United States General Accounting Office

GAO

Report to the Chairman
Committee on Governmental Affairs
U.S. Senate

February 2000

TENNESSEE VALLEY AUTHORITY

Problems With Irrevocable Trust Raise Need for Additional Oversight

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United States General Accounting Office
Washington, D.C. 20548

Office of Special Investigations

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February 29, 2000

The Honorable Fred Thompson
Chairman
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

The Tennessee Valley Authority (TVA), a wholly owned government corporation, is responsible for developing and conserving the natural resources of the Tennessee River Valley and supplying power throughout a seven-state area. TVA's authorizing legislation allows it to operate with a high degree of independence. All authority over TVA's operations is vested in TVA's three-member Board of Directors, which is composed of full-time TVA employees. The President appoints the Board members with the advice and consent of the Senate, to serve 9-year, overlapping terms of office. The President designates one member as the Chairman.[1]

In September 1999, we reported,[2] among other matters, that TVA's Office of Inspector General (OIG) had conducted investigations of allegations made against each of TVA's Board members. Specifically, the OIG initiated one of these investigations after receiving allegations concerning the creation and operation of an irrevocable trust known as the Center for Rural Studies (CRS) Trust and the role of TVA's Board Chairman, Craven Crowell. TVA created CRS in 1994 for the purpose of conducting studies and programs relating to issues and problems of rural communities. TVA funded CRS with a $30-million endowment. As a result of the OIG investigation, the trust agreement was revoked in 1995 and the funds were returned to TVA.

[1] Craven Crowell was appointed to the Board and designated as TVA's Chairman in May 1993; his term expires May 2002. During the period covered by this investigation, the other two Board members were William Kennoy and Johnny Hayes who were appointed to the Board in 1990 and 1993, respectively. Director Hayes resigned on February 1, 1999, and Director Kennoy's term expired on May 18, 1999.

[2] *Tennessee Valley Authority: Facts Surrounding Allegations Raised Against the Chairman and the IG* (GAO/OSI-99-20, Sept. 15, 1999).

Following the issuance of our September 1999 report, you expressed concern about the lack of oversight of TVA activities, raising specific concerns about the way TVA management created CRS. As a result, we agreed to determine the significant events pertaining to the creation, funding, and operation of CRS as well as any investigations of CRS; determine how TVA accounted for the funds returned to TVA; and respond to your concern about oversight of TVA activities.

Results in Brief

The trust agreement drafted to create CRS included safeguard provisions to ensure that CRS was accountable to TVA. At Chairman Crowell's direction, the structure of the trust was, however, changed and all the safeguard provisions were eliminated in a revised trust agreement. Further, Chairman Crowell named himself the Chair of CRS's Management Committee for an unlimited term. After the media criticized Chairman Crowell's dual role and lifetime chairmanship at CRS, Chairman Crowell had the trust agreement amended.

The TVA OIG initiated an audit of CRS after receiving an allegation concerning Chairman Crowell's role in creating CRS. Three days after the Inspector General (IG) notified CRS's Management Committee that the audit revealed possible criminal violations, CRS was terminated. After receiving the same allegations as the OIG, the U.S. Attorney's Office (USAO) for the Eastern District of Tennessee opened an investigation. The USAO decided that the IG could not be independent in investigating senior TVA managers and therefore excluded the OIG from the investigation. After an 8-month investigation, USAO officials determined that there was a prima facie case that Chairman Crowell violated the conflict-of-interest statute and that further investigation was warranted. However, USAO officials felt that USAO should not continue its investigation because the U.S. Attorney was a personal friend of Chairman Crowell. They referred the matter to the Department of Justice's Public Integrity Section.

After reviewing the evidence and holding 1 day of grand jury testimony, Justice concluded that Chairman Crowell's actions as a TVA official benefited CRS and thus demonstrated that Chairman Crowell had committed a technical violation of the conflict-of-interest statute. However, Justice concluded that Chairman Crowell should not be prosecuted because he had relied upon a good faith opinion from the designated agency ethics official. That official advised him that serving on both the TVA Board and CRS's Management Committee was not a conflict of interest. According to Justice, the opinion of the designated agency ethics

official was incorrect. Finally, Justice reviewed information concerning double billing by CRS's President/Chief Executive Officer (CEO). It declined to prosecute this matter after it concluded, among other factors, that there was no evidence that the President/CEO had personally profited.

We determined that CRS funds were transferred to TVA after CRS was terminated, including the $30 million endowment, which was deposited into TVA's operating account and commingled with other TVA funds. Further, the accumulated earnings of about $3.3 million were transferred from CRS and deposited into TVA's Rural Studies Agency Account. As of October 31, 1999, the value of the Rural Studies Agency Account was about $1.6 million.

The problems we found with CRS's creation and operation during our investigation raise concern about the need for better oversight of TVA's activities. For example, the Board permitted the creation of an irrevocable trust with a $30 million endowment from TVA that operated with no accountability to TVA. In addition, TVA's IG can be fired by the Board, thus limiting the IG's independence. We have reviewed the issue of the adequacy of TVA oversight in the past, concluded that it needed greater attention, and identified options for improving oversight and accountability. Further, a prior debate in Congress included a proposal for the creation of a larger Board of part-time directors responsible for policymaking and oversight of TVA's management.

