Emerging and Best Practices in Utilities & Energy Company and Third Party Codes of Conduct

Jason L. Lunday  
IntegrityFactor

Session Description

- Exploring current and emerging standards of conduct that specifically impact utilities and energy company ethics & compliance programs and their related operations.
- Review of emerging and best practices in utilities and energy corporate codes of conduct that address industry-specific risk.
- Review of leading practices in utilities and energy company third-party codes and other standards of conduct, especially given the increased focus placed on these industries' supply chains.

Inclusion of code of conduct content is provided under "fair use" rules.
Some Best & Emerging Practices

- Manager/leader responsibilities
- Better problem resolution guidance
- Greater reflection of and fit with company culture
- Better unifying concept/theme
- More aspirational tone; stronger effort to communicate a perspective
- Increased operational fit
- Links to policies, micro-learning, other supporting materials
- Visual design’s use of marketing approaches
- More E&C program descriptions (guidance channels, hotline, investigations, non-retaliation, corrective action, leadership and Board oversight)
- Code ongoing reinforcement
Less than Ideal Guidance

- "You may offer or accept meals, refreshments or entertainment offered as a business courtesy during the normal course of business or work relationships with others, provided they are of moderate value, in good taste, occur infrequently and do not violate the FCPA, the U.K. Bribery Act or other applicable laws."
- Re FERC rules: "You must stay informed about and follow all applicable laws and regulations relevant to the company's business and your individual job."

WHAT?!

What's the purpose of a code?
- Just to protect company (Trevino et al 1999 study shows this doesn't work well)
- Develop competent employees ("enlightened self-interest")
Why ‘Operationalize’ a Code?

- To educate employees
- To educate managers
  - Principal governance resource
  - Competent, standards work group roles
- To shape the business

- Effective standards ➔ Connect principles and rules to daily work
- Alignment of standards and operational procedures and practices
- To support culture’s (e.g., purpose and values) connection with operational procedures and practices
- To shape readers’ perspective of company purpose and the value of ethical business conduct

‘Operationalizing’ a Code to the Company

1. General topics are important to industry
2. Specific Topics
   - Take action: a senior executive team, which review will outline key terms to report.
3. Specific Subtopics
   - Bribery Reporting: Never accepting any “gift” or “favor” letters on which are not real to the main contract except on the advice of the SWC Departments.
   - Financial Reporting: Alcohol must not be served or consumed at any SWC workplace without prior approval. Approval is required for ‘hot meals’ or to provide alcohol at an event in a designated area.

Industry-Specific Content

Operational Fit: When reading a code, can you identify the company, or at least the industry, if the company is one named?

Utilities
- FERC
- NERC
- local public utility commissions
- DOE’s, OSAs (plant & system security)
- Affiliates – brokers (not above)
- Energy trading
- ‘To order’ communications (term of interest)
- Political contributions, PMO (FERC)
- Lobbying
- Marketing
- Security (key, facility)
- Environment
- Security leading
- Affiliates trading
- Conflict of interest transactions (3)
- Compensation (directors, etc.)
- Over-the-counter energy, energy, derivatives, shareholder engagement (State)

Energy
- Energy trading (trading)
- Natural gas sales (market codes of conduct)
- Bribery & corruption
- one gift to CEO (or equivalent title)
- use of third parties
- Health & safety
  - Environmental
  - Product safety (market)
  - Technology
  - Compliance
  - Conflict of interest
  - Industry related (vendor, external interest)
  - Acting as intermediary in deals
  - Use of dark pools
- Gifts
  - Indigenous peoples
- Travel (billing, security, associations, local cultures)
Anatomy of a Topic

- Sanctions
  - Rationale
    - Examples
    - Standards
    - Utilities
      - Decision tools
        - Bad flags
        - USA or FDI
        - Resources
    - Other
      - Executive
      - Shareholders

