

December 16, 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 E & C 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 July 29, 2014 through December 16, 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 July 29, 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, Code of Conduct violations, gifts, pre-employment outside activities/employment reviews and post-employment reviews related to the hiring of former employees.

DISCUSSION

Ethics Caseload

1. A management employee was terminated after it was determined that he violated the NYS Public Officers Law and NYPA’s Code of Conduct in separate instances while interacting with a NYPA vendor and overseeing a competitive solicitation for professional services, respectively. During his work with a NYPA vendor, the former employee solicited vendor representatives to work for his personal consulting business during NYPA work hours, either in person at NYPA facilities or with NYPA Information Technology assets. In addition, during his oversight of a competitive solicitation, the employee provided the Procurement Department with the names of two firms as proposed bidders without disclosing that he had either a current or prior professional relationship with the entities. These actions violated the NYS Public Officers Law and NYPA Code of Conduct provisions prohibiting conflicts of interest and using one’s official position to secure unwarranted privileges. It was also found that the former employee failed to

disclose and obtain approval from NYPA for a second outside personal business in violation of NYPA's Code of Conduct.

2. A NYPA consultant under contract to assist in the evaluation of applications under the K-Solar project to encourage solar installations at primary and secondary schools in the State self-disclosed a business relationship with one of the K-Solar program applicants. The consulting firm is a large publicly traded international firm with over 10,000 employees. In an effort to minimize any potential conflicts of interest, the E & C Office advised NYPA management to have the consultant submit a letter to NYPA detailing the steps it agreed to undertake to ensure that its staff providing services to NYPA on the K-Solar initiative would not engage or otherwise assist representatives within its organization who were involved with advising the K-Solar program applicant. Additionally, the E & C Office instructed NYPA staff that the consultant, as part of its NYPA activities, could not evaluate any bids submitted by the applicant being advised by the consultant's firm.
3. The Human Resources Department staff continues to work closely with the E & C Office to review potential conflicts of interest for prospective new hires, including those former NYPA employees who are being considered for employment on a temporary, part-time basis. These pre-employment reviews include disclosures from the prospective employees related to their outside activities and their individual or professional relationships with NYPA. This analysis of former employees includes a review of the NYS Retirement and Social Security laws to ensure that NYPA does not exceed and the former employee does not accept compensation in excess of the earnings limits contained in applicable law.
4. Salaried NYPA employees are giving back to their communities in increasing numbers through their participation in the Paid Volunteer Time Program. The program allows employees to donate up to two work days annually to eligible, tax-exempt organizations for designated charitable purposes. Recipients of these employees' time include the Roswell Park Cancer Institute, the Epilepsy Foundation, September 11th organizations, the Central Adirondack Search and Rescue Team and most recently, the Montrose Veteran's Hospital which provided Thanksgiving meals to area veterans. These requests are reviewed and approved by the employees' department, E & C Office, and the Human Resources Department.

Collaboration with the New York State Inspector General's Office

A NYPA employee working at the 500 MW Plant was observed by management collecting NYPA equipment and supplies and later transferring the equipment to his personal vehicle, after which he attempted to exit the Plant property. SENY management notified the E & C Office, which then reported the suspected criminal activity to the NYS Inspector General's Office ("IG") in accordance with applicable law. An investigation was conducted by the IG in collaboration with the Queens County District Attorney's Office, which led to an arrest and criminal prosecution for theft of State property valued at approximately \$4,500. The employee was terminated by NYPA.

Training and Outreach

The E & C Office continues to provide mandatory live training to employees who are required to participate in the Financial Disclosure Program administered by the NYS Joint Commission on Public Ethics (“JCOPE”). Newly hired employees or those employees whose salaries exceed the statutory filing threshold must participate in the live training. The E & C Office is required to submit an annual training compliance report to JCOPE identifying all required trainees and their training completion dates.

