

**Date:** September 29, 2015

**To:** THE TRUSTEES

**From:** THE PRESIDENT and CHIEF EXECUTIVE 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 March 26, 2015 to September 29, 2015.

### **BACKGROUND**

The principal substantive issues (“cases”) arising under the NYS ethics laws contained in the Public Officers Law and NYPA’s Code of Conduct investigated or researched since the most recent Governance Committee report on March 26, 2015 include various requests to engage in outside activities and employment and issues concerning conflicts of interest, energy policy reviews, gifts inquiries, post-employment restrictions questions and state service re-employment scenarios.

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 110 cases since the last report to the Governance Committee, including those discussed in detail below:

1. A review of employee overtime meal expense reports at the Clark Energy Center (“CEC”) resulted in an internal audit which uncovered various violations of NYPA procedures and management expectations. NYPA procedures authorize reimbursement for actual meal expenses incurred by eligible employees who worked appropriate overtime periods. The audit findings included instances where certain employees (i) purchased gift cards from restaurants and submitted the expenses for reimbursement; (ii) purchased multiple meals during periods when they were eligible for reimbursement for a single meal; and (iii) purchased meals at times outside the periods where they were eligible for an overtime meal. The E&C Office collaborated with CEC management, Human Resources and the Law Department to conduct a comprehensive investigation of the employees’ activities and determined that various employees had violated established procedures, including some on multiple instances and after having been previously advised of proper protocols. As a consequence, disciplinary action will be administered to the employees, including documentation and negative 2015 performance ratings. Additional corrective actions recommended include substantive changes to the overtime meal procedures and greater communication by management in reinforcing management’s expectations and enhanced oversight while reviewing and approving overtime meal reimbursement requests.
2. The Internal Audit Department performed a fraud risk assessment which consisted of interviews of senior management and probed their perceptions and understanding of NYPA’s fraud risks, internal controls and organizational culture relating to addressing those risks. The definition of fraud focused on “intentional acts or omissions designed to deceive others and which resulted in the victim suffering a loss and/or the actor achieving a gain”. Interviewees were questioned about various aspects of NYPA’s fraud risk control environment, including its employee concerns/whistleblower report telephone hotlines and employees’ legal duty to report fraud to the New York State Office of the Inspector General. The E&C Office will be meeting with the risk owners in all business and operational areas identified in the assessment to verify the internal controls currently in place to detect and mitigate fraud. It will also explore additional control measures to be implemented to strengthen NYPA’s fraud risk prevention.
3. The E&C Office reviewed various outside volunteer activity requests, including several under the Paid Volunteer Time Guidelines (PVT). In order to support the efforts of full-time, salaried employees who give their time to their communities and charitable organizations, the PVT allows employees to take up to two days per year to donate their time to eligible 501c(3) organizations. Employees donated time to, among others, the Roswell Park Cancer Institute, the Sarah Holbrook Community Center, the Epilepsy Association of Western NY, the Multiple Sclerosis Foundation and a homeless veteran’s group. The E&C Office reviews each PVT request to ensure the absence of conflicts of interest between the recipient organizations and NYPA and the employees seeking to donate their time.

Additional unpaid outside activity reviews outside the scope of PVT included a board position for a not-for-profit educational group, a chairmanship on a joint zoning board of appeals, an exploratory committee for the development of the Buffalo Center for the Arts and Technology and the chairmanship of the Supervisory Committee for the bank which succeeded the former NYPA Credit Union in western NY.

Outside compensated employment reviews included: several adjunct professorships, a psychoanalysis business, entrepreneurial endeavors, an author, a tutor, professional engineering services, photography, a building maintenance manager, a town councilman and a soccer coach. All inquiries were conditionally approved with guidelines requiring the employees' commitment to perform all outside work solely on their personal time and without the use of any NYPA resources. Employees who participate in the annual financial disclosure program administered by the New York State Joint Commission on Public Ethics ("JCOPE") are also required to disclose their outside employment in their Financial Disclosure Statements.

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

NYPA continues to collaborate with the NYS Inspector General's Office and other external agencies in providing requested documentation or information related to ongoing investigations with those agencies. In one instance, the E&C Office is coordinating the closure of a previously reported case involving attempted theft of NYPA property by a former employee at the 500MW Power Plant in Astoria, New York. In response to recommendations from the Inspector General's Office, NYPA is enhancing its asset management controls to mitigate future occurrences of misconduct involving its physical assets.

