UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

2022 REPORT ON ENFORCEMENT

Docket No. AD07-13-016

Prepared by Staff of the

Office of Enforcement
Federal Energy Regulatory Commission
Washington, D.C.

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The matters presented in this staff report do not necessarily represent the views of the Federal Energy Regulatory Commission, its Chairman, or individual Commissioners, and are not binding on the Commission.

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INTRODUCTION

The staff of the Office of Enforcement (Enforcement or Enforcement staff) of the Federal Energy Regulatory Commission (Commission) is issuing this report as directed by the Commission in its Revised Policy Statement on Enforcement.[1] This report informs the public and the regulated community of Enforcement's activities during Fiscal Year 2022 (FY2022),[2] including an overview of, and statistics reflecting, the activities of the three divisions within Enforcement: Division of Investigations (DOI), Division of Audits and Accounting (DAA), and Division of Analytics and Surveillance (DAS).

Enforcement recognizes the importance of informing the public of the activities of its staff and prepares this report with that objective in mind. Most of the information the public receives about Enforcement's activities comes from public Commission orders approving settlements, orders to show cause, orders assessing civil penalties, publicly released staff reports, Commission and delegated letter orders addressing accounting and financial reporting matters, and audit reports. This report summarizes the status and resolution of various matters that were public in FY2022. However, not all of Enforcement's activities result in public actions by the Commission. Like reports in previous years, the FY2022 report provides the public with more information regarding the nature of non-public Enforcement activities, such as investigations that are closed without action, self-reported violations, and examples of surveillance inquiries initiated by DAS that are terminated short of opening an investigation. This report also highlights Enforcement's work administering the audit and accounting programs and performing surveillance and analysis of conduct in wholesale natural gas and electric markets. In addition, DAA points out several areas to help companies enhance compliance programs.

OFFICE OF ENFORCEMENT PRIORITIES

The Commission's current Strategic Plan sets forth a mission to account for significant changes in energy supply due to a number of factors, such as the changes in the fuel mix of resources participating in the organized electric markets and the emergence and growth of new energy technologies. In addition, the Strategic Plan sets forth a mission to address increasing threats to the nation's energy infrastructure. As the Strategic Plan notes, both the nation's energy infrastructure and energy markets must adapt to these changes to ensure that consumers have access to economically efficient, safe, reliable, and secure energy at a reasonable cost.[3] The Strategic Plan identifies three primary goals to fulfill this mission: (1) ensure just and reasonable rates, terms, and conditions; (2) promote safe, reliable, and secure infrastructure consistent with

[1] *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 12 (2008) (Revised Policy Statement). Enforcement's current organizational chart is attached as Appendix A to this report.

[2] The Commission's fiscal year begins October 1 and ends September 30 of the following year. FY2022, the subject of this report, began on October 1, 2021, and ended on September 30, 2022.

[3] The Federal Energy Regulatory Commission, Strategic Plan FY 2022-2026 (Mar. 28, 2022) (Strategic Plan), https://www.ferc.gov/media/ferc-fy22-26-strategic-plan.

the public interest; and (3) support the mission through organizational excellence. To further those goals and assist the Commission in its obligation to oversee regulated markets, Enforcement gathers information about market rules, market participants, and market behavior through its investigations, audits, and surveillance. Enforcement also gathers information regarding energy infrastructure, as appropriate. Each of the divisions continues to work to bring entities into compliance with applicable statutes, Commission rules, orders, regulations, and tariff provisions.

In FY2022, Enforcement's priorities focused on matters involving:

- Fraud and market manipulation;
- Serious violations of the Reliability Standards;
- Anticompetitive conduct;
- Threats to the nation's energy infrastructure and associated impacts on the environment and surrounding communities; and
- Conduct that threatens the transparency of regulated markets.

Conduct involving fraud and market manipulation poses a significant threat to the markets the Commission oversees. Such misconduct undermines the Commission's goal of ensuring efficient energy services at a reasonable cost because the losses imposed by fraud and manipulation are ultimately passed on to consumers. Similarly, anticompetitive conduct and conduct that threatens market transparency undermine confidence in the energy markets and harm consumers and competitors. Such conduct might also involve the violation of rules designed to limit market power or to ensure the efficient operation of regulated markets. Enforcement focuses on preventing and remedying misconduct involving the greatest harm to the public, where there may be significant gain to the violator or loss to the victims.

The Reliability Standards established by the North American Electric Reliability Corporation (NERC), and approved by the Commission, protect the public interest by ensuring a reliable and secure bulk power system. Enforcement ensures compliance with these standards and focuses primarily on violations resulting in actual harm, through the loss of load or other means. Enforcement also focuses on cases involving repeat violations of the Reliability Standards or violations that present a substantial risk to the bulk power system. In addition, Enforcement focuses on Commission orders and regulations related to energy infrastructure, including ensuring compliance with Certificates of Public Convenience and Necessity and hydroelectric licenses to minimize the impact of these projects on the environment, landowners, and communities.

In FY2022, DOI staff opened 21 new investigations, while bringing seven pending investigations to closure without further action. During the fiscal year, staff negotiated 11 settlements that were approved by the Commission. Eight of these settlements resolved seven investigations for a total of approximately $55.54 million, which included approximately $23.59 million in civil penalties and $31.95 million in disgorgement.[4] Five of these eight

[4] A table of FY2022 Civil Penalty Enforcement Actions is attached as Appendix B to this report.

settlements also included compliance monitoring requirements. Three other Commission-approved settlements resolved two federal district court litigation matters, which totaled $1,975,000 in disgorgement.

In FY2022, DAA completed 12 audits of public utility, natural gas, oil, and regional transmission organization companies covering a wide array of topics. The audits resulted in 51 findings of noncompliance and 258 recommendations for corrective action, the majority of which were implemented within six months, and directed approximately $158 million in refunds and other recoveries. Additionally, during the fiscal year, DAA acted through the Chief Accountant's delegated authority or advised on 427 proceedings, including acting on 211 accounting filings requesting approval of a proposed accounting treatment or financial reporting matter, and assisting with 216 rate, pipeline certificate, merger and acquisition, and debt and security issuance proceedings before the Commission. Also, in FY2022, the Commission received Electric Quarterly Report (EQR) submittals from over 3,000 entities each quarter. DAA assessed whether sellers had timely complied with the requirements set forth in the multiple orders surrounding EQR filings and, through automated validations, whether the data was accurate. DAA also administered and oversaw compliance with the regulatory requirement to file FERC Form Nos. 1, 1-F, 2, 2-A, 3-Q (gas and electric), 6, 6-Q (oil), 60, and FERC-61, and responded to email inquiries pertaining to reporting and accounting instructions. During FY2022, the Commission received approximately 2,607 such financial form submittals and responded to hundreds of email inquiries. DAA also assisted the Commission in the process of adopting eXtensible Business Reporting Language (XBRL) as the standard for filing financial forms.

In FY2022, DAS surveillance staff identified and reviewed numerous instances of potential misconduct, some of which resulted in DAS opening a surveillance inquiry or an in-depth review of a market participant's conduct, in order to determine whether to recommend an investigation. During the fiscal year, natural gas surveillance screens produced approximately 16,766 screen trips, which resulted in 26 natural gas surveillance inquiries, but no referrals to DOI for investigation. Electric surveillance screens produced approximately 525,865 screen trips, which resulted in 32 electric surveillance inquiries and two referrals to DOI for investigation. In total, DAS closed 26 electric surveillance inquiries with no referral and, as of the end of the fiscal year, continued its analytic work on four. DAS also worked and provided analytical support on approximately 50 investigations with DOI and 15 other matters involving inquiries or litigation. During FY2022, DAS staff reviewed over 2.5 million transactions filed through the Commission's EQRs by all market-based rate holders selling wholesale energy in the bilateral markets.

DIVISION OF INVESTIGATIONS

A. Overview

This section of the report provides details on DOI's current investigative processes and practices to give the energy industry, energy bar, and public added insight on investigations and to provide investigative subjects general guidance on what to expect during an investigation.

DOI staff conducts investigations of potential violations of the statutes, regulations, rules, orders, and tariffs administered by the Commission. DOI staff learns of potential violations from

multiple sources, including referrals from other program offices within the Commission and other divisions within Enforcement; referrals from Independent System Operators/Regional Transmission Organizations (ISOs/RTOs) in organized markets or their market monitoring units (both internal and external); referrals from other agencies (both federal and state); self-reports; calls to the Enforcement Hotline; whistleblowers; and information gathered in other investigations. After learning of a potential violation, DOI staff evaluates whether to open an investigation based on the factors outlined in the Commission's Revised Policy Statement on Enforcement.[5]

If, after opening an investigation and gathering and reviewing relevant facts, DOI staff finds no violation, insufficient evidence of a violation, or that a violation should not be subject to sanctions, DOI staff closes the investigation without further action and so informs the subject.[6] Most of DOI staff's investigations are closed without further action.[7] On the other hand, if DOI staff finds that a violation occurred that warrants sanctions, it provides the subject with its preliminary findings, either orally, in writing, or both. The subject then has the opportunity to respond to staff's preliminary findings with any additional information or defenses. This stage presents an important opportunity for the subject to supplement factual information or to point out its views and theories of the case. Where warranted, staff conducts additional fact-finding after reviewing a subject's response and may modify its findings based on the response and further fact-finding. At the preliminary findings stage, DOI staff also provides investigative subjects with third-party evidence gathered during the investigation.

If, after reviewing the subject's response to the preliminary findings and conducting any supplemental fact-finding, DOI staff continues to conclude that violations occurred and that the violations warrant sanctions, it consults with Enforcement management and then seeks authority from the Commission to enter into settlement negotiations with the subject.[8] This request for settlement authority describes the facts and law that led to staff's determination, recommends a range of settlement terms supported, where applicable, with a penalty analysis under the Commission's Penalty Guidelines, and attaches the subject's preliminary findings response(s). If the Commission grants settlement authority, staff seeks negotiated resolutions within the

[5] Revised Policy Statement, 123 FERC ¶ 61,156 at P 25.

[6] The seven investigations DOI closed in FY2022 were closed because staff found there was either no violation, insufficient evidence to conclude that a violation had occurred, or that a violation should not be subject to sanctions.

[7] In some circumstances, even where DOI has determined that an investigation should be terminated, it has also identified broader market issues that may warrant attention. For example, the investigation may expose vague or ambiguous market rules that appear to undermine, distort, or otherwise inject uncertainty into market performance and participant obligations. To address these types of issues, Enforcement has a process whereby staff can share its concerns about existing tariffs, market rules, or business practice manuals with senior management in Enforcement and the Commission's Office of Energy Market Regulation (OEMR), Office of the General Counsel (OGC), and Office of Energy Policy and Innovation (OEPI) and explain how the issues may be resulting in poor or inefficient market outcomes.

[8] Investigative subjects are free to raise and explore potential resolution of an investigation, including through settlement, at any time during an investigation.

Commission-provided settlement authority range and terms. Settlements are sought with terms that will transparently inform the regulated industry about what conduct constitutes the violation. If an agreement is reached between Enforcement and the subject, it will be submitted to the Commission for approval. If the settlement agreement is approved, the Commission issues a public order that typically states why the settlement serves the public interest and attaches the executed settlement agreement. In FY2022, Enforcement resolved seven investigations via eight settlements approved by the Commission. Those settlements involved: (1) a retail energy supplier's violation of the California Independent System Operator (CAISO) tariff and the Commission's market behavior regulations (18 C.F.R. § 35.41(a) (2022)); (2) an energy marketer's violation of the PJM Interconnection, L.L.C. (PJM) tariff and the Commission's Duty of Candor rule (18 C.F.R. § 35.41(b) (2022)); (3) a third-party demand response aggregator and energy management services provider's violation of the ISO New England Inc. (ISO-NE) tariff; (4) a generation project developer's and ISO's violations of the ISO-NE tariff; (5) a consumer-owned generation and transmission electric cooperative's violation of the Commission's Anti-Manipulation Rule (18 C.F.R. § 1c.2 (2022)); (6) a renewable energy projects developer's violation of the PJM tariff; and (7) a fractionation plant and pipeline owner's violation of Part I, Section 20(1) of the Interstate Commerce Act and 18 C.F.R. § 357.2(a) (2022).[9] These settlements are described more fully below in DOI Section C.

If a settlement cannot be reached, and Enforcement intends to recommend issuance of an order to show cause (OSC) to the Commission, staff will provide the subject with notice and an opportunity to respond pursuant to Section 1b.19 of the Commission's regulations. After reviewing this response, staff, if it continues to believe violations have occurred, drafts an Enforcement Staff Report and Recommendation, which includes its findings of fact and conclusions of law regarding the investigation, as well as its recommendation to issue an OSC. This report, the subject's response to the Section 1b.19 notice, and any other submissions from the subject are then submitted to the Commission for consideration along with a proposed OSC. If the Commission concurs with staff's recommendation, it issues an OSC in a public docket directing the subject to explain why it did not commit a violation and why penalties, disgorgement, or any other remedies are not warranted. The subject then has an opportunity to respond to the OSC, and Enforcement staff may reply to the subject's response. The Commission's issuance of an OSC triggers the Commission's *ex parte* and separation of functions rules, because it initiates a contested on-the-record proceeding, with Enforcement and subjects as participants and the Commission as a neutral adjudicator.[10] The Commission therefore issues a public notice designating Enforcement staff generally as "non-decisional," with the exception of the specific identified Enforcement staff designated as "decisional," who had no prior involvement in the underlying investigation.

After considering the factual record and legal arguments submitted by the subject and Enforcement, the Commission issues a decision, which will take different forms depending on the relevant statute. Under the Natural Gas Act (NGA) and under a default process under the Federal Power Act (FPA), the Commission can either rule on the pleadings or set the matter for hearing

[9] The Commission's regulations can be found at www.ecfr.gov.

[10] *See* 18 C.F.R. §§ 385.2201, 385.2202 (2022) (outlining the Commission's rules governing off-the-record communications and separation of functions). *See also* 5 U.S.C. § 554(d) (2014).

before an Administrative Law Judge (ALJ), assuming genuine issues of material fact exist. In matters set for an ALJ hearing, the ALJ holds a hearing and issues an initial decision, which is followed by a final Commission decision that can be appealed to an appropriate United States court of appeals. Alternatively, if a civil penalty is proposed in an FPA matter, a subject can elect a process different from the ALJ route described above. A subject has 30 days following the OSC issuance in which to affirmatively elect a penalty assessment by the Commission followed by a "review de novo" of the law and facts before a district court. If such an election is made, the Commission follows its OSC paper hearing procedures to determine whether a violation occurred and, if it so finds, assesses a penalty through an order. If the subject does not pay the civil penalty within 60 days of the penalty assessment, the Commission is required by statute to file an action in district court for an order affirming the civil penalty. As of the end of FY2022, staff was litigating three such actions in federal district court, seeking to enforce the Commission's combined assessment of more than $66.1 million in penalties and disgorgement.[11] Staff also fully resolved one district court action through settlement during FY2022 and partially resolved another through settlement. As of the end of the fiscal year, there was one NGA-related matter on appeal to the United States Court of Appeals for the Fifth Circuit (subsequently decided in an opinion issued on October 20, 2022[12]) and one NGA trial-type ALJ proceeding pending before the Commission.[13] Further, during FY2022, there was one FPA-related OSC proceeding and one NGA-related OSC proceeding pending before the Commission.[14] These litigation matters are described more fully below in DOI Section B.

B. Significant Matters

DOI staff spent substantial time in FY2022 preparing briefs, reports, and other public filings related to litigation in federal courts, administrative proceedings before the Commission, as well as taking various steps to implement the recommendations contained in the Commission's November 2021 staff report entitled *The February 2021 Cold Weather Outages in Texas and the South Central United States*.[15] During FY2022, DOI staff also participated on a paper hearing proceeding in a matter remanded from the United States Court of Appeals for the District of Columbia Circuit related to the results of MISO's 2015/16 Planning Resource Auction for Local Resource Zone 4. In addition, DOI staff participated in a Notice of Proposed Rulemaking (NOPR) proceeding related to a proposed new, more expansive duty of candor rule.

[11] One of these matters settled at the beginning of FY2023. *See infra* note 17.

[12] *See infra* note 18.

[13] Another NGA trial-type ALJ proceeding is currently stayed. *See infra* Section B.3.c (regarding the *Rover Pipeline* matter in Docket No. IN19-4-000).

[14] For a more detailed discussion of the processes by which Enforcement conducts and concludes investigations, *see* Revised Policy Statement, 123 FERC ¶ 61,156 at PP 23-40.

[15] The November 2021 staff report can be found at https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and.

1. District Court Litigation

Over the past nine years, Enforcement has filed 10 enforcement actions in district courts across the country, including three that were still pending at the end of FY2022. In those proceedings, district courts have issued rulings to address a variety of procedural and substantive legal issues, including: (1) when does a claim accrue for purposes of the federal statute of limitations under 28 U.S.C. § 2462; (2) whether the Commission's civil actions seeking to enforce its penalty assessments should follow the Federal Rules of Civil Procedure; (3) the sufficiency of the Commission's notice of fraud and deceptive conduct pleadings; (4) what constitutes individual culpability under the FPA; (5) particular activity that establishes manipulation; (6) what evidence satisfies the scienter requirement under Section 222 of the FPA; (7) what is required to establish "due diligence" to overcome a Section 35.41(b) violation; and (8) the sufficiency of defendants' affirmative defenses. A United States court of appeals also issued an opinion on the construction and application of the federal statute of limitations to FPA civil penalty actions, as discussed below. In addition, in FY2022, a district court, in largely denying a motion to dismiss, rejected the defendants' arguments that FERC had failed to state a claim for manipulation under the FPA or that the claim was time-barred by the statute of limitations, also discussed below.

In FY2022, Enforcement staff continued litigating four matters in United States district courts to enforce the Commission's penalty assessments under the FPA. Those district court litigation matters are:

a) FERC v. Powhatan Energy Fund LLC, et al., No. 3:15-cv-00452 (E.D. Va.)

On May 29, 2015, in Docket No. IN15-3-000, the Commission issued an Order Assessing Civil Penalties in which it determined that Powhatan Energy Fund, LLC (Powhatan), Houlian "Alan" Chen, HEEP Fund, Inc. (HEEP), and CU Fund, Inc. (CU) (collectively, Defendants) had violated the Commission's Anti-Manipulation Rule by engaging in fraudulent Up-To Congestion (UTC) trades in the PJM market during the summer of 2010. The Commission determined that Defendants had engaged in trades to improperly collect certain market payments (called Marginal Loss Surplus Allocation, or "MLSA"). Specifically, the Commission found that Defendants had placed fraudulent round-trip trades (trades in opposite directions on the same paths, in the same volumes, during the same hours) that involved no economic risk and constituted wash trades. The Commission assessed civil penalties of $16.8 million against Powhatan, $1 million against Chen, $1.92 million against HEEP, and $10.08 million against CU and ordered disgorgement of unjust profits, plus interest, in the amounts of $3,465,108 from Powhatan, $173,100 from HEEP, and $1,080,576 from CU.

