

March 25, 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 (“E&C Office”) 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 December 17, 2013 to March 25, 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 December 17, 2013 include various requests to engage in outside activities and employment and issues concerning conflicts of interest, energy policy reviews, gifts inquiries and post-employment restrictions questions.

The E&C Office provides annual training and Code of Conduct Certification 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 Code of Conduct is implemented as an additional measure to reinforce acceptable business and professional conduct. The E&C 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 E&C Office reviewed 39 cases since the last report to the Governance Committee and handled 182 cases in calendar year 2013. The case totals for 2013 included the following categories: allegations, appearances of impropriety, conflicts of interest, general inquiries, gifts questions, outside activities and outside employment reviews, political inquiries, post-

employment questions, securities investments, issues related to unwarranted privilege and assessments relating to appropriate use of NYPA assets. The E&C Office experienced a 34% increase in case volume from 2012 to 2013. These cases originated from all NYPA facilities, with a concentration from the White Plains Office. Ethics inquiries were made by various trustees, officers, bargaining unit and salaried employees. The increase in case volume is attributed to the Comprehensive Ethics Training delivered to all trustees, officers and employees in 2013, as well as in-person meetings at the operating and transmission facilities and other targeted ethics communications.

### Selected Cases

As a leader in the implementation of Governor Cuomo's energy policy, NYPA frequently looks for opportunities to advance clean energy technology. Recently, a NYPA employee contacted the E&C Office to inquire whether NYPA could lead an initiative to obtain discounts from participating electric vehicle ("EV") manufacturers for the benefit of New York State employees. In discussions with a current vendor, NYPA learned that the EV manufacturer had installed rapid EV charging stations on a university campus in another state and then offered a discount incentive to members of the university's faculty to enable them to purchase electric vehicles.

NYPA is currently planning a program that will fund EV charging stations at state and local government sites. The employees of the participating public entities will be able to charge their personal electric vehicles at their work locations. The question posed to the E&C Office was whether NYPA could contact all EV manufacturers to ascertain whether they would be interested in participating in a program for New York State employees, whereby would be provided for their purchase of electric vehicles. In addition, it was asked whether NYPA could then publish and disseminate information related to those EV manufacturers who were willing to provide discounts to State and local government agencies involved in the EV charging station program.

The E&C Office opined that while the program may advance the mission to increase EV usage in New York State, NYPA should not take the lead in procuring discounts from EV manufacturers on behalf of all New York public employers. Given NYPA's current and prospective contractual relationships with many EV manufacturers, it could be perceived as a conflict of interest should NYPA engage in this wide-spread solicitation on behalf of all state and local government agencies participating in the EV charging station program. The E&C Office suggested that the staff members involved speak with either NYSERDA or the NYS Office of General Services ("OGS") which often negotiate widely available discounts for the state workforce.

Another case arose involving the utilization of the corporate Procurement Credit Card System ("Pro-Card"), which is used for business purchases under \$5000. Approximately 140 employees have Pro-Card privileges and are authorized to make purchases on NYPA's behalf. The E&C Office recently investigated an allegation related to a Pro-Card holder in the SENY region. The NYS Inspector General's Office referred the complaint to NYPA, which alleged that the employee was utilizing the Pro-Card to make non-business, personal purchases. This allegation was unsubstantiated.

Lastly, NYPA's Procurement Department identified an abnormality on another employee's monthly Pro-Card statement. A charge for a professional sports apparel item appeared on the monthly statement followed by a credit for the identical amount of the item. The Procurement Department researched the vendor and identified additional instances of employees receiving free merchandise for business purchases exceeding a minimum threshold. NYPA's employees are prohibited under the Code of Conduct from accepting or soliciting gifts from NYPA business partners. This prohibition was reinforced in the 2013 annual ethics training and is a frequent subject of the E&C Office's guidance.

