

State of New York  
Office of the Inspector General



Investigation of Employee Misconduct  
at the Department of Public Service

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## SUMMARY OF FINDINGS

The Inspector General determined that from 2002 to 2010 several employees in the New York State Department of Public Service, Office of Electric, Gas, and Water, Safety – Electric, Gas, and Steam Section improperly received gifts totaling more than \$7,000 in the form of meals and games of golf from regulated entities. The Inspector General’s investigation further determined that two Department of Public Service (DPS) employees violated DPS policy by sharing confidential information, which included drafts of documents to be submitted to the New York State Public Service Commission. The Public Service Commission (PSC) is statutorily designated to regulate utility companies providing service within New York State.

The Inspector General recommended that DPS require all employees to attend a mandatory ethics training program once per year. Specifically, DPS should focus on the obligation of DPS employees as public servants to abide by departmental policies, particularly with respect to the acceptance of gifts by state employees and the sharing of confidential information. The training should also include the obligation of employees to report malfeasance or misconduct to the Inspector General’s Office pursuant to Executive Law Article 4-A Section 55.

The Inspector General recommended that the Public Service Commission require regulated entities to train their staff on the proscription against offering gifts to public employees.

The Inspector General provided the findings in this report to DPS for review and appropriate action. In response, DPS has mandated training for all employees and major utility companies; commenced an enforcement action against a utility company for violating New York State Public Service Law resulting in a \$1.667 million settlement to New York State subject to PSC approval; and initiated disciplinary action against three DPS employees. Two of the three employees resigned as a result of the disciplinary action, and disciplinary charges against the third employee are pending. The Inspector General is also providing a copy of this report to the New York State Joint Commission on Public Ethics, which has jurisdiction over violations of the Public Officers Law.

## ALLEGATION

On, January 20, 2011, the Department of Public Service reported an allegation to the Inspector General that two employees of the Office of Electric, Gas, and Water, Safety - Electric, Gas, and Steam Section had accepted gifts from a regulated utility company, in contravention of the Public Officers Law and DPS policy. In addition, during this investigation, DPS reported an additional allegation to the Inspector General that members of the Electric, Gas & Steam Section improperly provided a confidential draft report to an outside consultant in violation of the Public Service Law, the Public Officers Law and DPS policy.

## SUMMARY OF INVESTIGATION

### **Background**

The New York State Public Service Commission (“Commission”) regulates the manufacture, sale, distribution, and transportation of electric, gas, steam, telecommunications, and water by utility companies that operate within New York State. The Commission is comprised of five members, each appointed by the Governor. The Chairperson of the Commission also serves as the chief executive officer of DPS, the administrative arm of the Commission. DPS performs regulatory functions which include analyses of utility rate increase requests, audits to ensure compliance with New York State code, consumer complaints, and utility-involved accident investigations. DPS will, where appropriate, report its findings to the Commission.

DPS divides its regulatory responsibilities among several offices. The DPS office at issue in this investigation, the Office of Electric, Gas, and Water, regulates the operations of electric, gas, and water utilities to ensure safe and adequate service to the public at fair and reasonable rates. Contained within that office is the Safety – Electric, Gas & Water Section (Safety Section), which is tasked with monitoring and inspecting the construction, operation, and maintenance of gas and hazardous liquid pipelines to ensure that standards of safety and reliability are being met. To that end, the Safety Section performs scheduled safety compliance and damage prevention audits of utilities to ensure compliance with state and federal regulations<sup>1</sup> and is responsible for investigating utility-related accidents.

The Safety Section also drafts reports to advise the Commission on certain decisions which may impact the public, including rate determinations, financing of capital improvements, audits of utility companies and inspections of their equipment. The Safety Section is comprised of approximately 30 staff members, both administrative and field staff, divided among three regions: New York City, Albany, and Buffalo. Much of the Safety Section’s regulatory tasks involve onsite inspection of materials and require staff to travel to the regulated utilities’ locations. The utilities, in turn, often provide office space for Safety Section field staff. As a result of this arrangement, field staff members often work closely with the regulated utilities.