- Definitional
  - Resources
    - Decision
      - 3
      - 3

Example - FERC

- Addressed in 12 of 20 codes
- Resources cited:
  - I – N/A
  - l – Oblique reference to resources
  - 3 – Website/policies
  - 4 – Specific contacts
  - 5 – Specific contacts, website/policy

Contents
- What FERC’s
- Penalties for violations
- Why FERC is relevant to the business
- FERC principles/standards
- Application of FERC rules to company ops

FERC Principles
- Non-discrimination – treatment of customers is
  - tariff in sales/purchase of services
- Independent functioning – arranging transmission and
  - certain marketing staff
- Marketing non-conduct – transferring certain non-
  - public information to select staff
- Cross-subsidization – restrictions on regulated
  - entities subsidizing competitors
- Anti-manipulation – in energy market transactions
- Transparency – timing and posting of non-public
  - information disclosures

- See
  - A3: Code
  - field energy FERC compliance document

Example - Rationale

Environmental Protection
Our commitment to environmental stewardship extends across the entire energy value chain. We proactively manage our environmental footprint, not only because we care about protecting the environment, but also to ensure we can compete in the energy marketplace. As a result, we are able to better serve our customers, create value for our shareholders and employees, and enhance the communities in which we operate.

Source: Billiton

Appropriate Affiliate Interactions
The energy industry established
- affiliate rules to safeguard
- the treatment of all utility rate payers. These rules are consistent with
- number of similar activities, such as
- information or allocating costs incurred by
- utility.

Source: Exxon

Human Rights
We recognize the traditional rights of indigenous people and acknowledge their right to maintain
- their culture, identity, traditions and customs. We encourage cultural sensitivity and recognize
- and respect ideas, places, structures and objects
- that are culturally or traditionally significant.

Source: BP Billiton

Communities
Creating and maintaining such an
- environment is not up to any single
- person, or group, within the
- Company. It requires the support
- and commitment of every member
- of our team, from the country or
- India, to the engineer in Angola, the
- accessibility in Canada, and the
- Business Development manager in
- Brazil – we all play a role in creating
- such an environment.

Source: Affiliation
Example – Overarching Standard

Trading Energy Responsibility
We conduct and report on our electric power and gas supply and trading activities in a transparent and ethical manner, complying fully with all applicable laws and regulations.

Human Rights
Our Commitment
BHP Billiton connects to the International Council of Mining and Metals (ICMM) Position Statement on Indigenous Peoples and working with Indigenous peoples in relation to new operations or major capital projects that are located on lands traditionally owned by, or under customary use of, Indigenous peoples, and are likely to have significant adverse impacts on Indigenous peoples.

Example – Specific Standard

Energy Market Behaviors
• Refrain from taking or delivering actions that may cause or have the effect of: (a) effecting artificial price movements, either alone or in concert with others; (b) manipulating bids or offers of the same product among the same market participants; (c) transferring substantial quantities of a commodity or other products under circumstances that are likely to cause or support price distortions; or (d) providing false or misleading information.

Community Relations
Employees and contractors who engage with Indigenous peoples from around the world are expected to: (a) respect the culture and traditional ways of Indigenous peoples; (b) avoid activities that may be perceived as disrespectful or offensive; (c) be aware of any issues that may be sensitive or culturally important; and (d) work to establish mutually beneficial relationships with Indigenous peoples.

Affiliate Relations
Companies in our affiliate network must have a commitment to the principles outlined in the Code of Conduct and comply with all applicable laws, rules, and regulations, including the Federal Energy Regulatory Commission (FERC), the North American Electric Reliability Corporation (NERC), the New Jersey Department of Environmental Protection (NJDEP), and the New York State Department of Public Service (NYS D-PUBS), and any other applicable regulations. Information regarding the Code of Conduct and other relevant information is available on our website.

Example - Utilities

Red Flags in Energy Trading
Things to watch out for include: (a) acting with other market participants to create or amplify false or misleading information, (b) engaging in transactions or other activities that may be perceived as affecting market prices, (c) acting in a manner that affects supply and demand, (d) acting in a manner that is inconsistent with the apparent or actual positions of others in the market (e.g., using a cell phone rather than in person), and (f) acting in a manner that may cause the company or its employees to be subject to any regulatory action.

