



Memorandum from the Inspector General, ET 4C-K

September 30, 2015

Sherry A. Quirk, WT 6A-K

REQUEST FOR MANAGEMENT DECISION – AUDIT 2014-15224 – "OBTAINING THINGS OF VALUE FROM TVA PROTOCOL" PROCESS

Attached is the subject final report for your review and management decision. You are responsible for determining the necessary actions to take in response to our findings. Please advise us of your management decision within 60 days from the date of this report.

Information contained in this report may be subject to public disclosure. Please advise us of any sensitive information in this report that you recommend be withheld.

If you have any questions or wish to discuss our findings, please contact Melissa L. Conforti, Senior Auditor, at (865) 633-7383 or Lisa H. Hammer, Director, Operational Audits, at (865) 633-7342. We appreciate the courtesy and cooperation received from your staff during the audit.

Richard W. Moore

MLC:BSC

Attachment

cc (Attachment):

TVA Board of Directors
Janet J. Brewer, WT 7C-K
William D. Johnson, WT 7B-K
Dwain K. Lanier, MR 3K-C
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OIG File No. 2014-15224



Office of the Inspector General

Audit Report

To the Executive Vice President
and General Counsel

“OBTAINING THINGS OF VALUE FROM TVA PROTOCOL” PROCESS

Audit Team
Melissa L. Conforti
Scott M. Norris

Audit 2014-15224
September 30, 2015

ABBREVIATIONS

ARRC	Audit, Risk, and Regulation Committee
Blackberry	The Cove at Blackberry Ridge, LLC
CEO	Chief Executive Officer
DAEO	Designated Agency Ethics Official
FY	Fiscal Year
HR	Human Resources
OGC	Office of the General Counsel
OIG	Office of the Inspector General
Protocol	Obtaining Things of Value From TVA Protocol
SPP	Standard Programs and Processes
TVA	Tennessee Valley Authority

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Audit 2014-15224 – “Obtaining Things of Value From TVA Protocol” Process

EXECUTIVE SUMMARY

Why the OIG Did This Audit

In August 2008, numerous newspaper articles questioned the fairness of a Tennessee Valley Authority (TVA) Maintain and Gainⁱ transaction granting water access to The Cove at Blackberry Ridge, LLC (Blackberry). Blackberry’s primary investor was a Congressman who served on the United States House Transportation Committee’s Subcommittee on Water Resources and the Environment, a congressional panel that provides formal oversight of TVA. The articles raised questions about whether the Congressman used his position to influence TVA’s decision to grant Blackberry’s request for water access. Because doubt was cast on the fairness of a TVA process, the TVA Office of the Inspector General (OIG) conducted an inspection and found no evidence of pressure on TVA from the Congressman to give Blackberry water access on this lakefront project.

However, the appearance of possible favoritism resulted in reputational harm to both the Congressman and TVA. Our inspectionⁱⁱ found this was due, in part, to the controversy created by a TVA spokesperson and the Congressman who both denied the Congressman had contacted anyone at TVA about the permit. Both the TVA spokesperson and the Congressman were contradicted by internal TVA e-mails showing the Congressman had called the former Chief Executive Officer (CEO) about an unrelated matter and, during that call, told the former CEO of continuing delays Blackberry was experiencing regarding resolution of the permit. In interviews with the OIG, the Congressman and former CEO confirmed their conversation was as described in the TVA internal e-mails. Neither the Congressman nor anyone at TVA explained why they had denied having what evidence showed was an innocuous conversation. While TVA management clearly recognized a potential conflict of interestⁱⁱⁱ existed, no policy or procedure existed that required TVA to document preferential treatment was not being shown, and no contemporaneous and independent review of the transaction was performed to ensure preferential treatment was not given. During the inspection, the OIG also

ⁱ The Maintain and Gain program was designed to allow consideration of proposals to obtain lake access rights at the landowner’s property by swapping access rights already available at other properties the landowner may possess. The policy, as written, required the transactions to result in no net loss or, preferably, a net gain of public shoreline to TVA.

ⁱⁱ OIG Inspection 2008-12003, Maintain and Gain Lakeshore Management Program, May 22, 2009, as submitted to the United States House of Representatives Committee on Standards of Official Conduct.

ⁱⁱⁱ For the purposes of this report, we use the term “potential conflict of interest” to denote a situation where a public official or employee has a private financial interest that conflicts with or appears to conflict with the public interest. Whether a potential conflict of interest is actually a conflict or an impermissible appearance of a conflict will depend on the facts of each individual case.



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performed a limited review of additional transactions that had the potential for preferential treatment and found the program was administered in an arbitrary and inconsistent manner that contributed, in some instances, to the appearance of preferential treatment.

As a result of that inspection, TVA and TVA’s Board of Directors agreed to develop a policy to provide a means to identify the potential of actual or apparent conflicts of interest or the appearance of the exertion of undue influence on the part of a person applying for a TVA benefit. TVA developed the “Obtaining Things of Value From TVA Protocol” (Protocol) in June 2009. This audit was initiated to determine whether the (1) design provides reasonable assurance of meeting its intended purpose and (2) Protocol was implemented as required. If such a Protocol were in place at the time of the innocuous conversation between the Congressman and former CEO, it would have required the conversation be documented that neither the Congressman nor TVA had done anything wrong.

What the OIG Found

As described above, TVA committed to create the Protocol to aid in the identification and prevention of actual or potential conflicts of interest or the appearance of undue influence on the part of the person applying for a TVA benefit. As outlined in this report, we determined the Protocol currently provides a false assurance that TVA is mitigating the risk of undue influence due to several factors: (1) the design not meeting its intended purpose, (2) the Protocol not being implemented as required due to inconsistent incorporation into policies and procedures and noncompliance with some Protocol requirements, (3) a lack of consequences for the applicant’s noncompliance with self-disclosure, and (4) an absence of instructions on how an employee discloses knowledge of actual or apparent undue influence related to the Protocol limits the likelihood of identifying and preventing actual or apparent undue influence. Ultimately, this poses a risk of reputational harm to TVA and the applicant, person, corporation, or entity seen as receiving the benefit.

In 2013, the media reported a real estate developer partnered with a former Congressman, a former TVA executive, and a former member of the TVA Board of Directors to lobby and propose a loan agreement to finance the completion of TVA’s Bellefonte Nuclear Plant. Based on the original intent of the Protocol to identify potential undue influence, one would expect TVA’s Protocol process to have identified this request as something of value being requested. However, the current Protocol



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definitions do not include (1) former congressmen, employees, or Board members; or (2) loan agreements.^{iv} If this request had been identified as a potential conflict of interest, the Protocol would have required the request be disclosed to TVA and OIG management and conversations be documented. Such transparency could better protect TVA and the applicant, person, corporation, or entity seen as receiving the TVA benefit if someone cast doubt on the fairness of this request.

