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INSPECTOR GENERAL

November 2, 2020

Gil C. Quiniones
President and Chief Executive Officer
New York State Power Authority
123 Main Street
White Plains, New York 10601-3170

Re: NYS IG 0075-020-2019

Dear President and CEO Quiniones:

On January 4, 2019, the Office of the New York State Inspector General received a complaint alleging that New York Power Authority (NYPA) security staff members illegally audio recorded NYPA employees and subsequently used one such recording as evidence against an employee in a disciplinary hearing.

The Inspector General conducted a joint investigation of the matter with the Niagara County District Attorney's Office (Niagara County DA), which also received this complaint. The Inspector General found that an in-person conversation between NYPA security staff members [REDACTED] and [REDACTED] was audio recorded without both members knowledge or consent; however, the investigation was unable to determine who actually recorded this conversation. Additionally, the Inspector General found that NYPA lacks policy and internal controls over the recording and review of conversations on its internal telephone system.

The following is a summary of the investigation, findings, and recommendations regarding the review of such recorded telephone conversations by NYPA's administrative personnel. The Inspector General recommends that NYPA take certain immediate actions, including promulgating policies regarding the recording and reviewing of telephone calls made and received at its facilities. At a minimum, these new policies should require that users of NYPA's telephone system be advised that certain calls may be recorded and reviewed.

The Audio Recording of ██████████ and ██████████ In-Person Conversation

The Inspector General found that on November 15, 2018, ██████████ and ██████████ had a conversation in the Sergeant's Office at the Niagara Power Project located in Lewiston. In this conversation, they made negative comments regarding ██████████ ██████████. According to ██████████ and ██████████ no one else was present during their conversation and they were unaware that their conversation was being recorded and did not consent to the same.

On December 7, 2018, ██████████ and ██████████ conducted an administrative disciplinary hearing of ██████████. During the hearing, ██████████ played an audio recording of ██████████ and ██████████ aforementioned November 15, 2018 conversation. Although ██████████ initially denied making any negative comments about ██████████ after being confronted with the audio recording, he confirmed that he was one party to the recorded conversation.

The investigation was unable to determine the source of this audio recording. ██████████ testified to the Inspector General and the Niagara County DA that ██████████ had received the audio recording as an attachment to an email sent to his NYPA email account from an account associated with GuerrillaMail.com, a service that provides users with disposable temporary email addresses which function to conceal a sender's identity. The Inspector General, through a review of ██████████ NYPA email account, confirmed ██████████ receipt of the recording by this method. Notably, ██████████ refused requests by the Inspector General and Niagara County DA to participate in a voluntary interview under oath.

The Inspector General and Niagara County DA received sworn testimony from NYPA employees in an effort to determine how and by whom the November 15, 2018, conversation was recorded. None, including ██████████ testified to creating or transmitting the audio recording or being aware of who had done so. The method of recording also remains unknown. The Inspector General found likely that a recording device was hidden in the office where the conversation took place and later retrieved by an unknown individual and anonymously sent to ██████████.¹

Given that the investigation was unable to identify who recorded the November 15, 2018 conversation, the Inspector General and Niagara County DA determined that a

¹ As explained later, NYPA's Voice over Internet Protocol (VOIP) telephone system has a monitoring feature that enables certain users to activate microphones contained within its telephones and contemporaneously listen to and record audio occurring in close proximity to that telephone. However, NYPA system administrators and the telephone system vendor advised that this feature has never been enabled on NYPA's telephone system.

criminal prosecution would be impossible. Under New York law, a person is guilty of eavesdropping when he or she unlawfully engages in wiretapping, mechanical overhearing of a conversation, or intercepting or accessing of an electronic communication.² Mechanical overhearing of a conversation is defined as the “intentional overhearing or recording of a conversation or discussion, without the consent of at least one party thereto, by a person not present there at, by means of any instrument, device or equipment.”³ On its own, ██████████ possession and use of the audio file at the disciplinary hearing does not violate New York State’s eavesdropping or other penal statutes.