#### Training and Outreach

The annual FERC Standards of Conduct training was recently provided and completed by all Trustees and designated employees.

The E&C Office is developing a comprehensive training to reaffirm the various legal requirements of employees to report certain meetings or 'contacts' occurring between NYPA employees and external parties. The training will include reviews relating to lobbying contacts for procurement matters, power allocations, rulemaking and ratemaking, as well as Project Sunlight recordable appearances. This training will be delivered during the fourth quarter and will be accompanied by a review of NYPA's Code of Conduct and related employee certification.

The E&C Office continued to provide the mandatory JCOPE Comprehensive Ethics Training course to new hire employees who participate in the JCOPE Financial Disclosure program. An additional training session will be scheduled during the fourth quarter.

#### Internal Audit—Ethics & Claims Management (OPR14120)

NYPA's Internal Audit Department conducted an audit of NYPA's Employee Concerns Line (877-TEL-NYPA) and a comprehensive review of the Ethics & Claims Management systems, ethics policies and procedures. The audit resulted in

observations and recommendations relating to claims handling, the need for a formalized written procedure for maintaining the case management system and a completed contract with the vendor providing hotline services. The E&C Office has implemented certain recommendations and reached an understanding with the Internal Audit Department for the remainder to be completed by the end of the fourth quarter.

### “Project Sunlight”

NYPA has submitted 127 covered appearances to date in calendar year 2015 in the Project Sunlight database maintained by the New York State Office of General Services. Additionally, the E&C office conducted several department training presentations and will include Project Sunlight in the annual ethics training as discussed above.

### Risk Alignment and Controls Committee “RACC”

The E&C Office is an active participant in the Risk Alignment and Controls Committee (“RACC”), which was formed to bring all of the NYPA departments concerned with risk management accountabilities together to review current practices, reduce any redundancies throughout the organization and to identify any gaps in NYPA’s risk profile so that they may be mitigated.

## **RELIABILITY STANDARDS COMPLIANCE**

### SUMMARY

This report highlights important aspects of NYPA’s reliability standards compliance management program for the period March 27, 2015 to September 29, 2015. 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 reported one (1) new possible violation of the NERC Reliability Standards to the Northeast Power Coordinating Council (NPCC), NERC’s compliance monitoring and enforcement agent for NYPA.

NPCC completed its review of NYPA’s reported possible violation. NPCC confirmed that it was a violation, but that it posed minimal risk to the reliability of the Bulk Electric System. The violation was processed as a compliance exception under NERC’s risk-based enforcement program for self-logging of minimal risk issues without a monetary penalty.

## Investigations of Possible Violations

During the reporting period, Technical Compliance initiated nine (9) investigations of possible violations of the NERC Reliability Standards; six (6) investigations were closed, two (2) are active investigations expected to be completed in late September and one (1) new investigation was initiated in September. This internal process is viewed by the regulator as evidence that NYPA has a strong internal compliance program.

## Guided Self-Certification of Compliance

During the reporting period, NYPA was required to self-certify compliance on September 11, 2015 for one (1) requirement of one (1) of the NERC Reliability Standards applicable to NYPA. The self-certification covered the period of January through July 2015. Technical Compliance has established a rigorous process to ensure that compliance evidence is updated before NYPA self-certifies compliance.

## NERC Risk-Based Compliance Monitoring and Enforcement Program

NYPA met with members of the NPCC Entity Risk Assessment (ERA) Group in July 2015 for the Inherent Risk Assessment (IRA) and Internal Controls Evaluation (ICE) orientation. The purpose of this meeting was to become familiar with the risk-based program being implemented by NPCC as well as to prepare NYPA for participation in the first step of the process which is the IRA. The IRA will be one tool NPCC will use to establish its compliance monitoring program for NYPA going forward.

NYPA completed and submitted the IRA package to NPCC on July 31, 2015. NPCC is evaluating the submitted materials to identify potential risks posed by NYPA to the reliability of the bulk power system (BPS). Upon NPCC's completion of the IRA evaluation, the ICE portion of the NPCC Entity Risk Assessment will commence which is anticipated to be complete by the end of November 2015. The results of the ICE will be used to further refine NPCC's compliance monitoring program for NYPA going forward.

## 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 New York State Independent System Operator ("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.

