

July 29, 2014

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 (“the Office”) advises NYPA’s trustees, officers and employees on the legal, regulatory, NYPA Code of Conduct and policy 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 25, 2014 to July 29, 2014.

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 25, 2014 include various requests to engage in outside activities and employment, including requests under NYPA’s recently instituted Paid Volunteer Time Guidelines, issues concerning conflicts of interest, gifts, post-employment reviews related to the hiring of former employees and requests for guidance related to misuse of corporate travel cards and vendor practices involving the provision of free merchandise to certain employees.

DISCUSSION

Ethics Caseload

The Office reviewed 49 cases since the last report to the Governance Committee. These cases originated from all NYPA headquarters and operations’ facilities. There has been a steady increase in ethics inquiries from employees at the operations’ facilities, including those represented by bargaining units. This is attributable to ongoing communications and training outreach, as well as a heightened awareness by employees of ethics and compliance requirements.

Cases of interest since the last report to the Governance Committee include an issue involving a bargaining unit employee who had received prior approval by the Office to engage in outside employment as a County Legislator. Among other conditions agreed to by the employee, the outside employment approval required the employee to formally recuse himself from all business before the County Legislature that may have any connection to NYPA. During the

recent public announcement of the Memorandum of Understanding between the County of St. Lawrence, the Saint Regis-Mohawk Tribe and the State of New York, the employee attended a widely publicized press conference in Albany on a regularly scheduled work day without proper notification and approval. His attendance at the press conference in his capacity as a County Legislator violated the outside employment conditions and Code of Conduct. The employee was disciplined and cautioned that any further violation of NYPA's Code of Conduct policies and the outside employment requirements could result in further disciplinary action and a referral of the case to the New York State Joint Commission on Public Ethics ("JCOPE") for investigation.

In another matter, a NYPA employee whose NYPA job duties include solar power initiatives and who is interested in installing solar panels at his personal residence contacted several commercial solar manufacturing firms for residential pricing information. While discussing residential solar price trends in the Northeast with a prospective NYPA vendor, the company offered the NYPA employee a discount on their services. The company sponsors an "Alliance" program, wherein employees of companies solicited by the vendor's employees are offered "Friends and Family" pricing. The Office determined that the employee should not avail himself of the discount offer as it would constitute an unwarranted privilege. The employee became aware of the limited vendor discount program solely through his NYPA employment. In addition, the discount was not extended to a broader group of NYPA or New York State employees, thus likely characterizing it as an impermissible gift under the NYS Public Officers Law and NYPA Code of Conduct.

In 2013 NYPA launched the Energy Market Acceleration Program (EE-MAP) to advance the energy efficiency industry in New York. NYPA partnered with the New York State Energy Research and Development Authority ("NYSERDA") and the Electric Power Research Institute ("EPRI") to assist advancement of commercial ready energy efficiency products and services that are not widely deployed. To achieve its goals, this coalition of energy experts created EE-Inc. and issued a Request for Information ("RFI") to companies which would fit the established criteria. The RFI closed in 2013 and a team of experts selected approximately 40 companies to participate.

The Office was asked to opine on whether those energy efficiency companies selected during the RFI process could be solicited to attend the BuildSmart NY 2014 Innovators Summit to be held in September. The purpose of the conference is to (1) engage executive sponsorship; (2) celebrate state-wide accomplishments in energy efficiency projects; (3) provide an opportunity for Executive Order 88 stakeholders and private sector energy professionals to network and share best practices; and (4) provide awareness of business opportunities for the EE-Inc. constituent companies selected during the RFI process. In an effort to defray the costs of the conference, the NYPA organizers would like to charge the attendees a booth rental fee.

The Office determined that while there was no specific prohibition against this practice, that charging a fee would give the impression of "pay-to-play" and advised that NYPA should bear the full cost of the event.

Collaboration with the New York State Inspector General's Office

The Office 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.

