Tennessee Valley Office of the Inspector General

Richard Moore
TVA Inspector General

News Release
Wednesday, November 28, 2007

Contact: Stefanie Hoglund
865-632-2233

Multi-Million Dollar Settlement—Largest in History of TVA OIG

Tennessee Valley Authority Inspector General Richard Moore and United States Attorney Courtney Cox, Southern District of Illinois, announced today that the United States has reached a civil settlement in excess of $25 million for an alleged violation of the civil False Claims Act with three Kinder Morgan limited partnerships (collectively “Kinder Morgan”) that provide coal and other energy transportation and distribution services.

In the case investigated by the TVA Office of the Inspector General (OIG) and the Federal Bureau of Investigation, a total of more than $25 million dollars will be paid to the United States, TVA (a government corporation), and foreign and domestic companies. The $25 million includes treble damages on the amount of TVA losses plus the actual losses of the private customers. TVA’s recovery will total nearly $8 million, including actual losses and the cost of its investigation. The case was handled by Assistant United States Attorneys Gerald M. Burke and Stephen Clark.

“This is the largest total recovery in the history of the TVA OIG,” said IG Richard Moore. “Because TVA spends in excess of $2 billion a year on coal, the OIG devotes substantial resources to detecting and preventing fraud in this area. Experts estimate that companies like TVA lose two to six percent of gross profits to fraud annually,” Moore continued. “Although I doubt TVA’s loss is at the high end of the spectrum, this case illustrates TVA is as vulnerable as other companies. OIG special agents and auditors worked closely with the FBI to put this case together, and I believe their efforts in finding and analyzing the evidence led directly to Kinder Morgan agreeing to this settlement.” IG Moore added, “This case was initiated based on information provided from a concerned individual. Tips such as this lead to most major investigations and we encourage anyone who suspects fraud to contact our hotline at 877-866-7840 or www.OIGempowerline.com.”

The specific limited partnerships involved in this settlement are: Kinder Morgan Energy Partners L.P., Kinder Morgan Operating L.P. “B” and Kinder Morgan Operating L.P. “C”. Kinder Morgan contracted with TVA and other private companies to handle and transport coal at two of its coal terminals – the Cora Terminal in Rockwood, Illinois, and the Grand Rivers Terminal (GRT) in Grand Rivers, Kentucky. Coal was shipped from those terminals to TVA plants in Kentucky, Tennessee and Alabama. TVA ordered large quantities of coal produced in the western United

States. The coal would be shipped by rail to Cora and/or GRT where it would be offloaded, stored and eventually loaded onto barges for delivery to TVA. On occasion, the coal was directly transferred from rail to barge, but more often the coal was placed in customer stockpiles to be later shipped out by barge. It is alleged that Kinder Morgan took coal from TVA and other customer stockpiles and sold it under the name of “Red Lightning” from 1997 through 2001.

The way the alleged scheme worked was that coal was weighed by certified scales when it was loaded onto a train to be shipped to the terminals. However, that same coal when shipped from the Cora terminal to the customer was weighed by barge draft. The barge draft method usually weighed two to three percent heavier than the certified scales, resulting in less coal being shipped from the terminal than received. Kinder Morgan exploited this weighing differential to show that it shipped out the same amount of coal as it had received. It claimed the “excess” coal therefore belonged to it and it had the right to sell the coal and keep the profit. KM took the differential (unshipped customer coal or excess coal) and sold it as its own “Red Lightning” coal. At the GRT terminal where certified scales were used for both incoming and outgoing coal, it is alleged that KM simply took coal from the customer stockpiles.

Using this scheme, KM took and sold approximately 258,725.84 tons of coal attributable to TVA which amounted to a $6,599,526 loss for TVA. Kinder Morgan has agreed to pay back three times this amount for a total of $19,798,578. Kinder Morgan has also agreed to reimburse other private customers in the amount of $5,208,383.00.

The total civil recovery of $25,006,961 in this matter will be distributed as follows:

TVA for its loss	$ 6,599,526.00
TVA OIG for investigative costs	$ 1,374,791.03
	$ 7,974,317.03
IKEC/AEP for its loss (private)	$ 3,114,214.00
CarboEx for its loss (private)	$ 1,078,840.00
Ziegler/Lexington Coal for its loss (private)	$ 646,761.00
CIPCO for its loss (private)	$ 211,715.00
Entergy Arkansas for its loss (private)	$ 100,011.00
Illinois Power/Ameren for its loss (private)	$ 55,361.00
Knight Hawk for its loss (private)	$ 1,481.00
	$ 5,208,383.00
U.S. Treasury General Fund (penalties)	**$11,824,260.97**

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