NYPA Lacks Policy and Controls Over the Recording and Reviewing of Conversations on its Internal Telephone System

During the course of the investigation, witnesses suggested to the Inspector General and Niagara County DA that the Voice over Internet Protocol (VOIP) telephone system utilized at the Niagara Power Project facilities is equipped to allow certain users to contemporaneously listen to and/or discretely record both conversations made on facility telephones and audio occurring in close proximity to facility telephones.

According to NYPA system administrators, telephones at the Niagara Power Project facilities are equipped to record telephone conversations and have been utilized to do so for decades. Also according to NYPA and Cisco Systems, Inc., the VOIP telephone manufacturer, the telephones in the Niagara facility have the capability to have a monitoring feature enabled, which could allow certain users to covertly record, or contemporaneously listen to, audio occurring in close proximity to remote facility telephones. However, this feature was not requested by administrators at the time of installation of the VOIP system and has never been engaged in the NYPA system. Additionally, NYPA and Cisco Systems advised that neither the facilities’ VOIP or analog telephone systems are configured to allow users to contemporaneously listen to live telephone calls to which they are not a party.

Significantly, the Inspector General found that NYPA lacks policy and procedure addressing the recording of telephone calls made on facility telephones and the subsequent reviewing of recorded telephone conversations. As a consequence, the Inspector General found that Niagara Power Project supervisory staff members reviewed hundreds of recordings of internal and external telephone calls made or received at the facility since at least 2014. Notably, the Inspector General found no documented basis, justification, or approval for most of these reviews. Moreover, despite NYPA system administrators advising the Inspector General that training on the telephone recording system is supposed to be provided to all new employees, the Inspector General found that NYPA failed to train or even notify its staff that it records telephone calls made on certain facility telephones and may review such recordings.⁴

Niagara Power Project Regional Manager ██████████ testified to the Inspector General and Niagara County DA about NYPA’s practices for the recording of

² New York State Penal Law § 250.05.

³ NYS Penal Law § 250.00.

⁴ During the investigation, NYPA began to place stickers on or near some facility telephones advising that calls made on these telephones were subject to recording and review.

telephone calls made on facility telephones and the review of those recordings. ██████ indicated that several systems engineers and managers were authorized to listen to recorded telephone calls under very limited circumstances for operational or disciplinary purposes. ██████ explained that this is generally done in response to significant events that require reviewing, and permission must first be obtained from NYPA's headquarters in White Plains.⁵ Further, ██████ testified that the reviewers are restricted to recordings made at the time of the event being investigated and are prohibited from randomly listening to recorded telephone calls.

Contrary to ██████ testimony, the Inspector General found almost no controls in place to authorize or limit the review of recorded telephone calls. In fact, multiple Niagara administrators indicated to the Inspector General that no training or guidance was provided to them upon being given access to the recorded call review system. ██████ the ██████ for the Niagara facility, testified to the Inspector General that employees with access to the recording system will typically perform "spot checks" of various recorded lines without seeking prior authorization. ██████ indicated that he believes authorization for review of recorded calls is only necessary when an operational or disciplinary issue is uncovered that needs to be escalated to a secondary level of review. ██████ also testified that during the orientation of new employees, a function which he oversees, new employees do not receive training on the recorded telephone system. He further advised that he was unsure if training of staff was provided on this issue from department heads.

Labor Relations Manager ██████ and Operations Supervisor ██████ both testified to the Inspector General that they did not recall receiving any written or verbal policy regarding use of the telephone recording system and were provided little or no training on proper protocols. Given this lack of direction and oversight of the system, both felt that they were responsible for setting their own limits on what type of use was appropriate. ██████ testified that he was never told he needed supervisory permission for reviewing recorded calls and as a result, does not seek it, while ██████ stated that she typically seeks permission from ██████ before reviewing a group of calls but does not request approval for each recorded call that she reviews.