Significant Events Pertaining to the Creation, Funding, and Operation of CRS

In April 1994, with the draft plan for CRS in hand, Chairman Crowell tasked TVA's Office of General Counsel (OGC) with preparing a trust agreement that recognized Chairman Crowell as the Chair of CRS's Management Committee. The draft trust agreement included several provisions that assured that CRS would be accountable to TVA. Based on his review of the draft trust agreement, the designated agency ethics official[3] concluded that Mr. Crowell's concurrent seats on both the TVA Board and CRS's Management Committee would not constitute a violation of the conflict-of-interest statute, 18 U.S.C. section 208.[4] However, the final trust agreement gave CRS—and particularly the Chair of the Management Committee—considerable power by providing the Chair with an unlimited term and stripped TVA of its oversight capabilities. When the terms of the trust agreement were publicly disclosed, TVA was criticized in the news media. As a result of this criticism, TVA amended the trust agreement. In the 14 months that CRS existed, its receipts and investment income totaled over $33.2 million and its expenditures were over $1.4 million. TVA directly paid approximately $829,000 of these expenditures.

[3] TVA employees are subject to the executive branch-wide standards of ethical conduct at 5 C.F.R. part 2635. 18 C.F.R. § 1300.101. Pursuant to 5 C.F.R. part 2635, the designated agency ethics official's responsibilities include coordinating and managing the agency's ethics program, counseling agency personnel concerning ethics standards, as well as assisting managers in understanding and implementing agency ethics programs. 5 C.F.R. § 2635.101 provides that criminal conflict of interest statutes, e.g. 18 U.S.C. § 208, must be taken into consideration in determining whether conduct is proper.

[4] Among other things, 18 U.S.C. § 208 prohibits an executive branch officer or employee from participating personally and substantially in a matter in which he or an organization in which he is serving as an officer has a financial interest.

Events Prior to Formal Board Approval

In November 1993 at the direction of Chairman Crowell, a public relations firm, Seigenthaler Public Relations, [5] was tasked to develop the concept for a TVA rural development center. The center would be funded with $30 million, which TVA was scheduled to receive in June 1994.[6] Mr. Seigenthaler submitted a draft plan in April 1994.

Subsequently, Norm Zigrossi, TVA's Chief Administrative Officer, instructed TVA General Counsel Ed Christenbury to prepare a trust agreement creating a nonprofit entity. Deputy General Counsel William Osteen informed James Barkley, the attorney assigned to prepare the agreement, that the trust would receive moneys from a variety of sources and would be tax exempt. In addition, Mr. Osteen told Mr. Barkley that the trust agreement must stipulate that (1) the trust would be controlled by a 3-member Management Committee, each with a 3-year staggered term;[7] (2) the trust would receive a $30-million endowment from TVA; and (3) the trustee would retain investment discretion over the endowment.

The draft trust agreement that Mr. Barkley submitted to Mr. Osteen on May 30, 1994, was subsequently approved by both Messrs. Osteen and Christenbury. It was then provided to Chairman Crowell and Mr. Zigrossi for review. It was drafted to protect TVA's interest and contained provisions assuring CRS's accountability to TVA. The key provisions of the document were as follows:

- The TVA Board was empowered to appoint and remove members of the trust's Management Committee.
- The books and records of the trust would be open to inspection and audit by TVA and GAO.

[5] TVA executed a contract with Thomas Seigenthaler's firm, Seigenthaler Public Relations, effective October 1, 1993, to advise on the planning of TVA's rural economic development programs. Part of the work involved establishing the rural development center concept and planning the organization of CRS. Effective December 1, 1994, Mr. Seigenthaler began performing work for CRS under a retainer agreement executed directly with CRS. On September 1, 1995, this agreement was replaced by an agreement that Seigenthaler Public Relations would bill CRS on an hourly basis.

[6] The funds were the proceeds of the settlement of a 1984 antitrust lawsuit.

[7] The proposed composition of the Management Committee included Mr. Crowell as the Chair, with Mr. Zigrossi and a TVA Senior Vice President as the other Management Committee members.

- The trustee was to make an annual accounting to both the Management Committee and TVA.
- The trustee was empowered to invest the endowment in securities and property approved by TVA.

After the draft trust agreement was provided to Mr. Zigrossi, Chairman Crowell requested that Mr. Osteen, in his capacity as the designated agency ethics official, provide an opinion of whether by serving on the CRS Management Committee, Chairman Crowell would violate the conflict-of-interest statute.[8] In response to this inquiry, Mr. Osteen tasked Robert Thompson, an OGC attorney and the alternate ethics official, to help draft an opinion. Mr. Thompson told us that he reviewed the original trust agreement prepared by Mr. Barkley and concluded that there was no conflict of interest. He based his decision on the fact that TVA had significant control over the trust in the trust agreement prepared by Mr. Barkley. Specifically, the TVA Board appointed CRS's Management Committee and had audit rights, and the CRS Board had to report annually to the TVA Board. In addition, the activities of the trust would be consistent with TVA's mission and would further that mission. Mr. Thompson added that he never reviewed the final trust agreement.

In June 1994, after reviewing the opinion prepared by Mr. Thompson and based on his own knowledge of the draft trust agreement, Mr. Osteen issued a written opinion. He concluded that Chairman Crowell's service on the Management Committee would not violate the conflict-of-interest statute. He reasoned that there was a direct nexus between TVA and CRS as evidenced by TVA's creation of CRS. Further, he believed the mission of the trust was consistent with and furthered TVA's mission and that Chairman Crowell's service on the Management Committee would be within the scope of his TVA official duties.