The most recent live training session was filmed by NYPA TV staff and will be used in the future to educate newly hired employees across NYPA’s facilities. In addition, the section of the presentation on gifts has been edited as a stand-alone training and will be delivered to all NYPA employees in December. It will represent NYPA’s 2014 annual ethics training. The gifts video will be delivered via the Learning Management System (“LMS”), and automatically records completion date and time in the tracking database.

The E & C Office recently developed and issued its new ethics and compliance awareness poster, entitled “Feeling Lucky?” Its purpose is to encourage employees to contact the E & C Office with ethics and compliance concerns or questions, while avoiding potential conflicts of interest and making ethical and legally supportable decisions regarding their work professional activities and relationships.

RELIABILITY STANDARDS COMPLIANCE

SUMMARY

This report highlights important aspects of NYPA’s reliability standards compliance management program for the period July 29, 2014 to December 16, 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 identified one (1) possible violation of the NERC Reliability Standards to the Northeast Power Coordinating Council (NPCC), NERC’s compliance monitoring and enforcement agent for NYPA. NPCC determined that the violation posed minimal risk to the reliability of the Bulk Electric System and agreed that the violation would be processed under NERC’s Reliability Assurance Initiative pilot program for self-logging of minimal risk issues and will not be subject to any penalties.

There are currently three (3) reported violations that have been mitigated and are under review by NPCC for closure.

Investigations of Possible Violations

During the reporting period, Technical Compliance initiated four (4) investigations of possible violations of the NERC Reliability Standards; two investigations were closed and four (4) are 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 was not required to self-certify compliance to any of the NERC Reliability Standards. Going forward, NYPA is required to self-certify compliance with selected reliability standards, as determined by NPCC, by March 20 of each year. The next set of self-certifications is due March 20, 2015. 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. During the reporting period, NYPA continued 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.

Specifically, NYPA continued its participation in the RAI pilot program for Self-Logging of Minimal Risk Issues during this reporting period. NYPA continued to receive very positive feedback from NPCC for its participation in this pilot program. During the period, NPCC invited other registered entities in the NPCC region to percolate in the self-logging program. NYPA provided guidance and support to these other entities in the mechanics of the self-logging process, especially the assessment of minimal risk.

During the period, the VP Technical Compliance, R. Crissman, agreed to serve on a RAI Industry Advisory Group, established by NERC, which will provide implementation guidance to industry for this NERC initiative; the implementation is planned to be completed by the end of 2015. Mr. Crissman attended a meeting of the Advisory Group in October, served as a panelist in two NERC-sponsored RAI workshops, and delivered a presentation regarding NYPA's participation in a RAI enforcement pilot program to the NERC Board of Trustees Compliance Committee at its meeting in Atlanta, GA on November 12.

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 has identified over 40 new 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.

During the reporting period, NYPA electronically submitted self-determined inclusions for its newly identified BES elements via NERC's *BESnet* software application; the tool NERC developed to identify and monitor new BES assets. NPCC and NERC have reviewed and accepted NYPA's submittals. Related to this requirement, NYPA continues to work closely with Alcoa in the development of a joint exception request to exclude the Moses-Alcoa 115 kV transmission lines from the BES.

NYPA staff continued discussions with NY Transmission Owners to reach agreements that clarify the roles and responsibilities for compliance management for the Transmission Owner (TO) standards related to NYPA assets operated and maintained by others. NYPA's discussions with these organizations also focused on reaching agreements, before April 2016, for managing compliance with the Version 5 Critical Infrastructure Protection (CIP) cyber security standards for assets owned by NYPA but that reside in facilities owned by others.

Critical Infrastructure Protection (CIP) Standards - Version 5

During the reporting period, NYPA continued to monitor regulatory developments associated with NERC's Critical Infrastructure Protection (CIP) Version 5 reliability standards for cyber security. These new reliability standards will have substantive impacts on NYPA's operations-related cyber security compliance program. In response, a comprehensive CIP Version 5 Compliance Transition Project Plan (Plan) has been developed to leverage NYPA's existing CIP Version 3 compliance program and includes tasks to expand the program to include the newly identified Cyber Systems, the identification of critical milestones and key internal resources.

