

Duke Energy's Ethics Officer Plays a Dual Role

By Andrew Singer

Having clear and unfettered access to a company's board of directors would seem to be a big plus for any ethics and compliance (E&C) officer.

If so, then Duke Energy's E&C office would appear to be well positioned.

That's because Jeff Browning, the company's chief E&C officer, also serves as the firm's chief audit executive, with executive oversight for the Charlotte, NC-based firm's internal audit function.

As chief audit officer, Browning was reporting to the audit committee of the company's board of directors for two years *before* adding ethics and compliance responsibilities to his portfolio.



Jeff Browning

Duke Energy is one of the largest electric power holding companies in the United States. Its regulated utility operations serve approximately four million customers located in five states in the Southeast and Midwest; its commercial power and international business segments operate power generation facilities in North America and Latin America.

Wearing two hats is useful, says Browning, a senior vice president. For one thing, there's "a lot of synergy and overlap in the information flow." Things learned in internal audit can often be applied to ethics and compliance, and vice versa.

Browning developed a certain comfort level and credibility with board members while serving as the audit function's interface with the audit committee and executive management. That arguably is a benefit now for the E&C function, he suggests. One point person for both audit and E&C makes for more "coherent communication" with the audit committee.

Directors' agendas are typically quite "full," after all, notes Browning, given the myriad governance requirements to which they are subject. Designating one person to deal with board members when it comes to *both* internal audit and ethics and compliance arguably makes better use of their time. (When an ethics or compliance officer reports to a company's board, it is often to that organization's audit committee.)

Nine full-time staffers

The E&C office has nine full-time staffers and one part-time person.

Until recently, the office had two to three people on the ethics side, five or six on the compliance side, with the others involved with training and education, recounts Browning.

The office will soon be organized differently, divided between 1) program administration, and 2) risk management, while keeping one or two individuals for training and

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This ensures, among other things, that ethics and compliance will ‘talk’ to each other, says Browning. It should also help with spikes in work flow.

Grouping E&C within internal audit, while not unheard of, is not commonplace. Was the Sarbanes-Oxley Act of 2002 (SOX) a factor in the decision to place ethics and compliance under the head of internal audit? (That bill, a reaction to a number of major corporate and accounting scandals, including the Enron scandal, sought to strengthen corporate governance and imposed a number of new financial reporting and compliance requirements on publicly held companies.)

Not really, answers Browning, even though the internal audit department *did* have to lot to do with Sarbanes-Oxley compliance in the immediate aftermath of the law’s implementation. But the office had less to do with SOX compliance over time as the company “pushed out” SOX monitoring and controls testing to its operating businesses.

Browning was named to lead the ethics and compliance group in November 2008, succeeding Julie S. Janson, who became president of Duke Energy Ohio and Duke Energy Kentucky.

Training

All new hires at Duke Energy receive E&C training, and refresher courses, too, are taken regularly by the existing workforce. These are generally computer-based training modules that make extensive use of case studies.

Live training is focused primarily on the 1,800 or so company employees who work in Central and South America. The company has gone to some lengths to ensure that E&C training there is “culturally appropriate,” says Browning.

It is “not the U.S.,” after all, and one can’t make the same ethics and compliance assumptions. Familial bonds in these countries often come into play when it comes to hiring outside providers, for example. A brother or cousin may offer a service that Duke Energy can use. The Duke Energy employee may feel disloyal to his or her family for *not* drawing on that relative’s services.

Thus, when it comes to some conflict-of-interest issues (e.g., nepotism), Duke Energy make a double effort to communicate the policy within its Code of Business Ethics, says Browning. According to the code, Duke Energy employees must:

- Be able to identify potential conflicts of interest when they arise.
- Make certain that any second jobs, financial interests or management interests in another entity do not cause a conflict of interest or have a negative impact on the confidence the public has in Duke Energy.
- Get approval from a group executive when an entity in which an employee or someone with a close relationship to the employee owns or acquires an interest that is greater than 5 percent seeks to do business with Duke Energy.

Regional executives are reminded regularly, too, about the potential for such conflicts. The company is careful also with translations in its training materials—Spanish and Portuguese, mostly—and the firm makes sure there is much “interactivity,” i.e., class discussion, when they perform E&C training.

New ventures in China

Live E&C training is used in certain other areas, depending on the perceived risks. The company is having more discussions regarding new business ventures in China, and it has been particularly careful with regard to Foreign Corrupt Practices Act (FCPA) compliance and training. Compliance issues dealing with the bribery of foreign officials may be new to many employees, so the company is favoring “live” meetings with lots of classroom discussion as opposed to the computer-based training modules.

(About 80 percent of E&C training at Duke Energy is computer-based, Browning estimates; the overall reliance on computer-based modules is probably necessary given that Duke Energy basically relies on only one or two professionals in the E&C office to deliver live training. In the past, the company made use of outside training consultants, but most training now is done by in-house specialists.) Some employees, too, don’t have access to computers, and live training is needed in these cases.