On July 31, 2015, Enforcement staff filed a petition in the United States District Court for the Eastern District of Virginia to enforce the Commission's order. Over the ensuing seven years, staff engaged in extensive proceedings in the district court, including prevailing against Defendants' statute of limitations defense in both the district court and the United States Court of Appeals for the Fourth Circuit.[16] On October 29, 2021, the Commission approved a settlement

[16] On September 24, 2018, the district court found that the Commission had met the statute of limitations established in 28 U.S.C. § 2462, but authorized Defendants to seek interlocutory

between Enforcement staff and Chen, HEEP, and CU (collectively, Chen Defendants). The terms of that settlement, which are laid out in more detail in 177 FERC ¶ 61,076, required the Chen Defendants to disgorge $600,000 to PJM after the Chen Defendants demonstrated an inability to pay the entire amount of the Commission-assessed penalty and disgorgement. Chen also agreed to a trader ban of two years in FERC jurisdictional markets.

Enforcement staff continued the Commission's case against Powhatan, completing both fact and expert discovery. Rather than file an expert report of its own, Powhatan filed a Voluntary Bankruptcy Petition in the United States Bankruptcy Court for the District of Delaware on February 16, 2022. The district court matter has been stayed pending the proceedings in the Bankruptcy Court, and Enforcement staff has engaged the United States Department of Justice to assist in litigating the Commission's bankruptcy claims against Powhatan.

b) FERC v. Coaltrain Energy, L.P., et al., No. 2:16-cv-00732 (S.D. Ohio)

On May 27, 2016, in Docket No. IN16-4-000, the Commission issued an Order Assessing Civil Penalties against Coaltrain Energy, L.P. (Coaltrain), its owners, Peter Jones and Shawn Sheehan, and Robert Jones, Jeff Miller, and Jack Wells (collectively, Defendants), who developed and implemented the relevant trading strategy. The Commission found that Defendants violated the Commission's Anti-Manipulation Rule by engaging in fraudulent UTC trades in the PJM market during the summer of 2010. In particular, the Commission determined that through their "over-collected loss" or "OCL" trading strategy, Defendants manipulated the PJM market by seeking to place extremely large volumes of UTC trades not to profit from price differences but for the sole or primary purpose of capturing MLSA payments.

The Commission also found that Coaltrain violated Section 35.41(b) of the Commission's regulations by making false and misleading statements and material omissions in Coaltrain's communications with Enforcement staff during the investigation to conceal the existence of relevant documents. The Commission ordered Coaltrain, jointly and severally with its co-owners Peter Jones and Shawn Sheehan, to disgorge $4,121,894 in unjust profits, plus interest. It also imposed civil penalties of $26 million on Coaltrain, $5 million each on Peter Jones and Shawn Sheehan, $1 million on Robert Jones, and $500,000 each on Jeff Miller and Jack Wells.

On July 27, 2016, Enforcement staff filed suit in the United States District Court for the Southern District of Ohio to enforce the Commission's order. Defendants then filed motions to

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appeal. On October 4, 2018, Defendants petitioned the United States Court of Appeals for the Fourth Circuit to review the district court order, and the Commission did not oppose the appeal. After granting the petition for review and holding oral arguments, on February 11, 2020, the Fourth Circuit issued an opinion affirming the district court and endorsing the Commission's construction and application of the statute of limitations to civil penalty actions arising under Section 31 of the FPA. In upholding the district court's opinion, the Fourth Circuit recognized that "Congress plainly conditioned FERC's right to bring an action in federal district court on the occurrence of a number of statutorily-mandated events," and that "[o]nly upon satisfaction of these requirements . . . did § 2462's statutory limitations period for filing suit commence." *Federal Energy Regulatory Commission v. Powhatan Energy Fund, LLC*, 949 F.3d 891, 899 (4th Cir. 2020).

dismiss or transfer, which the district court denied in virtually all respects on March 30, 2018. Discovery commenced shortly thereafter and concluded in November 2019.

In early 2020, the parties filed motions for summary judgment. On November 20, 2020, the district court denied Defendants' motion for summary judgment on the Commission's claims for market manipulation and granted the Commission's motion for summary judgment on its claim that Coaltrain violated Section 35.41(b).

On November 29, 2021, the district court issued an order holding that the court lacked jurisdiction in the action to order disgorgement or joint and several liability. On March 2, 2022, the court denied the Commission's motion for interlocutory review of the November 29, 2021 Order.

In May 2022, the parties participated in a court-ordered mediation. On September 21, 2022, the parties signed a formal settlement agreement, which Enforcement staff submitted to the Commission for approval.[17] On October 11, 2022, the Commission issued an order approving the settlement, which provides that Coaltrain will pay disgorgement to PJM of $4 million, nearly all the unjust profits sought by the Commission. *Coaltrain Energy, L.P.*, 181 FERC ¶ 61,031 (2022). Further, on October 14, 2022, the district court vacated its November 29, 2021 Order. *FERC v. Coaltrain Energy, L.P.*, No. 2:16-cv-732 (S.D. Ohio Oct. 14, 2022).

c) FERC v. Vitol Inc. and Federico Corteggiano, No. 2:20-CV-00040-KJM-AC (E.D. Cal.)

On October 25, 2019, in Docket No. IN14-4-000, the Commission issued an Order Assessing Civil Penalties in which it determined that Vitol Inc. (Vitol) and its trader Federico Corteggiano (collectively, Defendants) violated the Commission's Anti-Manipulation Rule and Section 222 of the FPA by selling physical power at a loss in October and November 2013 in the CAISO day-ahead market for the purpose of eliminating congestion costs that they expected to cause losses on Vitol's Congestion Revenue Rights (CRR) positions. The Commission assessed a penalty of $1,515,738 against Vitol and $1,000,000 against Corteggiano. The Commission also ordered Vitol to disgorge $1,227,143 in unjust profits, plus interest. Defendants failed to pay the assessed amounts.

On January 6, 2020, Enforcement staff filed a complaint in the United States District Court for the Eastern District of California to enforce the Commission's penalty assessment order against Defendants. Defendants filed motions to dismiss the complaint, and on December 20, 2021, the court denied Defendants' motions in large part. The court rejected Defendants' arguments that FERC's claim was barred by the statute of limitations and that FERC failed to state a claim for manipulation under the FPA. The court granted Corteggiano's motion in part by holding that FERC could not assess a penalty against him that was higher than the $800,000 FERC originally proposed in the OSC. The court held that FERC could impose the higher penalty only if it discovered new evidence suggesting a higher penalty was warranted and provided further notice

[17] Given that the date of the Commission's order approving the *Coaltrain* settlement occurred in FY2023, the settlement and its corresponding disgorgement award have not been included in Enforcement's FY2022 statistics.

to Corteggiano of such higher penalty.

On January 14, 2022, Defendants filed a motion to amend the court's December 20, 2021 Order to certify it for interlocutory appeal and to stay the action pending the appeal. On February 25, 2022, the court granted Defendants' motion to certify the denial of their motion to dismiss on statute of limitations grounds for interlocutory appeal and denied their motion to stay the litigation. Defendants filed their Answers on March 25, 2022. Discovery commenced on April 8, 2022 and is ongoing.

Defendants' petition to appeal to the Ninth Circuit, which the Commission did not oppose, was filed on March 7, 2022. On April 20, 2022, the Ninth Circuit Court of Appeals granted Defendants' request for interlocutory appeal. Defendants filed their opening brief on August 9, 2022, and the Commission filed its opposition brief on September 28, 2022. Defendants' reply brief is due November 18, 2022, and oral argument is anticipated during FY2023.

d) GreenHat Energy, LLC, et al., Docket No. IN18-9-000 (E.D. Pa.)

On November 5, 2021, the Commission issued an Order Assessing Civil Penalties in which it found that GreenHat Energy, LLC (GreenHat), John Bartholomew, Kevin Ziegenhorn, and the Estate of Andrew Kittell (collectively, Respondents) violated the Commission's Anti-Manipulation Rule and Section 222 of the FPA by engaging in a manipulative scheme in the PJM Financial Transmission Rights (FTR) market. In the Order, the Commission found that GreenHat and the individual Respondents: (1) engaged in a manipulative scheme in PJM by purchasing FTRs with virtually no upfront cash, planning not to pay for losses at settlement, and obtaining cash for the individual Respondents by selling profitable FTRs to third parties; (2) purchased FTRs based not on market considerations but to amass as many FTRs as possible with minimal collateral; (3) made false statements to PJM about money purportedly owed by Shell Energy North America (US), L.P. (Shell) to try to convince PJM not to proceed with a planned margin call; and (4) submitted inflated bids into a PJM long-term FTR auction with the intent to artificially raise the clearing price of FTRs that Shell had purchased from GreenHat and offered for sale in the auction.

The Commission assessed civil penalties in the amounts of $179,600,573 against GreenHat, $25 million against Bartholomew, and $25 million against Ziegenhorn; and found GreenHat, Bartholomew, Ziegenhorn, and the Kittell Estate jointly and severally liable for $13,072,428 in disgorgement. On January 6, 2022, the Commission filed a complaint seeking affirmance of the civil penalties and disgorgement in the United States District Court for the Eastern District of Pennsylvania**.** Shortly thereafter, the parties participated in mediation and ultimately agreed to resolve the matter through a settlement.

On August 19, 2022, the Commission approved two settlements of this matter, one with the Kittell Estate and GreenHat and one with John Bartholomew and Kevin Ziegenhorn. The principal terms of the settlements were: GreenHat and the Kittell Estate agreed to pay $600,000 in disgorgement (based on ability to pay); Bartholomew and Ziegenhorn agreed to pay a total of $775,000 in disgorgement (also based on ability to pay); Bartholomew and Ziegenhorn agreed not to trade in Commission-jurisdictional markets for 10 years and never to trade in PJM; GreenHat

agreed to entry of judgment of $179,600,573 in favor of PJM in a Texas state court lawsuit; and GreenHat agreed to dismiss its $62 million lawsuit against Shell, which was based on factual claims that the Commission determined in the Order Assessing Civil Penalties to be false. The settlement with GreenHat and the Kittell Estate is subject to approval by the San Diego Probate Court.

2. United States Court of Appeals Matters

a) BP America Inc., et al., Docket No. IN13-15-000

On August 5, 2013, the Commission issued an OSC to several BP entities directing BP to show cause why the Commission should not: (1) find that BP violated the Commission's Anti-Manipulation Rule and Section 4A of the NGA by manipulating the next-day, fixed-price natural gas market at Houston Ship Channel from September 2008 to November 2008; (2) impose a civil penalty in the amount of $28,000,000; and (3) require BP to disgorge $800,000 of unjust profits.

On August 13, 2015, Administrative Law Judge Carmen Cintron issued her Initial Decision finding that BP violated the Anti-Manipulation Rule and Section 4A of the NGA. On July 11, 2016, the Commission issued an order affirming the Initial Decision and ordered BP to pay $20,160,000 in civil penalties and disgorge unjust profits in the amount of $207,169 to the Low Income Home Energy Assistance Program (LIHEAP) of Texas for the benefit of its energy consumers. The Commission also denied BP's motion for rehearing of the Commission's initial order setting the case for hearing. On August 10, 2016, BP moved for rehearing of the Commission's July 11, 2016, decision.

On September 7, 2016, BP moved for modification of the portion of the Commission's order directing BP to pay the disgorgement to the Texas LIHEAP, alleging that Texas LIHEAP communicated to BP that it was unable to receive such a payment. The Commission responded with two orders. First, on September 8, 2016, the Commission granted rehearing for the limited purpose of further consideration of the matters raised by BP in its motion for rehearing of the July 11, 2016 decision. Second, on September 12, 2016, the Commission issued an order staying the payment directive of the disgorgement order until Commission issuance of an order on BP's request for rehearing. On September 9, 2016, BP separately filed a Petition for Review in the United States Court of Appeals for the Fifth Circuit only on the procedural issues ripe for appeal.

On December 11, 2017, BP filed a motion with the Commission for rehearing or to dismiss based on two recent court decisions, *FERC v. Barclays Bank PLC*, 2017 WL 4340258 (E.D. Cal. Sept. 29, 2017) and *Kokesh v. SEC*, 137 S. Ct. 1635 (2017). BP contended that, under *Barclays*, a Commission OSC does not initiate a "proceeding" under the applicable federal statute of limitations, 28 U.S.C. § 2462, and therefore, that this case was not timely brought and should be dismissed. BP also argued that it could not be ordered to repay its unjust profits because the same statute of limitations applies to actions for disgorgement under *Kokesh*. Enforcement staff's response was filed on January 25, 2018.

On December 17, 2020, the Commission denied BP's motion for rehearing. On January 19, 2021, BP paid the civil penalty and disgorgement under protest and filed a petition for

review with the United States Court of Appeals for the Fifth Circuit. BP filed its opening brief on May 26, 2021. The Commission's responsive brief was filed on July 26, 2021. BP's reply brief was filed on August 17, 2021. Oral argument took place on January 31, 2022.[18]

3. Administrative Proceedings at the Commission

a) Total Gas & Power North America, Inc., et al., Docket No. IN12-17-000

On April 28, 2016, the Commission issued an OSC directing Total Gas & Power North America, Inc. (TGPNA), Aaron Hall, and Therese Tran (collectively, Respondents) to show cause why they should not be found to have violated Section 4A of the NGA and the Commission's Anti-Manipulation Rule by engaging in a scheme to manipulate the price of natural gas at four locations in the southwest United States between June 2009 and June 2012. The OSC further directed TGPNA's ultimate parent company, Total, S.A. (Total), and TGPNA's affiliate, Total Gas & Power, Ltd. (TGPL), to show cause why they should not be held liable for Respondents' conduct and held jointly and severally liable for their disgorgement and civil penalties based on Total's and TGPL's significant control and authority over TGPNA's daily operations. Finally, the OSC directed Respondents to show cause why disgorgement and civil penalties should not be assessed in the following amounts: $9,180,000 in disgorgement and $213,600,000 in civil penalties against TGPNA, Total, and TGPL, jointly and severally; a $1,000,000 civil penalty against Hall (jointly and severally with TGPNA, Total, and TGPL), and a $2,000,000 civil penalty against Tran (jointly and severally with TGPNA, Total, and TGPL).

In advance of the OSC, on January 27, 2016, Respondents filed a lawsuit in the United States District Court for the Western District of Texas, challenging (among other things) the Commission's authority to assess penalties for violations of the NGA.[19] After the case was transferred to the United States District Court for the Southern District of Texas, that Court rejected Respondents' challenge on multiple grounds. Respondents appealed that dismissal to the United States Court of Appeals for the Fifth Circuit on September 26, 2016, which on June 8, 2017 affirmed the dismissal. Respondents subsequently sought rehearing in the Fifth Circuit *en banc*,

[18] At the beginning of FY2023, the Fifth Circuit issued an opinion, granting in part and denying in part BP's appeal and remanding the matter back to the Commission for reassessment of the penalty. Among its holdings, the Court held that (1) the Commission could not base its market manipulation charges on BP's intrastate transactions, but that it properly asserted jurisdiction over other interstate transactions; (2) the NGA and the Commission have provided proper definition and notice of market manipulation; (3) the Commission's finding of market manipulation was supported by substantial evidence, including BP's changed trading behavior and the "suspicious nature" of BP's trading patterns; and (4) the Commission complied with the Administrative Procedure Act's separation of functions rule. *BP Am., Inc. v. FERC*, No. 16-60604, 2022 WL 11717175 (5th Cir. Oct. 20, 2022).

[19] Additional details about this district court matter and subsequent appeals can be found in the 2018 Staff Report on Enforcement (Docket No. AD07-13-012), https://www.ferc.gov/legal/staff-reports/2018/11-15-18-enforcement.pdf.

which was denied on August 8, 2017. Respondents then petitioned the United States Supreme Court for certiorari, which the Court denied on June 18, 2018.

On July 15, 2021, the Commission ordered a hearing before an ALJ to determine whether TGPNA, Hall, Tran, Total, and TGPL are liable for market manipulation. The hearing order also directed the ALJ to determine facts relevant to applying the penalty guidelines.

The hearing is scheduled to commence on January 23, 2023. Discovery is set to close December 2, 2022, with prehearing briefing and motions due in mid-December 2022 and additional pretrial deadlines set throughout January 2023. The Initial Decision is due by July 10, 2023.

Since the fall of 2022, the parties have engaged in extensive motions practice regarding discovery and privilege disputes. On February 18, 2022, Enforcement staff filed its pre-filed direct testimony; Respondents filed their responsive testimony on July 22, 2022. Enforcement staff's rebuttal testimony was filed October 21, 2022.

Finally, on July 5, 2022, Respondents filed a motion to dismiss or stay the proceeding with the Commission.

b) PacifiCorp, Docket No. IN21-6-000

On April 15, 2021, the Commission issued an OSC directing PacifiCorp to show cause why it should not assess a civil penalty of $42 million against PacifiCorp for violating FPA sections 215(b)(1) and section 39.2(b) of the Commission's regulations. The Commission directed PacifiCorp to address potentially violative conduct of failing to comply with a Commission-approved Reliability Standard requiring transmission owners such as PacifiCorp to establish and have ratings for their transmission lines that are consistent with the company's methodology for establishing those ratings. After receiving an extension from the Commission, PacifiCorp filed its answer on July 16, 2021, and Enforcement staff filed its response to the answer on September 14, 2021.

c) Rover Pipeline, LLC and Energy Transfer Partners, L.P., Docket No. IN19-4-000

On March 18, 2021, the Commission issued an OSC directing Rover Pipeline, LLC and Energy Transfer Partners, L.P. (collectively, Rover) to show cause why they should not be found to have violated 18 C.F.R. § 157.5 by misleading the Commission in its Application for a Certificate of Public Convenience and Necessity and attendant filings. Section 157.5 requires that certificate applications and attendant filings contain full and forthright information. Rover stated in its certificate application that it was "committed to a solution that results in no adverse effects" to a historic 1843 farmstead, the Stoneman House, located near Rover's largest proposed compressor station. The Commission asked Rover to address allegations that Rover was planning to purchase the Stoneman House with the intent to demolish it, and ultimately did demolish it, without notifying the Commission of the purchase or demolition. The OSC further directed Rover to show cause why it should not be assessed civil penalties in the amount of $20,160,000. Rover's answer to the OSC was filed on June 21, 2021, and Enforcement staff's response to the answer was filed on July 21, 2021. On September 15, 2021, Rover filed a proposed supplemental answer.

