

MEMORANDUM OF UNDERSTANDING

1. Purpose

The U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), and the Tennessee Valley Authority (TVA), Office of the Inspector General (OIG), enter into this agreement to facilitate coordination between the two offices.

2. Background

Under the Inspector General Act of 1978, as amended (5 USC Appendix 3) (Inspector General Act), the OIG is established as an independent office which reports to the TVA Board of Directors. The OIG is not subject in any way to the authority of TVA's nuclear power organization and cannot be prevented "from initiating, carrying out, or completing any audit or investigation" (5 USC 3[a]). The OIG is required under the Inspector General Act to "conduct, supervise, and coordinate audits and investigations relating to the programs and operations of" TVA. As part of its responsibility, the OIG has jurisdiction to investigate allegations of fraud, waste, and abuse, including allegations of wrongdoing in TVA's nuclear program.

At the same time, the NRC, under the Atomic Energy Act of 1954, as amended (42 USC 2011 et seq.), has the authority to conduct such investigations as it deems necessary or proper to assist it in exercising any authority provided in that Act as well as in the administration or enforcement of the Act or any regulations or orders issued thereunder (42 USC 2201[c]). Pursuant to that authority, OI has the responsibility to investigate allegations of wrongdoing by nuclear licensees, which would include TVA. Therefore, the investigative jurisdictions of OI and the OIG can overlap in some areas.

Although each agency will independently carry out its statutory responsibilities, the agencies agree that administrative efficiency will be maximized by cooperation and, as appropriate, the timely exchange of information in areas of mutual interest. However, both agencies also recognize there are areas where it would be inappropriate for the NRC as a regulator to share information with TVA, the licensee, notwithstanding the OIG's independence and statutory authority.

3. Areas of Coordination

- a. The OIG and OI have the authority to conduct simultaneous, parallel investigations. However, as a matter of policy, the OIG generally will defer to OI and hold its investigation in abeyance when OI is actively pursuing a case. In order to avoid duplicative efforts and unnecessary parallel investigations, on request OI will advise the OIG (1) if it is actively pursuing a particular case and (2) the status of specific cases. Normally, however, OI will not provide the OIG with substantive information regarding an ongoing NRC investigation.

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- b. On request, the OIG will provide OI with information regarding its investigations, including status reports and substantive information. If the OIG believes it has information which (1) may be reportable under any NRC requirements or (2) should be provided to the appropriate TVA organization because of its potential nuclear safety significance, it will inform the responsible TVA organization so that organization can (1) take appropriate action and (2) determine whether to notify the NRC pursuant to NRC requirements. If the OIG cannot advise the appropriate TVA organization of the information because to do so might prejudice an investigation, the OIG will so advise the TVA Board of Directors and, as appropriate, the NRC.
- c. The NRC receives the following categories of allegations which OI will not investigate and which fall within the OIG's jurisdiction:
 - (1) Allegations within OI's jurisdiction which OI is not going to pursue because of resource constraints or other reasons.
 - (2) Allegations involving fraud, waste, or abuse by TVA employees, contractors, or subcontractors which do not fall within OI's jurisdiction.

When the NRC receives an allegation which falls within the OIG's jurisdiction and which OI does not plan to investigate, OI agrees to take reasonable steps to obtain the alleged's authorization to reveal his/her identity to TVA's OIG. If the alleged consents, OI will refer the allegation (including the alleged's identity and any information developed by the NRC) to the OIG for appropriate action. This does not preclude OI from taking whatever other action, including referral to the NRC staff, it may deem appropriate. If the alleged does not agree to disclosure of his/her identity, as appropriate, OI will provide the OIG information which will not reveal the alleged's identity, but will allow the OIG to investigate the concern.

- d. Both the OIG and OI have the authority to grant confidentiality. OI normally will not reveal a confidential source's identity to the OIG unless the confidential source agrees. If the confidential source agrees to disclosure of his/her identity to the OIG, the OIG will, on request, provide confidentiality to the individual in accordance with the OIG's policy on confidentiality.

The OIG will provide OI with the identity of confidential sources when OI requests those identities in connection with its regulatory responsibilities. Unless a confidential source consents to waive confidentiality, OI agrees to treat the identity of such sources as confidential in accordance with OI's policy on confidentiality.

- e. OI, the OIG, and the Department of Labor (DOL) have jurisdiction to investigate circumstances surrounding alleged violations of Section 210 of the Energy Reorganization Act of 1974, as amended (42 USC 5851). Under the DOL/NRC Memorandum of Understanding and the OIG's general working arrangement with DOL, OI and the OIG

cooperate with DOL and share information with DOL. Similarly, to avoid duplicative efforts, OI and the OIG agree to share information regarding Section 210 cases, as appropriate, and as outlined above for investigations in general.

- f. Both OI and the OIG have independent responsibility to refer potential criminal cases to the Department of Justice. The actions of either in making a referral are not binding on the other agency, and neither is required to notify the other of a referral.

4. Implementation and Liaison Between Agencies

The NRC official responsible for implementation of this agreement is the OI Director. The TVA official responsible for implementation of this agreement is the Inspector General. The working level points of contact are the TVA Assistant Inspector General, Investigative Operations, and OI's Atlanta Field Office Director.

The TVA Assistant Inspector General of Investigation Operations and OI's Atlanta Field Office Director, or their designees, shall make good faith efforts to meet at least on a quarterly basis to share information of mutual interest.

- 5. This agreement may be amended or modified upon written agreement by both parties to the Agreement. The Agreement may be terminated upon ninety (90) days' written notice by either party.

6. Effective Date

This agreement is effective when signed by both parties.

Dated: Jan 14 1991

Signed: [Signature]

Ben B. Hayes, Director
Office of Investigations
U.S. Nuclear Regulatory
Commission

Dated: 1-11-91

Signed: [Signature]

Norman A. Zigrossi
Inspector General
Tennessee Valley Authority