Example

1. My brother got behind on his bills and his creditors came to see him. He said he was going to pay the bills. He called his creditors and told them he was going to pay the bills, but that they had to wait. My brother told him he would be able to pay them in a few days. A: No. Employees cannot receive electric or gas service without the written permission specifically authorized by the company.

Source: FERC
Operationalizing a Code & Specific Risks

The Code
- Know your organization's universe of risks and compliance activities
- Know what's happening in your industry – what are the troubling or emerging issues (news articles, industry conference buzz, customer complaints)
- Review peer codes and policies
- Review industry specialist law firm articles/postings
- See how other industries do it/best practices (GIVE EXAMPLES)

Specific Topics
- Mostly the same general topics, but with the organization's spin
- HR issues; hotline calls; customer complaints; survey managers for their concerns
- Understand language and concepts used in these problems
- Attempt to ID root cause – discrimination due to external culture; misuse of assets due to offsite employees with access to them;
- Get specific with Q&A, FAQs, red flags

When & How to “Operationalize” a Standard

<table>
<thead>
<tr>
<th>When</th>
<th>How</th>
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</thead>
<tbody>
<tr>
<td>Industry/ Company</td>
<td>1. Consider focus on most common operations</td>
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<tr>
<td>Specific issues</td>
<td>2. Lead with Law/Regulation or Topic? (“FCPA” or “Antibribery”)</td>
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<tr>
<td>Culture or terminology</td>
<td>3. Explain relevance of topic/standard to: a) ethical industry conduct, and b) the company and its success</td>
</tr>
<tr>
<td>Terminology/ Concepts</td>
<td>4. Provide detail of rule, not “you should know the law governing...” or provide a company resource with this detail</td>
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<tr>
<td>Topical risk is high</td>
<td>5. List any gov’t. or other resource with more information (regulators are getting better at providing this info) e.g., Good Clinical Practices</td>
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<tr>
<td>Local group cultural</td>
<td>6. Discuss how employees can “get it right” and meet business goals</td>
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<td>terms/concepts are</td>
<td>7. Consider a guidance tool for making a related decision</td>
</tr>
<tr>
<td>called out</td>
<td>8. Get specific with utilities: e.g., Q&amp;A, FAQs, red flags</td>
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<tr>
<td>The day-to-day term</td>
<td></td>
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<td>e.g., not bribery</td>
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Leadership Message - Nike

A Message from Phil [Knight]
At NIKE, we are on the offense, always. We play hard, we play to win, but we play by the rules of the game.

This Code of Ethics is vitally important. It contains the rules of the game for NIKE, the rules we live by and what we stand for. Please read it. And if you’ve read it before, read it again.

Then take some time to think about what it says and make a commitment to play by it. Defining the NIKE playing field ensures no matter how dynamic and challenging NIKE may be, our actions and decisions fit with our shared values.

Thanks for your commitment,
Leadership Message - Enbridge

What we do every day matters to millions of people. By connecting energy supply to where it is needed—to keep us warm, take us places, power our industries, schools and hospitals and fuel our economy—we support prosperity and quality of life for millions of people across North America. The energy we deliver enables North Americans to achieve their fullest potential.

We are proud that Enbridge makes an essential contribution to our society and we must never forget the responsibilities placed upon all of us. We are stewards of a large, complex organization that transports, distributes and generates energy and that will evolve considerably over time as global and environmental conditions change. The people with whom we interact—our colleagues, indigenous communities, business partners, customers, investors, land owners and members of the public—count on us to do our work safely, reliably and in an environmentally responsible way, respecting their interests and always conducting ourselves and our business with integrity. The Enbridge values—Integrity, Safety and Respect—guide and support us as we work to secure Enbridge’s success, now and in the future.

The Enbridge Statement on Business Conduct reflects both the vital role we play in people’s lives ...