On June 20, 2022, the Commission issued an order setting this matter for a hearing before an ALJ to make factual findings. In particular, the Commission ordered the ALJ to: (1) determine the number of violations, if any, committed by Rover and the numbers of days on which any such violations occurred; (2) make findings regarding the amount of loss; (3) make findings with respect to Respondents' compliance programs based on the factors specified in the relevant sections of the Penalty Guidelines; and (4) make findings with respect to Respondents' culpability based on the factors specified in the Penalty Guidelines. Then-Chief Administrative Law Judge Cintron ordered a hearing to commence by March 6, 2023, and designated Judge Joel deJesus as the presiding judge.

On February 1, 2022, Rover filed a civil action in the United States District Court for the Northern District of Texas (No. 3:22-cv-00232), seeking a Declaratory Judgment that Enforcement staff must litigate its claims in federal district court, rather than in an ALJ proceeding (Declaratory Judgment action). Rover alleged that the ALJ proceeding would violate multiple constitutional provisions, *i.e.*, Article II, the Seventh Amendment right to a jury trial, Article III, and the Fifth Amendment Due Process Clause. That same day, Rover filed with the Commission a motion to stay the ALJ proceedings pending the outcome of the Declaratory Judgment action and noting the Supreme Court's grant of a writ of certiorari on January 24, 2022, in *Axon v. Federal Trade Comm'n*, Case No. 21-86, which may resolve whether a respondent may go to federal court to challenge the lawfulness of an agency proceeding. Enforcement staff opposed Rover's motion for stay before the Commission on February 4, 2022.

On February 14, 2022, Rover filed, in the Declaratory Judgment action, a motion to stay the ALJ proceeding pending the district court's disposition of its claims. On March 7, 2022, the Commission opposed Rover's request to stay the ALJ proceeding. On May 19, 2022, Rover filed a brief in the Declaratory Judgment action arguing that both the district court and ALJ proceedings should be stayed following the *Jarkesy v. Securities and Exchange Commission*, 34 F.4th 446 (5th Cir. 2022) decision and in consideration of the Supreme Court's grant of a writ of certiorari in *Securities and Exchange Commission, et al. v. Cochran*, Case No. 21-1239. On April 5, 2022, the Commission filed a brief opposing Respondents' request to stay the ALJ proceeding. On May 24, 2022, the district court stayed the ALJ proceeding, without prejudice, under 5 U.S.C. § 705. Consistent with that Order, on June 13, 2022, Judge Joel deJesus issued an order suspending the procedural schedule in the ALJ proceeding.

d) Rover Pipeline, LLC and Energy Transfer Partners, L.P., Docket No. IN17-4-000

On December 16, 2021, the Commission issued an OSC directing Rover Pipeline, LLC and Energy Transfer Partners, L.P. (collectively, Rover) to show cause why they should not be found to have violated Section 7(e) of the NGA; Section 157.20 of the Commission's regulations, 18 C.F.R. § 157.20; and the Commission's Order Issuing Certificates, issued to Rover in 2017, by: (1) intentionally including diesel fuel, other toxic substances, and unapproved additives in the drilling mud during its horizontal directional drilling (HDD) operations under the Tuscarawas River in Stark County, Ohio, (2) failing to adequately monitor the right-of-way at the site of the Tuscarawas River HDD operation, and (3) improperly disposing of inadvertently released drilling mud that was contaminated with diesel fuel and hydraulic oil. Rover filed an answer to the OSC

on March 21, 2022, and Enforcement staff filed its response to the answer on April 20, 2022. Rover filed a surreply on May 13, 2022.

e) Ampersand Cranberry Lake Hydro, LLC, Docket No. 9685-034

On October 21, 2021, the Commission issued an OSC to Ampersand Cranberry Lake Hydro, LLC (Ampersand Cranberry Lake), directing it to show cause why it should not be found to have violated Article 5 of its hydropower project license by failing to retain the possession of all project property covered by the license and why it should not be assessed a civil penalty of $600,000 for such a violation. The project dam has a high hazard potential rating, which means that a failure of the project works would result in a probable loss of human life, and Ampersand Cranberry Lake had told FERC staff that it would not be able to complete promised dam safety work because it had lost possession of the project property.

Ampersand Cranberry Lake filed an answer to the OSC on November 22, 2021, and Enforcement staff submitted its response to the answer on December 22, 2021.

On April 21, 2022, noting that "the record suggests that Ampersand Cranberry Lake deliberately attempted to shirk its obligations under the Project license by voluntarily entering into an agreement to terminate its access to the Project property," the Commission issued an order finding that Ampersand Cranberry Lake had violated Article 5 and assessing a civil penalty of $600,000 for the violation.

4. Joint Reliability Inquiry

During FY2022, Enforcement staff continued its work on the joint reliability inquiry stemming from the February 2021 cold weather event in Texas and other southern and central states. From February 8 through 20, 2021, and especially on February 15 and 16, these states experienced unusually cold weather, including snow and freezing rain. The below-average temperatures caused 1,045 individual generating units within the Balancing Authority and Reliability Coordinator footprints of the Electric Reliability Council of Texas (ERCOT), Southwest Power Pool, Inc. (SPP), and the Midcontinent Independent System Operator, Inc. (MISO), to experience more than 4,000 outages, derates, or failures to start. For over two consecutive days, ERCOT averaged over 34,000 MW of generation outages, 49 percent or nearly half of its 2021 actual all-time winter peak load. The unexpected generation outages caused capacity emergencies in ERCOT, SPP, and MISO South, leading to firm load shed. ERCOT, unable to import more than 1,220 MW over its direct current ties, shed 20,000 MW and its load shed lasted three consecutive days. MISO South shed 700 MW, which lasted over two hours, and SPP's load shed lasted approximately five hours and was 2,700 MW at its worst point. MISO and SPP imported large amounts of power from the east, and the power flows of approximately 13,000 MW at peak caused transmission emergencies in MISO, leading to an additional 2,000 MW of firm load shed.

Immediately following the event, the Commission announced the formation of a joint inquiry with NERC and all six of the relevant regional reliability entities to determine the causes of the event and make recommendations to prevent such events in the future. Enforcement staff, including individuals from DOI, were part of the FERC team that conducted the inquiry into the matter. Staff reviewed entity data and conducted interviews to determine the causes of the

generation losses and to develop recommendations. The inquiry team issued its preliminary findings and recommendations on September 23, 2021, and issued its final report entitled *The February 2021 Cold Weather Outages in Texas and the South Central United States* on November 16, 2021. In the final report, FERC and NERC staff found that freezing issues caused by failure to winterize the generating units caused 44 percent of the generation losses, and fuel issues (the majority of which were natural gas fuel supply issues) caused 31 percent of the losses. The inquiry team made nine key recommendations and several other secondary recommendations for a total of 28 recommendations to help prevent similar future events.

Since the final report's issuance, Enforcement staff have worked to ensure that the report's recommendations have been implemented. For example, staff have served as an observer to the NERC Standards Drafting Team that completed proposed new Reliability Standards and responded in part to Recommendation 1, which focused on suggested revisions to the NERC Reliability Standards. Certain new Reliability Standards were filed with the Commission in October 2022, with the remainder to be filed with the Commission by winter 2023-2024. Staff also served as a team member and moderator for the joint Commission-NERC technical conference (proposed in Recommendation 3) held on April 27-28, 2022, which focused on improving generating unit cold weather reliability. In response to Recommendation 7, which recommended a gas-electric forum to discuss concrete ways to improve gas-electric coordination, the North American Energy Standards Board has convened a Gas-Electric Harmonization Forum, working with FERC staff, NERC staff, and the National Association of Regulatory Utility Commissioners (NARUC), with Enforcement staff serving as a resource and panelist. FERC, NERC, and Regional Entity staff are also working with NERC committees and task forces on an additional 17 recommendations, as well as with NARUC staff and committees on eight recommendations that are within state jurisdiction.

5. Paper Hearing Proceeding Related to 2015/16 MISO Auction Results

On June 16, 2022, the Commission issued an order on remand[20] establishing paper hearing procedures in response to a 2021 decision by the United States Court of Appeals for the District of Columbia Circuit in *Pub. Citizen, Inc. v. FERC*.[21] That decision remanded two Commission orders[22] that had ruled on three complaints from May 2015 regarding the results of MISO's 2015/16 Planning Resource Auction (PRA) for Local Resource Zone (Zone) 4. In the Remand Order, the Commission established paper hearing procedures to address the issues raised by the D.C. Circuit's opinion. Specifically, and as part of the procedures, the Commission directed Enforcement staff to provide an assessment of a market participant's—Dynegy Marketing and Trade, LLC (Dynegy)—conduct during MISO's 2015/16 PRA, including whether Dynegy's conduct constituted an exercise of market power and/or market manipulation.[23] Under the procedural schedule established by the Commission, Enforcement staff submitted a Remand

[20] *Pub. Citizen, Inc. v. FERC*, 179 FERC ¶ 61,185 (2022) (Remand Order).

[21] 7 F.4th 1177 (D.C. Cir. 2021).

[22] *Pub. Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 168 FERC ¶ 61,042 (2019), *order on reh'g*, 170 FERC ¶ 61,227 (2020).

[23] Remand Order, 179 FERC ¶ 61,185 at P 18.

Report on September 14, 2022, and further briefing in response to the Remand Report will take place during FY2023.

6. Duty of Candor Notice of Proposed Rulemaking

On July 28, 2022, the Commission issued a NOPR that would establish a new, more expansive Duty of Candor rule under the FPA.[24] The proposed regulation would require that all entities communicating with the Commission or other specified organizations regarding matters jurisdictional to the Commission submit accurate and factual information and not submit false or misleading information or omit material information. Under the proposed rule, exercising due diligence to prevent such occurrences would be an affirmative defense to violations of the requirement. The Commission sought comment on all aspects of the proposed rule, including the Commission's authority for the proposed rule, the entities to which the proposed rule should apply, and the scope of the communications covered by the proposed rule. DOI staff presented the draft NOPR to the Chairman and Commissioners at the July 2022 open meeting, and the Commission subsequently issued the NOPR with a 60-day comment period from the date of publication in the Federal Register. Comments were due on November 10, 2022.

C. Settlements

In FY2022, the Commission approved 11 settlement agreements to resolve pending enforcement matters, including eight settlements to resolve seven investigations and three settlements in two federal district court matters. The settlements totaled approximately $23.59 million in civil penalties and $33.92 million in disgorgement. Since 2007, Enforcement has negotiated settlements totaling approximately $813.5 million in civil penalties and approximately $553.9 million in disgorgement.

In 2010, the Commission issued revised Penalty Guidelines.[25] Under the Penalty Guidelines, an organization's civil penalty can vary significantly depending on the amount of market harm caused by the violation, the amount of unjust profits, an organization's efforts to remedy the violation, and other culpability factors, such as senior-level personnel involvement, prior history of violations, compliance programs, self-reporting of the violation, acceptance of responsibility, and cooperation with Enforcement's investigation. For example, under the Penalty Guidelines, an organization's culpability score can be reduced to zero through favorable culpability factors, lowering the base penalty by as much as 95 percent.[26]

In FY2022, the Commission approved settlement agreements that resolved investigations concerning several different types of violations, including the Commission's market behavior regulations, including its Duty of Candor rule, 18 C.F.R. §§ 35.41(a) and (b); the

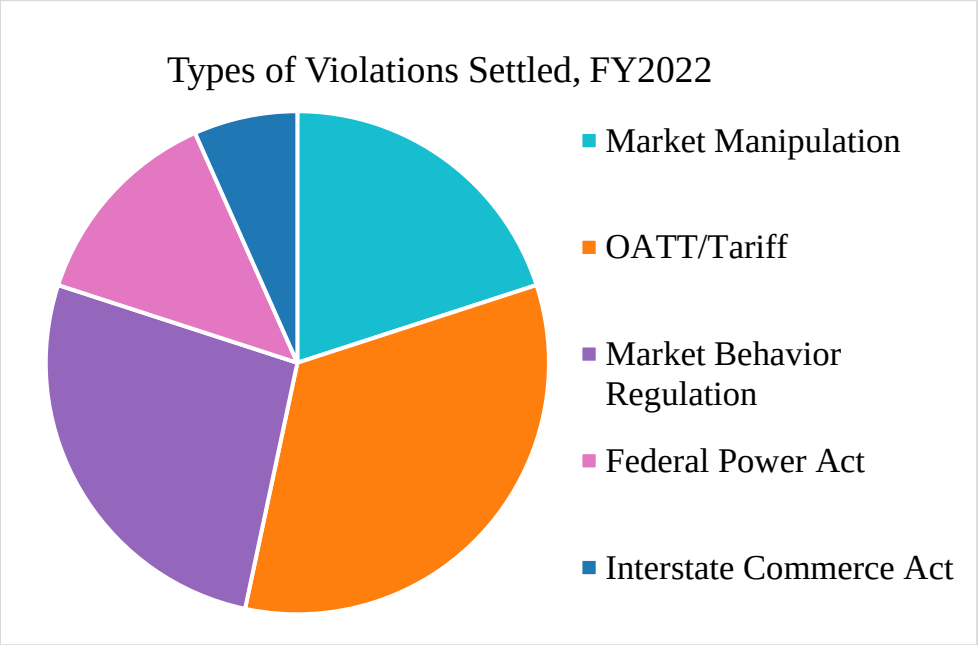
[24] *Duty of Candor*, Notice of Proposed Rulemaking, 180 FERC ¶ 61,052 (2022).

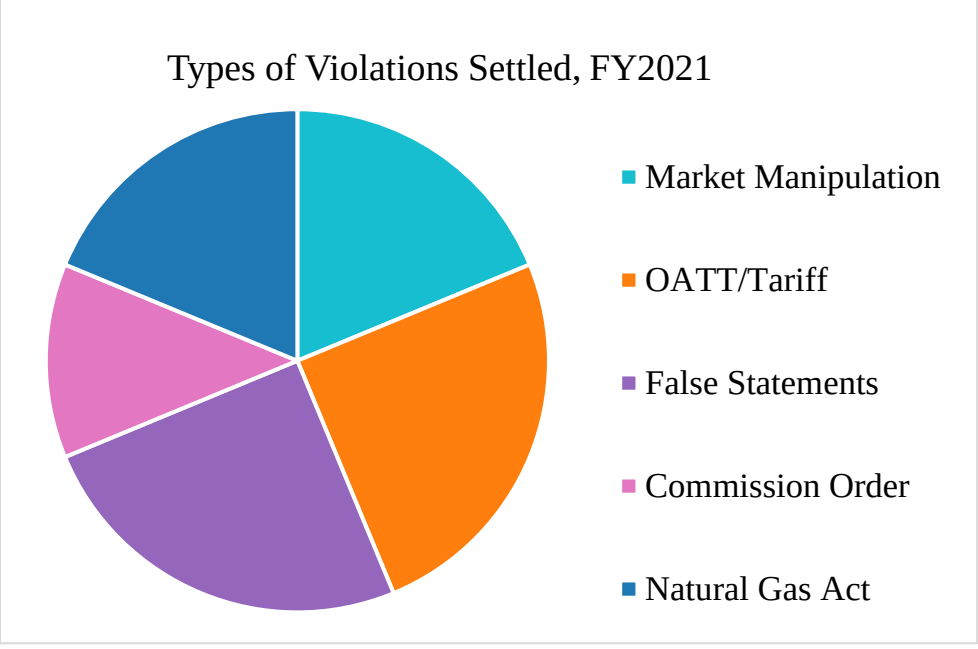
[25] *Enforcement of Statutes, Orders, Rules, and Regulations*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines), https://www.ferc.gov/whats-new/comm-meet/2010/091610/M-1.pdf.

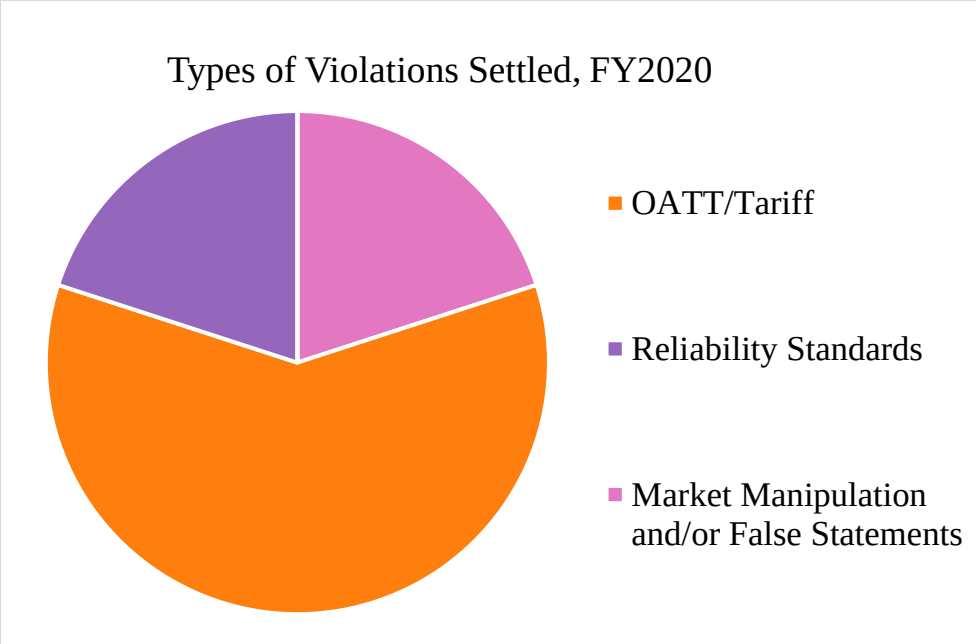
[26] *Id.* P 109.