The CIP Version 5 Capital Expenditure Request will be presented to the Board of Trustees for approval in January 2015. Expenditure estimates for implementation of the revised standards have been included in the Operations budget plan for 2015-2016.

Implementation of the plan will enable NYPA to demonstrate compliance with the new standards by the April 1, 2016 enforcement date.

Physical Security Standard

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). This standard was approved by FERC in November 2014 and will be effective July 1, 2015.

In anticipation of FERC's approval of this standard, NYPA completed a preliminary risk assessment pursuant to the applicability criteria in the standard and identified several of NYPA's transmission stations and substations that 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. NYPA is working with the New York Independent System Operator (NYISO) and NY Transmission Owners to develop a modeling methodology to ensure consistency across New York State in the assessment and identification of transmission facilities that will be subject to this standard.. 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.

NPCC Spot Check Audits

On July 29, 2014, NPCC initiated an off-site Spot Check Audit of the operations and planning standard PRC-002-NPCC-001 – Disturbance Monitoring for NYPA's Transmission Owner function registration. NYPA submitted the required compliance documentation on October 17, 2014. The NPCC audit staff completed its review of NYPA's compliance documentation and provided a preliminary indication that NYPA is fully compliant with PRC-002-NPCC-001. The final NPCC Spot Check Audit report is expected to be issued by the end of 2014.

Environmental and Health and Safety Compliance Audit Programs - Governance Committee Report

This report highlights the implementation of NYPA's Environmental and Health and Safety Compliance Audit programs pursuant to Corporate Policies CP 04-01 Environmental Compliance Audit Program and CP 04-02 Health and Safety Compliance Audit Program for the period of December 15, 2013 to December 16, 2014. Per the procedures for the programs, reports to the Governance Committee are made annually. A brief background statement is followed by discussion of specific topics affecting the audit programs.

Background

NYPA conducts environmental, health, and safety audits of its facilities to ensure that the facilities are operated and maintained in compliance with applicable laws, regulations, permits, policies and procedures. The audit findings, if any, identify various regulatory, policy and preferred management practice deficiencies. If deficiencies are identified, they are documented and assigned to the appropriate facility staff to close out with appropriate and verifiable actions. The findings are categorized into three (3) levels based on risk.

During the reporting period, NYPA's facilities maintained substantial compliance with applicable environmental, health and safety laws and regulatory requirements. Most of the findings were administrative in nature or housekeeping issues, which do not rise to a high risk level.

Environmental, Health and Safety Compliance Audits

During the reporting period, audits were conducted at the White Plains Office, the Vischer Ferry and Crescent small hydro projects, the Niagara Power Project, the Hudson River Submarine Cable Crossing, and the Pouch and Kent Small Clean Power Plants. The audits were aligned with the purpose and function of each facility and covered either 1) environmental requirements or 2) health and safety requirements or both. The audits of the larger facilities tested compliance with both the environmental and the health and safety requirements, while the audits of the smaller facilities focused more on the environmental requirements due to minimal manning of those facilities.

There were no Level 1 findings in the audits conducted during the reporting period. A Level 1 finding, as defined, poses the highest risk to the environment, employees, and NYPA. The vast majority of the findings during the reporting period were associated with lower level risks; many of them being administrative in nature.

Internal Audit of the Environmental and Health and Safety Compliance Audit Programs

In 2014, Internal Audit conducted an audit of the Environmental and Health and Safety Compliance Audit Programs and generally found the programs to be effective. There were four (4) recommendations from the internal audit that were aimed at improving the Environmental and Health and Safety Compliance Audit Programs. The recommendations were made to improve the tracking, verification, record retention and escalation processes for the findings discovered in the Environmental and Health and Safety Compliance Program audits. All four (4) of the recommendations were promptly addressed with enhancements being made to the procedures for the Environmental and Health and Safety Audit Programs. Internal Audit reviewed the enhancements, agreed with them, and closed all four (4) of the recommendations in 2014.