Third-Party Codes of Conduct

2016 Review of Fortune 100

• ~45% had third-party codes
• Average pages – 7.5
  • Longest: Citi (52pp.); Boeing (25 pp.)
• Larger ostensible focus on compliance with external standards/rules – 40 mentioned
  • UN Universal Declaration of Human Rights
  • UN Global Compact
  • ILO INTL Labor Standards
  • OECD Guidelines for Multinational Enterprises
• Strong Examples
  • Apple
  • Hewlett-Packard
  • Merck
  • Verizon
• IBM uses the EICC industry code as its supplier code
2016 Review of Fortune 100

Topic Groupings
• Human rights
• Environmental protection
• Health & safety
• Third party (use of local suppliers, diversity, S&R, subcontractors)
• "Business integrity"
  • FCIA
  • Antitrust
  • ANX
  • Gifts, hospitality, entertainment
  • Corporate opportunities
  • Political activities
  • etc.
• Product quality/safety
• General code terms
• Reporting violations
• Establishing principles/standards to subcontractors

Utilities
• 7 out of 20 had third party codes
  • Duke, Nextel, Southern, Dominion Resources, PPL, Amereen, Entergy
• Many indicated use of employee code for at least some third parties
• Interesting topics
  • Supplier violation
  • Conditions of payment
  • Endorsements, publicity
  • Support for utility regulated issues – non-affiliation, information sharing
  • Mineral sourcing
  • Company procurement practices
  • Gifts, entertainment
  • Supplier diversity

Oil & Gas/Energy
• 3 out of 21 had third party codes
  • ConocoPhillips, BP, Resources, Shell
• Interesting topics
  • Human rights
  • Minorities’ and indigenous peoples’ rights
  • Local and diverse sourcing

Types of Third Party Codes
A. Mirror of employee code, but shorter
B. Similar to employee code, but no employee-specific topics (e.g., conflicts of interest, reporting legal actions against oneself)
C. Contract focus
D. Human rights focus
E. Supply chain focus (e.g., human rights, conflict minerals, human trafficking)
F. Industry model (e.g., EICC Code)
Good Practices in Third Party Codes

• Indicate applicable parties (e.g., agents, contractors, consultants, distributors)
• Fit content to company’s third party types and relationships
• Link to third-party contracts
• Clarify who should receive, read and train to code
• Consider versions for different third parties (if applicable to relationship type)
• Post/make readily available to prospective third parties and heavily promote in communications with prospects
• Support with training
• Consider allowing third party to use its own code if it’s substantive

An Base Code Applicable to Third Parties

<table>
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<tr>
<th>Pros</th>
<th>Cons</th>
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<tr>
<td>• One document for all parties&lt;br&gt;• Everyone sees the same thing&lt;br&gt;• Easier for employees to hold third parties to standards employees know&lt;br&gt;• Brings third parties “into the fold”</td>
<td>• Some topics may not be relevant to third parties&lt;br&gt;• Some standards truly may not apply to third parties&lt;br&gt;• Less likely third parties will read employee code if they have their own employee code&lt;br&gt;• Co may have trouble holding third parties to a code where some standards cannot be enforced</td>
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Standards for Third Parties

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<th>Employee Focused</th>
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<tr>
<td>Specific contract</td>
<td>Employee code re: employee relation with third parties</td>
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<tr>
<td>Template contract that is customized</td>
<td>Employee code with some third party requirements</td>
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<tr>
<td>Select policies for third parties</td>
<td>Employee code that third parties attest to</td>
</tr>
<tr>
<td>Template contract topics</td>
<td>Employee code with third party carve outs (and attest to)</td>
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<tr>
<td>Third-party code to supplement contract</td>
<td>Codes for different third parties</td>
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What questions can I answer?

Jason.Lunday@integrity-factor.com

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<tr>
<td>• Duke Energy</td>
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<td>• NextEra</td>
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<td>• Dominion Resources</td>
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<td>• Exelon</td>
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<td>• PPL</td>
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<td>• PSEG</td>
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