Also in June 1994, Mr. Zigrossi submitted to Mr. Christenbury a document prepared by Messrs. Zigrossi and Seigenthaler directing certain changes in the structure of the trust. According to the document, (1) CRS was to be funded by an irrevocable trust established by TVA and (2) the members of the Management Committee would not be eligible for compensation for services while employed by TVA. According to Mr. Christenbury, Mr. Seigenthaler also told Mr. Christenbury that Chairman Crowell would (1) be named as the Chair of CRS's Management Committee, (2) have an

[8] 18 U.S.C. § 208.

unlimited term, and (3) have the power to remove and appoint the other members. As to the other Management Committee members, Mr. Zigrossi and a TVA Senior Vice President would serve 6-year and 3-year terms, respectively. Further, TVA was not to have the right to audit the books and records of the trust.

Mr. Christenbury told Mr. Seigenthaler that allowing the Chair of CRS's Management Committee to have sole control of the moneys and activities of the trust created appearance problems. He was also concerned that TVA was not going to have the authority to audit CRS. Notwithstanding these concerns, Mr. Christenbury instructed his staff to make the changes to the trust document to reflect Mr. Seigenthaler's instructions. Mr. Seigenthaler told us that he developed the concept for CRS; however, he denied involvement in the final decisions concerning the structure of the trust agreement.

The revised trust agreement contained the following key provisions:

- The Chair of the Management Committee could remove any other Management Committee member.
- The Chair of the Management Committee would have an unlimited term.
- The Chair of the Management Committee could appoint his successor.
- The books and records of the trust were open to inspection by only the Management Committee and its agents.

At the time he prepared the revised trust agreement, Mr. Barkley complained to Mr. Osteen about the structure of the Management Committee. He pointed out that TVA would have no control over the trust and could take no action even if the Chair of the Management Committee became incapacitated. Mr. Barkley stated that he considered it “very disconcerting” that Chairman Crowell had named himself Chair of the CRS Management Committee for an unlimited term. He also said he told Mr. Osteen that it was an “odd thing” for the Chair of the Management Committee to control such power and that “political concerns” would eventually lead to the breakup of the proposed organization. [9] According to Mr. Barkley, Mr. Osteen responded, “. . . this is what the Chairman wanted.”

[9] Mr. Barkley made these statements in response to questions by the Federal Bureau of Investigation during its investigation of Chairman Crowell.

Mr. Osteen stated that he did not review and was not fully aware of the contents of the final trust agreement, but he does not believe that any changes to the trust agreement would have affected his opinion concerning Chairman Crowell serving on the CRS Management Committee. He added that he was never asked to review his previous ethics opinion after the trust agreement was changed and that he did not independently review the opinion in light of the final trust agreement. He told us that he did not recall Mr. Barkley raising any concerns about the revised trust agreement.

In July 1994, Chairman Crowell and Director Hayes approved the revised trust agreement through the sequential approval process.[10] However, Director Kennoy disapproved of some of the terms in the trust agreement and thus refused to sign it. Specifically, Director Kennoy expressed concerns that TVA lacked the authority to hold the CRS Management Committee accountable and that the Chair of the Management Committee had too much control.

Although he knew about Director Kennoy's concerns, Chairman Crowell concluded that the structure of CRS would remain the same. However, Chairman Crowell directed that the trust agreement name Directors Hayes and Kennoy to the Management Committee in place of Mr. Zigrossi and the Senior Vice President. Director Kennoy continued to raise concerns that the Management Committee lacked accountability to TVA. As a result of Director Kennoy's disagreement with the proposed CRS trust agreement, the Board was forced to vote on the matter at a public hearing.

[10] Mr. Christenbury explained that there are two methods employed to gain Board approval of various proposals. The first, the sequential approach, is typically used when TVA management desires not to release information to the public. The second, the open Board meeting, is used when the release of information will not detrimentally affect TVA and when the time demands for the action falls within the Board's next scheduled meeting.

Prior to the TVA Board voting on the proposal to establish CRS, Chairman Crowell met with Director Kennoy. Director Kennoy described the meeting as an attempt by the Chairman to coerce him into voting for the proposal when it came before the Board. Director Kennoy stated that shortly after the meeting, the TVA IG informed him that the OIG had received allegations from a Member of Congress concerning improper conduct on his part. Director Kennoy told us that he believes that Chairman Crowell used his contacts to initiate this matter. The IG told us that his office completed its investigation of the matter and issued a report, concluding that there were no violations on the part of Director Kennoy. Chairman Crowell reviewed the investigative report and prepared a written response, which was critical of the OIG investigation of Director Kennoy.[11]

Formal Board Approval to CRS and Amendments to the Trust Agreement

On October 26, 1994, the trust agreement was formally presented to TVA's Board. The proposal passed with the Chairman and Director Hayes voting “yes” and Director Kennoy voting “no.” Director Hayes told us that this vote was the only one that had not been unanimous during the time he served on the Board. He said that normally any disagreements between the Board members are resolved before an issue is presented at a public Board meeting. The Board resolution stipulated that only the earnings from the $30 million endowment could be expended by the trust and if the trust terminated, the endowment would be returned to TVA. In addition, the Board authorized $300,000 of federal appropriated funds for CRS' s initial operating expense. In addition, the resolution authorized TVA to loan its employees to CRS.