### **DPS Employees Accepted Gifts from a Public Service Commission Regulated Utility**

#### ***The Relevant Law***

By virtue of their employment, all DPS staff, including the Safety Section employees, are deemed public officers under New York State law. Specifically, New

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<sup>1</sup> In addition to enforcing state regulations, the Commission is responsible for ensuring compliance with Federal regulations. As such, certain PSC employees are designated agents of the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to an Interstate Agent Agreement for the purpose of carrying out an audit and inspection program for interstate gas and hazardous liquid pipeline.

York State Public Service Law section 15 designates “every commissioner and every person employed or appointed office in the department shall be and be deemed to be a public officer.” As such, all DPS employees are subject to the Public Officers Law.

Prior to 2007, Public Officers Law section 73 (5) proscribed state employees from “solicit[ing], accept[ing] or receive[ing] any gift having a value of seventy-five dollars<sup>2</sup> or more whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.” The law also forbids any person from “directly or indirectly, offer[ing] or mak[ing] any such gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee under such circumstances.”<sup>3</sup> The Public Ethics Reform Act of 2007 lowered the previously imposed \$75 limitation to “any gift having more than a nominal value.”

Moreover, section 74 of the Public Officers Law prohibits state employees from engaging in conduct which would “give reasonable basis for the impression that any person can improperly influence him” or which would raise suspicion among the public that the acts engaged in violate the public’s trust. Upon commencing employment with DPS, each employee receives copies of the aforementioned sections of law.<sup>4</sup>

With regard to these Public Officers Law sections, New York State’s ethics commissions<sup>5</sup> have issued advisory opinions which construed Public Officers Law section 73(5) to prohibit state employees from accepting or receiving any gift from “disqualified sources.” A disqualified source has been defined as “an individual who, on his or her own behalf or on behalf of a non-governmental entity, or non-governmental entity on its own behalf which: is regulated by, or regularly negotiates with, appears before . . . and lobbies or attempts to influence action or position on legislation or rules, regulations or rate making before the State agency with which the State officer or employee is employed or affiliated.” The ethics commission concluded that “gifts from certain sources can be *per se* inferred to be intended to influence or reward official action.”

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<sup>2</sup> The New York State Commission on Public Integrity Advisory Opinion No. 94-16 interpreted the gift limitation as calculated annually per source, the aggregate of which could not exceed the \$75 limitation within a 12-month period.

<sup>3</sup> Public Service Law section 15 also prohibits corporations subject to the supervision of the commission from offering “any commissioner or to any person employed by the department . . . any present gift or gratuity of any kind.”

<sup>4</sup> The relevant law is also readily available on DPS’s intranet and public Web site.

<sup>5</sup> The ethics commissions referred to in this report include the State Ethics Commission, the Commission on Public Integrity and the Joint Commission on Public Ethics. The State Ethics Commission was replaced by the Commission on Public Integrity in September 2007. The Public Integrity Reform Act of 2011, which disbanded the Commission on Public Integrity and created the Joint Commission on Public Ethics, took effect in December 2011.

These laws discussing the acceptance of gifts by public employees were provided by the DPS Ethics Officer to all DPS staff upon their hiring. In addition, these laws, along with State ethics commissions' opinions, are published on DPS's internet and intranet.<sup>6</sup> DPS also offered ethics training intended to educate DPS staff on receiving and accepting gifts; however, the training sessions were not mandatory for all staff. In fact, the first required ethics training targeted at field staff, including Safety Section personnel, took place following the commencement of this investigation.

### *The Gifts at Issue*

The Inspector General found that from 2002 through 2010, employees within the Safety Section accepted gifts from regulated entities totaling more than \$7,000 in value. Specifically, certain DPS staff, including both supervisory and engineer-level employees, accepted gifts ranging from small meals to rounds of golf.