During the reporting period, NYPA continued to engage the NYISO in discussions regarding NYPA's request of the NYISO to add some of NYPA's newly identified BES elements to its list of controlled assets for Transmission Operator (TOP)

compliance purposes. NYPA is taking a position that since it does not operate most of its newly identified BES assets, in a NERC functional model sense, that it will not be registered as a TOP. The NYISO agreed to add the Plattsburgh-Saranac 115 kV transmission line and confirmed that existing NYPA BES transformers will remain as NYISO controlled assets for TOP. The NYISO requested NYPA to develop and submit an exclusion exception request to the BES definition for the Plattsburgh 115 kV capacitor banks 5 and 6. This exception request was submitted to NPCC for evaluation in August 2015.

Related to this requirement, NYPA and Alcoa completed development of a joint exception request to exclude the Moses-Alcoa 115 kV transmission lines from the BES. This exception request was submitted to NPCC for evaluation in June 2015. Approval of this and the Plattsburgh 115kV capacitor banks exception requests will relieve NYPA from registering as a Transmission Operator.

NYPA continued to work with the NYISO regarding NYPA's responsibilities as a NERC registered Transmission Planner under a Coordinated Functional Registration (CFR) agreement. Under the agreement, the NYISO will perform the functional responsibilities and have compliance accountability for all but a few requirements under the transmission planning standards that apply to NYPA's assets.

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 signed a Memorandum of Understanding (MOU) for this purpose with the Long Island Power Authority (LIPA) in July 2015 pertaining to the East Garden City substation for the Y49 transmission line. 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 (V5)

The CIP V5 team continues to execute the CIP transition plan. As part of the transition, NYPA participated in NPCC's CIP V5 outreach program on September 15-17, 2015. The outreach program is an opportunity for NYPA to present its CIP V5 transition progress to date, engage NPCC auditors in specific compliance discussions and receive direct feedback and recommendations from NPCC regarding NYPA's approach. NYPA's participation provides the opportunity to incorporate relevant recommendations into the transition plan to ensure NYPA's compliance by the April 1, 2016 CIP V5 enforcement date.

The CIP V5 team consists of a Project Management team and eleven (11) compliance breakout teams. These teams have cross functional representation of NYPA's internal stakeholders and are focusing on the following areas:

- Review and update of the CIP policies and procedures,
- Identification and classification of all of the new in-scope cyber assets,
- Implementation of the physical security controls, and

- Identification and modifications to the work management tools.

The Transition Plan leverages NYPA's existing CIP Version 3 compliance program by transitioning the existing program to a CIP Version 5 posture and expanding it to the new Cyber Systems later in 2015.

At the March 2015 Board of Trustees meeting, the CIP Version 5 implementation Capital Expenditure Authorization Request (CEAR) was approved. The CIP Version 5 implementation expenditure estimates are included in the Operations budget plan for 2015-2016.

The Chief Operating Officer (COO) sent a memo to the Board of Trustees on September 2, 2015 that provided a status update on NYPA's CIP Version 5 implementation.

### Physical Security Standard

As a result of 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, NERC developed a new physical security standard (CIP-014-1 – Physical Security) which was approved by FERC on November 20, 2014 and it will become effective October 1, 2015.

In July, NYPA completed its preliminary risk assessment of NYPA transmission stations/substations as required under Requirement R1 of CIP-014-1. NYPA provided the draft risk assessment report to the NYISO which agreed to perform an independent verification of the NYPA risk assessment per Requirement R2. In August, the NYISO began its review of NYPA's draft risk assessment report and engaged NYPA regarding the analysis results. NYPA anticipates finalizing the draft risk assessment report in September 2015. Based on the draft report, NYPA will have three (3) facilities that will be subject to the CIP-014-1 standard.

Related to this standard and at the request of NPCC, NYPA Physical Infrastructure Security, RSC and Clark Energy Center (CEC) Site Security provided NPCC Physical and Cyber Security Specialists with an overview of our physical security program as well as updates on our CIP V5 and CIP-014 compliance efforts. This included a detailed review of NYPA's approach to assessing threats and vulnerabilities and a high level review of the controls being added as part of the CIP Version 5 implementation. NYPA later received a request to provide the same briefing to NERC's newly hired Principal Critical Infrastructure Physical Security Advisor, who had been briefed by NPCC. NYPA did meet with NERC onsite at CEC and provided a similar review. Both NPCC and NERC were very appreciative the time that NYPA staff spent to provide the review.