The Procurement Department worked with the E&C Office, the employees' supervisors and the Human Resources Employee Relations Group to strengthen the internal controls relating to the Pro-Card procedure and its implementation, including reinforcing the "no gifts" rule. In addition to reaffirming the Code of Conduct and management's expectations, each employee's actions are being addressed through NYPA Performance Management process. In one instance, the employee's Pro-Card privileges were suspended pending the Employee Relations investigation, with additional corrective actions likely to follow.

As a result of these recent cases, the E&C Office is working with the Procurement Department to develop a targeted ethics training program for all Procurement Department employees. This program will address the expectations and rules relating to appearances of impropriety, conflicts of interest, gifts, unwarranted privileges and other ethical principles.

#### Collaboration with the New York State Inspector General's Office and Other External Agencies

The E&C Office continues to collaborate with the NYS Inspector General's Office and other agencies 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 a recent case, a former NYPA employee was investigated by the NYS Inspector General's Office and the Westchester County District Attorney's Office in connection with his theft of gas. Over an extended period of time, this former employee utilized NYPA fuel credit cards to purchase gas for personal vehicles. In addition, he submitted false documents to NYPA's Fleet Department to cover up his fraudulent activity. The former employee's employment was terminated by NYPA and criminal charges are being prosecuted against him in Westchester County.

#### Training and Outreach

The E&C Office provided live and computer based training of the NYS Joint Commission on Public Ethics ("JCOPE") 2013 comprehensive ethics program during June through December, 2013. All employees who participate in the annual Financial Disclosure Program administered by JCOPE were required to participate in a live training session. In addition, all trustees received this mandatory training and submitted their 2013 Code of Conduct Certification forms. Vice President and Chief Ethics and Compliance Officer Joseph Gryzlo became a certified trainer and

provided live training at all headquarters, operations and transmission facilities across the State. In December, 2013, the PowerPoint presentation used during the live training sessions was provided to all bargaining unit and salaried employees who were not required to receive it in person. Human Resources' staff at the operations and transmission facilities has provided invaluable assistance in delivering the training materials to these employees and facilitating their annual Code of Conduct certifications.

A compliance training report detailing the date of each required filer's participation in the training was submitted to JCOPE on January 31, 2013, as required by law.

This training will be provided on an on-going basis to all applicable new hire employees and those employees who change positions resulting in participation in the annual Financial Disclosure Program.

The E&C Office developed and issued its annual FERC Standards of Conduct training to the trustees and designated marketing, transmission and other required employees during the first quarter of 2014. The purpose of this mandatory training is to reaffirm FERC's rules relating to (i) the maintenance of the independent operation of NYPA's transmission and marketing functions; (ii) transparent disclosures of actions that could create an undue preference for market participants; and (iii) non-discrimination in the treatment of NYPA's transmission customers.

#### Financial Disclosure

NYPA submitted its annual Financial Disclosure Program report to JCOPE on February 26, 2014. NYPA reported 680 participants in the Financial Disclosure program. Of those 680, 156 were designated as holding "policy-making" positions and 201 were serving in title exempt positions or held individual exemptions based upon their job duties as authorized by JCOPE or its predecessor Ethics Commissions.

The salary threshold for inclusion in the annual JCOPE Financial Disclosure program remains \$90,020 for calendar year 2014. Individual forms are due on May 15, 2014. Notifications are expected to be sent by JCOPE to all required filers at their NYPA e-mail address during the month of March and will inform them of their obligation to complete the annual filing or apply for an individual exemption before the May 15<sup>th</sup> filing deadline. The E&C Office will alert required filers to the Financial Disclosure Program requirements and issue compliance reminders prior to the May 15 filing deadline. The E&C Office is available to assist filers with any program eligibility and interpretation questions or concerns.

#### "Project Sunlight"

Project Sunlight is a database maintained by the NYS Office of General Services which allows members of the public access to information concerning meetings between NYPA personnel and external parties under five qualifying categories. The Governor's Office continues to closely monitor compliance with Project Sunlight and hosts periodic meetings to discuss any issues related to the database. In 2013, NYPA submitted 248 appearances in the database, and has logged 20 so far in calendar year 2014. In addition, NYPA has submitted its required Project Sunlight compliance plan, detailing its actions in establishing its program, ongoing training of staff, the development of materials, filing and subsequent audit requirements.

