently yields a \$20 million per year profit to the FFB/Treasury/taxpayers.
- Power bonds sold to the FFB are issued under the same Basic Bond Resolution (i.e., same terms and conditions) as those sold to the public.

- All bondholders (FFB and private holders) possess significant rights to protect their investment by being able to take legal action to compel the power program to take the actions necessary (including raising power rates) to maintain the degree of financial stability mandated under the Basic Bond Resolution's covenants.

On-budget status risks the power program's being arbitrarily affected by across-the-board or directed legislation designed to reduce the national deficit figure, whether or not taxpayers themselves will benefit.

- Such legislation could place the power program in the undesirable position of foregoing needed power facilities or dramatically raising rates to fund them with current proceeds. Whatever the effect, such arbitrary intervention negates the responsibility on conducting a businesslike operation that Congress vested in the TVA Board of Directors, as well as exposing TVA ratepayers to the potential for arbitrary and imprudent actions.
- The potential for harm is not hypothetical, as evidenced by the severe disruptions in the Postal Service's business operations that resulted from budgetary limitations enacted by the Omnibus Budget Reconciliation Act of 1987. The Postal Service is presented in the Budget in essentially the same manner as is TVA's power program. Consequently, the power program is equally vulnerable to the same harm to its operations.

V. Off-Budget Treatment For the TVA Power Program Was Intended by Congress

In considering TVA's 1959 self-financing legislation, the Public Works Committees of both the House and Senate clearly expressed the intent that the power program's financial transactions would not be presented in the Budget as affecting the calculation of the national deficit figure.

- This meant that the power program budget should be presented to Congress each year for information, but otherwise be off-budget (e.g., like the pending bill, H.R. 4150, would treat the Postal Service).
- This congressional intent has been reaffirmed on several occasions over the years by the Senate Environment and Public Works and the Senate Budget Committees.

The 1985 report by the Senate Judiciary Committee approving a balanced budget amendment to the United States Constitution expressly noted that the TVA power program's financial transactions would not be included in the Government's "receipts" and "outlays" totals which would be subject to the "balanced budget" constitutional requirements.

VI. Off-Budget Status Would Not Affect Congressional Scrutiny

Presently, the power program budget is given to the President and to Congress for informational purposes only. The enactment of new substantive legislation would be necessary if Congress were to modify the budget. Off-budget status would not change this degree of scrutiny. If placed off-budget, the power program budget would still be included in the Budget Appendix and given to Congress each year. It merely would not be used in the calculation of the national deficit and, consequently, not be threatened by "deficit reduction" legislation.

VII. Conclusion

A self-financing program that imposes no burden on the Nation's taxpayers, such as the TVA power program, should not first have to suffer adverse effects like the Postal Service to its business operations before action is taken to remove it from the budgetary process.

During the 1950s TVA suffered such severe adverse constraints at the hands of the budgetary process that it nearly became unable to meet the Tennessee Valley's electric power needs. Congress wisely responded to insulate TVA's power program from further political interference by enacting the 1959 Self-Financing Amendment. However, the budgetary process has changed to such an extent in recent years that Congress's 1959 action is no longer sufficient to preserve TVA's ability to make sound business decisions for the power program.

On the basis of these justifications, TVA urges the National Economic Commission to recommend the actions necessary to remove the budgetary risks to the TVA power program and other self-financing programs when there are no corresponding benefits to the Nation's taxpayers.

Marvin Runyon
Chairman, Board of Directors
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902
(615) 632-2921

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