The Inspector General obtained expense records submitted by all utility companies regulated by the Commission. A review of these documents, which included the location and purpose of each meeting, revealed that collectively, Safety Section staff members received gifts from regulated utilities on more than 200 occasions. In fact, on several occasions, multiple Safety Section employees, including supervisory employees, were present together at meals and golf games paid for by a regulated entity. The value of each gift bestowed varied in cost from between \$2 and \$5 per person to more than \$70 per person, and included meals from a low-cost pizzeria as well as seafood restaurants. In addition to gifts of meals, several employees were given gifts of games of golf played during work hours. Two employees in particular, Joseph Klesin and Carlos Ortiz, received a significant number of gifts over an approximate eight-year period. Both Klesin and Ortiz were assigned to the Safety Section's New York City Office; Klesin was Ortiz's direct supervisor. Klesin, a Safety Section Supervisory Engineer, received gifts from a regulated entity on more than 55 occasions between 2003 and 2010, including 16 games of golf, the aggregate value of which was more than \$1,800. Ortiz, a Utility Engineer, received gifts from that same entity on more than 35 occasions between 2002 and 2010, including 13 games of golf, the aggregate value of which was more than \$900.

The Inspector General interviewed DPS employees who accepted gifts, including Ortiz and Klesin. When interviewed by the Inspector General, Klesin and Ortiz admitted to accepting gifts from the regulated utility; however, attempting to justify the benefit bestowed upon them, each asserted that the gifts were "working lunches" or continued meetings where business had been discussed. Furthermore, when the Inspector General confronted Klesin with each expense, he acknowledged that the utility employee had paid for the respective meals and golf, but noted that he had extended an offer to pay which was refused by the utility employee.

Notably, all of the employees interviewed by the Inspector General seemed unfamiliar with the specific sections of law to which they were subject, but

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<sup>6</sup> When the policy was updated in June 2008, the DPS Ethics Officer disseminated an office-wide e-mail informing staff of the update and attaching the amended policy.

acknowledged that as state employees, they were limited in what they could accept from Commission-regulated entities; however, all attested to a belief that they were prohibited from accepting gifts worth more than \$75 and were unaware of the 2008 modification to the Public Officers Law that lowered the acceptable amount to a nominal value. Despite this misunderstanding of the law, documents examined by the Inspector General revealed a value far exceeding not only the nominal value for gifts received after 2008, but also the \$75 limitation applicable prior to 2008. Moreover, because the source of each gift received was provided by an entity regulated by DPS and, therefore, the Commission, the regulated utility bestowing the gifts may be considered a “disqualified source” as defined in the advisory opinions detailed above, thereby precluding state employees from accepting any gifts whatsoever.

### **The Improper Release of Confidential Information**

As noted, the Safety Section is responsible for investigating incidents, explosions, fires, and accidents that may involve natural gas, liquid petroleum, and liquid natural gas or the substance facilities. When an incident involves these Commission-regulated substances, the Safety Section will attempt to determine the cause of the incident to prevent recurrence. The Safety Section Safety Guidelines Manual prescribes the method and parameters of accident investigations. All accident investigations include field response and analysis of the involved utility company’s applicable operations and maintenance records. The analysis is documented, depending on the severity of the incident, either by a field investigation report or a formal report to the Commission. According to the Safety Guidelines Manual, generally, accident investigations that result in injuries, fatalities, and/or substantial property damage and/or which result in specific recommendations are formally reported. Whereas a field investigation report includes predetermined categories of information that Safety Section staff complete, the more formal report to the Commission includes conclusions which relate to conditions identified as causative factors (which may be attributed to the utility company) and recommendations for improvements to the involved utility’s protocols. The investigative process necessarily requires Safety Section staff to work with the utility company to collect information and conduct interviews.

Public Service Law Article 1 section 25 delineates the Commission’s power to penalize public utility companies that “knowingly fail or neglect to obey or comply with a provision, order or regulation under the authority of the Commission, adopted specifically for the protection of human safety, including but not limited to, the commission’s code of gas safety regulations . . . if it is determined by the Commission that such safety violation caused or constituted a contributing factor in bringing about a death or personal injury.” Public utility companies face a civil penalty of up to \$250,000 for each gas safety regulation found to have been violated. As a result, accident investigations and the conclusions deduced by Safety Section staff must be carefully guarded from influence. Accordingly, DPS staff members are restricted in the type of information they are permitted to disclose.