This proposal for a loan agreement to fund Bellefonte Nuclear Plant is one instance when a potential conflict of interest was not identified or disclosed to the appropriate TVA or OIG management due to the limitations set by the Protocol definitions. Conversely, due to the implementation of the Protocol, TVA identified several instances of potential conflicts of interest in Section 26a permits^v and interest in real property requests. In addition, disclosures were made to both TVA and OIG management for Section 26a and land disposal permits identified as having a potential conflict of interest as required by the Protocol. We determined there were also some land use records that were identified but not disclosed to the appropriate TVA or OIG management. No processes other than Section 26a and land disposal permits incorporated the Protocol into their policies and procedures.

The Protocol was also created to protect TVA and the TVA Board,^{vi} along with those applying for a TVA benefit, by providing additional oversight to ensure undue influence or preferential treatment is not used to benefit someone. Therefore, revising the Protocol to clearly reflect its true purpose as a risk mitigation tool, rather than as an assurance regarding the decision-making process, and designing it to focus on the high-risk transactions to identify and prevent actual or apparent undue influence will provide for better identification of such requests and better protect the parties involved. Overall, improvements to the Protocol process can further reduce the risk of undue influence or preferential treatment. Improvements can also help prevent the approval of transactions that either may (1) not be in TVA’s best interest because undue influence was

^{iv} TVA excludes loan agreements from its sole-source contract provisions. See TVA’s Standard Program and Process (SPP), TVA-SPP-04.010, Justification and Approval for Non-Competed Contract Actions, effective February 9, 2015.

^v Section 26a of the TVA Act requires TVA approval be obtained before any construction, operation, and maintenance activities can be carried out that affect navigation, flood control, or public lands along the shoreline of the TVA lakes or in the Tennessee River or its tributaries. Examples of structures and projects that require TVA approval include boat docks, piers, boat ramps, shoreline or stream bank stabilization, bridges, culverts, commercial marinas, barge terminals and mooring cells, water intake and sewage outfalls, and fill or construction within the river floodplain. TVA calls documents granting such requests Section 26a permits.

^{vi} Several TVA Board members also stated they believe the Protocol protects them.



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used or (2) be in the best interest of TVA but may appear as if they were not fair and impartial. This could cause reputational harm to TVA and/or the applicant, person, corporation, or entity seen as receiving the benefit.

What the OIG Recommends

We recommend the Executive Vice President and General Counsel (and Designated Agency Ethics Official), along with responsible TVA management and the TVA Board of Directors:

1. Perform a risk assessment to determine what types of (a) “things of value” and (b) “covered persons” should be defined in the Protocol.

We recommend the Executive Vice President and General Counsel (and Designated Agency Ethics Official), along with responsible TVA management in various organizations:

2. Enhance the Protocol by:
 - a. Evaluating whether defining applicant consequences for violating the policy would be beneficial. If so, incorporate the required notice to the applicant.
 - b. Incorporating how employees report within TVA when they become aware of a request for benefits that involves an actual or potential conflict of interest, regardless of whether identified by applicant self-disclosure or employee knowledge, and notify the Office of the General Counsel and OIG as required by the Protocol.
 - c. Revising immediately and requiring review cadence.
3. Require implementation of the Protocol into all related SPPs and processes related to requests for all TVA benefits identified as “things of value,” including consistently requiring any person who submits a request to TVA for a “thing of value” to identify whether (a) a “covered person” stands to benefit if approved or (b) an actual or apparent conflict of interest exists.
4. Develop a repository for all types of defined “covered person” requests other than those related to Section 26a permit and interest in real property requests to ensure all requests with identified actual or apparent conflicts of interest are disclosed to the appropriate TVA and OIG personnel as required.



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5. Identify who is responsible to brief the TVA Board's Audit, Risk, and Regulatory Committee and require the briefing to include the status of requests by Covered Persons for Things of Value reported since the prior briefing at least every six months.
6. Provide detailed and robust annual training as required.
7. Disseminate the Protocol annually, at a minimum, to TVA personnel who could be affected by its requirements and ensure TVA InsideNet posts the most recent version when referenced.

TVA Management's Response and Our Evaluation

In response to our draft audit report, TVA management provided clarifications related to wording within the report, which have been incorporated as applicable. See Appendix B for TVA management's complete response.

BACKGROUND

In 1999, the Tennessee Valley Authority (TVA) instituted its Shoreline Management Policy to improve the protection of shoreline and aquatic resources while continuing to allow reasonable public access to both. The Shoreline Management Policy restricted residential access rights to about 38 percent of available shoreline while protecting the remaining 62 percent. This Policy also adopted the Maintain and Gain program designed to allow consideration of proposals to obtain lake access rights at the landowner's property by swapping access rights already available at other properties the landowner may possess, resulting in no net loss, or preferably, gain of public shoreline for TVA.

In August 2008, numerous newspaper articles questioned the fairness of a TVA Maintain and Gain transaction granting water access to The Cove at Blackberry Ridge, LLC (Blackberry). Blackberry's primary investor was a Congressman who served on the United States House Transportation Committee's Subcommittee on Water Resources and the Environment, a congressional panel that provides formal oversight of TVA. The articles raised questions about whether the Congressman used his position to influence TVA's decision to grant Blackberry's request for water access. Because doubt was cast on the fairness of a TVA process, TVA suspended the Maintain and Gain program.¹

Also, the TVA Office of the Inspector General (OIG) conducted an inspection and found no evidence of undue influence on TVA from the Congressman to give Blackberry water access on this lakefront project. However, the appearance of possible favoritism resulted in reputational harm to both the Congressman and TVA. Our inspection² found this was due, in part, to the controversy created by a TVA spokesperson and the Congressman who both denied the Congressman had contacted anyone at TVA about the permit. However, both of these statements were contradicted by internal TVA e-mails showing the Congressman had called the former Chief Executive Officer (CEO) about an unrelated matter and, during that call, told the former CEO of continuing delays Blackberry was experiencing regarding resolution of the permit. In interviews with the OIG, the Congressman and former CEO confirmed their conversation was as described in the TVA internal e-mails. Neither the Congressman nor anyone at TVA explained why they had denied having what evidence showed was an innocuous conversation. While TVA management clearly recognized a potential conflict of interest³ existed, no policy or procedure existed that required TVA to document preferential treatment was not being shown and no contemporaneous and independent review of the transaction was performed to ensure preferential

¹ The Maintain and Gain program was subsequently terminated on August 20, 2009.

