

July 23, 2013

MEMORANDUM TO THE GOVERNANCE COMMITTEE

FROM THE VICE PRESIDENT and CHIEF ETHICS & COMPLIANCE OFFICER

SUBJECT: Recent Developments and Status of NYPA's Ethics & Compliance Program – Governance Committee Report

ETHICS and COMPLIANCE

SUMMARY

The Office of Ethics and Compliance advises NYPA's trustees, officers and employees on the legal, regulatory and NYPA Code of Conduct ethics and compliance standards relating to NYPA's employees and operations. It coordinates the investigation of allegations and concerns involving NYPA's assets and employees. This report highlights significant developments in NYPA's ethics and compliance program for the period March 1, 2013 to July 1, 2013.

BACKGROUND

The principal substantive issues arising under the NYS ethics laws and NYPA's Code of Conduct investigated or researched since the most recent Governance Committee report on March 21, 2013 include various requests to engage in outside activities and employment and issues concerning conflicts of interest, gifts inquiries, post-employment restrictions and re-hire reviews related to former employees.

The Office of Ethics and Compliance provides annual training to all trustees, officers and employees to reaffirm NYPA's commitment to prevailing ethics principles and raise awareness of the laws and regulations with which all NYS public employees are required to comply. Annual review of and certification to the NYPA Ethics Code of Conduct is implemented as an additional measure to reinforce acceptable business and professional conduct. The Office also coordinates required training for designated employees to comply with the Federal Energy Regulatory Commission's (FERC) Standards of Conduct relating to its transmission and energy marketing functions and FERC Rules designed to prevent manipulation of energy markets.

DISCUSSION

Ethics Caseload

The Ethics & Compliance Office reviewed 61 cases since the last report to the Governance Committee. This level of activity represents an upward trend in case volume and included reviews in the following categories: 3 appearances of impropriety; 1 conflict of interest; 2 general inquiries; 2 Financial Disclosure questions; 9 gifts questions; 12 outside activities and 12 outside employment reviews; 1 political activity inquiry; 11 post-employment questions; 6 issues related to unwarranted privilege and 2 assessments relating to appropriate use of NYPA

assets. These cases originated from all NYPA facilities, with a concentration from the White Plains Office. There has been a steady increase in ethics inquiries from employees at the operations' facilities, including those represented by bargaining units.

Cases of interest since the last report to the Governance Committee include the re-hire on a temporary basis of several former NYPA employees in the Operations business unit to support major capital work at the projects, including the Transmission Life Extension and Modernization initiatives. The Office evaluates these employment recommendations to ensure compliance with the NYS and NYPA Code of Conduct post-employment restrictions, as well as the statutory limits on earnings contained in the NYS Retirement & Social Security Law. In all instances, the re-hiring of former NYPA employees is justified by those individuals' unique expertise, knowledge and skills, as well as the short term duration of their specialized engagement.

The Office facilitated an outside employment request with the NYS Joint Commission on Public Ethics ("JCOPE") for a designated policy maker who serves as an adjunct professor at Columbia University.

In recent months, NYPA has undertaken several new initiatives regarding social media, including an internal blog, Facebook and Twitter accounts. The Office has required that certain disclaimers be added to the internal employee blog to ensure that employees are aware of the rules regarding not providing unwarranted privileges to any parties through endorsements of their products or services. NYPA employees who are authorized to engage in social media forums should remain cautious in the manner in which they utilize social media to avoid any conflicts with the Public Officers Law and restrict their communications to official NYPA business.

Collaboration with the New York State Inspector General's Office

The Office of Ethics and Compliance continues to collaborate with the NYS Inspector General's Office on investigations of allegations and complaints involving NYPA employees and business partners. Issues of corruption, fraud, criminal activity, conflicts of interest or abuse by state officers and employees relating to their office or employment, or by anyone having business dealings with covered agencies, are included within the Inspector General's Office jurisdiction. Details of pending cases will be provided during the Governance Committee Executive Session upon request.

Training and Outreach

The Public Integrity Reform Act of 2011 requires that all Trustees and employees who participate in the Financial Disclosure Program administered by the JCOPE receive a live, two-hour comprehensive ethics training by August 15, 2013. NYPA's Chief Ethics and Compliance Officer, Joseph Gryzlo, was certified to conduct the training for the approximately 400 NYPA trainees. Multiple training sessions have been held and others are scheduled, which will ensure compliance with the August 15 deadline. NYPA will submit a compliance training report to JCOPE listing all NYPA required trainees and their training completion dates.