The June 22, 1995, *Metro Pulse* (a local newspaper) reported that regardless of how long he remained in office, Chairman Crowell had assured himself lifetime personal control of over $30 million in TVA funds that were delivered in October 1994 into the establishment of the autonomous CRS.

[11] On September 13, 1994, the OIG received allegations against Director Kennoy from a Member of Congress. The Member informed the OIG that the allegations came from a credible source, but declined the OIG's request to identify the source. Prior to issuing a report in June 1995, the IG requested that the Department of State OIG perform a quality review to ensure the adequacy of the investigation. The State Department concurred with the final report and stated that under its own operating policies and procedures, the findings would have been referred to Justice's Public Integrity Section for a definitive prosecutive opinion. In the TVA IG's opinion, such a referral was not warranted. In July 1995 Chairman Crowell wrote his response to the OIG report.

On September 27, 1995, the trust agreement was amended as follows:

"The Chair of the Management Committee shall hold office for a term to expire on May 18, 2002. The terms of office for the Chair of the Management Committee and other two members of the Management Committee shall coincide with the expiration of their present terms as members of the Tennessee Valley Authority Board of Directors. After these limited terms expire, all subsequent appointees serve six-year terms. The Chair of the Management Committee shall have the power to appoint members of the Management Committee."

Funding for CRS

Total funding for CRS during the approximately14 months it was in existence was $33,222,297. On November 23, 1994, Chairman Crowell signed the trust agreement and had $30 million transferred to the trustee.[12] On November 28, TVA transferred an additional $617, 091—the interest earned on the $30 million endowment from the date TVA received it on June 22, 1994. The TVA OIG audit of CRS was unable to locate any documentation of the Board authorizing this transfer.

On January 13, 1995, TVA and the Electric Power Research Institute (EPRI)[13] entered into an agreement that provided for EPRI to provide CRS initial funding for operating expenses and to conduct research and development projects. At the time, Mr. Crowell was the Chairman of TVA's Board, the Chair of CRS's Management Committee, and a member of EPRI's Board of Directors. Further, TVA paid EPRI annual dues of $25 million, representing approximately 10 percent of EPRI's total annual revenue.

EPRI was to provide CRS at least $600,000 per year for 1995, 1996, and 1997 by using $300,000 of its funds plus $300,000 that TVA would provide EPRI. The funding for 1995 was to be used for the development of a 5-year plan and for CRS's start-up phase. In May 1995, TVA transferred to EPRI the $300,000 in funds authorized by the Board in October 1994. EPRI paid CRS a total of $505,250 during the period that CRS was in operation.

[12] On November 16, 1994, the CRS Management Committee selected Union Planters National Bank as the trustee.

[13] EPRI was formed in 1972 to conduct a coordinated research and development program for the U.S. electric utility industry. EPRI's activities range from supporting fundamental research to commercializing products and services developed for its member utilities and the electric industry.

On August 14, 1995, TVA transferred another $300,000 directly to CRS to pay for a CRS survey conducted by Roper Starch Worldwide, a nationally recognized pollster. The project director, under contract with CRS, described the survey as an in-depth survey of rural areas in the Southeast United States on attitudes about such things as politics and economic opportunity. He added that it was his understanding that Chairman Crowell would be using the data for his book on the rural south.

The survey funds came from the interest earned on federally appropriated funds associated with TVA's Technology Brokering Program.[14] Prior to the funds transfer, Lawrence Stein, CRS's President and Chief Executive Officer[15] requested that TVA's Vice President for Economic Development release the funds to CRS, but she refused because no contract or agreement existed between TVA and CRS for the release of the funds. She subsequently refused to release the funds even when the Chairman requested that she do so. Chairman Crowell then directed the Vice President for Economic Development to transfer the funds to Mr. Zigrossi, which she did. Mr. Zigrossi subsequently released the funds to CRS.

From November 1994 through January 1996, CRS received a total of $1,798,956 in investment income.

[14] In 1988, TVA created the Technology Brokering Program to promote economic development through interagency agreements with federal agencies, particularly the Department of Defense. The federal agency funded projects through this program and TVA administered the contracts for a certain fee. This program is referred to as off-loading of contracts. Upon receipt, TVA invested the program advance funds and earned about $4.3 million in interest revenue during 1992 and 1993. In 1994, the Subcommittee on Oversight of Government Management of the Senate Committee on Governmental Affairs published a report titled, *Off-loading: The Abuse of Inter-Agency Contracting to Avoid Competition and Oversight Requirements*. The report specifically discussed the accumulation of excess fees and interest earned by TVA and recommended that TVA return these funds to the U.S. Treasury. TVA has since returned approximately $6.8 million; however, the Department of Defense OIG has determined that an additional $4.8 million is outstanding.

[15] On July 18, 1994, TVA named Lawrence Stein to be the President and Chief Executive Officer of CRS effective November 15, 1994.

Table 1: Center for Rural Studies Trust, Summary of Cash Receipts and Investment Income Earned November 23, 1994, through January 31,1996

Description	Amount
Funds received from TVA	
Initial endowment (November 23, 1994)	$30,000,000
Interest earned on initial endowment (November 28, 1994)	617,091
Rural attitudes survey	300,000
Total received from TVA	**$30,917,091**
Other sources of revenue	
Funds received from EPRI (1995)	505,250
Funds received from the Center for New West[a]	1,000
Total funds received, November 1994-January 1996	**$31,423,341**
Total investment income	**$1,798,956**
Total funds received and investment income	**$33,222,297**

[a]Mr. Stein told us that the Center for New West made this payment to CRS to offset his costs for travel to a conference that the Center for New West sponsored.