² Inspection Report 2008-12003, Maintain and Gain Lakeshore Management Program, May 22, 2009, as submitted to the United States House of Representatives Committee on Standards of Official Conduct.

³ For the purposes of this report, we use the term "potential conflict of interest" to denote a situation where a public official or employee has a private financial interest that conflicts with or appears to conflict with the public interest. Whether a potential conflict of interest is actually a conflict or an impermissible appearance of a conflict will depend on the facts of each individual case.

treatment was not given. During the inspection, the OIG also performed a limited review of additional transactions that had the potential for preferential treatment and found the program was administered in an arbitrary and inconsistent manner that contributed, in some instances, to the appearance of preferential treatment.

As a result of that inspection, TVA and TVA's Board of Directors developed the "Obtaining Things of Value From TVA Protocol" (Protocol) in June 2009 to identify the potential of actual or apparent conflicts of interest or the appearance of the exertion of undue influence over TVA matters. In June 2009, TVA internal communications stated the Protocol "creates a procedure for identifying inherent conflicts of interest by those applying for any TVA benefit," and the "process for handling requests and inquiries is clearly outlined to emphasize the importance of managing these intakes ethically and responsibly." TVA internal communications also mentioned TVA was "among the first in the federal government to address" the challenge to "identify and manage conflicts of interest" and "remove any appearance of impropriety." If the Protocol had been implemented at the time of the conversation between the Congressman and former CEO, the conversation could have been documented showing neither the Congressman nor TVA had done anything wrong.

According to the Protocol document, its purpose is to ensure that "when something of value is being sought from TVA, the decision-making process needs to be fair, impartial, transparent, and evenhanded, both in fact and in appearance." The Protocol requires the applicant requesting a "thing of value" to self-disclose whether a "covered person" stands to benefit if the request is approved. According to the Protocol, a "thing of value" is defined as (1) any interest in real property held by TVA in the name of the United States, (2) any Section 26a permit,⁴ (3) a sole-source contract with monetary value greater than \$25,000, (4) a donation with a monetary value greater than \$10,000, or (5) surplus or excess property with a monetary value greater than \$10,000. A "covered person" is defined as any of the following individuals or an immediate family member of any one of the following individuals: (1) an elected government official, (2) a policy-making level employee of an entity that regulates TVA or its activities, (3) a management-level employee of a power customer of TVA, (4) a TVA Director, or (5) a TVA employee. The Protocol includes a process to handle requests and inquiries related to a "covered person" requesting a "thing of value," including documenting any communication with the "covered person." The Protocol requires this information be disclosed to the Chief Ethics Officer and the OIG. The Chief Ethics Officer's role is to review the information to ensure the "covered persons" transactions are "fair, impartial, transparent, and evenhanded,

⁴ Section 26a of the TVA Act requires TVA approval be obtained before any construction, operation, and maintenance activities can be carried out that affect navigation, flood control, or public lands along the shoreline of the TVA lakes or in the Tennessee River or its tributaries. Examples of structures and projects that require TVA approval include boat docks, piers, boat ramps, shoreline or stream bank stabilization, bridges, culverts, commercial marinas, barge terminals and mooring cells, water intake and sewage outfalls, and fill or construction within the river floodplain. TVA calls the documents granting such requests Section 26a permits.

both in fact and in appearance.” The OIG also receives “covered persons” request notifications for additional independent oversight.

The Protocol also requires annual training on the Protocol for individuals who review requests for “things of value.” The requests for defined “things of value” are processed by various business units at TVA. Specifically, TVA’s Shared Services organization manages the Natural Resources and Real Property Services business unit, which is responsible for administering requests related to the interest in real property, Section 26a permits, sole-source contracts, and surplus or excess property. In addition, TVA’s Shared Services organization manages the Supply Chain and Facilities business unit, which is responsible for providing information for requests related to sole-source contracts and surplus or excess property. TVA’s Human Resources (HR) and Communications organization manages the Communications business unit, which is responsible for processing requests for donations.

In addition to the Protocol, TVA employees are required to comply with several ethical requirements. TVA employees must comply with the Standards of Ethical Conduct which apply to all federal government employees. These Standards include: (1) general principles, such as use of public office for private gain and preferential treatment; (2) specific rules on such topics as gift acceptance, conflicts of interest, and use of resources; and (3) references of other laws such as those covering political activity. Postemployment laws also restrict former employees from making certain kinds of communications back to TVA and other federal agencies. TVA employees in designated positions are required to file financial disclosure reports showing such interests as investments, liabilities, and outside positions. All TVA employees receive information about the ethics program and must receive annual ethics training. Failure to comply with these requirements can result in disciplinary actions including, but not limited to, imprisonment, fines, demotion, or firing for violating an ethics provision.

OBJECTIVES, SCOPE, AND METHODOLOGY

In 2009, TVA implemented the Protocol in response to a prior OIG inspection.⁵ After several years since the implementation of the Protocol, this audit was initiated to determine whether the (1) design provides reasonable assurance of meeting its intended purpose and (2) Protocol was implemented as required. Our audit included testing key internal controls related to management oversight of the Protocol.

The scope of the audit was “covered person” requests for “things of value” from fiscal year (FY) 2010 through FY2013. In addition, we tested the FY2015 Employees Rights and Responsibilities training materials and records for compliance with the Protocol to understand the current state of the training

⁵ Inspection Report 2008-12003, Maintain and Gain Lakeshore Management Program, May 22, 2009, as submitted to the United States House of Representatives Committee on Standards of Official Conduct.

materials. Both “covered persons” and “things of value” are defined by the Protocol document and described previously in the background section of this report. To achieve our objectives, we:

- Obtained and reviewed relevant policies and procedures, including:
 - The current Protocol, effective January 2013, including previous versions since inception.
 - Various TVA Standard Programs and Processes (SPPs), including:
 - TVA-SPP-04.0, Management of the TVA Supply Chain Process, effective June 16, 2014.
 - TVA-SPP-04.01 and TVA-SPP-04.010, Competition and Justification and Approval of Non-Competed Contract Actions, effective October 30, 2012, and February 9, 2015, respectively.
 - TVA-SPP-16.0, Land and Water Resources, effective February 28, 2011.
 - TVA-SPP-16.01, Shoreline Management/Section 26a, effective January 15, 2011.
 - TVA-SPP-16.07, Land Disposal, effective January 20, 2011.
 - TVA-SPP-16.8, Land Use, effective December 15, 2010.
 - TVA-SPP-26.001, Corporate Contributions and Sponsorships, effective March 1, 2013.
 - Various TVA Stewardship Guidelines related to Section 26a permits and Land Use and Disposals as of February 2015.
 - Section 26a Permit and Land Use Agreement Disclosure Requirements, effective July 2009.
 - Integrated Information System Section 26a User Manual, effective October 2013.
 - 26a System Update July 1, 2009: Requirements to Create a 26a Permit Record.
- Conducted interviews of personnel in relevant TVA business units (i.e., Board Services, Reservoir Land Use and Permitting, Communications, Office of the General Counsel [OGC], and the OIG) in order to obtain information about the Protocol and related processes. We identified these individuals by reviewing organizational charts as of August 2014, policies and procedures, and through referrals.
- Interviewed 11 of 14⁶ members of the TVA Board of Directors who served between the implementation of the Protocol and August 2014.
- Created a flow chart of the Section 26a permit, land use, and land disposal processes to identify key points in the process and determined whether necessary controls existed at those key points. We assessed whether

⁶ One former TVA Board member passed away and two former TVA Board members did not respond to our request for an interview.

existing controls are adequate for “fair, impartial, transparent, and evenhanded decision making, both in fact and in appearance.”

- Tested the population of 172 Section 26a permit, 2 land use, and 6 land disposal applications submitted to TVA by a “covered person” between October 1, 2009, and September 30, 2013, to determine whether the Chief Ethics Officer was notified of the transaction required by the Protocol as a key control, and we also tested to determine if the OIG was notified.
- Selected a nonstatistical sample of Section 26a permit, land use, and land disposal “covered person” requests to test for compliance with key controls that occur during the actual processing of an application. We tested to determine if the applicant disclosure form was obtained by TVA prior to approval. Specifically, we selected:
 - Thirty Section 26a permit records.
 - Five land disposal records.
 - Ten land use records.
- Reviewed materials administered to determine compliance with Protocol training requirements. The materials reviewed consisted of the FY2011 through FY2013 Board Ethics Training briefings,⁷ FY2010 through FY2012 Annual Ethics training videos, and FY2013 and FY2015 Employee Rights and Responsibilities training videos. We did not review FY2014 training materials because these were not considered in scope.
- Obtained FY2010 through FY2013 (1) meeting minutes of TVA’s Audit, Risk, and Regulation Committee (ARRC)⁸ and (2) TVA training records of TVA Board members to determine compliance with Protocol requirements.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

FINDINGS

For the most recent version of the Protocol, dated January 2013, we evaluated whether the (1) design provides reasonable assurance of meeting its intended purpose, and (2) Protocol was implemented as required. We determined the design does not provide assurance of meeting its intended purpose, and the Protocol was not implemented as required. In addition, we identified additional opportunities for improvement to the Protocol documentation.

⁷ TVA stated the same materials from 2011 were used in 2012.

⁸ TVA’s ARRC was formerly known as the Audit, Governance, and Ethics Committee.

DESIGN IS NOT MEETING THE INTENDED PURPOSE

The Protocol was developed in 2009 to assist in the identification of actual or apparent preferential treatment on the part of persons applying for a TVA benefit and to protect TVA and the TVA Board along with the applicants by requiring additional oversight. However, as described later in this report, there are limitations to achieving this purpose, including reliance on the (1) applicant to self-disclose if they are a “covered person,” (2) employee to document “covered person” status and communication with the applicant, and (3) Chief Ethics Officer to obtain and review the documentation. Therefore, we determined the stated purpose of the Protocol could be revised to more clearly reflect its true purpose as a risk mitigation tool rather than as an assurance regarding the decision-making process.

As previously stated, the Protocol included specific definitions of a “thing of value” and a “covered person.” During our review, the August 2014 ARRC meeting minutes noted the Designated Agency Ethics Official (DAEO) at that time presented possible additions to the definition to include potential employment and participation in TVA programs or events. The former DAEO further presented changes related to a “covered person” such as including former TVA Directors,⁹ excluding elected officials who are inquiring about status of a request made to TVA by such official's constituents, and clarifying the relationship of the Protocol to requests received by individual Directors.

We interviewed 11 of 14 members of the TVA Board who served on the Board since the Protocol was implemented and key personnel in TVA's Board Services, Land Use and Permitting, Communications, and OGC. During these interviews, we received suggestions for possible ways to expand the definition of “things of value” to include potential employment, policy changes that could have financial implications, and changes in zoning or environmental classifications. Suggestions were also provided to change the definition of a “covered person” to (1) include contractors, staff members of elected government officials, individuals formerly in the categories listed in the current Protocol (i.e., former Board members), and businesses controlled by any of those categories listed in the current Protocol; and (2) clarify the meaning of immediate family members.

Several of the TVA Board members interviewed stated there should probably be more discussion around the dollar amounts used in the Protocol to help define a “thing of value.” Some of the Board members believe the dollar amounts are set too high.

While we agree the definitions within the Protocol as well as the suggested additions can help in determining what could be a benefit and who could benefit, narrow definitions may inadvertently limit the reporting of (1) persons that could exert undue influence or receive preferential treatment and (2) things that could

⁹ According to these ARRC meeting minutes, TVA executives are already banned by a one-year ethics restriction.

be sought from TVA for personal benefit. One such instance that occurred and was publicly reported in 2013 was a proposal by a real estate developer who partnered with a former United States Congressman, former TVA executive, and former TVA Board member to finance the completion of TVA's Bellefonte Nuclear Plant. Some Board members were concerned because it was not covered by the Protocol, as they expected it would have been identified as a "covered person" transaction. Specifically, as currently written, the Protocol did not require it to be disclosed because the definitions did not include (1) loan agreements as a "thing of value"¹⁰ or (2) former congressmen, employees, or Board members as a "covered person."

Discussing the level of risk TVA management and the TVA Board are willing to accept should aid in determining what types of "things of value" and "covered persons" should in fact be addressed by the Protocol. Evaluating the definitions of a "thing of value" and "covered person" to include other relationships and requests not previously specified as expected by the Board may result in the identification of other high-risk transactions that could be addressed by the Protocol. This could further reduce the risk of actual or apparent undue influence due to the additional oversight the Protocol requires as well as better protect TVA and the applicant from reputational harm.

