

## **Ready for the Heat Wave - Con Ed's Process in the Compliance Arena**

In the Process Section of the August issue of Wired Magazine is an article by Mike Olsen entitled, "*How Con Ed averts blackouts during a heat wave*". . Being from Houston and living in one of the hottest summers on record, I was interested in how the electric company in New York City might handle a heat wave and attendant overloading of the Big Apple's power grid. The article set out the procedures which Con Ed has in place. While noting they were "worthy of NORAD"; the article drove home to me, once again, how important to a process is a Foreign Corrupt Practices Act (FCPA) compliance program.

Con Ed has a five step process to save its electrical grid in an overload situation. These steps are: (1) Recruit, (2) Monitor, (3) Escalate, (4) Make the Call and (5) Shut it Down. These five steps can be critical in a FCPA compliance program. So if your company is in New York, New England or any other place in the United States where an overloaded power grid looms this summer (i.e.: the entire US) perhaps you might consider this process in the context of your FCPA compliance program.

### ***Recruit***

Con Ed uses this step to recruit New Yorkers to put technology in place to allow it switch off central air conditioning units at the Utility's discretion. In the compliance arena it would mean not only having the right technology in place but to recruiting personnel which will conduct business in a compliant manner. While this would point to a background due diligence and HR department interviews, it would also point to greater involvement by the Compliance Department. For high risk or senior management positions, it should also include some type of compliance interview with questions specifically designed to elicit responses of compliance, ethics and anti-corruption issues.

### ***Monitor***

Con Ed uses this step to monitor other media and information to predict when a heat wave might come through the city. For a company, it could mean to have the compliance nimbleness to react to changes in business circumstances to reassess its risks. If your business model changes or your company moves into a new geographic territory, the company should use the tools available to it to manage any new or additional risks which might arise.

For company personnel, an ongoing key is to monitor such personnel. You can do this through annual performance reviews, ongoing training and other mechanism. One of the keys is incentivizing such behavior in your company. This means not only in pay and benefits but through the promotion of persons who conduct business ethically and in accordance with your company's Code of Conduct. You should publicize compliance wins and successes throughout the company and make sure that other employees see that it is not simply a matter of hitting your numbers each quarter.

### ***Escalate***

When a massive heat wave hits or is predicted Con Ed sets up a situation room to monitor and coordinate responses. In the compliance arena, this means that your company needs to put the tools in place to allow company employees to escalate a compliance concern, issue or problem. Part of this is to put a reporting system, such as a hotline or reporting line, in place. However, there should also be training as to what an employee can do if “something in his or her guts” tells them that something is wrong. This also means there must a clear and concise NO RETALIATION policy for any such reports made in good faith. These reports need to be triaged as soon as possible.

### ***Make the Call***

Con Ed has specially trained personnel who are authorized to activate direct load controls on individual thermostats across the city to reduce power in emergency situation. Similarly, after triage of any escalated compliance issues, they need to be sent to the appropriate group within the company for further investigation. There needs to be a careful consideration of the steps forward. Companies do not want to be in the position of Renault but reacting decisively is equally important. What may be a key is that evidence needs to be secured and reviewed as soon as possible. But the key is to have processes in place to react to such escalated concerns and follow that plan based upon the circumstances presented.

### ***Shut Down***

For Con Ed, this may mean the rolling shut down of wattage across the company. For a company it could mean a full shut down, such as we saw recently with News of the World. However, the key is to have a plan and process in place. If there is such a plan and process in place News Corp may not have reacted in crisis mode but through pre-thought out leadership. If a shut down or suspension, due to compliance concerns, is warranted, this process can aid in a crisis situation.

Con Ed has a huge responsibility in New York City and its surrounding environs. Your Compliance Department has an equally large responsibility in your company in times of crisis. Is your process ready?

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