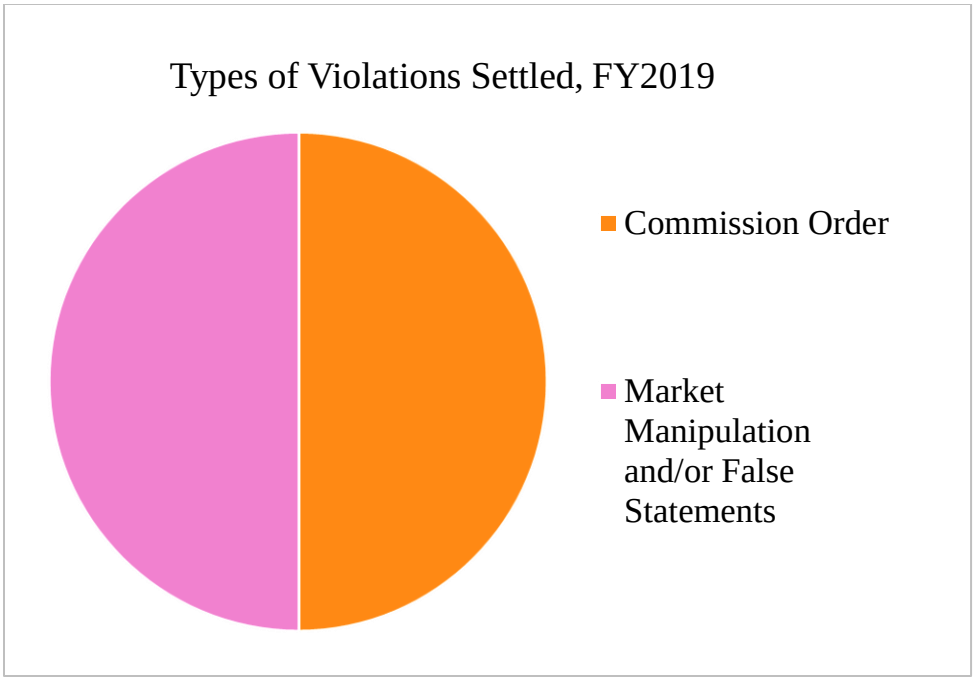
Anti-Manipulation Rule, 18 C.F.R. § 1c.2; Part I, Section 20(1) of the Interstate Commerce Act and 18 C.F.R. § 357.2(a); and ISO/RTO tariffs.

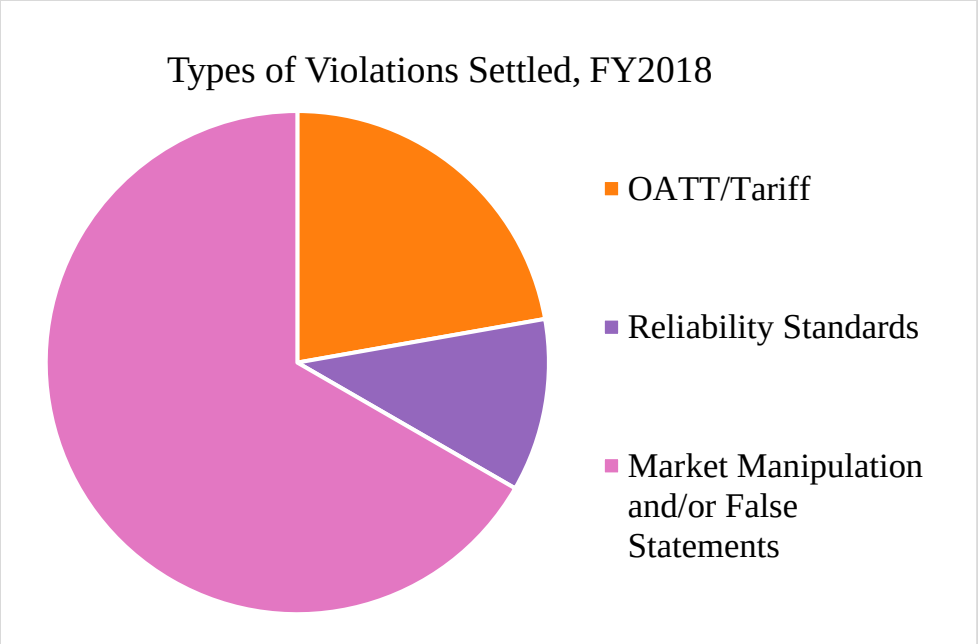
The charts below illustrate the types of violations settled in the last five fiscal years, Fiscal Years 2018-2022. Some settlements concerned multiple types of violations.






Types of Violations Settled, FY2020
OATT/Tariff
Reliability Standards
Market Manipulation and/or False Statements


Types of Violations Settled, FY2019
Commission Order
Market Manipulation and/or False Statements



The Commission approved the following settlement agreements resolving investigations in FY2022:

1. *Constellation NewEnergy, Inc., Docket No. IN22-4-000*

On March 29, 2022, the Commission issued an order approving the settlement of Enforcement's investigation of Constellation NewEnergy, Inc. (CNE) into whether CNE complied with the pertinent CAISO tariff provisions regarding the treatment of imports for Resource Adequacy (RA) purposes. Enforcement's investigation found that CNE violated 18 C.F.R. § 35.41(a) and Sections 4.2.1, 37.2.1.1, and 37.3.1 of the CAISO tariff, by failing to purchase capacity in support of its RA-related imports and otherwise failing to reasonably plan for the circumstance of those imports being dispatched by CAISO. Under the terms of the settlement, CNE admitted to the facts, but neither admitted nor denied the violations. CNE agreed to pay a civil penalty of $2,400,000 and disgorgement of $2,300,000.

2. *Dynegy Marketing and Trade, LLC, Docket No. IN22-3-000*

On March 28, 2022, the Commission issued an order approving a Stipulation and Consent Agreement with Dynegy Marketing and Trade, LLC (Dynegy). The order resolved Enforcement's investigation into whether Dynegy's Real-Time energy market offers in Summer 2017 for ten GE 7FA dual-fuel combustion turbines in the PJM market misrepresented that the units could ramp to their maximum oil-based output attained during their capacity tests (ICAP) while running on gas. Enforcement's investigation found that Dynegy's conduct violated (1) the Commission's Duty of Candor rule, 18 C.F.R. § 35.41(b); and (2) Section 1.7.19 of Schedule 1 of the Amended and Restated Operating Agreement and Attachment K – Appendix of the PJM Open Access Transmission Tariff (OATT), which require each unit to be able to change output at the ramping rate specified in the Offer Data. The Commission's order also resolved Enforcement's separate finding that Dynegy violated Section 35.41(b) when it maintained a prospective 16 MW capacity increase for one of its dual-fuel units based on (a) unit upgrades that were never completed by the

previous owner and (b) the use of auxiliary generators during capacity tests, which practice was prohibited by PJM. Dynegy stipulated to the facts, but neither admitted nor denied the alleged violations. It agreed to pay a civil penalty of $450,000 and disgorgement plus interest of $119,425.10, and to submit annual compliance reports for at least two years and potentially a third year at Enforcement's discretion.

3. *Enerwise Global Technologies, LLC d/b/a CPower, Docket No. IN22-7-000*

On August 25, 2022, the Commission issued an order approving the settlement of Enforcement's investigation of Enerwise Global Technologies, LLC d/b/a CPower (CPower). Enforcement investigated whether CPower complied with its offer obligations in the ISO-NE energy market during the period June 1, 2018 through February 28, 2019. Enforcement determined that CPower failed to offer the MWs required by ISO-NE tariff provisions governing its participation in the ISO-NE energy market, which constituted violations of Section III.13.6.1.5.1 of the ISO-NE tariff. Under the terms of the settlement, CPower admitted to the facts, neither admitted nor denied the violations, and agreed to pay a civil penalty of $2,539,372, disgorge $2,460,628 to ISO-NE, and undertake compliance monitoring for one year with the option of Enforcement to extend it to two years.

4. *Salem Harbor Power Development LP and ISO-New England, Inc., Docket No. IN18-8-000*

On June 27, 2022, and September 30, 2022, the Commission issued orders approving related settlements of Enforcement's investigations of Salem Harbor Power Development LP (Footprint) and ISO-NE. Enforcement's investigation found that ISO-NE made over $100 million in capacity payments to Footprint for Footprint's New Salem Harbor Generating Station project (Project) even though the Project had not yet been constructed or started commercial operation. Enforcement determined that this conduct violated provisions of the ISO-NE tariff, and one of the Commission's market behavior rules, which required Footprint to sell off its capacity award prior to its capacity commitment period or, barring that, required ISO-NE to sell it off on Footprint's behalf. Enforcement also determined that ISO-NE committed a further tariff violation by denying the ISO-NE Internal Market Monitor's (IMM's) access to a database of information regarding Footprint after the IMM investigated these violations. After the investigation, Footprint lost an arbitration with its main contractor for the Project and declared bankruptcy. In their respective settlements, Footprint and ISO-NE both stipulated to the facts and neither admitted nor denied the violations. Footprint agreed that the Commission would have unsecured bankruptcy claims of over $43 million – $17,100,000 as a civil penalty and $26,693,237.67 in disgorgement. ISO-NE agreed to pay a civil penalty of $500,000. The entities also agreed to various compliance measures, including compliance monitoring.

5. *Golden Spread Electric Cooperative, Inc., Docket No. IN21-9-000*

On November 18, 2021, the Commission issued an order approving the settlement of Enforcement's investigation of Golden Spread Electric Cooperative, Inc. (Golden Spread) into whether Golden Spread violated the Commission's Anti-Manipulation Rule by offering its Mustang Station generating unit into the SPP market in a manner that improperly targeted and increased Day-Ahead Market make whole payments. Under the settlement, Golden Spread agreed to pay a civil penalty of $550,000 and disgorgement to SPP of $375,000. Golden Spread further

agreed to submit annual compliance reports and make enhancements to its compliance program, including additional training for its employees. Golden Spread stipulated to the facts, but neither admitted nor denied the alleged violation.

6. *sPower Development Company, LLC, Docket No. IN22-5-000*

On June 24, 2022, the Commission issued an order approving the settlement of Enforcement's investigation of sPower Development Company, LLC (sPower) into whether sPower violated Section 36.2A of the PJM tariff by submitting to PJM two interconnection study agreements that inaccurately stated sPower had site control over property for a proposed interconnection (which was necessary for the interconnection process to proceed) when it did not have such control. Under the agreement, sPower agreed to pay a civil penalty of $24,000. sPower also agreed to submit annual compliance monitoring reports for two years, with a possible third year. sPower stipulated to the facts, but neither admitted nor denied the alleged violation.

7. *M3 Ohio Gathering LLC and Utica East Ohio Midstream LLC and UEOM NGL Pipelines LLC, Docket No. IN22-6-000*

On June 24, 2022, the Commission issued an order approving the settlement of Enforcement's investigation of M3 Ohio Gathering LLC (M3) and Utica East Ohio Midstream LLC, and UEOM NGL Pipelines LLC (Utica East) into whether M3/Utica East violated Part I, Section 20(1) of the Interstate Commerce Act and the Commission's regulations (18 C.F.R. § 357.2(a)) when they failed to submit annual and quarterly Form No. 6s during the period 2013-2019. Under the agreement, M3 agreed to pay a civil penalty of $30,000 and Utica East agreed to certify and submit all outstanding FERC Form No. 6 filings through the Commission's eForms portal. M3 and Utica East stipulated to the facts, but neither admitted nor denied the alleged violation.

D. Self-Reports

Over the previous five fiscal years (Fiscal Years 2018-2022), Enforcement staff received approximately 691 self-reports. The vast majority of those self-reports were concluded without further enforcement action because, among other factors, there was no material harm (or the reporting companies already had agreed to remedy any harms) and the companies had taken appropriate corrective measures (including appropriate curative filings), both to remedy the violations and to avoid future violations through enhancements to their compliance programs.

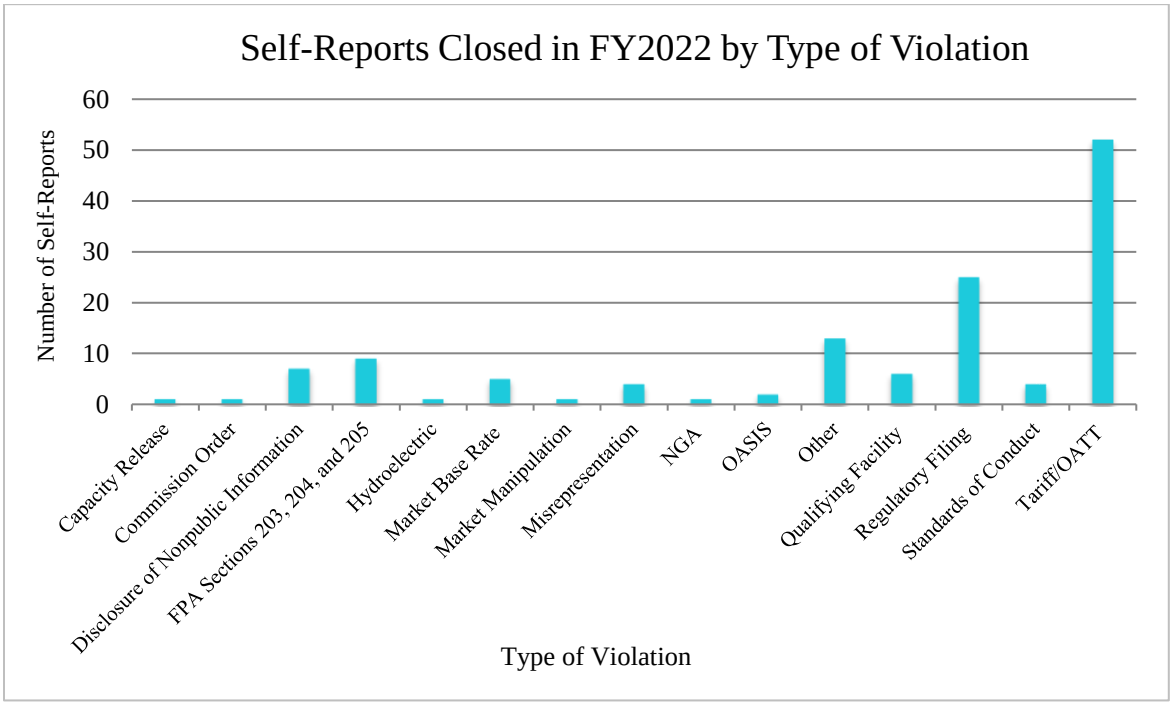
1. Statistics on Self-Reports

In FY2022, DOI staff received 124 new self-reports from a variety of market participants, including public utilities, natural gas companies, generators, and ISOs/RTOs. Many of these self-reports (56) were from ISOs/RTOs and involved relatively minor violations of tariff provisions. DOI staff closed 126 self-reports in FY2022, 44 of which were carried over from

previous fiscal years. Of the self-reports received in FY2022, 39 remained pending at the end of the fiscal year.

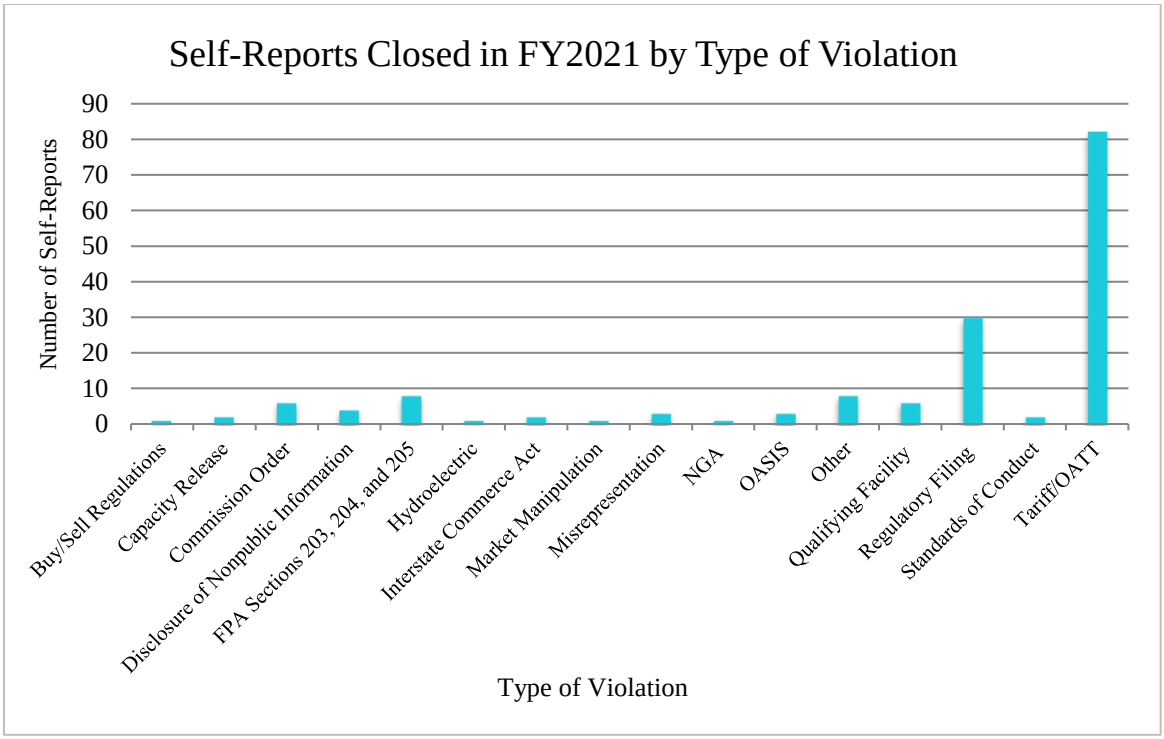
The Penalty Guidelines emphasize the importance of self-reporting by providing credit that can significantly mitigate penalties if a self-report is made.[27] Staff continues to encourage the submission of self-reports and views self-reports as demonstrating a company's commitment to compliance. Additional information about self-reports, including how to submit them to DOI, is contained on the Commission's website at www.ferc.gov/self-reports.

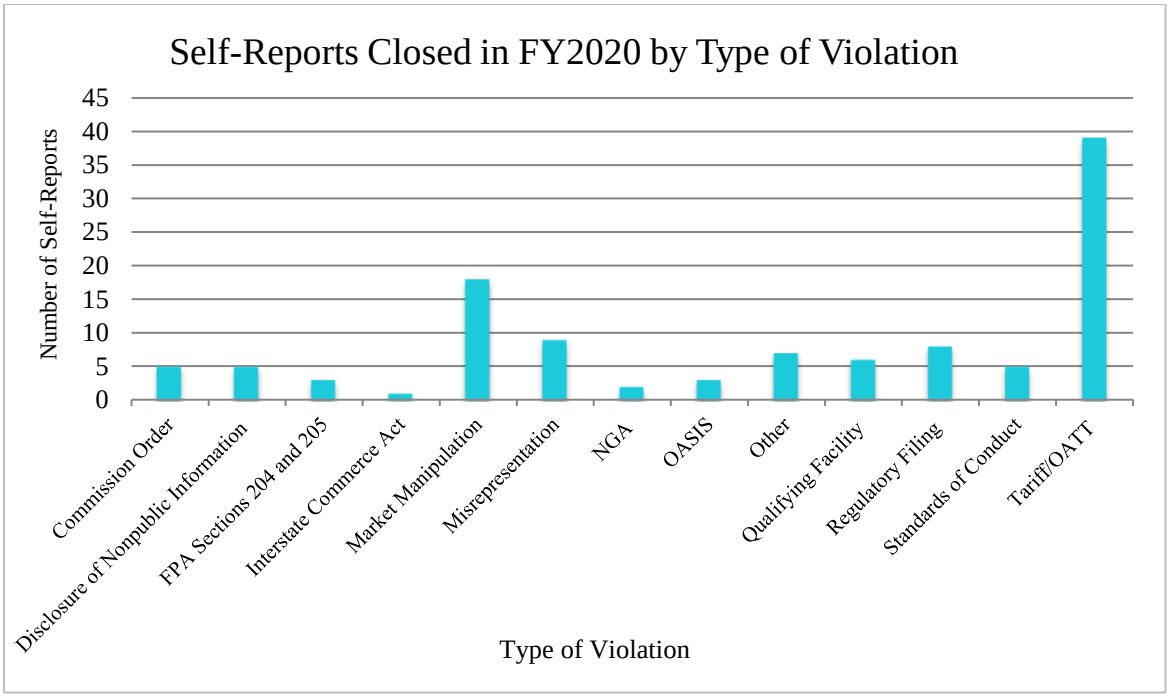
The following charts depict the types of violations for which DOI staff received self-reports from Fiscal Years 2018 through 2022.[28] Some self-reports include more than one type of violation.