NOT IMPLEMENTED AS REQUIRED

Although we noted design could be improved, implementation of the current Protocol reduces risk when TVA benefits are applied for by a person exerting undue influence. We determined the Protocol was not implemented as required due to (1) inconsistent incorporation of the Protocol into policies and procedures and (2) noncompliance with some Protocol requirements.

Protocol Not Incorporated Into Policies, Procedures, and Processes

As detailed below, we reviewed the various policies and procedures related to approving the "things of value" as defined in the Protocol to determine whether the requirements of the Protocol were incorporated or referenced in those policies and procedures. Our review of policies and procedures, including TVA SPPs and Stewardship Guidelines previously listed, found that only two types of "things of value" (i.e., Section 26a and real property) incorporated the Protocol in its policies and procedures.

Section 26a and Real Property

We found the Section 26a permits and real property, which includes both land use permits and land disposals, incorporated the Protocol into their processes. The Land and Shoreline Management Stewardship Guidelines, specifically 16.5.4.2 (Process Descriptions) and 16.5.4.15 (Permission Process Description), incorporate the Protocol through the Applicant Disclosure Form. This form requires the applicant to self-disclose if they are a representative of a corporation

¹⁰ TVA excludes loan agreements from its sole-source contract provisions. See TVA-SPP-04.010, Justification and Approval for Non-Competed Contract Actions, effective February 9, 2015.

or entity submitting an application and whether one or more of the defined “covered person” is applicable to them or partners, investors, or senior management of the corporation or entity, as well as if there are any other business or personal relationships that could appear to be a conflict of interest. This additional information regarding conflicts of interest is broader than the Protocol-defined types of “covered persons.” This is an improvement in the Protocol because it may reveal additional types of actual or apparent conflicts of interest beyond what the Protocol currently requires. We noted the Applicant Disclosure Form advises all persons the request and communications that occur as part of the application process may be made public and could be reviewed formally by the OIG, as required by the Protocol. However, the Protocol-required notification to the OIG and the Chief Ethics Officer was not included in the process descriptions for land use or land disposals, even though these notifications are routinely made for land disposals.

For the Section 26a and land disposal permit processes, system changes were made to incorporate the Protocol with their existing processes, requiring automated controls. According to Natural Resources and Real Property Services personnel, similar system changes were not made to incorporate the Protocol into the land use processes; however, the new TRIRIGA system, scheduled for 2015 implementation, will give land use the same functionality as the automated controls currently used for Section 26a and land disposal permits, including the requirement to enter whether the person is covered or not and uploading a form prior to any approval. In addition, automated e-mail notifications to the appropriate TVA personnel and the OIG for oversight are planned to be included as part of TRIRIGA’s implementation.

Sole-Source Contracts

While the process documentation for TVA’s sole-source contracts mentions the Protocol, the process documentation for noncompeted contract actions (i.e., sole-source contracts) does not incorporate steps specific to the Protocol. However, it does reference the Protocol by stating “if a request is made to TVA from a Covered Person, as defined by TVA’s Obtaining Things of Value From TVA Protocol, such as the request to award a sole-source contract over \$25,000, the TVA Officer responsible for the affected program shall take the actions required in the Protocol, including required disclosures of relevant information.” According to the process documentation, the Protocol is available under Resources on the TVA Administrative Services Ethics homepage. We were unable to locate the Protocol as described. We did locate an HR and Communications¹¹ Web page with a link to “Resources”; however, it did not include the Protocol. During the audit, the SPP was updated to state it is available on the OGC’s SharePoint page, in the section titled Ethics and Conflicts of Interest, under Procedures, and we did locate the Protocol. Process documentation goes on to state “this procedure does not apply to contracts for purchase or sale of power, the acquisition, disposal, or transportation of fossil fuel, the disposal of fossil

¹¹ TVA Administrative Services is now known as HR and Communications.

operation by-products, the acquisition or disposal of real property, the sale of services, loan agreements, and cooperative agreements.” Although the TVA officer is responsible for reporting these “covered persons” requests, multiple employees in the business units are responsible for processing the requests. Therefore, information in the SPPs describing the method to obtain self-disclosure and meet other Protocol requirements may be necessary to ensure compliance. Additionally, we confirmed the Protocol was not implemented into the process for sole-source contracts.

Donations and Surplus/Excess Property

We reviewed the process documentation for donations and surplus/excess property and noted neither of these documents incorporated or referenced the Protocol. We also confirmed the Protocol was not implemented in either process.

The lack of incorporation of the Protocol could be one reason there were no identified contracts, donations, and surplus property requests by a “covered person” as required by the Protocol and no Chief Ethics Officer and OIG notification of land use requests by a “covered person.” Consequently, the lack of incorporation may result in the additional oversight required by the Protocol not being triggered, posing a reputational risk to TVA and the applicant, person, corporation, or entity seen as receiving the benefit.

Noncompliance With Protocol Requirements

We identified noncompliance with key Protocol requirements. Specifically, we determined (1) “covered persons” identification was not consistently obtained, (2) the Chief Ethics Officer and OIG were not consistently notified of identified “covered persons,” (3) TVA Board briefings were not performed routinely, and (4) annual detailed Protocol training was not provided as required. There is no conclusive method to determine if all oral communication between TVA and a person identified as a “covered person” is being documented as required by the Protocol; therefore, we did not test compliance with this requirement.

Consistently Obtain Self-Disclosure

According to the Protocol:

Any person who submits a request to TVA for a Thing of Value will be required to identify whether a Covered Person stands to benefit if the request is approved. Additionally, the form used to request any Thing of Value will advise all persons that the request and communications that occur as part of the application process may be made public and could be reviewed formally by the Office of Inspector General (OIG).

As stated above, we determined the Protocol was not incorporated into the process documentation for (1) a sole-source contract with a monetary value greater than \$25,000, (2) a donation with a monetary value greater than

\$10,000, and (3) surplus or excess property with a monetary value greater than \$10,000. Without the identification of a “covered person” requesting these types of “things of value,” compliance with this Protocol self-disclosure requirement cannot be determined for these three types of defined “things of value.” As stated previously, we determined the Protocol was incorporated into the processes for Section 26a and interest in real property. Therefore, in order to determine whether this self-disclosure requirement was implemented, we tested a sample of Section 26a permits and real property transactions to determine whether the Applicant Disclosure Form was obtained.

