

Office of the Inspector General  
Report of Administrative Inquiry

June 9, 2009

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6 + 7 (C)

[ ]  
EMPLOYEE MISCONDUCT - ETHICS  
OIG FILE NO. 1K-12095

We have completed our investigation of an allegation that [ ] provided false information during a TVA OIG inspection.

More specifically, [ ] provided false information to the OIG during a review of TVA's Maintain and Gain (M&G) Program (OIG Inspection 2008-12003). This program allows owners of lakeshore parcels without deeded water access rights to obtain water access by extinguishing an equal or greater amount of water access rights from another parcel on the same reservoir. The amount of water access rights is measured in linear lakeshore footage which is attached to an easement held by the adjacent landowner.

One aspect of the inspection involved the issue of whether or not Congressman Heath Shuler, Eleventh District, North Carolina, received special treatment in the approval of an M&G application submitted by The Cove at Blackberry Ridge, LLC (Blackberry). Congressman Shuler was a partner in Blackberry at the time the application was approved, thus raising questions as to whether he had received special treatment from TVA.

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The TVA Code of Conduct (Code) stresses the need for TVA employees to exercise integrity. The Code promotes the ideal that TVA employees "are honest, fair, and trustworthy in all our TVA activities and relationships." Moreover, TVA management should strive to "[e]xhibit the highest standards of ethical conduct at all times and avoid behavior that could reasonably be perceived as improper." Our investigation found [ ] failed to live up to these standards by being less than truthful during an OIG inspection.

Specifically, [ ] was not candid in the following respects:

- [ ] denied knowing Congressman Shuler held an ownership in Blackberry despite evidence [ ] was fully aware of his ownership status.
- [ ] denied Congressman Shuler had contacted TVA about Blackberry's M&G application. However, an internal e-mail shows [ ] knew or should have known otherwise.

The basis for these conclusions is outlined below.

## BACKGROUND

Blackberry was formed in May 2005 by Dennis Tumlin, Bradley Varner, Danny Smith, and Heath Shuler. Congressman Shuler was not an elected official at the time. He was elected to the United States House of Representatives in November 2006 and took the oath of office the following January.

Blackberry sought to develop a residential subdivision on Watts Bar Lake and wanted to construct a multiple-slip community boat dock. However, despite the fact Mr. Tumlin (one of two original purchasers, along with Mr. Varner, of the tract) was told by a TVA representative in February 2005 that the development parcel had lake access rights, a closer review of the deeds revealed this to be untrue. Consequently, Blackberry could not obtain a permit for a dock before obtaining the requisite access rights.

Blackberry sought water access rights through TVA's M&G Program and submitted three M&G applications toward that end. The first application was rejected because the access rights which Blackberry proposed to extinguish were not provided for in the deed to the parcel. The second application was rejected because the linear footage of the access was less than the amount of access to be opened and because TVA's M&G Committee found the access rights to be extinguished did not inure to the public benefit. However, the third application was accepted in May 2008 after Blackberry agreed to remedy the deficiencies of the second application and further M&G Committee review was suspended. [ ]

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The approval of Blackberry's M&G application underwent public scrutiny after Congressman Shuler submitted a financial disclosure statement which revealed his investment in Blackberry to be between \$5 million and \$25 million. Regional newspapers questioned TVA about the matter. Articles stemming from the inquiries focused on whether it was ethically proper for TVA to approve the M&G application when Congressman Shuler was both a partner in Blackberry and a member of the House Transportation Committee's Subcommittee on Water Resources and the Environment (one of two congressional panels that provide formal oversight of TVA).

The media inquired whether Congressman Shuler contacted TVA about the Blackberry matter. TVA denied any contact with Congressman Shuler regarding Blackberry's M&G application based on information provided by [ ] [ ]

## SUMMARY OF INVESTIGATION

Despite evidence suggesting otherwise, [ ] [ ] denied to the media that Congressman Shuler contacted TVA about the Blackberry M&G application. [ ] [ ] also denied to the OIG that [ ] was aware Congressman Shuler was an owner of Blackberry. Evidence indicates [ ] [ ] knew or should have known Congressman Shuler held an ownership

interest in Blackberry and that the Congressman had contacted TVA about Blackberry's M&G application.

Remainder through page 11  
And Attachments redacted