The company uses Global Compliance Services, Inc. (Charlotte, NC) to manage its EthicsLine. Why an outside vendor? Some employees are simply more comfortable using a non-company resource, suggests Browning. Also, the third-party provider offers 24/7 hotline coverage. “We’re not staffed to do that.”

How does Duke Energy measure E&C effectiveness?

Browning, like other professionals who work in this area, admits that this remains a somewhat problematic area. Take hotline contacts. If the number spikes up, that could be a good sign. It means that the company is doing a better job communicating to employees, driving home the point that they have a number they can call if and when a question or a problem arises.

On the other hand, it could be a bad sign. It could mean that employees aren't finding "internal redress" when they report problems or misconduct through conventional channels, like going to their manager.

"You can read the numbers either way," says Browning.

Staying abreast of strategic initiatives

The E&C office strives to stay in the loop as Duke Energy develops strategic initiatives. Because the office was aware early on about the new ventures in China, for instance, it was able to get a jump on developing FCPA training protocols.

The federal government's recent economic stimulus package presented opportunities for Duke Energy. Because the E&C office was informed of these at an early stage, again, it was able to prepare new training and compliance initiatives to deal with the increased government scrutiny and regulations that would be involved. "Certain [government] agencies have certain requirements, and we have to get out in front of that from an ethics and compliance standpoint," explains Browning.

Hotline research

As mentioned in the previous issue of *Ethikos*, Duke Energy has been involved with the Ethics Resource Center (ERC) in supporting ethics hotline research. An ERC task force on procedural justice has been working with academics—researchers like Tom Tyler at New York University—who have been surveying employees who contact company hotlines. What do they, the employees, think of the process? Duke Energy employees have been offered the opportunity to "opt in" to this study. About 20 percent to 25 percent of employees who contact the EthicsLine have participated.

Duke Energy receives only about 250 EthicsLine calls a year, however. Starbucks, also a task force participant, gets a much greater volume of calls, notes Allen J. Stewart, managing director, Ethics, Duke Energy, who serves on the ERC task force. One preliminary conclusion—largely based on the Starbucks data—is that there is little correla-

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tion between the perception of "fairness" on the part of the caller and the time it takes to close a case. Duke Energy is still in the process of building *its* database and definitive conclusions will have to wait.

Still, Stewart and others are intent on learning what other factors equate with the perception of "fairness" on the part of hotline callers. Was the decision objective, fact-based, and consistently applied throughout the organization? Do they trust the decision makers? Does the level of detail offered influence the caller's sense of fairness? (Some detail may not be provided to the caller because it might violate *another's* privacy.) Does it make a difference whether the contact is web-based, the result of walking into Duke Energy's ethics office, or made through the third-party-managed telephone line (EthicsLines)? Do people still feel that they have been respected throughout the process?

Asked why the company elected to participate, Browning notes that the ERC has access to some of the "preeminent people" conducting research on these types of issues. It has been a "robust research process," says Browning, and he believes that the results—and the discussions that will follow—will be "robust" as well.

In any event, "We're constantly looking to get better," says Browning.

In recent years, Duke Energy's E&C activities have drawn some favorable attention. The firm was one of 36 companies to make Ethisphere's list of the "World's Most Ethical Companies" for four consecutive years (2007-2010). Others were General Electric, Starbucks, American Express, Google, Nike, Time Warner, and PepsiCo. According to Ethisphere, total shareholder returns of the 2010 "most ethical" companies have been 53 percent since 2005, compared with negative 4 percent for the S&P 500.

"In addition to improving a company's bottom line, a strong ethics program has shown to lead to increased consumer loyalty, regulatory leniency in the event of a

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transgression and stronger employee retention rates,” notes Ethisphere¹.

While Browning acknowledges that he can't prove cause and effect from these statistics, he notes that this (i.e., superior shareholder returns) is something that they have “touted” at times, particularly with senior management and the company's board.

Keys to success

What are the keys to a successful E&C program? “You have to have good people,” says Browning. In this instance he means the 10 or so people who are running

¹See <http://www.thefreelibrary.com/Ethisphere+Announces+2010+World%27s+Most+Ethical+Companies.-a0221743074>

Duke Energy's E&C office on a day-to-day basis. “At the end of the day, that is exactly what it boils down to: You need top-notch people.”

It's important, too, to have support from the top, including the audit committee, to ensure that “the function has a voice in the company.”

Stewart adds that it's critical for employees to see models of ethical behavior on an everyday basis—with regard to their peers as well as their superiors. How people actually act within the company is key.

Employees must also learn that they have a “duty” to report misconduct (something that *cannot* be taken for granted, as past Ethics Resource Center surveys attest).

And when employees *do* report misconduct, they have to believe that something will be done: That is, the company will take corrective action, *and* the reporting employee will not suffer retaliation for pointing out shortcomings. □

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