## **RELIABILITY STANDARDS COMPLIANCE**

### **SUMMARY**

This report highlights important aspects of NYPA's reliability standards compliance management program for the period December 18, 2013 to February 24, 2014. 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 self-reported three (3) possible NERC Reliability Standards compliance violations to the Northeast Power Coordinating Council (NPCC). NPCC determined that the violations posed minimal risk to the reliability of the Bulk Electric System. Furthermore, NPCC 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, enforcement actions related to nine (9) compliance violations that NPCC determined qualified for treatment under NERC's Find, Fix and Track (FFT) process were closed as remediated issues. Remediated issues afforded FFT treatment become part of NYPA's compliance history and are not subject to penalties.

#### **Possible Violation Concern Investigations**

During the reporting period, Technical Compliance initiated one (1) new investigation of a possible NERC Reliability Standards compliance violation. The concern was identified by

staff pursuant to an internal procedure entitled “Possible NERC Reliability Standards Compliance Violation.” There are currently three (3) open compliance violations investigations. 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 nineteen (19) self-certifications of compliance pursuant to NYPA’s NERC registrations for the NERC reliability standards; eight for the Critical Infrastructure Protection (CIP) standards, six for the Protection and Control standards, and five for other applicable NERC reliability standards. 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, along with other generation and transmission companies in North America, including Large Public Power Council (LPPC) and American Public Power Association (APPA) members, 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; one is focusing on methods for assessing a company’s internal controls for managing compliance and one is focusing on new tools for processing minimal risk violations of the standards (“Enforcement Aggregation Pilot”). 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. Furthermore, at the request of NERC, NYPA staff has participated in or is participating in three (3) Industry Focus Groups related this initiative.

### Bulk Electric System (BES) Definition

As stated in earlier reports, 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. Pursuant to the new definition, 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), 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.

During the reporting period, NYPA signed an agreement with Con Edison that clarifies the roles and responsibilities for compliance management for the Transmission Owner (TO) standards related to assets Con Edison operates and maintains for NYPA in southeast New York. NYPA is also in discussions with LIPA to reach a similar agreement for assets LIPA operates and maintains for NYPA in southeast New York. 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.

In addition, NYPA continued to engage in bi-lateral discussions with other New York transmission owners regarding compliance management roles and responsibilities for the Transmission Operator (TOP) and Transmission Planning (TP) functions for NYPA's newly identified BES assets located within their substations or for substations that are owned by NYPA and are operated and maintained by other transmission owners. The discussions with the transmission owners also have been focusing on reaching agreement on compliance management for the Version 5 Critical Infrastructure Protection (CIP) standards. These discussions are expected to conclude in compliance management agreements between NYPA and the other transmission owners in 2016; before the end of the BES and CIP Version 5 implementation periods.

#### NERC Recommendation 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 previous reports, the assessment discovered about 260 line clearance discrepancies in NYPA's 1,400 miles of transmission lines. All of the discrepancies on the high and medium priority lines have been corrected. The remediation of discrepancies on the low priority lines is planned for completion in 2014.

#### 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. The approved CIP Version 5 standards will have substantive impacts on NYPA's operations-related cyber security compliance program. Quanta Technologies, a consultant, was engaged in January under an existing contract to assist staff in performing a cyber system classification assessment pursuant to the criteria that have been established in the revised standards. The results of the assessment will be used to confirm the scope and costs of the implementation plan NYPA must execute to demonstrate compliance with the revised standards. Expenditure estimates for implementation of the revised standards have been included in the Operations budget plan for 2014-2016.

#### Potential for 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. Both FERC and NERC responded that actions will be taken by them to evaluate the need for such standards. NYPA staff are closely monitoring developments related to these initiatives and will inform senior management and the Board of any developments that may directly impact NYPA.