Source: TVA OIG Draft Report

According to TVA's OIG analysis of CRS's expenditures for the period November 1, 1993, through January 31, 1996, the total cost incurred was $1,410,747, of which TVA paid $829,691 directly. Of the $1.4 million cost incurred, $680,790, or 48 percent, was paid for salaries and benefits of the three TVA employees on loan to CRS, including relocation costs. Of the $680,000, $377,388 was associated with Mr. Stein.

Prior to entering into the contract with CRS, EPRI requested that Mr. Stein provide CRS's proposed General and Administrative (G&A) rate. The contract required EPRI to reimburse CRS for costs incurred, including a pro rata share of the overhead rate or G&A. Mr. Stein informed EPRI that CRS had an 81.82 percent G&A rate. Because EPRI's auditors typically review cost proposals prior to signing a contract, EPRI officials requested that they audit CRS to substantiate the 81.82 percent G&A rate. Mr. Stein would not provide the support necessary to conduct the audit. He subsequently contacted Chairman Crowell who in turn contacted the President of EPRI and expressed his dissatisfaction and concern about the EPRI/CRS contract not being signed. As a result of this contact, the audit was not conducted and the contract was signed on March 1, 1995.

Significant Events Pertaining to the Audit and Investigations of CRS and Chairman Crowell

Based on an anonymous complaint concerning Chairman Crowell's creation of CRS, TVA's OIG initiated an audit of CRS in November 1995. Three days after the IG informed CRS's Management Committee that the audit revealed possible criminal violations, the Management Committee terminated CRS, moving its activity under the aegis of TVA. Less than a month later, Mr. Stein resigned. After receiving the same complaint, the USAO for the Eastern District of Tennessee opened an investigation with the Federal Bureau of Investigation (FBI). After an 8-month investigation, the USAO decided that the Eastern District should be recused from any further investigation, citing the U.S. Attorney's personal relationship with Chairman Crowell. However, the USAO felt further investigation was warranted because there was a prima facie case that Chairman Crowell had violated the conflict-of-interest prohibitions in 18 U.S.C. section 208. The investigation was transferred to the Public Integrity Section of Justice, which declined prosecution of Chairman Crowell. Justice also reviewed the information concerning the double billing by Mr. Stein and declined to prosecute this matter.

Allegations Against Chairman Crowell

In September 1995, an anonymous source sent letters to two congressional offices containing allegations about Chairman Crowell. The source claimed, among other things, that Chairman Crowell had made financial arrangements to benefit his personal friends and political cronies by way of CRS.

One of these congressional offices forwarded the letter to the GAO FraudNET, which referred the matter to TVA's OIG on October 16, 1995. The other office forwarded the letter to the FBI. During October 1995, the TVA OIG received letters from both the FBI and GAO, conveying the allegations from the anonymous source regarding Chairman Crowell. Independently, the FBI's Knoxville office initiated a public corruption investigation in November 1995. On November 28, 1995, the IG provided Chairman Crowell a copy of the anonymous letter containing the allegations and requested that Chairman Crowell, as Chair of CRS's Management Committee, authorize a financial audit of CRS by the OIG. The OIG did not have audit rights.

TVA OIG Audit and Investigation of CRS

After Chairman Crowell authorized the audit of CRS, the OIG immediately initiated the audit to trace all CRS funds received and disbursed. An initial

review of CRS's financial records determined that there was no accounting system and CRS's internal controls were “absolutely” inadequate.

As a result, the auditors interviewed Mr. Stein to determine the basis for CRS's billings to EPRI. During an interview on November 30, 1995, Mr. Stein admitted that he directed a TVA employee on loan to CRS to “concoct the EPRI bills out of nothing.” He also stated that the bills were “contrived” and EPRI was billed for “presumed” costs. In subsequent conversations with the OIG, Mr. Stein said his intent was to acquire as much money as possible for CRS before TVA's 3-year commitment expired. Mr. Stein said he sought EPRI moneys to move funds quickly into CRS accounts in anticipation of full operations. Mr. Stein had informed the Internal Revenue Service (IRS) that he intended to accumulate funds in the trust for 3 years and use the interest to provide salary/compensation for himself, other staff, and operations.

The OIG audit of CRS records determined that CRS overbilled EPRI by $361,045, of which $257,034 appeared to have been falsified and determined that the balance was not in compliance with the contract. $227,366 in G&A expenses billed to EPRI was entirely unsupported by actual CRS expenditures. Further, the OIG found that CRS submitted other budget proposals to a vendor and IRS, that indicated the G&A rate was 10.4 percent or 5.4 percent, respectively. These G&A rates were not shared with EPRI, nor was the fact that TVA was paying for most of CRS's expenses. In effect, CRS billed EPRI as if all its costs were direct costs, and added overhead costs even though it never incurred such costs. Mr. Stein told OIG auditors that he was not aware of any double billing or overbilling.

On December 4, 1995, following the CRS audit fieldwork, the IG notified the CRS Management Committee[16] of potential violations of law surrounding CRS billings to EPRI. The OIG opened two investigations involving CRS based on the questionable billings and other indications of financial irregularities found during the audit.