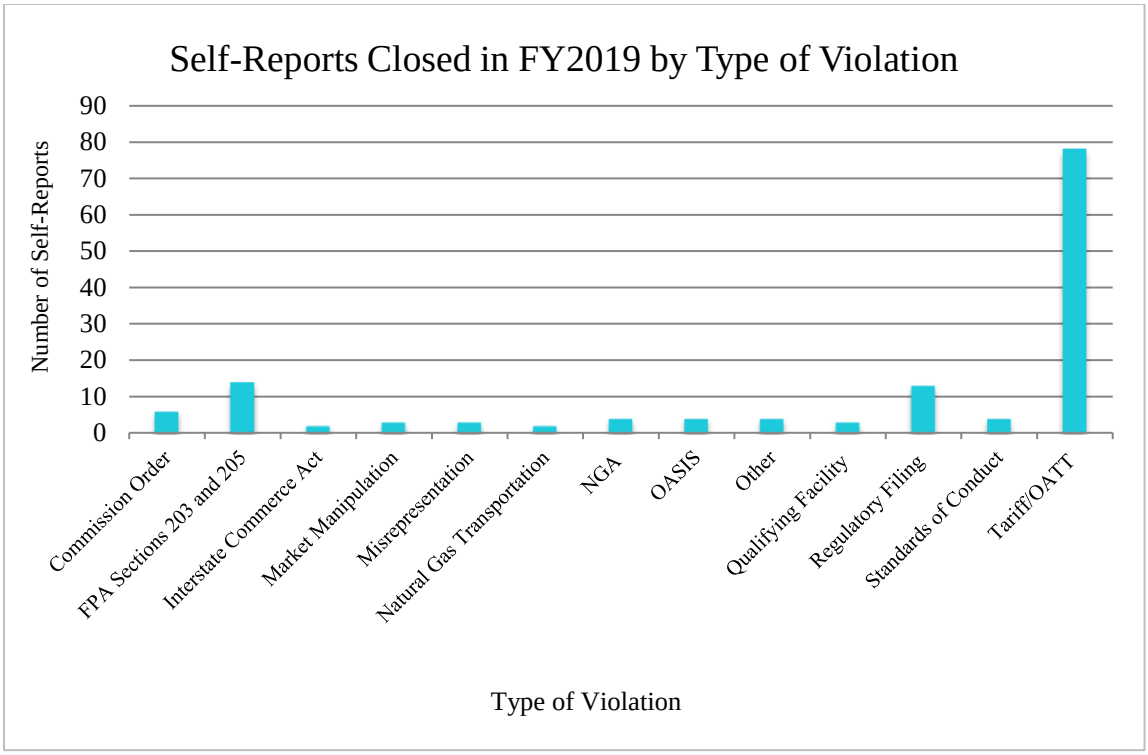


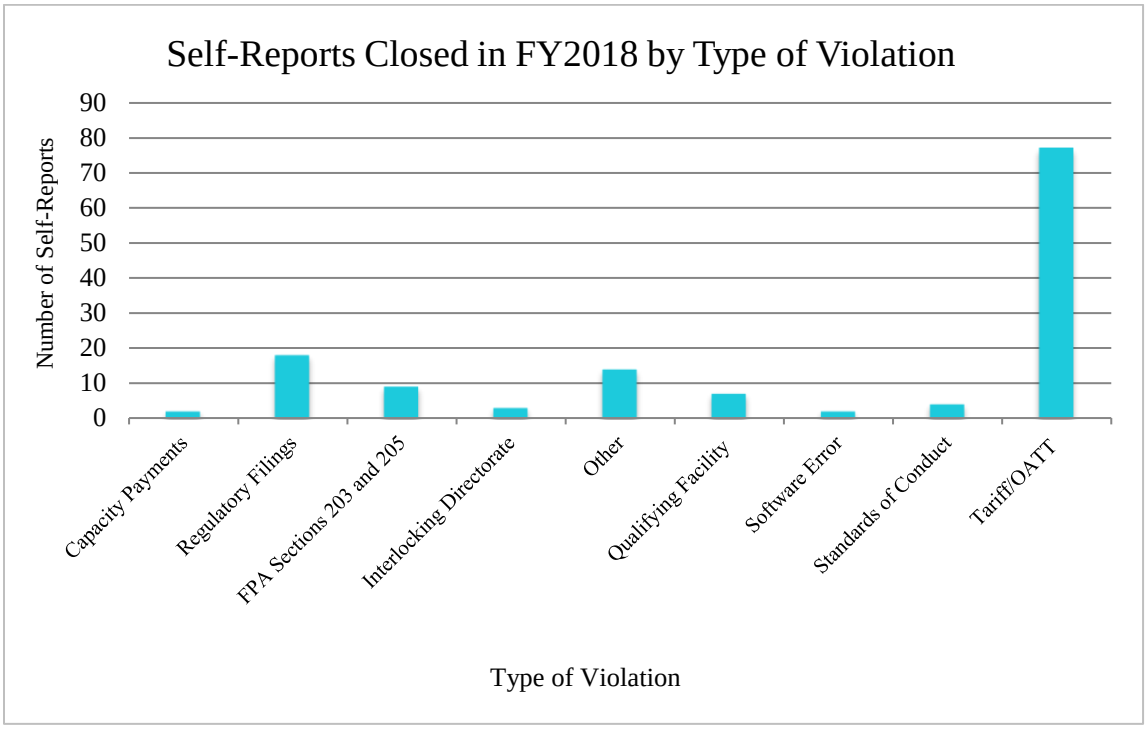
[27] Revised Penalty Guidelines, 132 FERC ¶ 61,216 at P 127.

[28] Consistent with the FY2018 through FY2021 Annual Reports, the FY2022 Self-Reports Closed chart includes the substantive violation reported by an ISO/RTO and replaces the ISO/RTO category used in previous years.


Self-Reports Closed in FY2021 by Type of Violation
Number of Self-Reports
90
80
70
60
50
40
30
20
10
0
Buy/Sell Regulations
Capacity Release
Commission Order
Disclosure of Nonpublic Information
FPA Sections 203, 204, and 205
Hydroelectric
Interstate Commerce Act
Market Manipulation
Misrepresentation
NGA
OASIS
Other
Qualifying Facility
Regulatory Filing
Standards of Conduct
Tariff/OATT
Type of Violation


Self-Reports Closed in FY2020 by Type of Violation
Number of Self-Reports
45
40
35
30
25
20
15
10
5
0
Commission Order
Disclosure of Nonpublic Information
FPA Sections 204 and 205
Interstate Commerce Act
Market Manipulation
Misrepresentation
NGA
OASIS
Other
Qualifying Facility
Regulatory Filing
Standards of Conduct
Tariff/OATT
Type of Violation





2. Illustrative Self-Reports Closed with No Action

In a continuing effort to promote transparency while encouraging the compliance efforts of regulated entities, Enforcement presents the following illustrative examples of self-reports that DOI staff closed in FY2022 without conversion to an investigation. In determining whether to

close a self-report or open an investigation, DOI staff considers the factors set forth in the Commission's Revised Policy Statement on Enforcement.[29] As examples, in FY2022 several ISOs/RTOs and market participants reported minor tariff and reporting violations, two market participants reported standards of conduct violations, at least four market participants reported violations of the FPA, and several companies reported regulatory filing violations. The illustrative summaries below are intended to provide guidance to the public and to regulated entities as to why staff chose not to pursue an investigation or enforcement action, while preserving the non-public nature of the self-reports.

Market-Based Rate (MBR) Authorization. A power marketer self-reported that it sold the output of an affiliate wind generation facility that did not have a MBR tariff on file with the Commission. After discovering the omission, the affiliate filed the MBR tariff application with the Commission, and the power marketer self-reported the violation to Enforcement staff. After the Commission granted the affiliate's application for MBR authority and directed the power marketer to refund the difference between the MBR and a cost-justified rate, the power marketer made the refund payments. Because the power marketer self-reported the violation, the violation was inadvertent, and the power marketer fulfilled its refund obligation, staff closed this self-report without further action.

Tariff/OATT Violation (Electric). A demand response aggregator self-reported that its demand reduction offers for a month would be below its capacity obligations because the related ISO had rejected its bids to shed capacity in the monthly reconfiguration auction due to the aggregator's failure to post sufficient financial assurance. The aggregator had failed to post sufficient financial assurance due to an individual manager's inability to approve a wire transfer. Because the aggregator self-reported the issue, the error was inadvertent, the aggregator sought guidance from the ISO regarding the error, and the aggregator took steps to improve its internal processes, staff closed this self-report without further action.

18 C.F.R. § 35.1/OATT Violation (Electric). A public electric utility failed to properly file with the Commission the depreciation rates used in the development of its wholesale Transmission Formula Rates, which is a violation of 18 C.F.R. § 35.1 and certain provisions of the related ISO's OATT. The utility had erroneously believed that filing its depreciation rates with the relevant state commissions was sufficient. During its preparation for upcoming electric rates cases, the utility's outside counsel noticed the mistake. Upon this discovery, the utility notified Enforcement staff and, after consultation with the FERC Office of Energy Market Regulation, filed with the Commission revisions to the impacted OATT attachments, which the Commission accepted. As the reported violation was inadvertent in nature, promptly reported and remediated, and caused no economic harm, staff closed this self-report without further action.

Regulatory Filing Violation (Failure to File Certain Agreements). A utility self-reported that it had been providing wholesale service to a delivery point without a properly executed service agreement. Upon further investigation, the utility had found two additional service points to which it delivered energy without a properly executed service agreement. The Commission ordered the utility to refund the time value of monies collected for the period the rates were charged without Commission authorization until the FERC effective date of the service agreements. The utility

[29] Revised Policy Statement, 123 FERC ¶ 61,156 at P 25.

complied with these orders and implemented additional internal processes to ensure applications are processed in a timely manner, and that service agreements are executed and filed with the Commission before services are rendered. Because the time value of monies collected during this time were refunded, there was no financial harm to the customer, there was no unjust financial benefit to the utility, and there was no broader harm to the market, staff closed this self-report without further action.

Tariff/OATT Violation (Electric). A utility self-reported its failure to meet certain tariff-mandated deadlines for generator interconnection applications. During a regular review of its applications and status, the utility had discovered four instances of missing the tariff-mandated deadline with the same customer; more particularly, the utility had processed the applications several days after the tariff-mandated deadline. According to the utility, the errors were caused by human error. As the missed deadlines were inadvertent, resulted in minimal harm, and were effectively remedied to mitigate the harm, staff closed the self-report without further action.

Tariff/OATT Violation (Electric). An electric utility self-reported that it failed to comply with the posting requirements of its OATT. The utility had posted incorrect interconnection study metrics on its Open Access Same-Time Information System (OASIS), as well as failed to timely post other such study metrics on OASIS. Given that the interconnection study metrics were corrected, the missing studies were added to OASIS, and the violations did not harm the utility's interconnection customers, staff closed this self-report without further action.

Tariff/OATT Violation (Electric). A utility self-reported that it had failed to upload base case data to a password-protected site as required by its OATT. The data and password-protected site had both been prepared in the spring of 2019, in advance of the effective date of FERC Order No. 845, but due to an employee's error had not been posted. The error was discovered in the fall of 2021 when a transmission customer contacted the utility to request access to the base case data. For approximately a year and a half, the utility had not received any requests for access to the site where the data should have been posted. Upon discovering the error, the utility posted the data as soon as it was compiled and prepared for upload. The utility also implemented process improvements to prevent reoccurrence. Given the inadvertent nature of the event, the lack of any apparent harm to customers or the market, and the utility's proactive mitigation efforts, staff closed this self-report without further action.

Tariff/OATT and Reporting Violations (Electric). An investor-owned utility self-reported several minor errors at two of its generating units. The self-report covered eight errors in NERC's Generating Availability Data System (GADS) reporting system, two miscommunications during low-load testing events, and a small number of outages/derates entered into the New York Independent System Operator (NYISO) iTOA system with inaccurate outage reasons. The issues identified constituted potential violations of NERC's GADS reporting requirements and the NYISO tariff. The utility identified these compliance issues during its review of derate practices at its plants operating in NYISO, which the company undertook in response to Enforcement staff's investigation of another one of its NYISO units. Because the utility had been thorough and transparent in its dealings with staff; the violations did not result in market harm; the conduct consisted of discrete, isolated, short-duration violations; and the utility had implemented compliance measures to address each violation type to prevent recurrence, staff closed this self-report with no further action.

OASIS (Electric and Gas). An electric and natural gas utility self-reported that, due to an error in an administrative setting, for an approximately nine-month period, transmission service reservations for an affiliate submitted on the utility's OASIS were not flagged as affiliate transactions as required by 18 C.F.R. § 37.6(c)(4). Within one day of discovering the issue, the utility corrected the administrative setting for reservations going forward. The utility also manually corrected the previous inaccurate reservations and any long-term postings, included an OASIS notice entry, and added a detective measure to ensure the affiliate would be identified in the future. Because the violation resulted from an inadvertent error in an administrative setting, caused minor harm, and was adequately and quickly remedied once discovered, staff closed the self-report without further action.

Tariff Violation (Gas). A natural gas transportation company self-reported that nearly 200,000 MMBtu of natural gas had flowed across jurisdictional natural gas liquids pipelines without a proper nomination, in violation of the company's tariff. Because the error was inadvertent and isolated in nature, did not cause significant monetary harm, and resulted from a mistake of fact concerning the jurisdiction of the pipeline utilized to transport the natural gas, staff closed this self-report without further action.

Regulatory Violation (Gas). An oil and natural gas company filed a self-report concerning a software glitch involving the Operationally Available Capacity Postings on the Electronic Bulletin Boards for its four interstate natural gas pipelines. The company later filed a supplemental self-report related to two additional, isolated events concerning a software maintenance glitch and the compromise of Domain Administration Credentials, as those events also impacted the Operationally Available Capacity Postings. Soon thereafter, the software and maintenance concerns were resolved, corrective measures were taken to mitigate the recurrence of the problems, and the security concern was reported to the Homeland Security Transportation Safety Administration. Because of the inadvertent and isolated nature of these events, the efforts taken to mitigate the problems, and the fact that these events did not harm the market, staff closed this self-report without further action.

Tariff/OATT Violation (ISOs/RTOs). Multiple ISOs/RTOs self-reported what staff determined upon factual review to be relatively minor violations of their tariffs, resulting from either software or human error. Those errors included: the late transmission of certain settlement statements, as well as the late posting of documents and/or data; failing to properly generate bids in a limited number of circumstances on behalf of resource adequacy resources; incorrectly settling certain categories of exceptional dispatches; using incorrect price inputs in calculating settlement prices; failing to maintain confidentiality of market participant project information; failing to properly calculate market participants' credit requirements under certain conditions; misapplication of dispatch parameters due to software issues; a software error that prevented certain load forecast data from being posted to databases; small over/underpayments and small errors in calculating capacity and reserve values; a delay in reporting net benefits price threshold data; the improper reporting of certain service agreements in EQR filings; failing to maintain certain deadlines for informational filings; and the inclusion or exclusion of costs in a manner inconsistent with the tariff. The ISOs/RTOs also reported certain other potential mistakes in implementing tariff provisions. In all such instances, the violations were inadvertent, resulted in minimal harm, and were promptly and effectively remedied to mitigate the harm and prevent future violations. Accordingly, staff closed these self-reports without further action.

Regulatory Filing Violation (WECC Soft Price Cap). A utility submitted a self-report based upon an extreme weather event which resulted in numerous energy transactions exceeding the $1,000/MWh WECC soft price cap. The utility employees involved with the trades were not aware of the soft price cap or the requirement to file the transactions and the requisite justification request with the Commission. As a result, the utility did not make the required filings, though it did disclose the two trades in excess of the soft cap in its subsequent EQR filings. Based upon the limited nature of the violation and the subsequent fulfillment of the reporting requirements, staff closed the self-report with no further action.

Regulatory Filing Violation (MBR Application). An exempt wholesale generator (EWG) self-reported that it failed to identify a passive, upstream owner in its MBR application. Because the noncompliant behavior was inadvertent, the EWG took corrective measures to mitigate the reoccurrence of the problem, and the error was mooted by intervening circumstances (*i.e.*, the EWG's interest in the passive upstream owner terminated), staff closed this self-report without further action.

Reporting Error (Gas). A company that engages in natural gas and electric marketing and trading self-reported that it had made natural gas reporting errors because it inadvertently omitted next-month transactions reported to an independent provider of price information and market data on days four and five of the natural gas bid-weeks for certain months in late 2021 and early 2022. Because the company did not benefit from the omitted information and the company implemented steps to ensure the accuracy of its natural gas reporting in the future, staff closed this self-report without further action.

Pipeline Certificate Order Violation (Gas). An interstate pipeline self-reported a violation of an environmental condition in its FERC certificate authorizing the installation of a new mainline valve assembly to tie into an existing pipeline. The environmental condition required the pipeline to obtain a written authorization from the Commission's Director of Office of Energy Projects before placing the new facilities into service. The facilities, however, had been placed in service without such requisite written authorization. Staff closed this self-report without further action after determining that the violation had been inadvertent and the installation of the mainline valve assembly posed no problems from either an environmental or landowner perspective.