In addition to fulfilling this compliance training requirement, the Office will provide this ethics training to all NYPA employees to satisfy the NYPA annual ethics training commitment.

Non-Financial Disclosure filers will be invited to attend the live training sessions and will also have the option to complete the training electronically.

The Office is also using these training sessions to facilitate the annual Code of Conduct Certification process. In recent years, the Code Certification process has been completed electronically. NYPA has been encouraged to return to a paper process which includes employees' signatures. Employees have been asked to read the newly amended Code of Conduct and submit their signed certification acknowledging their understanding of the Code's provisions and commitment to comply with them.

Financial Disclosure

Annual Financial Disclosure Forms were due at JCOPE on May 15, 2013. On several occasions, the Office facilitated the resolution of questions between employees and Commission staff.

Compliance with this requirement is the responsibility of the individual required to file the form. Employees who knowingly fail to file the Financial Disclosure Form shall be subject to a hearing and escalating fines not to exceed \$40,000.

Honoraria

NYPA filed its annual report on Honoraria with JCOPE on May 31, 2013. There were no instances of Honoraria reported.

"Project Sunlight" Update

Project Sunlight is a component of the Governor's 2011 Public Integrity Reform Act. Effective January 1, 2013, it requires NYPA to record in a database maintained by the NYS Office of General Services (OGS) all individuals, firms or other entities (excluding other State and local governmental agencies and elected officials) that appear before NYPA on their own behalf or in a representative capacity on behalf of a client or customer for certain purposes.

The covered 'appearances' category was altered in the second quarter to eliminate telephone calls from the reporting requirement. Current covered appearances include live, in-person meetings and video conferences. E-mails, letters and other written communications remain excluded from reporting. The removal of telephone calls from the database reduced NYPA's entries from approximately 200 to 137. NYPA had submitted various clarification and exception requests to the Governor's Counsel's Office and received favorable determinations which will enable it to continue to efficiently conduct its business while complying with the purpose and expectations for Project Sunlight.

RELIABILITY STANDARDS COMPLIANCE

SUMMARY

This report highlights important aspects of NYPA's reliability standards compliance program for the period March 04, 2013 to July 23, 2013. A brief background statement is followed by discussion of specific reliability standards-related topics affecting the enterprise.

BACKGROUND

Following the 2003 Northeast blackout, the Energy Policy Act of 2005 was passed and gave the Federal Energy Regulatory Commission ("FERC") the power to establish mandatory standards for electric reliability. FERC named the North American Electric Reliability Corporation ("NERC") as its Electric Reliability Organization ("ERO") and charged it with developing and enforcing reliability standards. The Northeast Power Coordinating Council ("NPCC") is NERC's enforcement agent for the Northeast U.S. NERC established an organization and processes for developing, implementing and enforcing standards. The initial set of standards became enforceable on June 18, 2007. Since then, the standards have continued to be expanded and revised to address known gaps in the standards or gaps discovered from lessons learned from analyses of more recent system disturbances and blackout events.

NYPA is currently registered, under the NERC functional registration model, as a Transmission Owner, Generator Owner, Generator Operator, Purchasing and Selling Entity, and Load Serving Entity. Recently, NYPA requested de-registration as a Load Serving Entity. Under these registrations, NYPA is subject to 115 standards containing 379 requirements. The standards cover a wide range of NYPA's operation and maintenance activities and processes. In addition, NYPA is subject to some more stringent standards and reliability requirements established by NPCC.

DISCUSSION

NERC Reliability Standards Compliance Enforcement Actions

During the reporting period, NYPA staff managed compliance enforcement actions related to several of the NERC Reliability Standards that are applicable to NYPA's NERC registrations. There are currently nine (9) active enforcement actions related to self-reports of possible violations of the standards. One of these was submitted to the Northeast Power Coordination Council (NPPC) in 2011, one in 2012, four (4) in January 2013, two (2) in February 2013 and one (1) in June 2013. For those submitted in 2011, 2012 and June 2013, NYPA reached favorable settlement agreements with NPCC with final closure anticipated within the next few months. For the remaining self-reports submitted in 2013, three (3) mitigation plans have been completed and are currently under review by NPCC, and three (3) mitigation plans are in progress.