According to Property and Natural Resources personnel, between October 1, 2009, and September 30, 2013, there were 7,146 Section 26a permit applications submitted to TVA. Of the 7,146 applications, 172 were submitted by a “covered person.” During the same period, 6 of 63 land disposal applications and 2 of 236 land use applications applicable to the Protocol requirements were submitted to TVA by a “covered person.” We determined 27 of the 30 Section 26a permit applications selected had an Applicant Disclosure Form as required, and the remaining 3 had a Letter of No Objection from TVA to the applicant indicating the proposed work would not affect TVA land or land rights and would not require approval under Section 26a. We determined all 5 land disposal applications and all 10 land use applications selected had a completed Applicant Disclosure Form as required.

When reviewing land use records for reasonableness, we identified 57 of the 236 records in the population were blank in the “covered person” field. We determined 20 of the 57 records were approved without the required Applicant Disclosure Form. TVA personnel indicated the likely scenario was the project lead failed to obtain the form but issued the license for the majority of these records. As mentioned, the system used for land use records does not have automated controls to ensure the applicant disclosure form is obtained prior to approving an application, as the land disposal and Section 26a permit applications system does.

In addition, when reviewing the Section 26a permit population for reasonableness, we identified 14 records that did not have data entered to indicate the “covered person” status of the applicant (i.e., the “covered person” field was blank). We determined all 14 records actually had an Applicant Disclosure Form on file; but TVA was not able to determine why the “covered person” field was blank for the Section 26a records and stated the issue could have been caused by system or user error and the field is not monitored to identify such occurrences.

Consistently Notify the Chief Ethics Officer and OIG

According to the Protocol, “When TVA receives a request for a Thing of Value from a Covered Person (“Request”), the TVA officer responsible for the affected program activity (“Responsible Officer”) shall disclose all relevant information about the Request to the Chief Ethics Officer and OIG.” Although there has been

no Chief Ethics Officer at TVA since 2013, the former DAEO indicated he and his staff perform these responsibilities; therefore, we compared the “covered person” transactions identified to those reported to the former DAEO and OIG and determined they are not consistently notified of “covered person” requests.

According to the former DAEO and the individual responsible for reviewing the “covered person” applications, they were only aware of Section 26a “covered persons” requests, which prompt automated notifications. Since the OIG maintains a separate listing of transactions, we compared the populations of Section 26a permits, land disposal, and land use “covered person” applications submitted between October 1, 2009, and September 30, 2013, to the OIG listing and determined notifications occurred for all of the 172 Section 26a permit “covered person” applications and 6 land disposal “covered person” applications. However, we determined notifications were not sent to the former DAEO or the OIG for any of the 2 land use “covered person” applications because it relies on a manual control that was not performed.

In addition, we identified 46 records where the OIG received notification the applicant was a “covered person,” but those database records were marked as “No” regarding “covered person” status in the data provided by TVA. TVA explained the records were initially marked to match the applicant disclosure form and upon learning the applicant was working in their professional capacity, the land record was changed to reflect the appropriate “covered person” status. However, at that point, the e-mail notification had already been sent and the system does not send notification of the change in “covered person” status.

Brief the TVA Board as Required

The Protocol requires the Chief Ethics Officer to report to TVA’s ARRC on the status of active “covered person” requests and any identified issues at least once every six months. Based on a review of the ARRC meeting minutes for the scope of the audit, we found little evidence documenting the Chief Ethics Officer reported the status of active “covered person” requests every six months as required. Specifically, the Chief Ethics Officer only reported the status of active “covered person” applications during the February 10, 2010, meeting. The DAEO, who replaced the Chief Ethics Officer, identified issues during the August 3, 2011, meeting. In addition, we noted three additional occasions when TVA management, other than the Chief Ethics Officer, discussed one identified issue. TVA concurred it was aware of no additional occasions when the Ethics and Employee Concerns staff updated the Board with Protocol requests or identified issues. Providing the status of all new “covered person” requests since the prior TVA Board briefing may be prudent to ensure the Board is aware of every request with a potential or actual conflict of interest to increase transparency with the Board and demonstrate how the Protocol is working.

Provide Annual Detailed Training as Required

The Protocol states the individuals who review requests for “things of value” shall receive annual training from the Chief Ethics Officer on (1) the process to

approve such requests, (2) the requirements of the protocol, (3) the identification of “covered persons,” and (4) other relevant information such as reference material to the actual Protocol document. However, we reviewed the training materials and determined none of these detailed training elements required by the Protocol have been provided consistently.

Specifically, we reviewed the FY2011 through FY2013 Board briefing materials for Ethics training¹² and determined the training materials did not address any of the detailed training elements required by the Protocol. In addition, we reviewed the FY2010 through FY2012 Annual Ethics and FY2013 Employee Rights and Responsibilities training videos required for all TVA employees, including TVA Board members, and found the training materials did not address all of the detailed training elements required by the Protocol. Therefore, we also reviewed the FY2015 Employee Rights and Responsibilities training video, which has been used since September 11, 2014, to determine the current state of compliance. The table below depicts our findings. The results of the specific training elements we tested are included in Appendix A of this report.

Protocol Requirements Included in the Annual Ethics Training					
Protocol Requirement	FY2010	FY2011	FY2012	FY2013	FY2015
1. The process to approve such requests.	No	No	No	No	No
2. The requirements of the Protocol.	Some	Some	Some	None	Some
3. The identification of “covered persons.”	Yes	Yes	Yes	No	Yes
4. Other relevant information.	Some	Some	Some	Some	Some

Table 1

According to the Ethics and Employee Concerns Manager, when identifying topics for the annual training, TVA generally bases their decisions on various factors, including the number of inquiries received on various topics during that year and the implementation of new laws, regulations, etc.

Also, we reviewed the FY2010 through FY2013 Annual Ethics/Employees Rights and Responsibilities Training records in TVA’s training database for the TVA Board members because from time to time Board members may receive requests. The Protocol requires the Board members to direct the inquirer to the responsible TVA officer. We found evidence showing 2 of the 11 Board members interviewed did not take the annual Ethics training as required during the final year of their hold-over term. The training for both Board members became due approximately seven months after the expiration of their appointed term but while they continued to serve on the Board in accordance with the TVA Act.¹³

¹² TVA stated the same materials from 2011 were used in 2012.

¹³ Under the TVA Act, Board members whose terms expire in a given year may continue to serve until a replacement is sworn in or the current Congress adjourns, whichever comes first.