Qualifying Facility (QF) Violation (Solar). A solar facility self-reported that it had slightly exceeded the 19.92 MW limit in its interconnection agreement during the first six months of its operation due to an incorrect setting that prevented proper communication with the power plant controller. The solar facility also reported that it had filed its FERC Form No. 556 (Certification of QF Status) approximately two weeks late and had made approximately $5,000 in sales during that period. Because the solar facility only slightly exceeded the agreed power output, received *de minimis* profits from its violations, and adequately and quickly remedied the violation once it was discovered, staff closed the self-report without further action.

Regulatory Filing Violation (FERC Form No. 552). A small gas retail marketer self-reported that it had failed to file an accurate FERC Form No. 552 (Annual Report of Natural Gas Transactions) in violation of Section 260.401 of the Commission's regulations. Pursuant to this regulation, unless otherwise exempted, each natural gas market participant, *i.e.*, any buyer or seller that engaged in physical natural gas transactions the previous calendar year, must prepare and file

with the Commission a FERC Form No. 552 addressing its natural gas transactions by May 1 for the previous calendar year. The marketer had failed to submit forms because it was unaware of this requirement. As soon as the violation was identified, senior management worked on identifying and organizing the necessary data so that the outstanding forms could be submitted. The marketer then worked with staff in the appropriate offices to complete submission of the forms. For these reasons, and because the violations resulted in no economic harm, staff closed this self-report without further action.

Violation of Commission Order. A public electric utility exceeded its short-term debt limit in violation of a Commission order setting the utility's short-term debt limit under authority granted to it by FPA Section 204. Upon discovery of the short-term debt limit exceedance, the utility and its parent company brought the utility back into compliance within one business day and promptly notified Enforcement staff. The utility and its parent company also undertook a broad compliance review and implemented new measures to ensure the short-term debt limit would not be exceeded in the future. Because the utility took action to prevent the violation's recurrence, and given that the violation was inadvertent, promptly corrected and reported, and caused no market harm, staff closed this self-report without further action.

FPA Section 203 Violation (Late Filing). A holding company self-reported that it had failed to submit a timely application for Commission approval under FPA Section 203 for secondary stock market acquisitions that had caused it to indirectly hold more than 10 percent of the common stock of another entity. Because the error was inadvertent and the company had instituted new procedures to prevent a recurrence of its failure to make the required Section 203 filing, staff closed the self-report without further action.

FPA Section 205 Violation and Regulatory Violation (Electric). A power marketer acting as a non-transmission owning utility self-reported its failure to timely submit its triennial updated market power analysis, and belatedly filed the same. The company represented that it had been confused as to when the update was due, citing its small size, its status as a first-time MBR holder, and the then-state of the COVID-19 pandemic. The company also stated that (1) it became aware of the error while preparing for a compliance filing and consulted with the Office of Energy Market Regulation, and (2) there had been no relevant changes with respect to its MBR authorization and the missed filing therefore had a minimal effect on the Commission's regulatory scheme. The company also represented that it revised its internal processes regarding regulatory deadlines and filings. For all the foregoing reasons, staff closed this self-report with no further action.

Standards of Conduct Violation (Training). A utility self-reported that it failed to provide FERC-mandated Standards of Conduct training to a new hire within 30 days of the employee's start date. Upon discovering the error, the employee completed the required training within one day. The violation resulted from the process by which the utility's personnel management software identified new hires and assigned trainings. The utility amended this process to include human verification of training assignments for new hires. Given the inadvertent nature of the error, the lack of any apparent harm, and the utility's proactive mitigation efforts, staff closed this self-report without further action.

Standards of Conduct Violation (Independent Functioning Rule). A utility submitted a self-report indicating that it may have violated the Commission's Standards of Conduct, and

specifically the "Independent Functioning Rule," because certain employees in various departments had access to transmission function information. The utility, however, operated under a Commission-authorized waiver of that rule. Enforcement staff inferred that the utility had proactively submitted the self-report to mitigate the chance that the incident may result in the loss of its waiver. Nonetheless, even if the waiver had not been in place, there was no indication to staff that the accessible information was shared between the utility's transmission and marketing employees. Given that the utility promptly took steps to eliminate future access to transmission function information (and thereby avoid a potential violation of the rule were it to apply), staff closed the self-report without further action.

E. Investigations

In FY2022, DOI staff opened 21 new investigations, as compared with 12 investigations opened in FY2021 and six investigations opened in FY2020. These investigations arose from several sources, including referrals by ISO/RTO market monitors and Enforcement's DAS and DAA. In addition to the seven cases closed through settlement, staff closed seven investigations without further action in FY2022, as compared to four closed without further action in FY2021. In addition to closing these investigations during the fiscal year, DOI staff closed five Market Monitoring Unit (MMU) referrals following inquiries into and analyses of the referred conduct and alleged violations. These MMU referrals, discussed in DOI Section F below, were closed without being converted into investigations.

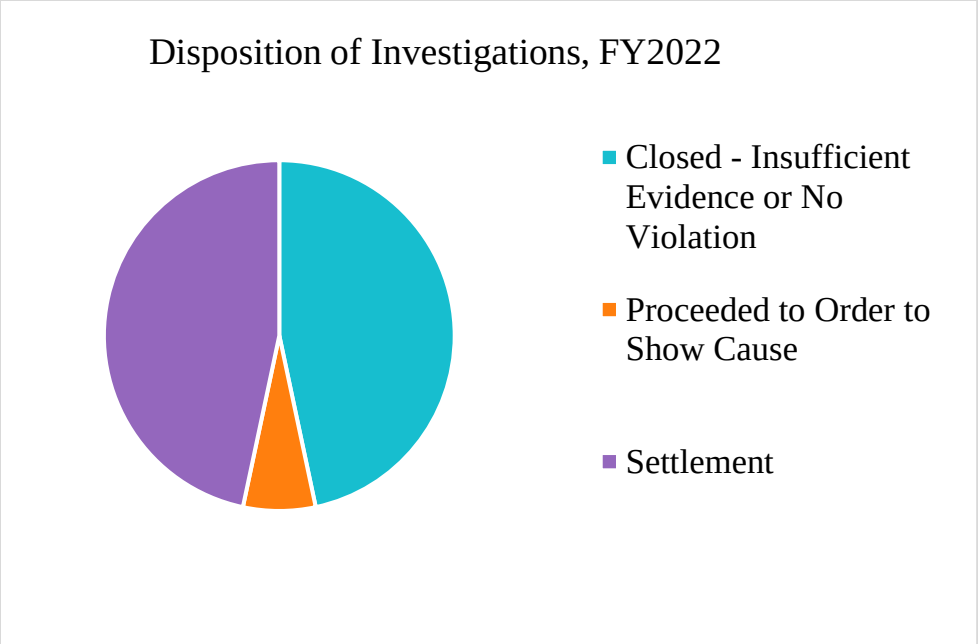
1. Statistics on Investigations

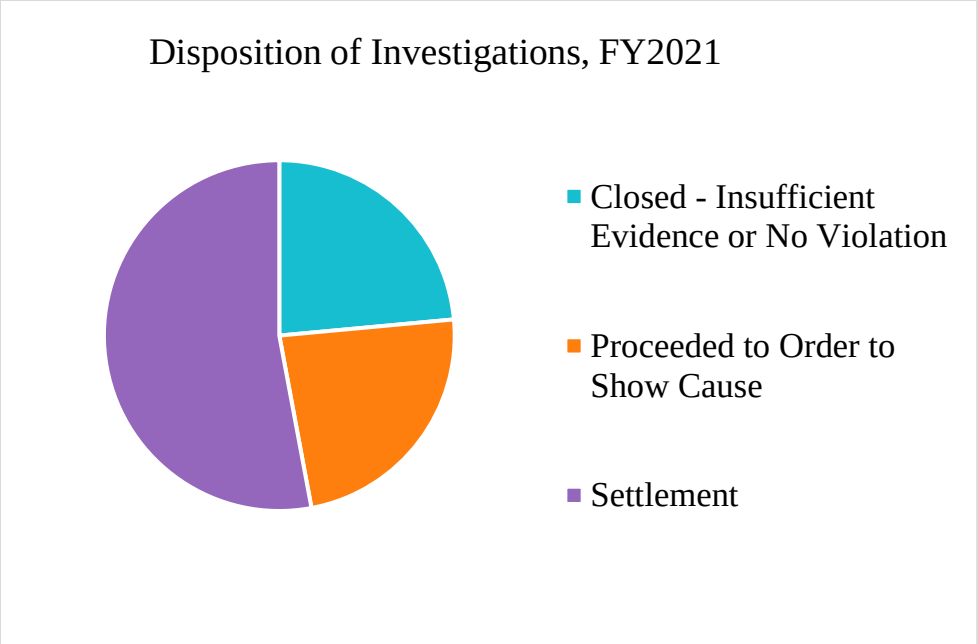
Of the 21 investigations staff opened this fiscal year (some of which involved more than one type of potential violation or multiple subjects), at least 12 involved potential market manipulation, nine involved potential tariff violations, and seven involved potential misrepresentations prohibited by the Commission's Duty of Candor rule. The 21 investigations involved a wide range of additional issues, including NERC's Rules of Procedure, ISO/RTO must-offer requirements, and Section 205 of the FPA.

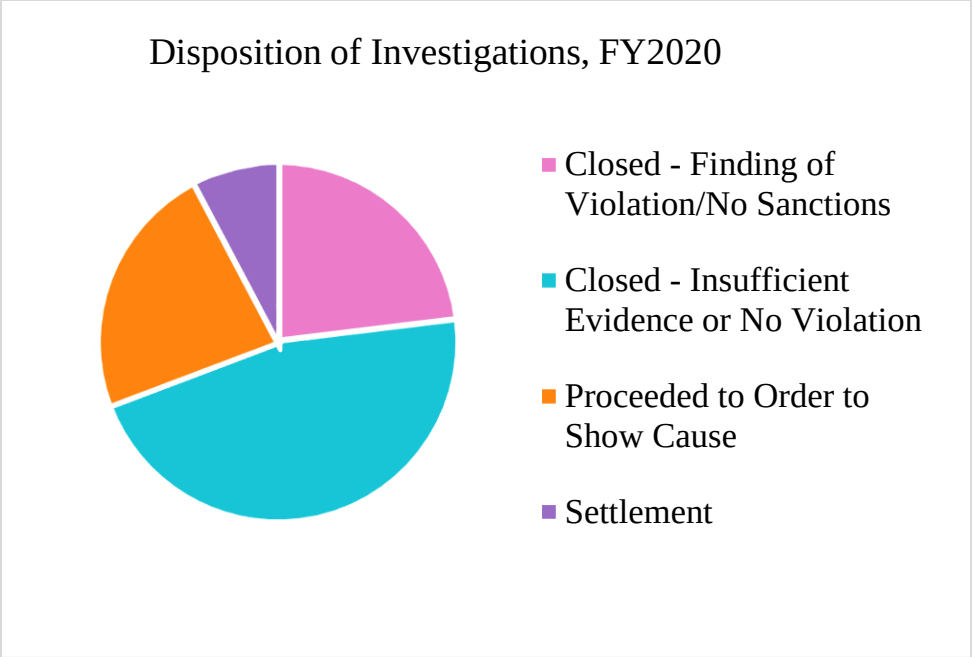
The seven investigations DOI closed in FY2022 were closed because staff found there was either no violation or insufficient evidence to conclude that a violation had occurred.[30] The seven closings were in addition to the seven investigations closed pursuant to settlements that staff reached with subjects. The Commission-approved settlements of these investigations are summarized above in DOI Section C and listed in Appendix B. The investigations closed without further enforcement action are discussed below.

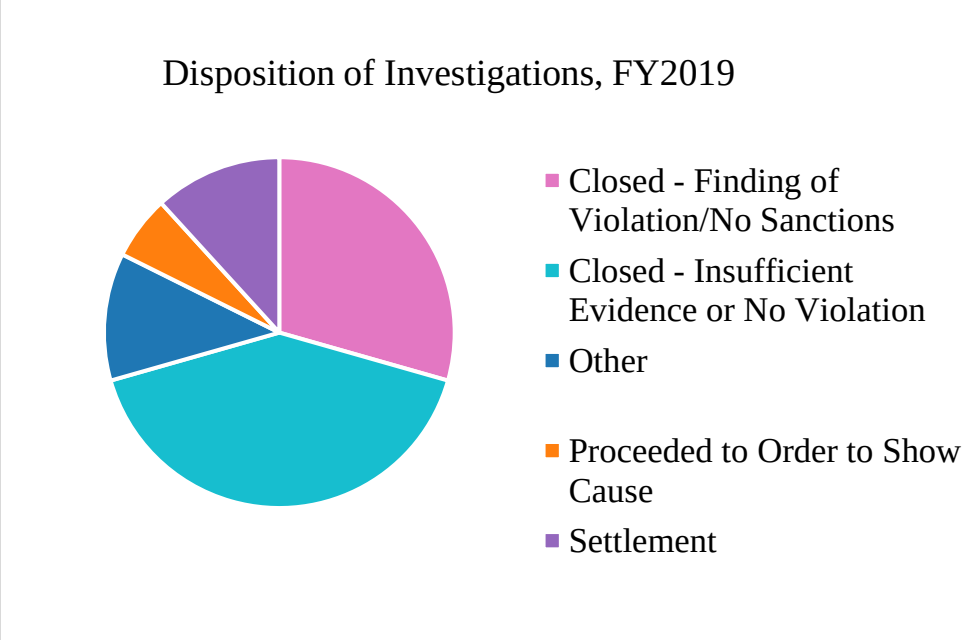
The following charts show the year-by-year disposition of investigations that closed over the past five years (FY2018-2022) and the aggregate disposition of investigations that closed from Fiscal Years 2012 through 2022.

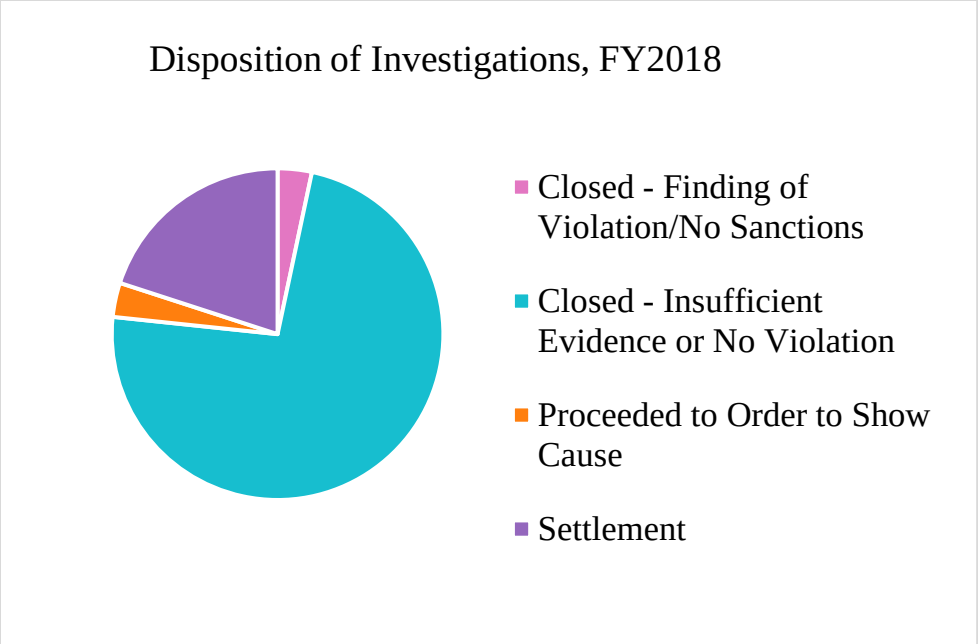
[30] DOI staff terminate an investigation with no further action when they have discovered facts sufficient to determine that a violation of a Commission requirement likely did not occur or cannot be proved or, if one occurred, the matter is not of sufficient gravity to warrant sanctions beyond correction of the violation.

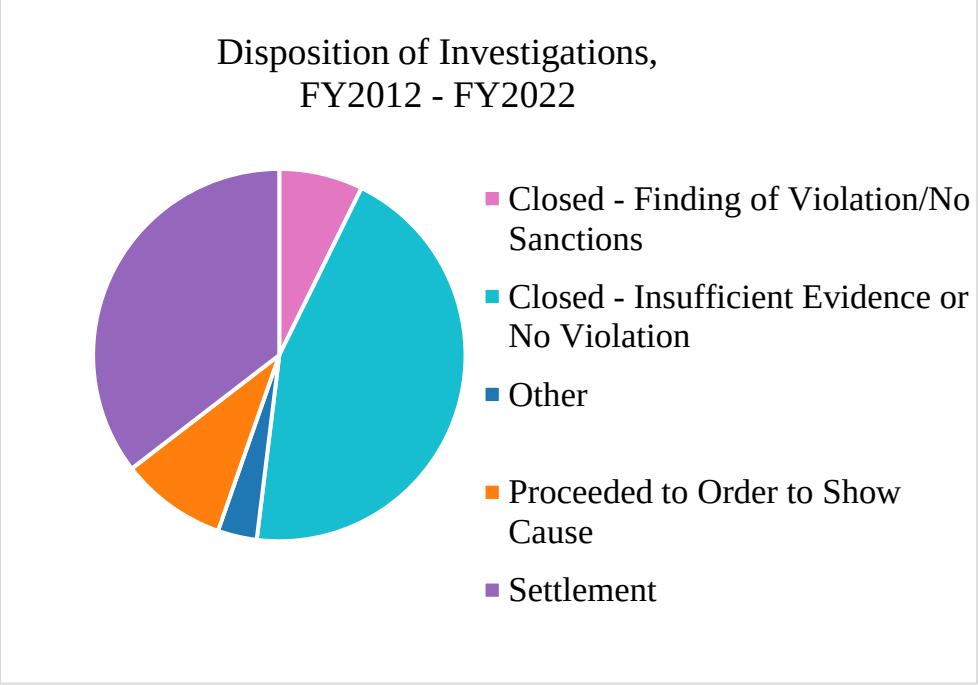

Disposition of Investigations, FY2022
Closed - Insufficient Evidence or No Violation
Proceeded to Order to Show Cause
Settlement


Disposition of Investigations, FY2021
Closed - Insufficient Evidence or No Violation
Proceeded to Order to Show Cause
Settlement

