

EXHIBIT 9

April 20, 2023

Via TVA FOIA portal and electronic mail to foia@tva.gov

Denise Smith
Freedom of Information Officer
Tennessee Valley Authority
400 West Summit Hill Dr.
Knoxville, TN 37902-1401

**RE: Freedom of Information Act Request for Records of TVA's Agreement with
Concentric Energy Advisors, Inc.**

Dear Ms. Smith:

Under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, the Southern Environmental Law Center ("SELC") requests the following documents from the Tennessee Valley Authority ("TVA"):

1. All records of TVA's contractual agreement with Concentric Energy Advisors, Inc., related to Concentric's October 3, 2022 report entitled "Assessment of the Draft Environmental Impact Study and Response to Certain Reports."¹

For the purposes of this request, the term "records" includes all written, printed, recorded or electronic: documents, materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, maps, photographs, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages, and mail in TVA's possession or control. Upon request, SELC will provide a file-sharing link for easy transfer of the requested documents.

FOIA requires a responding agency to make a "determination on any request within twenty (20) working days of receipt. *See* 5 U.S.C. § 552(a)(6)(A)(i). FOIA also requires the release of all reasonably segregable portions of a document that are themselves not exempt. 5 U.S.C. § 552(b). TVA "shall withhold information under this section only if the agency reasonably foresees that disclosure would harm an interest protected by" a statutory exemption. 5 U.S.C. § 552(a)(8)(A)(i). Should TVA deny this request, TVA must inform SELC of the grounds for denial and the specific administrative appeal rights which are available. *See* 5 U.S.C. § 552(a)(6)(A)(i).

To the extent any responsive materials are not already in electronic format, SELC is requesting photocopies without charge, or at a reduced charge, because reduction or waiver of fees would be in the public interest. A disclosure is in the public interest if: (1) it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) it is

¹ See TVA, Cumberland Fossil Plant Retirement Final Environmental Impact Statement, Appendix Q (Dec. 2022).

not primarily in the commercial interest of the requester. The public interest standard of the fee waiver provision of the FOIA should be “liberally construed” in favor of waivers. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *Pederson v. Resolution Trust Corp.*, 847 F. Supp. 851, 855 (D. Colo. 1994); *Etlinger v. FBI*, 596 F. Supp 867, 872 (D. Mass. 1984). The goal of the statute is to avoid the “roadblocks and technicalities which have been used by various Federal agencies to deny waivers . . .” *Pederson*, 847 F. Supp. at 855.

SELC is a 501(c)(3) non-profit organization with over 30 years of experience disseminating public information about regulated industries’ activities, such as TVA’s regulatory issues and operations. *See* 5 U.S.C. § 552 (a)(4)(A)(iii). SELC maintains a website that includes both general and topic-specific information regarding the matters with which SELC is involved, including TVA’s energy policy choices and relationships with local distribution utilities.² Lawyers at SELC are interviewed by the media to explain their work and its significance.³ SELC’s website contains documents generated by SELC for the specific purpose of educating the public on particular issues. SELC staff members speak at conferences on particular topics, and SELC assists the public in locating information relating to a particular topic by collecting and posting relevant information, documents, and links to other websites.

A fee waiver will clearly benefit the general public through increased notice and understanding of the operations of TVA and of potential or proposed major investments in new generation facilities. SELC further certifies that disclosure of the information sought is not in our commercial interest. Should SELC’s request for reduced or waived fees be denied, SELC is prepared to bear the reasonable duplication and search costs necessary to fulfill this request. However, I request you contact me before processing this request if the fee is expected to be in excess of \$100.00. SELC reserves its right to appeal a fee waiver or reduction denial.

If you have any questions regarding this request, please do not hesitate to contact me at (615) 921-9470 or tbussey@selctn.org.

Sincerely,

Trey Bussey
Southern Environmental Law Center

² *See, e.g.*, <https://selc.link/3xaNpO5>; <https://selc.link/2RLAjYp>.

³ *See, e.g.*, <https://abcnews.go.com/US/wireStory/tennessee-valley-authority-considers-replacing-coal-gas-78640645>.