In June 2014, the Office was informed by the Inspector General's Office of the final disposition of a case which previously resulted in the termination of employment of a NYPA employee. In December 2012, Inspector General's Office commenced an investigation into allegations that a former NYPA employee was using NYPA fuel credit cards to purchase gas for his personal vehicle. The investigation revealed that between August 2012 and November 2013, the former employee had improperly removed fuel credit cards from NYPA fleet vehicles to purchase gas for his personal vehicle. He also attempted to conceal his activities by creating documentation to make it appear that NYPA fleet vehicles were fueled with the credit cards. The Inspector General's Office referred the case to the Westchester County District Attorney for criminal prosecution.

In May 2014, the former employee pled guilty to a NYS Penal Law Class A misdemeanor and was sentenced to a term of probation and required to make restitution to NYPA in the amount of \$2,918.14. NYPA received the restitution check (representing full reimbursement for all misappropriated fuel) and will deposit it in the appropriate NYPA account.

Training and Outreach

The Public Integrity Reform Act of 2011 ("PIRA") requires that all Trustees and employees who participate in the Financial Disclosure Program administered by the JCOPE receive a live, 2-hour comprehensive Ethics training presentation which addresses the NYS Code of Ethics and key provisions of the NYS Public Officers Law and related NYS Regulations. The training continues to be offered to new hire employees.

Recently, the Governor's Office of Employee Relations ("GOER") issued updated training requirements that include Code of Conduct training under development by GOER. This training will be issued to all employees and will include a certification requirement. We anticipate issuing this training and certification in the third quarter of 2014, and will simultaneously facilitate NYPA's annual Code of Conduct certification.

Financial Disclosure

Annual Financial Disclosure Forms were due at JCOPE on May 15, 2014. On several occasions, the Office facilitated the resolution of questions raised by employees and JCOPE 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 are subject to a hearing and escalating fines not to exceed \$40,000.

The Office is offered the opportunity to review all applications from employees seeking an exemption from participation in the Financial Disclosure Program. Among them, a comprehensive review of the “Planner” job description was conducted to determine whether it warranted exclusion from the process. Employees serving in the original “MRM Planner” title hold a title exemption from participation in the Program. Recently, NYPA created the new title of “Planner”, a salaried position. The “Planner” position includes increased responsibilities, interactions with vendors and contractors and a planned expansion of the duties associated with the position over the course of time. NYPA took the position that the “Planner” title should not be granted an exemption and requested of JCOPE an agency denial. JCOPE concurred and all individual exemption requests for this position have been denied. Employees still serving in the MRM Planner role will retain their current exemptions. It is expected that the position will be phased out upon attrition by the incumbents.

The Office is planning a review of all job titles with current filing exemptions to determine if the roles and responsibilities of those positions have evolved beyond the duties contemplated at the time the original exemptions were granted. The Office will work with the Human Resources Department to analyze the most current job descriptions for each position, review each position and prepare a report and recommendation for General Counsel to review and make a determination regarding issuing agency denials to JCOPE for those positions that no longer qualify for an exemption.

RELIABILITY STANDARDS COMPLIANCE

SUMMARY

This report highlights important aspects of NYPA’s reliability standards compliance management program for the period February 24, 2014 to July 29, 2014. A brief background statement is followed by discussion of specific reliability standards-related topics affecting the enterprise.

BACKGROUND

Background information related to the origin of the North American Electric Reliability Corporation (NERC) mandatory standards for reliability and NYPA’s obligations to demonstrate compliance with the standards has been presented in previous reports to the Governance Committee.

DISCUSSION

NERC Reliability Standards Compliance Enforcement Actions

During the reporting period, NYPA self-reported two (2) possible NERC Reliability Standards compliance violations to the Northeast Power Coordinating Council (NPCC), NERC’s compliance monitoring and enforcement agent for NYPA. NPCC determined that the violations posed minimal risk to the reliability of the Bulk Electric System and agreed that the violations would be processed under NERC’s Reliability Assurance Initiative Enforcement Aggregation Pilot (see section labeled NERC Reliability Assurance Initiative (RAI)) and will not be subject to any penalties. In addition, during this period, NPCC determined that three previous instances of noncompliance processed during the previous reporting period were appropriately mitigated and closed them.