As explained above, DPS staff members are subject to the Public Officers Law, the state employee code of ethics. Public Officers Law section 74 prohibits a state employee from engaging in conduct which would give a reasonable impression that any person could improperly influence him or her, or unduly enjoy his or her favor. Public Officers Law section 74 (3)(c) also limits a state employee from disclosing confidential information acquired during the course of his or her official duties that would further his or her personal interests. In addition, Public Service Law section 15 prohibits DPS employees from divulging confidential information, and provides that employees who release confidential information obtained from a regulated utility are guilty of a misdemeanor. DPS also has a confidential information policy which limits the dissemination of categories of information deemed confidential in order to prevent any compromise to the integrity of DPS's process or attempt to affect Commission deliberations. DPS policy defines confidential information to include: consumer information, Commission deliberations and pre-decisional analyses, internal memoranda, settlement discussions, trade secrets or confidential commercial information, and information protected from disclosure under the Freedom of Information Law.

On July 25, 2008, DPS was notified<sup>7</sup> by a utility company of an explosion at a residential building in Queens. Less than an hour before the explosion occurred, utility personnel had been at the location to restore the building's gas service. Initial reports indicated that 16 people were injured, two critically. The Safety Section immediately commenced an investigation. Under the supervision of Safety Section Supervisory Engineer Joseph Klesin, Safety Section Utility Engineer Carlos Ortiz led the investigation.<sup>8</sup> Also part of the accident investigative process was Steven Blaney, Chief, Gas Petroleum Safety. Blaney was responsible for approving and finalizing all reports in the Safety Section, including accident investigation reports. Simultaneous investigations were also being conducted by officials from the New York City Fire and Police Departments. In addition to DPS and law enforcement officials, a consultant hired by the utility was also present to monitor the investigation. The consultant hired by the utility was a former DPS Safety Section employee who retired in 1994. Significantly, Blaney, Klesin, and Ortiz were employed by DPS during the consultant's tenure there; Klesin and Ortiz reported to the consultant and were subordinate to him.

In general, whether a particular incident report is presented to the Commission is determined by the Section Chief and Director of the Office of Electric, Gas, and Water in consultation with investigative staff. During the course of an accident investigation, Safety Section staff members routinely consult with utility staff to obtain certain information, such as company operation and maintenance protocols, and work records, or to contact utility employees relevant to the investigation. In point of fact, it is common for Safety Section employees to confirm or share factual information regarding the events

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<sup>7</sup> Safety Guidelines Manual section 9.8 requires that the Safety Section employee designated to respond to an incident, explosion, fire, or accident which may involve natural gas, petroleum, LNG, LPG, or steam notify the Emergency Notification List, which includes the region chief, section chief, and supervising engineer.

<sup>8</sup> Joseph Klesin was the original responder to the accident site, but thereafter was replaced by Carlos Ortiz.

of the incident to confirm its accuracy; however, drafts of an accident investigation report are supposed to remain internal until the document is finalized.

As part of the instant investigation, the Inspector General obtained DPS e-mails of Safety Section staff involved in the drafting of the report regarding the Queens incident. In an e-mail to Klesin, Ortiz, and Blaney dated July 30, 2008, mere days after the July 25, 2008 explosion, Safety Section Chief Gavin Nicoletta advised staff that in anticipation of Commission interest coupled with the high profile nature of the Queens incident, the Safety Section's investigative findings would be documented in a formal report to the Commission. The accident investigation report, which continued to be drafted for almost a year and involved substantial and protracted revisions, was finalized in April 2009. On September 26, 2008, the first draft of the accident investigation report was forwarded to Blaney. In an e-mail that clearly evinces his knowledge that the draft report was being circulated, the utility consultant sent an e-mail to Klesin and Ortiz at 10:41 a.m. that same day demanding a copy of the report; in a large font, he wrote: "Where the \*\*\*\* is it!!!!!!!" That evening, Klesin forwarded the draft document, in Word format, to the consultant. Two days later, on September 28, 2008, the consultant responded, highly critical of the draft that had been provided to him:

Joe [Klesin] attached is the report with my comments. How can you allow this to go to Albany, in order to assure that you're doing your job you got to ask Steve [Blaney] to disregard what was sent and that you got to see to it that steve's [sic] gets a cleaner report.

It's obvious that every opportunity to case a cloud or suspicion that the company may have been at fault was grabbed. When nothing the company did contributed to the incident.