Failure to consistently (1) obtain self-disclosures, (2) notify the appropriate TVA and OIG personnel, (3) provide specific Protocol training, and (4) brief the TVA Board of requests by those with actual or apparent conflicts of interest does not reduce the risk as intended by the Protocol because inadequate or no oversight will be prompted. Inadvertently, TVA may approve transactions resulting in persons receiving or appearing to receive preferential treatment. Therefore, such noncompliance with the Protocol poses a risk of reputational harm to TVA and/or the applicant, person, corporation, or entity seen as receiving the benefit.

POTENTIAL IMPROVEMENTS TO THE PROTOCOL DOCUMENT

We identified potential improvements to the Protocol document. Specifically, we determined the Protocol lacks both review cadence and consequences.

Lack of Review Cadence

As mentioned, the Protocol has been revised three times since its inception to clarify definitions, increase dollar requirements, and change titles of individuals or committees. In its 2013 revision, one of the changes to the Protocol was to change the title “Chief Ethics and Compliance Officer” to “Chief Ethics Officer.” However, since October 2013, TVA has not had a Chief Ethics Officer. Instead, TVA’s DAEO updates the TVA Board when needed. The former DAEO assigned Protocol responsibilities to the Ethics and Employee Concerns Manager and reviewing the “covered persons” requests to the Ethics Paralegal.

Although this difference in title is minor, with the frequency of TVA Board changes and TVA reorganizations, it may be necessary to change the Protocol more frequently. New Board members may have ideas about improvements to the Protocol. Currently, there is no revision frequency included in the Protocol. By including and abiding by a revision frequency schedule, new titles and improvements can be included and updated on a regular basis.

Lack of Consequences

Under ethics standards, TVA employees are specifically prohibited from giving preferential treatment. The Standards of Ethical Conduct for Employees of the Executive Branch state “Employees shall act impartially and not give preferential treatment to any private organization or individual” and “Employees shall not use public office for private gain.” It further states any violation of this part or any other part “may be cause for appropriate corrective or disciplinary action to be taken under applicable Government wide regulations or agency procedures.” However, the Protocol does not take into consideration how an employee discloses if they are aware of an actual or apparent undue influence by applicants requesting a TVA benefit, although they are ethically required to disclose such knowledge.

In contrast, the Protocol states that “any person who submits a request to TVA for a Thing of Value will be required to identify whether a covered person stands to benefit if the request is approved.” TVA must rely heavily on the requestor’s

self-disclosure as a “covered person” because there is no efficient and effective way for TVA to research every applicant to make this determination. However, the Protocol does not include any consequences¹⁴ for that individual if they decide not to notify TVA that they meet the criteria.

While giving preferential treatment can result in disciplinary action for TVA employees, it may be prudent for TVA to determine if any additional consequences should be instituted for applicants’ noncompliance with identifying themselves as having an actual or apparent conflict of interest. Including this consequence and a process for performing future business with any applicant who has failed to provide factual information could further mitigate the risk of partiality given to an applicant.

CONCLUSION

TVA committed to create the Protocol to aid in the identification and prevention of actual or potential conflicts of interest or the appearance of undue influence on the part of the person applying for a TVA benefit. The Protocol was also created to protect TVA and the TVA Board, along with those applying for a TVA benefit, by providing additional oversight to ensure undue influence or preferential treatment is not used to benefit someone. Due to the implementation of the Protocol, TVA identified several instances of Section 26a permits and interest in real property requests with potential conflicts of interest. In addition, disclosures were made to both TVA and OIG management for Section 26a and land disposal permits identified as having a potential conflict of interest as required by the Protocol.

However, as outlined in this report, we determined the Protocol currently provides a false assurance that TVA is mitigating the risk of undue influence due to several factors. The combination of the (1) design not meeting its intended purpose, (2) Protocol not being implemented as required due to inconsistent incorporation into policies and procedures and noncompliance with some Protocol requirements, (3) lack of consequences for the applicant’s noncompliance with self-disclosure, and (4) absence of instruction on how an employee discloses knowledge of actual or apparent undue influence related to the Protocol limits the likelihood of identifying and preventing actual or apparent undue influence. Ultimately, this poses a reputational risk to TVA and the applicant, person, corporation, or entity seen as receiving the benefit.

As previously mentioned, in 2013 the media reported a real estate developer partnered with a former United States Congressman, a former TVA executive, and a former TVA Board member to lobby and propose a loan agreement to finance the completion of TVA’s Bellefonte Nuclear Plant. Based on the original

¹⁴ The form used to self-disclose being a “covered person” for interest in real property held by TVA in the name of the United States and Section 26a permit applications includes a statement that “failure to provide any required information or documents may result in a delay in processing your application or in your application being denied.”

intent of the Protocol to identify potential undue influence, one would expect TVA's Protocol process to have identified this request as something of value being requested; however, the current Protocol definitions do not include (1) former congressmen, employees, or Board members; or (2) loan agreements. If this request had been identified as a potential conflict of interest, the Protocol would have required the request be disclosed to TVA and OIG management and conversations be documented. Such transparency could better protect TVA and the applicant(s) if the media cast doubt on the fairness of this request.

Revising the Protocol to clearly reflect its true purpose as a risk mitigation tool, rather than as an assurance regarding the decision-making process, and designing it to focus on the high-risk transactions to identify and prevent actual or apparent undue influence will provide for better identification of such requests and better protect the parties involved. Overall, improvements to the Protocol process can further reduce the risk of undue influence or preferential treatment. Improvements can also help prevent the approval of transactions that either may (1) not be in the best interest of TVA because undue influence was used or (2) be in the best interest of TVA but may appear as if they were not fair and impartial. These improvements could ultimately minimize reputational harm to TVA and/or the applicant, person, corporation, or entity seen as receiving the benefit.

RECOMMENDATIONS

We recommend the Executive Vice President and General Counsel (and DAEO), along with responsible TVA management and the TVA Board of Directors:

1. Perform a risk assessment to determine what types of (a) "things of value" and (b) "covered persons" should be defined in the Protocol.

We recommend the Executive Vice President and General Counsel (and DAEO), along with responsible TVA management in various organizations:

2. Enhance the Protocol by:
 - a. Evaluating whether defining applicant consequences for violating the policy would be beneficial. If so, incorporate the required notice to the applicant.
 - b. Incorporating how employees report within TVA when they become aware of a request for benefits that involves an actual or potential conflict of interest, regardless of whether identified by applicant self-disclosure or employee knowledge, and notify the OGC and OIG as required by the Protocol.
 - c. Revising immediately and requiring review cadence.