[16] The members of CRS's Management Committee were also members of the TVA Board of Directors.

On December 7, 1995, the CRS Management Committee signed a resolution to initiate termination of CRS and transfer its activities into TVA. It was reported in the media that Chairman Crowell announced that CRS—charged with enhancing Tennessee Valley economic growth, creating rural jobs, and making the power system more competitive—would be moved beneath TVA's corporate umbrella.[17] TVA also entered into a contract with the University of Kentucky Research Foundation to continue the contractual relationship initiated between CRS and the foundation.[18] The contract tasked the foundation to perform or supervise studies related to issues and problems of rural communities and to benefit rural inhabitants of the Tennessee Valley Region.

On January 5, 1996, Mr. Stein resigned from TVA, effective January 22, 1996. He agreed not to disclose the terms and arrangements surrounding his resignation or make comments or statements to the news media that were adverse to or critical of TVA, its management, its employees, or its programs. TVA also agreed not to disclose the terms of Mr. Stein's resignation, except as required by applicable law.

During the 14 months CRS operated, a 5-year plan was developed and two activities—the Roper Starch Survey and preparation to publish an Internet guide for farmers—were undertaken.

U.S. Attorney's Office Investigation of CRS and Chairman Crowell

In late 1995, after receiving a copy of the anonymous complaint from the FBI, an Assistant U. S. Attorney (AUSA) for the Eastern District of Tennessee reviewed the allegations and concluded that the FBI was not actively investigating the matter and that additional investigation was warranted. As a result, the USAO began supervising the investigation and the FBI began serving subpoenas for records. The AUSA was aware that TVA's OIG was conducting an audit of CRS and concluded that the TVA OIG could not be entirely independent in investigating Chairman Crowell and other senior managers at TVA because TVA's Board could fire the IG. Therefore, the OIG was excluded from the investigation.

[17] The resolution stated that CRS was being terminated because it had not received contributions from other entities and had accomplished all the purposes for which it was established that it was capable of accomplishing without additional contributions.

[18] The initial contract between CRS and the Kentucky foundation was effective in January 1995; its project manager was Dr. David Freshwater.

The IG first learned of the FBI and USAO investigation of CRS in February 1996. After a meeting with the AUSA, the IG suspended all audit and investigative efforts and provided the FBI all OIG files regarding the allegations concerning CRS and Chairman Crowell, including summaries it had prepared.

The FBI/USAO investigation focused on whether Chairman Crowell's participation in the creation of CRS constituted a violation of 18 U.S.C. section 208. The investigation did not address CRS's questionable billing practices. The FBI conducted a number of interviews with TVA employees, including Mr. Zigrossi.

Mr. Zigrossi told us that he had conversations with Virgil Young, at the time the Special Agent in Charge (SAC) of the Knoxville, Tennessee, FBI office. Prior to becoming TVA's Chief Administrative Officer, Mr. Zigrossi had been TVA's first IG and previously served as the SAC of the FBI Washington, DC, field office. He asked SAC Young about the status of the FBI investigation of Chairman Crowell. However, SAC Young told us that while he did have conversations with Mr. Zigrossi during the FBI's investigation of Chairman Crowell, they did not discuss the investigation.

On August 22 or 23, 1996, at the request of SAC Young, a meeting was held at the USAO with the AUSA, the Chief Assistant, the FBI supervisor, the FBI case agent, and SAC Young attending this meeting. At that time, SAC Young attempted to convince the USAO that there was insufficient evidence to proceed with a case against Chairman Crowell. SAC Young told us that this was the first time he ever attempted to convince a U.S. Attorney not to pursue a prosecution. According to the FBI case agent, the arguments presented by SAC Young at the meeting were identical to those used by Mr. Zigrossi when the case agent interviewed Mr. Zigrossi. The FBI case agent stated that he believed that SAC Young presented Mr. Zigrossi's views as his own.

The Chief Assistant stated that he had had many dealings with SAC Young and it was unusual for him to have a working knowledge of an ongoing investigation. A senior FBI official in the Knoxville FBI office told us that SAC Young did not involve himself in operational matters, including the details of ongoing investigations. The AUSA told us that it was highly unusual for any investigative agency to argue against proceeding with a prosecution, because the agency normally pushes for prosecution. The FBI case agent stated that the AUSA was so incensed about SAC Young's argument against prosecution that he provided the SAC a copy of the

section of the U.S. Attorney's handbook that clearly states that the USAO will determine what warrants prosecution.

The U.S. Attorney said that he had attended both professional and social functions with Chairman Crowell, including having lunch with Chairman Crowell during the course of the investigation of the Chairman. He also said that Chairman Crowell had telephoned him to ask about the status of the investigation, but the U.S. Attorney denied providing any information to Chairman Crowell about the investigation. We attempted to interview Chairman Crowell about his contacts with the U.S. Attorney and other matters. However, he declined to be interviewed.

Eight months after it began its investigation, the USAO held a meeting to review the status of the investigation and to determine what actions needed to be taken. The U.S. Attorney, Chief Assistant, Chief of the Criminal Section, and the AUSA attended. They agreed that Chairman Crowell's actions warranted further investigation by the grand jury to determine if an indictment could be returned. However, they also decided that the Eastern District of Tennessee should not pursue the grand jury indictment because of the relationship between the U.S. Attorney and Chairman Crowell, as well as the relationship between the USAO, TVA management, and TVA OIG. It was decided that the USAO would request Justice to assume responsibility for the investigation and recuse the Eastern District.