Annexed to this e-mail was a draft version of the report substantively edited by the consultant. He noted to Klesin that he had color-coded his edits to correspond with changes to be made: "red suggested insert – green suggested delete – blue my comments." The 24-page draft report contained no less than 17 suggested insertions or comments. For example, following a portion of the report which attributed the root cause of the explosion to the utility, the consultant inserted "[a] knock out blow right in the beginning. It's a statement that can't be backed up by any fact, only conjecture. Should come out."

Over the next 10 months, two Safety Section employees, Blaney and Klesin, shared a draft version of the investigative report with the consultant on at least four separate occasions. Each time the document was shared, it was sent by e-mail in Word format, which permitted the consultant to edit and manipulate the document. Moreover, all sections of the report – not simply the facts section which may be shared to confirm the events in question – had been shared, including the "discussion" and "corrective actions" sections. The discussion section, which contained analysis by Safety Section personnel, furnished the consultant with a preview of the grounds the Commission could use to take action against the utility. The corrective action section provided the

consultant a preview of the suggested corrective actions the utility company may be required to take.

In at least one e-mail, it appears that Blaney attempted to limit the purpose for which the report was being shared. On November 24, 2008, Blaney e-mailed a copy of the report to the consultant with the following cautionary message: “only for purposes of fact checking. Treat confidential and discuss only with me. Do not show anybody.” However, in the consultant’s December 19, 2008, response to Klesin, which indicates his changes had already been conveyed to Blaney, it is evident that he did not heed Blaney’s direction. The consultant attached a version of the report in which he had developed his own conclusion section. In fact, the consultant went as far as to assert, “it would be nice if we can get conclusion 4 in the report.” Conclusion 4, as crafted by the consultant, stated: “that although [the utility] failed to follow their existing procedure, it is staff’s opinion that this failure was not contributory to the incident.” Following the November communication, Klesin shared one more draft with the consultant, and Blaney provided a final version of the accident investigation report to the consultant several days in advance of its official release. Ultimately, the conclusion section was not modified as the consultant had requested, and the full report was not provided to the Commission. When queried as to why the full report was not provided to the Commission, Safety Section Chief Nicoletta explained that because the report concluded that the utility had not complied with its own internal code, but had complied with New York State code, the report was not presented to the Commission.<sup>9</sup> Nonetheless, it is evident that Safety Section personnel provided a confidential document to a utility consultant with whom they had a relationship and permitted him to insert himself into the drafting process of a report that, at the time of its premature dissemination, was intended to be relied upon by the Commission.

The dissemination of draft versions of an accident investigation report violates DPS’s confidential information policy because any draft versions of the report are considered pre-decisional analyses. The designation of the accident investigation report as a pre-decisional analysis is consistent with then Safety Section Chief Nicoletta’s July 30, 2008, e-mail alerting Blaney, Klesin, and other Safety Section staff that he anticipated the case would be presented to the Commission. The report was shared within less than two months of Nicoletta advising his subordinates of the “high profile” nature of the case and cautioning them to expect inquiries from the Commission. Moreover, the Inspector General’s investigation revealed that on January 25, 2007, all DPS staff, including Blaney and Klesin, received DPS’s internal policy by e-mail governing the dissemination

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<sup>9</sup> In March 2011, the Queens incident investigation report was brought before the Commission. Thereafter, following the filing of an order to show cause in anticipation of proceeding with a penalty action against the utility, the Commission entered into a settlement agreement in which the utility agreed to pay \$1.5 million. Following an additional DPS investigative effort, the Commission proceeded against the utility on the grounds that the non-compliance was based on the utility’s failure to follow its written gas turn-on and restoration procedures, which constituted a violation of Public Service Law (PSL) §§ 5 and 65 mandating safe and adequate service and Commission regulation 16 NYCRR 255.603(d), and Commission precedent.

of confidential information.<sup>10</sup> That in April 2009 Safety Section staff decided not to present the report to the Commission does not change this analysis given the expectation at that time that the report would be presented to the Commission. When interviewed by the Inspector General, Blaney acknowledged the confidential information policy, but claimed he thought it was limited to financial information.