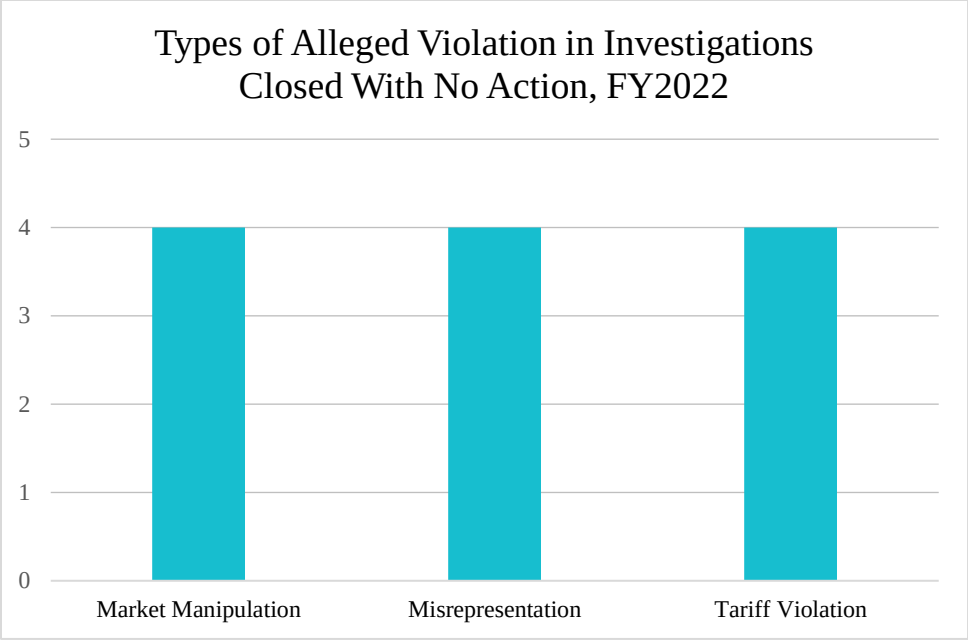

Disposition of Investigations, FY2020
Closed - Finding of Violation/No Sanctions
Closed - Insufficient Evidence or No Violation
Proceeded to Order to Show Cause
Settlement

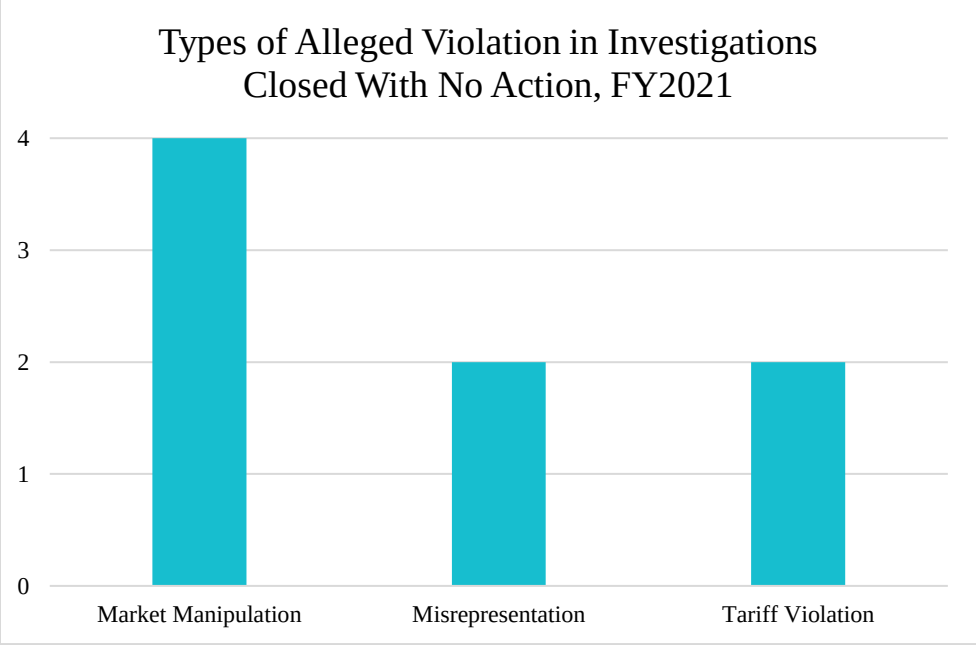

Disposition of Investigations, FY2019
Closed - Finding of Violation/No Sanctions
Closed - Insufficient Evidence or No Violation
Other
Proceeded to Order to Show Cause
Settlement

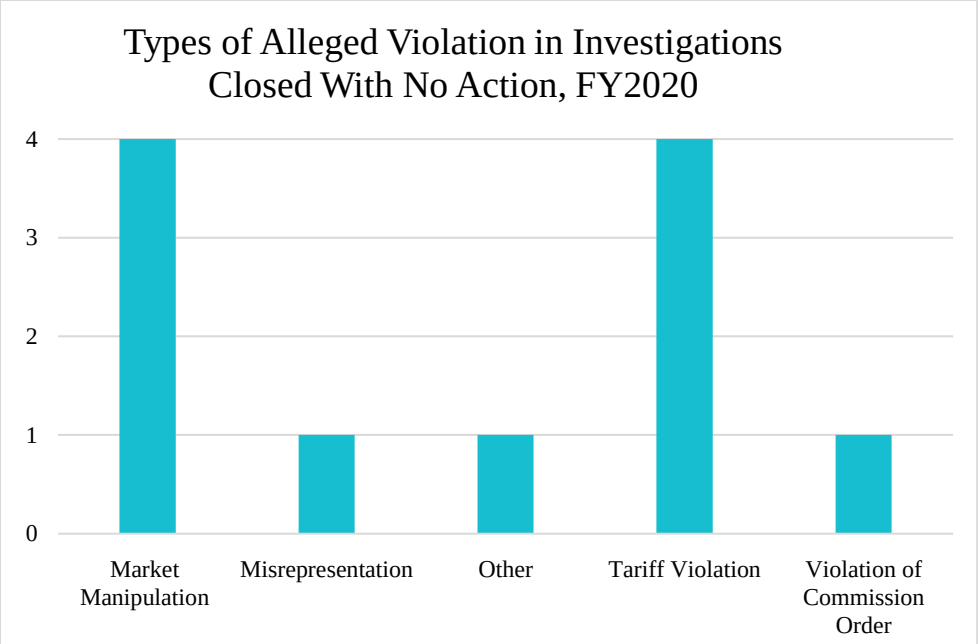


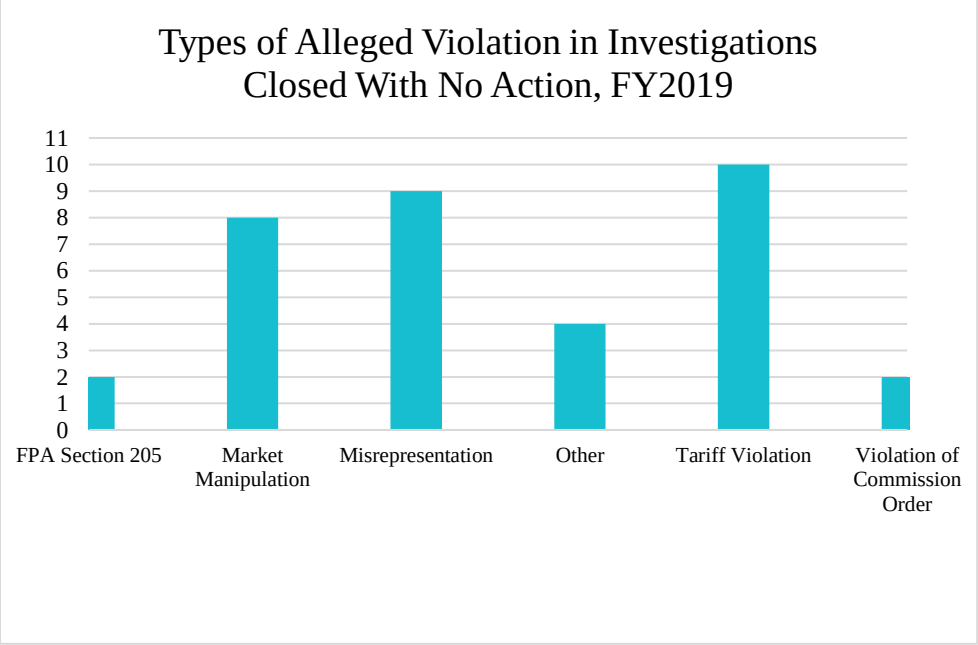


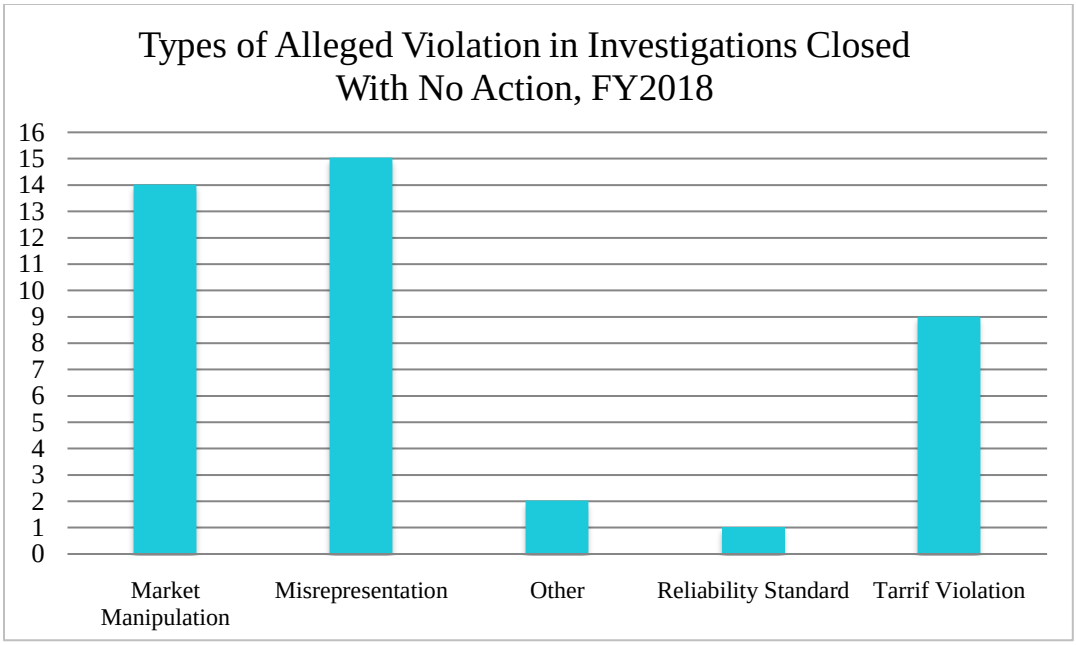
The following charts summarize the nature of the conduct at issue for those investigations that were closed without further action in Fiscal Years 2018-2022. Some investigations included more than one type of alleged violation.


Types of Alleged Violation in Investigations Closed With No Action, FY2022
5
4
3
2
1
0
Market Manipulation
Misrepresentation
Tariff Violation


Types of Alleged Violation in Investigations Closed With No Action, FY2021
4
3
2
1
0
Market Manipulation
Misrepresentation
Tariff Violation


Types of Alleged Violation in Investigations Closed With No Action, FY2020
4
3
2
1
0
Market Manipulation
Misrepresentation
Other
Tariff Violation
Violation of Commission Order


Types of Alleged Violation in Investigations Closed With No Action, FY2019
11
10
9
8
7
6
5
4
3
2
1
0
FPA Section 205
Market Manipulation
Misrepresentation
Other
Tariff Violation
Violation of Commission Order



2. Illustrative Investigations Closed with No Action

The following summaries of investigations that Enforcement closed without action in FY2022 are intended to provide guidance to the public while preserving the non-public nature of DOI's investigations.

Market Manipulation (Electric). Following a referral from PJM's MMU, staff opened an investigation to determine whether a market participant submitted cost-based offers based on a higher-cost fuel type in violation of the PJM Operating Agreement (OA) to avoid market power mitigation and target unjust make-whole payments. As part of the investigation, staff reviewed data request responses and fuel usage and offer data. Staff also conducted multiple interviews with the market participant, PJM, and PJM's MMU regarding offer behavior, fuel cost policy, settlements, and gas procurement. Staff determined that the market participant violated the PJM OA but found insufficient evidence that the violation was part of an intentional market manipulation scheme. Staff also concluded that the violation of the OA did not result in substantial unjust profits and resulted in minimal, if any, market effects. Based on these findings, staff closed the investigation without further action.

Market Manipulation, Tariff Violation, and Misrepresentations Prohibited by Duty of Candor (Electric). Following a referral from the ISO-NE IMM, staff opened an investigation into whether a company violated the ISO-NE tariff, the Commission's Anti-Manipulation Rule, and the Commission's Duty of Candor rule by submitting a static de-list bid with potentially false or misleading cost information as part of one of ISO-NE's forward capacity auctions. Staff determined there was insufficient evidence that the company had submitted false or misleading information based on the company's explanations and contemporaneous documents. As a result, staff closed the investigation without further action.

Market Manipulation (Electric). Following a referral from PJM's MMU, staff opened an investigation into whether a market participant improperly offered certain dual-fuel units in a

manner to target Non-Synchronized Reserve lost opportunity cost (NSRLOC) credits in violation of the Commission's Anti-Manipulation Rule. During the investigation, staff analyzed relevant data and other materials from the participant, PJM's MMU, PJM, and FERC Order No. 760. After completing its analysis, staff determined that the evidence was insufficient to support a conclusion that the participant intended to perpetrate a fraudulent scheme with respect to the receipt of NSRLOC credits and, accordingly, closed the investigation without further action.

Market Manipulation, Tariff Violation, and Misrepresentations Prohibited by Duty of Candor (Electric). Following a referral from DAS, staff open an investigation into whether two companies were violating the MISO tariff, the Commission's Anti-Manipulation Rule, and the Commission's Duty of Candor rule. The companies offered a plant into the MISO capacity market that had been undergoing successive long-term planned outages to upgrade the plant's six generating turbines. Consequently, the companies had received millions of dollars of capacity payments while the units were completely unavailable during all or most of the delivery year. Staff determined there was insufficient evidence that the companies had engaged in market manipulation or submitted misleading information to MISO, as the MISO tariff permitted units expected to be on long-term outage during the Planning Year to participate in the capacity markets and to receive capacity payments. Additionally, the companies openly communicated with both MISO and MISO's MMU about the status of the upgrade project, which included seeking advice from MISO and MISO's MMU regarding whether the units should be offered during upgrades and the consequences for withholding capacity from the capacity market. Further, the Commission approved revisions to the applicable tariff provisions, which limited the ability of resources to participate in the capacity auction in certain circumstances. For these reasons, staff closed the investigation without further action.

Market Manipulation, Tariff Violation, and Market Behavior Rules Violation (Electric). Following a referral from DAS, staff opened an investigation into whether a market participant misrepresented the availability of one of its cogenerators to NYISO and incorrectly reported certain derates of the facility to maximize its capacity sales, in violation of the NYISO tariff, the Commission's market behavior rules, and the Commission's Anti-Manipulation Rule. Upon investigation, staff determined that: (1) the market participant had not intentionally misrepresented the cogenerator's availability to NYISO; (2) the market participant had entered into a settlement with NYISO, which addressed the ambient derates that were the subject of staff's investigation; and (3) the market participant had implemented several compliance measures to address the root causes of the winter ambient derates evaluated by staff to prevent their reoccurrence at the cogenerator or the market participant's other generating units. For these reasons, staff closed the investigation without further action.

F. MMU Referrals

ISO and RTO MMUs perform a critical function surveilling organized electric markets to detect potential violations, including market manipulation, anticompetitive behavior, and tariff noncompliance. As the Commission has recognized, "effective market monitoring requires close collaboration between the [MMUs], ISOs, RTOs, and [Enforcement]."[31] This collaboration occurs

[31] *Southwest Power Pool, Inc.*, 137 FERC ¶ 61,046, at P 20 (2011).

formally, through certain reporting requirements set forth in Commission regulations, as well as informally, through regular dialogue with Enforcement. Both types of collaboration facilitate a high level of situational awareness among Enforcement staff and ensure a robust knowledge base for investigations. In an effort to promote transparency and provide guidance to regulated entities and MMUs, this Section highlights the MMUs' functions, describes the types of conduct MMUs monitor and refer to Enforcement, and provides illustrative examples of MMU referrals that Enforcement closed in FY2022 as initial inquiries without conversion to an investigation.

By regulation, MMUs are required "to make a non-public referral to the Commission in all instances where the [MMU] has reason to believe that a Market Violation has occurred."[32] This referral requirement applies to potential "misconduct by the ISO or RTO, as well as by a market participant."[33] The Commission has not prescribed a specific level of detail or length for referrals. However, they must be: (1) non-public, (2) in writing, and (3) addressed to the head of Enforcement with copies to the heads of OEMR and the Office of General Counsel (OGC).[34] In addition, they must include: (1) "sufficient credible information to warrant further investigation by the Commission;" (2) the names and contact information for suspected violators; (3) the dates of the alleged violations and whether the behavior is ongoing; (4) the rule, regulation, or tariff provisions allegedly violated; (5) the specific conduct that allegedly constitutes the violation; (6) the consequences to the market; (7) if the referral includes allegations of manipulation, a description of the alleged manipulative effect; and (8) any other information the MMU wishes to include.[35] There is also a continuing obligation to update referrals with any information the MMU learns that is "related to the referral."[36] After receiving a referral, Enforcement conducts an inquiry into the alleged conduct and determines whether to open a full investigation.

To help facilitate these regulatory requirements, Enforcement assigns staff to serve as liaisons with the MMUs for each ISO or RTO as well as with the ISO and RTO itself. MMUs refer a wide range of potential violations – both in terms of type and seriousness. Examples of referrals illustrating this broad range include: (1) referral of CPower for potential violations of the ISO-NE tariff related to CPower's alleged failure to offer the MWs required by ISO-NE tariff provisions

[32] 18 C.F.R. § 35.28(g)(3)(iv)(A) (2022). A Market Violation is a violation of a tariff, Commission order, rule or regulation, market manipulation, or inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies. *Id.* § 35.28(b)(8).

[33] *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 125 FERC ¶ 61,071, at P 311 (2008).

[34] 18 C.F.R. §§ 35.28(g)(3)(iv)(B)-(C).

[35] *Id.* § 35.28(g)(3)(iv)(D).

[36] *Id.* § 35.28(g)(3)(iv)(E). Separate and apart from this referral requirement, MMUs also must "[i]dentify and notify [Enforcement] of instances in which a market participant's or [ISO's/RTO's] behavior may require investigation, including, but not limited to, suspected Market Violations." 18 C.F.R. § 35.28(g)(3)(ii)(C). These notifications are more informal, can be made orally or in writing, and do not require the documentation involved in a referral.

governing its participation in the ISO-NE energy market (discussed *supra*);[37] (2) referral of CNE for potential violations of the Commission's market behavior regulations and the CAISO tariff related to CNE's alleged failure to purchase capacity in support of its RA-related imports (discussed *supra*);[38] and (3) referral of ISO-NE and Footprint related to capacity payments Footprint received for the New Salem Harbor Generating Station project that had not yet been constructed or started commercial operation (discussed *supra*).[39]

1. Statistics on MMU Referrals

In FY2022, staff received 18 new MMU referrals. Of these referrals (some of which involved more than one type of violation or multiple subjects), 14 involved potential market manipulation, at least 10 involved potential tariff violations, and seven involved potential misrepresentations prohibited by the Commission's Duty of Candor rule. Ten of these MMU referrals were the sources for investigations opened this fiscal year. Of the MMU referrals received in FY2022, five remained pending as inquiries at the end of the fiscal year.