Accordingly, on October 2, 1996, the USAO's First Assistant met with Justice's Public Integrity Section and the Associate Attorney General. During the meeting, the First Assistant discussed the status of the investigation and provided the following as reasons warranting the recusal of the U.S. Attorney and USAO: (1) the U.S. Attorney was a close personal friend of a former U.S. Senator and, as a result, has known Chairman Crowell for years; (2) the Eastern District of Tennessee had daily contact with individuals involved in the investigation; and (3) TVA's General Counsel's office worked closely with the Eastern District on civil and other TVA-related matters. The U.S. Attorney and members of his supervisory staff concluded that it would be difficult for the Eastern District to maintain an impartial posture in the investigation and prosecution of the allegations against Chairman Crowell.

On October 16, 1996, the U.S. Attorney wrote a memorandum to Justice requesting the District's recusal from the investigation. The memorandum referred to the pending investigation involving TVA, Chairman Crowell, and, potentially, others who might have been involved with Chairman

Crowell's apparent violation of the federal conflict-of-interest statutes. In addition, the U.S. Attorney recommended that the companion wire fraud investigation of double billing by Mr. Stein be referred to the appropriate USAO.

The AUSA assigned to the investigation told us that he felt that SAC Young's attempt to convince him to drop the case and the U.S. Attorney's recusal of the entire USAO were successful attempts to deter him from proceeding with the investigation. The First Assistant told us that as long as the current U.S. Attorney is in office, the USAO for the Eastern District of Tennessee would not be able to pursue a case against Chairman Crowell.

Public Integrity Investigation of Chairman Crowell

Public Integrity accepted the case from the U.S. Attorney and assigned a trial attorney in November 1996 to assume responsibility for the investigation. In December 1996, the Public Integrity trial attorney[19] told the FBI that he would probably recommend declining prosecution after he had reviewed the summary of interviews conducted by the FBI; reviewed documents collected by the FBI, USA, and OIG; and held 1 day of grand jury testimony. According to the FBI case agent, the investigation was about 50 percent complete at the time it was transferred to Public Integrity and that no further investigation was conducted after the 1 day of grand jury testimony in December 1996. Over a year later, on January 6, 1998, Public Integrity officially notified the FBI in writing that it declined to prosecute the case.

The Chief of the Public Integrity Section told us that the scope of the Public Integrity investigation was limited to two questions that concerned whether Chairman Crowell violated the conflict-of-interest prohibitions in 18 U.S.C. section 208. The first question focused on whether the creation of the trust resulted in a predictable financial benefit to Chairman Crowell at the time he had established it. Justice concluded that there was no concrete evidence that Chairman Crowell would have received a financial gain at the time the trust was created. It further concluded that even if Chairman Crowell created CRS for his future benefit or the benefit of friends or associates, there would be no criminal violation because that is not a predictable financial gain as defined by the statute.

[19] Justice refused our request to interview the Public Integrity trial attorney assigned to this investigation.

The second question focused on whether any of Mr. Crowell's official acts as TVA's Chairman would have financially benefited CRS. Justice concluded that CRS financially benefited from Chairman Crowell's actions as TVA Chairman. As a result, Justice concluded that Chairman Crowell's actions on behalf of CRS constituted a technical violation of the conflict-of-interest statute. However, citing the good faith opinion by the designated agency ethics official that Chairman Crowell could simultaneously sit on the Boards of TVA and the CRS Management Committee, Justice declined to prosecute Chairman Crowell.[20] The Chief of the Public Integrity Section told us that he believed Mr. Osteen's opinion was erroneous because Chairman Crowell's actions "clearly" constituted a technical violation of the conflict-of-interest statute. For example, Mr. Crowell made decisions as Chairman of TVA authorizing the transfer of funds from TVA to CRS. Nevertheless, the Chief of Public Integrity advised us that Justice does not typically prosecute such technical violations.

In order to determine whether this technical violation should be prosecuted, Justice's investigation focused on determining whether Mr. Osteen's ethic opinion was coerced. Justice concluded that there was no evidence of coercion and that the opinion was prepared in good faith.

With regard to the double billing, Public Integrity reviewed the information concerning the double billing by Mr. Stein and determined that there was "no harm no foul" in that (1) there was no evidence that Mr. Stein personally profited; (2) the transaction was between two nonprofit organizations; and (3) TVA had reimbursed the other entity, EPRI, for the amount of the erroneous billings. Justice further stated that it believed a principal witness against Mr. Stein would not have been credible. This witness, a convicted felon hired by Mr. Stein, had testified that Mr. Stein directed him to over bill EPRI.

Declination by Public Integrity Questioned by USAO

The AUSA assigned to the investigation said that Justice informed him that it declined to prosecute the case, citing TVA's designated agency ethics official's opinion that there was no conflict of interest as a defense for Chairman Crowell. The AUSA stated he believed that he was prepared to overcome that defense.

[20] Good faith reliance on the advice of a designated agency ethics official is a factor taken into account by Justice in the selection of cases for prosecution. 5 CFR 2635.107(b).

The Chief of the Criminal Section told us that he was very upset when Justice sent a letter stating that it had declined the case claiming it did not meet prosecutive guidelines. He felt that there was a prima facie case against Chairman Crowell that needed further investigation, but no such follow-up was done.