3. Require implementation of the Protocol into all related SPPs and processes related to requests for all TVA benefits identified as “things of value,” including consistently requiring any person who submits a request to TVA for a “thing of value” to identify whether a (a) “covered person” stands to benefit if approved or (b) an actual or apparent conflict of interest exists.
4. Develop a repository for all types of defined “covered person” requests other than those related to Section 26a permit and interest in real property requests to ensure all requests with identified actual or apparent conflicts of interest are disclosed to the appropriate TVA and OIG personnel as required.
5. Identify who is responsible to brief the TVA Board’s ARRC and require the briefing to include the status of all requests by Covered Persons for Things of Value reported since the prior briefing at least every six months.
6. Provide detailed and robust annual training as required.
7. Disseminate the Protocol annually, at a minimum, to TVA personnel who could be affected by its requirements and ensure TVA InsideNet posts the most recent version when referenced.

TVA MANAGEMENT’S RESPONSE AND OUR EVALUATION

In response to our draft audit report, TVA management provided clarifications related to wording within the report, which have been incorporated as applicable. See Appendix B for TVA management’s complete response.

SPECIFIC REQUIREMENTS INCLUDED IN THE ANNUAL ETHICS TRAINING

Protocol Required Training	Fiscal Year (FY) 2010	FY2011	FY2012	FY2013	FY2015
1. The process to approve such requests.	No	No	No	No	No
2. The requirements of the Protocol, including:	A and B only	A only	B, C, F, and G; and some of A and E.	No	A only
a. The decision-making process needs to be fair, impartial, transparent, and evenhanded, both in fact and in appearance.	Yes	Yes	Some, it did not state "both in fact and in appearance."	No	Yes
b. The Tennessee Valley Authority (TVA) officer responsible for the affected program activity shall disclose all relevant information about the request to the Chief Ethics and Compliance Officer and to the Office of the Inspector General (OIG).	Yes	No	Yes	No	No
c. Any person who submits a request to TVA for a "thing of value" to self-identify whether a "covered person" stands to benefit if the request is approved.	No	No	Yes	No	No
d. The form used to request any "thing of value" to advise all persons that the request and communications that occur as part of the application process may be made public and could be reviewed formally by the OIG.	No	No	No	No	No
e. All oral communication between TVA and the covered person regarding the request shall be documented and maintained by TVA, including the date and time of the conversation and a general description of the items discussed.	No	No	Some, it did not state "including the date and time of the conversation and a general description of the items discussed."	No	No

Protocol Required Training	Fiscal Year (FY) 2010	FY2011	FY2012	FY2013	FY2015
f. The TVA Board of Directors should inform the person making any inquiry to them that they cannot substantively respond and direct any questions to the responsible officer in charge of the request.	No	No	Yes	No	No
g. Those reviewing the requests for “things of value” are required to complete annual training from the Chief Ethics and Compliance Officer.	No	No	Yes	No	No
3. The identification of “covered persons.”	Yes	Yes	Yes	No	Yes
4. Other relevant information such as:	B only	A and B only	A only	B only	A and B only
a. A definition of “thing of value.”	No	Yes	Yes	No	Yes
b. Contact information for further information.	Yes	Yes	No	Yes	Yes
c. Including the actual Protocol document as a resource.	No	No	No	No	No

September 17, 2015

Richard W. Moore
Inspector General
ET 4C-K

We have reviewed the draft Audit regarding the "Obtaining Things of Value from TVA Protocol Process" (OIG File 2014-15224). We are in the process of exploring options for actions in response to your recommendations, and would greatly benefit from additional time to analyze several alternatives; hence, we request a 30-day extension with respect to developing an action plan and establishing a schedule for potential revisions as to the Obtaining Things of Value from TVA Protocol (the "Protocol").

As to certain findings, factual statements, and conclusions noted in the draft Audit, we note the following clarifications or reservations:

- Pages i and 1

Original wording in footnotes ii and 2: *"Inspection Report 2008-12003 on Maintain and Gain Lakeshore Management Program, May 22, 2009"*

Suggested Wording: *"Inspection Report 2008-12003 on Maintain and Gain Lakeshore Management Program, May 15, 2009"*

Comment: The draft report discusses a potential "conflict of interest" on the cited pages. Note that the report tends to use the term "conflict of interest" in a broader sense than in the way the Office of Government Ethics typically uses that term in reference to financial conflicts of interest, such as in 5 C.F.R. Part 2634 or Part 2640.

- Pages ii, iv, 13, and 14

Comment: There are several references made regarding the lack of consequences if an individual violates the Protocol. A significant consequence exists, however, under 18 U.S.C. § 1001, which makes it a federal crime to provide false or misleading information to the U.S. government.

- Pages iii and 2

Original wording in footnotes iv and 3: *"Section 26a of the TVA Act, passed by Congress in 1933, requires TVA approval be obtained These requests are called Section 26a permits."*

Suggested wording in footnotes iv and 3: *"Section 26a of the TVA Act, passed by Congress in 1935, requires TVA approval be obtained TVA documents granting such requests are called Section 26a permits."*

Comment: Section 26a was not enacted as part of the original TVA Act of 1933 but was added through an amendment passed in 1935.

- Pages iii and 14

Comment: Although the Bellefonte financing proposal did not meet the terms of the Protocol, the ethical propriety of the situation was fully evaluated by the DAEO.

Richard W. Moore
Page 2
September 17, 2015

- Page iv

Comment: Recommendation 5 mentions a required briefing of the TVA Board, but the Protocol is written in terms of briefing the Board's Audit Committee.

Comment: It may be more precise to describe the Board briefing as providing the status of requests by Covered Persons for Things of Value under the Protocol, rather than using the looser terminology "new actual or apparent conflict-of-interest requests"

- Page 12

Original Wording: *"We found evidence showing 2 of the 11 Board members interviewed did not take the Ethics training annually as required for all employees."*

Suggested Revision: *"We found evidence showing 2 of the 11 Board members interviewed did not take the Ethics training during the final year of a hold-over term, as required for all employees."*

- Page 13

Original Wording: *"The former DAEO assigned Protocol responsibilities to the Ethics and Employee Concerns Manager and another HR employee for reviewing the 'covered persons' requests."*

Suggested Revision: *"The former DAEO assigned Protocol responsibilities to the Ethics and Employee Concerns Manager and the Ethics Paralegal for reviewing the 'covered persons' requests."*

In closing, I would like to say that we value our long-standing relationship as partners in protecting TVA, and I certainly stand ready to meet with you at your convenience to hear any further concerns you may have from time to time over the Protocol and its potential refinement and implementation.



Sherry A. Quirk
Executive Vice President, General Counsel
and Designated Agency Ethics Official

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