Although Blaney conceded to the Inspector General that it was “unusual” to share a draft report, he pointed to another accident investigation in which the report was shared in order to verify facts. The Inspector General was able to identify and confirm that another report had been disclosed to verify facts a few months after the Queens incident investigation had concluded. However, investigation revealed that the methods by which that report was shared differed greatly: Safety Section staff consulted with DPS’s legal department prior to disclosure; the report was accompanied by a letter signed by DPS General Counsel and the Director of Electric, Gas, and Water; the utility company was instructed that the report was being disseminated for the limited purpose of identifying factual inaccuracies; and the draft was sent less than a month prior to its public release. Blaney neglected to divulge to the Inspector General, however, that in addition to this official disclosure through counsel’s office, he had improperly shared this draft with the same consultant two months prior to its official disclosure.

## FINDINGS AND RECOMMENDATIONS

The Inspector General’s investigation found that for more than eight years, several DPS employees assigned to the Safety Section engaged in misconduct by accepting gifts from public utility companies that were regulated by the Commission. The investigation revealed that at least two employees, Supervisory Engineer Joseph Klesin and Utility Engineer 3 Carlos Ortiz, over an approximate eight-year period, regularly received benefits in the form of meals and games of golf. The Inspector General calculated the value of the improper benefits received by employees of the Safety Section at a minimum of approximately \$7,000 of which Klesin received more than \$1,800 in gifts and Ortiz received more than \$900. The misconduct by DPS employees implicates both the Public Officers Law and the Public Service Law.

The Inspector General’s investigation further revealed that Klesin, along with Chief of Gas Safety Steven Blaney, released several draft versions of an accident investigation report in violation of DPS’s confidential information policy. Klesin and Blaney each shared the report on at least two separate occasions with a consultant employed by the public utility company that was the subject of the accident investigation.

The Inspector General also found that Safety Section employees were seemingly ignorant with regard to their obligations under Public Officers Law sections 73 and 74, Public Service Law section 15, and DPS’s internal gift or confidential information policy.

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<sup>10</sup> The various iterations of DPS’s confidential information policy had previously been disseminated as early as 2003; however, the most recent policy, effective August 17, 2006, had been disseminated to all staff by DPS’s Director of Administration on January 27, 2007.

While the Inspector General's investigation determined that DPS disseminated DPS policies and the aforementioned statutes to all staff and offered ethics training programs, the policies were communicated via e-mail and the training sessions were not required of all employees.

The Inspector General recommended that DPS institute a mandatory ethics training program to educate all employees about their obligations as public officers to abide by departmental policies, particularly with respect to the acceptance of gifts by state employees and the sharing of confidential information.

The Inspector General further recommended that DPS further define confidential information to specifically include draft documents. Moreover, DPS should establish protocols for sharing documents with outside consultants or employees of utility companies that should include documented approval prior to dissemination.

The Inspector General provided the findings of this report to DPS for review and appropriate action. DPS initiated disciplinary action against Blaney, Klesin, and Ortiz for the conduct described above. Klesin and Ortiz resigned as a result of the disciplinary action, and disciplinary charges against Blaney are pending. The Inspector General is also providing a copy of this report to the New York State Joint Commission on Public Ethics, which has jurisdiction over violations of the Public Officers Law.

### **Public Service Commission Response**

In its response to the Inspector General's report, the Public Service Commission noted that DPS agrees with all, and has already implemented most, of the above recommendations.

DPS now requires annual ethics training of its employees. Furthermore, DPS will be sending a letter to all major utility companies requesting that each company review and submit its ethics training for review by the DPS ethics officer. Upon approval of the ethics training, each utility company will be required to train all employees who interact with DPS staff regarding the gift provisions discussed herein.

DPS initiated an internal audit of the Safety Section regarding the processes and procedures, including confidentiality protocols. The audit recommended significant changes, all of which were implemented.

The utility company which provided gifts to Klesin and Ortiz, as well as other Safety Section employees, has reached a settlement regarding the improper gifting in violation of the New York State Public Service Law. The utility company has agreed to pay \$1.667 million at shareholder expense in lieu of PSC's commencement of an enforcement proceeding in New York State Supreme Court. The agreement is subject to PSC approval at its August 2012 meeting.