The Inspector General analyzed data reflecting all downloaded and/or reviewed recordings of telephone calls at the Niagara Power Project facilities on both the VOIP and analog telephone systems for the period of December 2014 through April 2019. This analysis revealed that during this period, various NYPA administrative personnel, including ██████ ██████ ██████ and Operations Superintendent ██████ ██████ together reviewed thousands of recorded calls.

In fact, the analysis revealed that during this period, ██████ reviewed almost 300 incoming and more than 300 outgoing recorded telephone calls, and ██████ reviewed almost 800 incoming and almost 500 outgoing recorded calls. When asked about this large volume of reviewed calls, ██████ advised the Inspector General that she

⁵ According to ██████ significant events included a "fire or other emergency" or investigations of misconduct involving the use of a telephone.

believed that her lack of knowledge of the software upon initially being given access to it led her to survey many calls in order to find those she actually sought. The Inspector General found no evidence that ██████ was aware of the large volume of recorded calls that were reviewed by ██████ ██████ and others. Additionally, the analysis revealed that telephone calls were recorded at locations where ██████ believed no such recordings were being made. Of note, the analysis revealed that Sinatra even reviewed recorded telephone calls that were made and received by ██████

The Inspector General also interviewed NYPA employees about the recording of telephone calls at the Niagara Power Project facilities. These employees testified that although they had heard rumors that some telephone calls were recorded at work, they were unaware if or under what circumstances this occurred. Some recalled that in the past, certain telephones were marked with a sticker notifying users that calls made on that telephone might be recorded. Additionally, the employees testified that NYPA did not address the recording and reviewing of telephone calls during their orientation, onboarding, or through any official communication, and no written notification was currently posted of any such recordings. Likewise, the employees testified that no audio notifications were played at the beginning of telephone calls advising users that their calls could be recorded and reviewed.

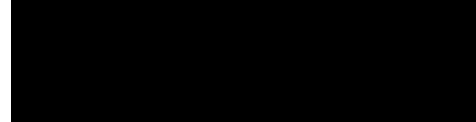
In light of these findings, the Inspector General recommends that NYPA review the conduct of its administrative personnel, including ██████ and ██████ and take any remedial action it deems appropriate.

The Inspector General also recommends that NYPA take immediate action to address the broader issues identified in this investigation. Specifically, NYPA should promulgate comprehensive policy and procedure for the recording and reviewing of calls on its telephone systems. This policy should designate those positions responsible for the program's oversight and those employees eligible to record and review telephone calls, and the authorizations needed for the same. This policy should also clearly define the circumstances under which telephone calls may be recorded and recordings reviewed. In addition, all authorization requests should be retained for appropriate retention periods and should include whether each submitted request was approved or denied and by whom. The policy should also indicate the circumstances in which users are permitted to download recorded calls versus reviewing calls. In cases where downloading is permitted, a secure, limited-access location should be identified where these recorded call files will be maintained.

Consistent with this policy, NYPA should place stickers on all facility telephones that are subject to recording notifying users of the same. The notifications should be clear and conspicuous and advise users that internal and external telephone calls may be recorded and reviewed. Also pursuant to this new policy, NYPA should implement an audio notification, which should be played at the beginning of each telephone call and advise users, both internal and external, that calls may be recorded and reviewed. Furthermore, the Inspector General recommends NYPA institute periodic audits of the activities of users of the recorded telephone call system. Finally, NYPA should train all current employees and new hires on this policy.

Please advise me of any action taken by NYPA in response to this referral within 45 days of the date of this letter. If you require further information, please contact Deputy Inspector General Jeffrey J. Hagen at 716.847.7102.

Sincerely,



Spencer Freedman
Executive Deputy Inspector General

Cc: Justin E. Driscoll, Esq.
Executive Vice-President and General Counsel

Joseph W. Gryzlo, Esq.
Vice President and Chief Ethics and Compliance Officer