We discussed with the Chief of the Public Integrity Section the USAO's view that there was a prima facie case that Chairman Crowell violated the conflict-of-interest statute and that there was a need for further investigation. The Chief of the Public Integrity Section stated that it is his interpretation as an expert on conflict-of-interest issues that Chairman Crowell's control over the trust was not enough to result in a violation of the conflict-of-interest statute. He said the USAO for the Eastern District of Tennessee does not normally prosecute these types of cases and lacks expertise in this area.

Disposition of the CRS Accounts After CRS Was Terminated

On January 3, 1996, the CRS Management Committee decided to transfer all CRS programs, functions, and operations to TVA. The actual dates the funds were transferred to TVA were May 24 and 29, 1996, when $33,356,109.69 was transferred from CRS trust accounts to TVA's Rural Studies Agency Account. The funds returned to TVA by CRS are in TVA's name and not in a trust. In addition, $521,923.69[21] from CRS's accounts was transferred to EPRI on May 2, 1996.

In February 1997, a $1.5 million endowment was made from the Agency Account to the University of Virginia's Darden School Foundation for the development of a public-private partnership institute. During March 1997, $30 million was transferred from the Agency Account to TVA's general operating account with the U.S. Department of the Treasury. Between 1996 and October 1999, $2,611,541.52 was paid to continue the rural studies research programs at the University of Kentucky Research Foundation. The Foundation has produced about 30 publications related to rural economics and maintains an Internet web site about rural studies. The value of the Rural Studies Agency Account as of October 31, 1999, was $1,585,866.93.

[21] This amount was the $505,250 EPRI paid CRS plus earned interest of $16,673.69.

Concerns Over Lack of TVA Oversight

The problems we found with the creation and operation of CRS exemplify the need for better oversight of TVA activities. The issue of TVA's oversight has been examined several times in the past. In a 1982 report, we pointed to a growing concern with TVA's activities and identified options for improving oversight and accountability.[22] These options included periodic congressional oversight hearings. In a 1983 report, we discussed our concerns about TVA's management and concluded that the issue of the adequacy of TVA's oversight needed greater attention.[23] In a 1987 report entitled *TVA–A Path to Recovery*, the Southern States Energy Board concluded, "additional mechanisms are needed to ensure that TVA is accountable for its actions to its ratepayers, Congress, and the American public."[24] The report further stated that a larger Board—comprised of part-time directors who would be responsible for policymaking and oversight of TVA's management—should be established. In 1995 and 1998 reports, we raised these same concerns about a lack of oversight of TVA.[25]

In 1997, TVA's oversight was a topic of debate in the Congress and in October 1997 a bill was introduced in the Senate to expand TVA's Board from three full-time members to nine part-time members who had strong backgrounds in corporate management or strategic decisionmaking. Under this proposal, the expanded Board would establish long-range goals and policies for TVA and the day-to-day management would be handled by an independent chief executive officer. This proposed legislation was not enacted into law.

Currently, there are efforts in the Congress to ensure that TVA's IG is independent of the TVA Board and therefore can conduct effective oversight of TVA. Some concerns are that TVA's Board can hire and fire the IG and TVA's OIG is currently being managed by an interim IG on detail from TVA. As a result, there are two bills pending in the Congress to make

[22] *Tennessee Valley Authority—Options for Oversight* (GAO/PEMD-82-54, Mar. 19, 1982).

[23] *Triennial Assessment of Tennessee Valley Authority—Fiscal Years 1980-1982* (GAO/RCED-83-123, Apr. 15, 1983).

[24] The Southern States Energy Board was comprised of government and industry experts with diverse experiences in energy operations, management, and regulation.

[25] *Tennessee Valley Authority: Financial Problems Raise Questions About Long-Term Viability* (GAO/AIMD/RCED-95-134, Aug. 17, 1995) and *Federal Power: Options For Selected Power Marketing Administrations' Role in a Changing Electricity Industry* (GAO/RCED-98-43, Mar. 6, 1998).

the TVA IG a statutory IG, nominated by the President and confirmed by the Senate.

Scope and Methodology

We conducted our investigation from September 1999 through February 2000. We interviewed TVA officials involved with the creation of CRS. We also interviewed TVA OIG employees who were involved in the audit and investigations of Chairman Crowell and Lawrence Stein and reviewed OIG supporting documentation. We met with Justice officials and reviewed documents from the Knoxville office of the FBI, USAO for the Eastern District of Tennessee, and the Public Integrity Section. We also reviewed the records from the DOD OIG pertaining to its audit and investigation of TVA's Technology Brokering Program, which partly funded CRS. We also reviewed and analyzed TVA Rural Studies financial records, contracts, and other documents.

We attempted to interview Chairman Crowell and Mr. Zigrossi, but both declined our request. We also attempted to interview the Public Integrity Section trial attorney who was assigned to the investigation of Chairman Crowell; however, Justice declined our request. We previously interviewed the AUSA assigned to the investigation of Chairman Crowell during our 1999 investigation of TVA. We attempted to interview the AUSA during this investigation; however, Justice declined our request.

As discussed with your office, unless you announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send letters to interested congressional committees and members and make copies available to others upon request. If you have questions about our investigation, please contact me or Deputy Director for Investigations Donald Fulwider at (202) 512-7455. Assistant Director John Ryan was a key contributor to this investigation.

Sincerely yours,

Robert H. Hast
Acting Assistant Comptroller General
for Special Investigations

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