



## Recent NY Enforcement Action Highlights Need for Periodic Reviews of State Ethics Requirements

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Public utilities, as well as other entities that regularly negotiate with, appear before and attempt to influence regulators, are reminded of the importance of complying with applicable ethics laws when dealing with public officials and employees of state agencies. Seemingly minor violations can be easy to overlook, particularly those regarding improper expenditures, and may nevertheless result in hefty monetary fines and unwanted publicity.

The case of National Grid provides a timely example. The utility recently executed a settlement with New York state regulators under which it has agreed to pay \$1.6 million to stave off a formal enforcement action by the New York State Public Service Commission (PSC).<sup>1</sup> Over the course of an 18-month investigation involving a review of expense records submitted by all utilities regulated by the PSC, the New York State Office of the Inspector General uncovered numerous violations by National Grid of Section 73(5) of the NY Public Officers Law from 2002 to 2010. Prior to 2007, public officers in New York were not allowed to receive, and no person was allowed to give, more than \$75 annually in gifts intended to influence their actions.<sup>2</sup> However, the New York State Ethics Commission had concluded that gifts from certain entities could be considered *per se* intended to influence. State law was subsequently amended so that no gift could have more than “nominal” value. Over an eight-

year period, National Grid employees allegedly had provided regulators with gifts, including meals and free games of golf, amounting to at least \$7,000. In addition to fining National Grid, the New York State Department of Public Service (DPS) also intends to request that each major utility in New York review and submit its ethics training for review. After DPS approves the ethics training, each utility must provide targeted training to all employees who interact with DPS.

While every state’s laws will be unique, most every state has some kind of ethics law governing expenditures on behalf of public employees. In Pennsylvania, for example, the Public Official and Public Employees Act prohibits, among other things, the giving or receiving of “anything of monetary value” to a public employee on the understanding that it is meant to influence official action.<sup>3</sup> This includes gifts to a member of the employee’s immediate family or a business with which he is associated. New Jersey has a self-described “zero tolerance” policy which provides that, except with respect to unsolicited gifts of trivial or nominal value, no public officers and employees, or their immediate family members and business associates, shall accept (and must furthermore report) gifts or any other thing of value received and which are in any way related to their public duties.<sup>4</sup> Maryland’s ethics requirements are slightly more relaxed. Although public officials may not solicit any gift, there are

1 The settlement agreement remains subject to the approval of the PSC at its next meeting in August 2012.

2 All Department of Public Service staff are considered “public officers” under New York State law.

3 65 Pa. C.S. § 1101.1 *et seq.*

4 See New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 *et seq.* New Jersey Uniform Ethics Code, available at <http://nj.gov/ethics/docs/ethics/uniformcode.pdf>.

exceptions made for the types of gifts they may receive under specified circumstances, including meals and ceremonial gifts.<sup>5</sup>

The National Grid case provides an excellent opportunity for regulated utilities to review currently applicable law and revisit internal policies and training procedures. Companies also may consider undertaking a more formal internal audit under the supervision of counsel in order to ensure they are currently in full compliance.

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*To discuss any questions you may have regarding the opinion discussed in this Alert, or how it may apply to your particular circumstances, please contact:*

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<sup>5</sup> Md. State Government Code §15-505.