Possible Violation Concern Investigations

During the reporting period, Technical Compliance initiated investigations of seven (7) possible NERC Reliability Standards compliance concerns identified by the staff pursuant to an internal procedure entitled “Possible NERC Reliability Standards Compliance Violation.” Five (5) of the investigations are still ongoing; one (1) was reported as a possible violation and processed by NPCC via its Find, Fix, and Track (FFT) process with no penalty; and one (1) resulted in a recommended possible violation self-report. These compliance concerns were associated with the Voltage and Reactive (VAR), Critical Information Protection (CIP), and Protection and Control (PRC) NERC Reliability Standards. This internal process is viewed by the regulator as evidence that NYPA has a strong internal compliance program.

Self-Certifications of Compliance

During the reporting period, NYPA successfully completed three (3) self-certifications of compliance for the Communications (COM) and Protection and Control (PRC) NERC Reliability Standards pursuant to NYPA’s NERC registrations. Technical Compliance has established a rigorous process to ensure that compliance evidence is updated before NYPA self certifies compliance.

BULK ELECTRIC SYSTEM DEFINITION (BES)

The relevant background on this topic is contained in the July 31, 2012 report to the Governance Committee.

The Federal Energy Regulatory Commission (FERC) approved the new Bulk Electric System (BES) definition on December 20, 2012. The new definition will provide greater clarity and ensure consistency in identifying system elements across the nation’s reliability regions and will require transmission assets above 100kV to be subject to the NERC Reliability Standards. NYPA staff continued work to identify any compliance gaps for 40 newly identified BES elements under NYPA’s current NERC registrations.

As stated in the last report, the adoption of the new BES definition may require NYPA to register as a Transmission Operator (TOP) and/or a Transmission Planner (TP), which would require NYPA to demonstrate compliance with additional reliability standards. During the reporting period, NYPA continued to participate in meetings with the NYISO and the other NY Transmission Owners to assess new state-wide functional registration and compliance management impacts and actions pursuant to the new BES definition. NYPA staff having knowledge of these matters also met several times internally during the reporting period to further clarify the impacts on NYPA with respect to functional responsibility and compliance accountability for the TOP and TP Standards.

In addition, NYPA staff continued to assess and resolve identified Transmission Owner (TO) registration compliance gaps for its 40 newly identified BES elements. During the reporting period, NYPA held bi-lateral meetings with National Grid and New York State Electric and Gas to address projected gaps in compliance for the TO standards for newly identified NYPA BES assets located within their substations. Similar meetings with Consolidated Edison and LIPA were held. In addition, NYPA engaged in bi-lateral discussions with other Transmission Owners to discuss the Transmission Operator (TOP) and Transmission Planning

(TP) responsibilities and the impacts of Version 5 of NERC's Critical Infrastructure Protection (CIP) reliability standards on NYPA's newly identified BES assets located within their substations.

NERC RECOMMENDATIONS TO INDUSTRY – Facility Ratings for Transmission Lines

During the reporting period, NYPA continued to implement its work plan for responding to NERC's October 7, 2010 "NERC Alert – Recommendation to Industry" requiring NYPA to review its current Facility Ratings Methodology for its solely- and jointly-owned transmission lines to verify that the methodology is based on actual field conditions (in particular, line clearances). As stated in the last Governance Committee report, the assessment discovered about 260 line clearance discrepancies in NYPA's 1,400 miles of transmission lines; about 50 of which are on lines rated as high priority. All of the discrepancies on the high priority lines have been corrected. The remediation of discrepancies on the medium priority lines is planned for completion in 2013. Design packages are being finalized by Quanta Technology / Realtime Utility Engineers and CT Male for mitigating the discrepancies on the medium and low priority transmission lines. A status update was submitted to NERC in July 2013.

CYBER SECURITY DEVELOPMENTS

During the reporting period, NYPA staff continued to monitor the progress toward implementation of Version 5 of NERC's Critical Infrastructure Protection (CIP) reliability standards. NERC filed the CIP Version 5 Reliability Standards with FERC for approval on January 31, 2013. FERC issued a Notice of Proposed Rule (NOPR) regarding Critical Infrastructure Protection (CIP) Version 5 standards on April 18, 2013 with industry comments due in June 2013. Based on the NOPR, Version 4 of the CIP standards will not be enforced. Version 3 will be replaced with Version 5, which will become effective July 1, 2015. The pending approval and adoption of Version 5 of the Critical Infrastructure Protection (CIP) standards will have substantive impacts on NYPA's CIP compliance program. Staff is in the process of performing a classification assessment of those assets that will be affected by the revised standards to determine the scope and costs of the implementation plan that will ensure NYPA's compliance with the revised standards. Expenditure estimates for implementation of Version 5 have been included in the Operations budget plan for 2014-2015.