Investigations of Possible Violations

During the reporting period, Technical Compliance initiated four (4) investigations of possible violations of the NERC Reliability Standards; two (2) are still active. 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 completed four (4) self-certifications of compliance for reliability standards applicable to NYPA. Technical Compliance has established a rigorous process to ensure that compliance evidence is updated before NYPA self certifies compliance.

NERC Reliability Assurance Initiative (RAI)

NYPA has been actively supporting NERC and NPCC in moving this important NERC program forward. NYPA continues to participate in two pilot programs to test new compliance monitoring and enforcement tools. These pilot programs are being conducted in several regions across the country to establish the basis for a more risk-based, continent-wide compliance monitoring process. One is focusing on methods for assessing a company's risk and internal controls for managing compliance and one is focusing on new tools for processing minimal risk violations of the standards.

During the period, NYPA agreed to extend its participation in the RAI pilot program for Aggregation of Minimal Risk Issues for another six (6) months into October 2014. NYPA delivered presentations on its participation in this pilot program at the May 2014 NPCC Compliance and Standards Workshop and in a NERC-sponsored webinar in June 2014. NYPA received very positive feedback from the regulator for its participation in this pilot program.

Bulk Electric System (BES) Definition

As stated in earlier reports, the Federal Energy Regulatory Commission (FERC) approved the new Bulk Electric System (BES) definition and that NYPA will have over 40 newly identified BES elements that will be subject to the NERC reliability standards in July 2016.

As stated in earlier reports, the adoption of the new BES definition may require NYPA to register as a Transmission Operator (TOP) and/or a Transmission Planner (TP). 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 also met with NPCC staff to discuss NYPA's position on these matters.

NYPA staff continued discussions with LIPA to reach an agreement that clarifies the roles and responsibilities for compliance management for the Transmission Owner (TO) standards related to assets LIPA operates and maintains for NYPA in southeast New York (a similar agreement was executed with Con Edison earlier). NYPA continued to meet separately with National Grid and New York State Electric and Gas to address projected gaps in compliance for the Transmission Owner (TO) standards for newly identified NYPA BES assets located within their substations. NYPA's discussions with these NY Transmission Owners also focused on reaching agreement, before April 2016, for managing compliance with the Version 5 Critical Infrastructure Protection (CIP) cyber security standards for assets owned by NYPA, but operated and maintained by others.

Cyber Security Developments

During the reporting period, NYPA staff continued to monitor regulatory developments and implement a plan for demonstrating compliance with Version 5 of NERC's Critical Infrastructure Protection (CIP) reliability standards. In a recent development, FERC directed NERC to revisit some of the requirements in Version 5 that will result in a Version 6 for some of the CIP standards. These new reliability standards will have substantive impacts on NYPA's operations-related cyber security compliance program.

NYPA's effort to identify and classify its 'high' and 'medium' impact Cyber Systems is progressing and nearing conclusion. The results will be used to confirm the scope and costs of the implementation plan NYPA must execute to demonstrate compliance with the revised standards. In parallel, a Request for Proposal for the physical security modifications required under the new standards was developed and will be issued shortly as input to a Capital Expenditure Request that will be presented to the Board of Trustees in 2014. Expenditure estimates for implementation of the revised standards have been included in the Operations budget plan for 2014-2016.

Physical Security Standards

As a result of recently distributed information about an April 2013 coordinated physical attack on a Pacific Gas and Electric Corporation substation, several US Senators requested FERC and NERC to consider whether NERC should establish and enforce standards for physical security for critical electric facilities. As a result, FERC directed NERC to develop a new physical security standard (CIP-014) that is expected to be approved by FERC in 2014.

In anticipation of FERC's approval of this standard, NYPA is assessing the applicability and impacts to NYPA's facilities and is regularly updating management. Pursuant to the applicability criteria in the standard several of NYPA's transmission stations and substations may be subject to the standard. The next step is to identify the stations and substations through system modeling studies that if rendered inoperable or damaged as a result of a physical attack, could result in instability uncontrolled separation, or cascading within an Interconnection. This analysis is being conducted in consultation with the New York Independent System Operator (NYISO). Those facilities that are identified from the modeling studies will be subject to other requirements including a vulnerability assessment and a documented security plan that must be reviewed and updated every 30 months.