DOI staff elected not to open full investigations of three MMU referrals in FY2022, all of which were carried over from the prior fiscal years. These referrals were analyzed and closed as inquiries. These three referrals, which involve potential tariff violations, were closed without further action because staff concluded that there was either no violation or insufficient evidence of a violation. Two other MMU referrals, which involved potential violations of the Commission's market behavior regulations, were merged into an already-existing investigation and thus were not treated as separate matters.

2. Illustrative MMU Referrals Closed with No Action

Enforcement presents the following illustrative summaries of MMU referral inquiries that DOI staff closed in FY2022 without conversion to an investigation. In determining whether to open an investigation based on an MMU referral, staff considers the factors set forth in the Commission's Revised Policy Statement on Enforcement.[40] The illustrative summaries below are intended to provide guidance to the public and to regulated entities as to why staff chose not to pursue an investigation or enforcement action, while preserving the non-public nature of the MMU referral.

[37] *Enerwise Global Technologies, LLC d/b/a CPower*, 180 FERC ¶ 61,126 (2022) (approving settlement agreement that included a $2,539,372 civil penalty and $2,460,628 in disgorgement in which the company stipulated to the facts, but neither admitted nor denied the violations).

[38] *Constellation NewEnergy, Inc.*, 178 FERC ¶ 61,231 (2022) (approving settlement agreement that included a $2,400,000 civil penalty and $2,300,000 in disgorgement in which the company stipulated to the facts, but neither admitted nor denied the violations).

[39] *Salem Harbor Power Development LP*, 179 FERC ¶ 61,228 (2022); *ISO-New England, Inc.*, 180 FERC ¶ 61,223 (2022).

[40] Revised Policy Statement, 123 FERC ¶ 61,156 at P 25.

Potential Tariff Violation. Following two referrals from MISO's MMU, staff analyzed whether certain generators violated Section 69A.3 of the MISO tariff by relying on capacity in their Planning Resource Auction (PRA) and Fixed Resource Adequacy Plan (FRAP) offers for units that should reasonably have been expected to be unavailable. MISO tariff Section 69A.3 limits the ability of resources to participate in the PRA or be included in a FRAP if the resources expect full or partial outages that would last for 90 or more of the first 120 Calendar Days in a planning year. Following the referral, staff discussed the matter with the generators, MISO, and the MMU and collected documents from the MMU. Staff concluded that the relevant tariff provision did not require generators to evaluate their planned or historical outages in advance of the PRA (or FRAP). Moreover, the obligations outlined in MISO's Business Practice Manuals did not provide standards for market participants to identify expected outages/derates that should result in preclusion of a resource's capacity from the PRA (of a FRAP). For those reasons, staff closed these two MMU referrals without further action.

Potential Tariff Violation. Following a referral from ISO-NE's IMM, staff analyzed whether a generator made false and misleading statements in connection with the submission of static delist bids on behalf of several resources in the ISO's twelfth, thirteenth, and fourteenth Forward Capacity Auctions. Following the referral, staff opened an inquiry, and gathered information from the company and the IMM. Staff determined that an investigation was not necessary because the information available supported the company's contention that its statements were neither false nor misleading. Thus, staff closed this referral without further action.

G. Enforcement Hotline

DOI staff fields calls and other inquiries made to the Enforcement Hotline (Hotline).[41] The Hotline is a means for people, anonymously if preferred, to inform Enforcement staff of potential violations of statutes, Commission rules, orders, regulations, and tariff provisions. When staff receives information concerning possible violations, such as allegations of market manipulation, abuse of an affiliate relationship, or violation of a tariff or order, staff researches the issue presented and often consults other members of the Commission's staff with expertise in the subject matter of the inquiry. In some cases, Hotline communications lead to the opening of investigations by DOI.

In FY2022, Enforcement received 240 Hotline calls and inquiries, 226 of which promptly were resolved within the fiscal year either through advice provided by staff, because the caller stopped responding to staff's communications, or because the matter was already pending before the Commission and so staff could not discuss it with the caller. Staff also closed 10 Hotline matters that had been pending from the previous year. Of the Hotline calls received in FY2022, 14 remained pending at the end of the fiscal year.

Every year, a significant percentage of the Hotline calls and inquiries relate to subjects outside of the Commission's jurisdiction or contested matters pending before the Commission. DOI staff resolves these matters by advising the callers where they may find the information they need or,

[41] *See* 18 C.F.R. § 1b.21 (2022).

consistent with the rules governing contested proceedings, directing them to the appropriate Commission office or docketed proceeding.

H. Other Matters

In addition to its investigative work, DOI staff worked on other important matters in FY2022, including:

Collaboration with Other Commission Offices. DOI staff regularly coordinates with other Commission program offices regarding potential enforcement matters or enforcement-related policies and procedures. This includes working closely with the Office of Energy Projects (OEP) and OGC on pipeline certificate and hydroelectric licensing matters to ensure compliance with statutory and regulatory obligations, as well as the terms and conditions of pipeline certificates and hydroelectric licenses and exemptions. DOI staff works with OGC, OEMR, and OEPI on various matters that arise under the FPA, including requests and approvals related to Sections 203 and 205. DOI Staff works with OEPI and the Division of Audits and Accounting (DAA) on issues related to forms and EQRs. In addition, DOI staff also coordinates with OEMR on evaluating refunds resulting from an electric utility's failure to have rates on file or appropriate Qualifying Facility (QF) certification. OGC and OEMR regularly consult with DOI staff when a QF submits a request for a declaratory order and/or a request for waivers of various provisions of Part 292 of the Commission's regulations related to small power production and cogeneration under the Public Utility Regulatory Policies Act. Regulated entities can submit questions to the Compliance Help Desk to reduce their risk of subsequent findings of noncompliance and potential enforcement actions. Finally, OGC and OEMR confer with DOI staff for prefiling meetings and/or regarding requests involving the Standards of Conduct under Order No. 717 or Affiliate Restrictions under Order No. 697.

Hydropower Compliance. OEP's Division of Hydropower Administration and Compliance (DHAC) has authority over hydropower compliance matters until such matters are referred to Enforcement. DOI staff discussed potential dam safety and other violations with DHAC during FY2022.

No-Action Letters. Enforcement is one of several offices within the Commission that is jointly responsible for processing requests seeking a determination whether staff would recommend enforcement action against the requestor if it pursued particular transactions or practices. The "No-Action Letter" can be a useful tool for entities subject to the Commission's authority to reduce the risk of failing to comply with the statutes the Commission administers, the orders, rules or regulations thereunder, or Commission-approved tariffs.[42] Commission staff is generally available to confer on a pre-filing basis for possible "No-Action Letter" requests.[43]

Reliability Coordinator. As part of its cooperation with other program offices, Enforcement has a designated Reliability Coordinator who is a member of DOI staff. In addition to serving a

[42] *See Interpretive Order Modifying No-Action Letter Process and Reviewing Other Mechanisms for Obtaining Guidance*, 123 FERC ¶ 61,157 (2008).

[43] Additional details about the Commission's No-Action Letter process are available at https://www.ferc/gov/enforcement-legal/enforcement/no-action-letters.

leadership role in inquiries or investigations involving reliability of the Bulk-Power System, the Reliability Coordinator serves as a team member on reliability-related matters including NERC and Regional Entity filings (e.g., Notices of Penalty, changes to NERC Rules, amending or retiring Reliability Standards, NERC Five-Year Assessments, and similar periodic filings). Enforcement's Reliability Coordinator also makes presentations to NERC and at Regional Entity meetings, such as those of the Member Representative, Operating, and Planning Committees.

DIVISION OF AUDITS AND ACCOUNTING

A. Overview

The Division of Audits and Accounting (DAA) administers Enforcement's audit, accounting, and forms administration and compliance programs to support the Commission's mission to assist consumers in obtaining reliable and efficient energy service, at a reasonable cost, through appropriate regulatory and market means. DAA's primary goal in conducting its audit, accounting, and forms administration and compliance activities is to enable the Commission to achieve its strategic objectives by assisting in the development of just and reasonable rates and providing knowledge and awareness of, and increasing compliance with, the Commission's regulations and policies.

DAA's audit program supports the Commission's strategic objectives through public risk-based audits. DAA performs various types of audits that respond to the needs of the Commission, public, and industry, and advises the Commission on often complex compliance and other matters. The audit program serves as a resource for the Commission to examine risk areas within the regulated industries and inform the Commission's actions regarding rates, regulatory accounting, tariffs, financial and operational transparency, policy initiatives, law, reliability, and other areas in the electric, natural gas, and oil industries. DAA audits also provide jurisdictional entities an opportunity to work with DAA to evaluate and improve their overall compliance, identify potential areas of noncompliance before they escalate, and facilitate stronger compliance programs. DAA's publicly issued audit commencement letters and audit reports provide valuable guidance and insight into areas of emphasis and concern involving industries regulated by the Commission.

DAA's accounting program is a vital component of the Commission's strategic goal of establishing just and reasonable cost of service rates, terms, and conditions by: (1) overseeing the accounting and reporting of financial information affecting cost of service rates; (2) acting as the focal point for interpretive guidance concerning the Commission's financial accounting and reporting rules, orders, regulations, and statutes; and (3) advising the Commission and industry on accounting and other financial issues. The accounting program facilitates the consistent reporting of financial information and ensures that a regulated entity's operations are reported in a manner that most appropriately supports ratemaking analysis. DAA's accounting program also provides accounting expertise to the Commission's other program offices and assists in the development of Commission policies and proposed rulemakings to ensure these initiatives properly consider and evaluate the related accounting and financial issues.

DAA's forms administration and compliance program supports the Commission's responsibility to ensure just and reasonable rates, terms, and conditions for consumers. DAA

administers, analyzes, and ensures compliance with the filing requirements of EQRs and various Commission forms. The EQRs and Commission forms provide valuable information to the public, external shareholders, and the Commission and support the development of regulatory strategies that focus on the competitiveness and efficiency of wholesale energy markets. DAA conducts outreach to and communication with the public regarding these compliance programs, with the goal of ensuring that all parties comply with the Commission's filing requirements.

B. Outreach and Guidance

DAA's programs, through their outreach and guidance, inform the industry, the public, and others about what constitutes effective compliance, accountability, and transparency. The goal of DAA's outreach is to provide jurisdictional entities with ample opportunity to achieve compliance and avoid noncompliance that may result in harm to jurisdictional customers and energy markets. DAA regularly hosts EQR user group meetings to conduct outreach with the filing community. DAA also actively engages in regular outreach activities with industry trade associations, such as the Edison Electric Institute (EEI), Interstate Natural Gas Association of America (INGAA), Liquid Energy Pipeline Association (LEPA) (formerly the Association of Oil Pipe Lines (AOPL)), and Natural Gas Supply Association (NGSA), and encourages interested parties to contact DAA with any inquiries or concerns. As a result of these interactions, DAA considers opportunities to enhance the efficiency, transparency, and effectiveness of its audit, accounting, and forms administration and compliance programs. DAA also engages with state regulators, including through outreach activities with NARUC, and with the public accounting firms that audit and certify jurisdictional entities' financial reports. Such outreach contributes to DAA's analysis of accounting, financial reporting, and market trends affecting jurisdictional entities and issuances of accounting guidance by the Chief Accountant.

DAA also continues to provide formal accounting guidance in response to accounting requests filed with the Commission. Informal accounting guidance may be requested and obtained from DAA via email (accountinginquiries@ferc.gov) and phone ((202) 502-8877). Informal guidance on issues related to the FERC financial forms may be obtained from DAA via email: Form1@ferc.gov (Forms 1, 1-F, and 3-Q (electric)); Form2@ferc.gov (Forms 2, 2A, and 3-Q (gas)); Form6@ferc.gov (Forms 6 and 6-Q (oil)); and Form60@ferc.gov (Form 60 (service companies)). Informal guidance on issues related to the EQR may be obtained from DAA via email (eqr@ferc.gov) and phone ((202)-502-8076). Informal guidance on all other compliance matters may be obtained through the Compliance Help Desk.[44]

C. Compliance

1. Compliance Programs

It is imperative that companies establish and maintain effective compliance programs. Such programs should foster a culture of compliance that begins at the executive level and permeates throughout the organization. Effective compliance programs increase the likelihood that

[44] Information about the Commission's Compliance Help Desk is available at https://www.ferc.gov/about/contact-us/compliance-help-desk.

jurisdictional companies will understand and follow the Commission's rules, regulations, and orders, as well as their own tariff provisions, both in letter and spirit. However, since each company is unique in terms of size, region, organizational structure, and other relevant characteristics, no two compliance programs are alike. Each company must tailor its program to the specific challenges it faces. Notwithstanding these differences, DAA has found that the strongest compliance programs include:

- A proactive program that:
    - Equips staff and management with sufficient training, education, tools, and other resources, such as well-publicized policies and procedures, to detect issues in a timely manner and to correct or prevent noncompliance;
    - Stays abreast of compliance trends by reviewing Commission orders and audit reports and evolves based on these trends and other developments in the industry.
- The active involvement of senior management to emphasize the importance of compliance and the allocation of funds necessary to maintain a robust compliance program.
- A designated compliance officer and compliance committee, charged with development and oversight of compliance activities and metrics, that assess program effectiveness.
- The active involvement of internal audit and monitoring functions to routinely assess compliance with tariff provisions and Commission rules, orders, and regulations, to foster a strong and sustainable culture of commitment to compliance on an enterprise-wide basis.
- A policy and culture of seeking guidance from the Commission as necessary to ensure compliance, including an effective process to self-report noncompliance identified through internal oversight activities.

DAA appreciates the time, effort, and cooperation that each company puts forth during an audit. A company's willingness to proactively assist DAA not only demonstrates its commitment to compliance but can reduce the time it takes to complete an audit.

2. Timely Remedy of Noncompliance

Equally important to a robust compliance program is the timely remedy of noncompliance. Although an effective compliance program will often prevent noncompliance with Commission rules, regulations, and orders, any instances of noncompliance should be addressed immediately. Timely implementation of audit recommendations helps maximize their impact, demonstrates commitment to compliance, and supports fair, competitive markets. DAA tracks every audit recommendation it makes and works with each company until all recommendations have been fully implemented. The completion of this implementation phase is communicated by the Chief Accountant to the regulated entity in each audit. Further, the Commission's FY2022-2026 Strategic Plan encourages strong compliance programs and places emphasis on timely implementation of corrective actions within six months of audit completion.[45] In FY2022, 99 percent of DAA's audit recommendations were implemented within six months.

[45] *See* Strategic Plan, *supra* note 3, at 28 (Objective 1.2: Promote compliance with FERC rules).

3. Compliance Alerts

DAA continues to observe certain areas in which compliance has been problematic for some entities. DAA believes that highlighting these areas for jurisdictional entities and their corporate officials here will increase awareness of these concerns and facilitate compliance efforts. The topics presented below represent areas where DAA has found recurring compliance concerns or noncompliance of significant impact over the past five years. DAA believes that greater attention in these areas will enable jurisdictional entities, including entities that have not yet been audited, to prevent noncompliance, thereby avoiding potential enforcement actions. To assist jurisdictional entities in gaining a better understanding of particular areas of noncompliance, docket number(s) for one or more recent audit reports or Commission orders are provided in the discussions below.

ELECTRIC INDUSTRY

Allocated Labor. Companies have charged labor and labor-related costs to construction projects without using an appropriate cost allocation method or time tracking process to ensure capitalized labor costs have a definite relation to construction. Specifically, DAA has observed that allocation methods were not properly designed, nor were the allocation results sufficiently monitored to ensure that costs charged were appropriately allocated to capital projects when employees: (1) performed activities that only supported the operations of the existing infrastructure; (2) spent a portion of their time performing construction-related activities and a portion on other jurisdictional activities; or (3) performed activities supporting both jurisdictional and non-jurisdictional activities (FA20-9-000, FA20-6-000, FA19-3-000, FA19-1-000).

Allowance for Funds Used During Construction (AFUDC). Recent audit activity has shown deficiencies in how jurisdictional entities have calculated AFUDC, resulting in excessive accruals. Short-term debt is regarded as the first source of funding construction activities in the AFUDC calculation, and the short-term debt rate is derived using an estimate of the cost of short-term debt for the current year. DAA has found instances where a company used commitment fees associated with lines of credit in the calculation of the short-term or the long-term debt rate. Under Order No. 561, Commission approval is required to include such fees as part of the AFUDC short-term or long-term debt rate. Moreover, when a credit facility is established to create liquidity for the company's general purpose needs, the associated commitment fees resemble a banking charge to support a company's utility operations as a whole, and the commitment fees should be excluded when calculating AFUDC (FA20-7-000, FA19-3-000, PA18-2-000).

Other common findings related to AFUDC audits and decisions include:

- Improper exclusion of certain short-term debt or long-term debt amounts from the AFUDC rate calculation (FA20-3-000, FA20-1-000);
- Computing AFUDC on contract retention and other noncash accruals (FA20-7-000, FA19-3-000);
- Improperly using monthly equity and long-term debt balances instead of prior-year-end balances in computing the AFUDC rate (FA21-4-000, FA20-7-000);

- Improperly using fiscal year-end book balances for long-term debt and common equity amounts when computing the AFUDC rate, rather than the calendar year-end balances reported in FERC Form No. 1 (FA20-3-000);
- Improperly including Account 216.1, Unappropriated Undistributed Subsidiary Earnings, and Account 219, Accumulated Other Comprehensive Income, balances as part of the equity component of the AFUDC formula (FA20-9-000, FA20-3-000, FA20-1-000, FA19-1-000);
- Improperly accruing AFUDC on inactive or suspended construction projects (FA21-4-000, FA20-1-000);
- Improper inclusion in the short-term debt rate of interest recorded on transmission and interconnection study advances received from customers (PA18-1-000); and
- Improperly compounding AFUDC on a monthly basis rather than a semi-annual basis (FA21-4-000, FA20-7-000).

Formula Rate Matters. A focal point of DAA's formula rate audits continues to be compliance with the Commission's accounting and FERC Form No. 1 (Annual Report of Major Electric Utilities, Licensees and Others) requirements for costs that are included in formula rate recovery mechanisms used to determine billings to wholesale customers. DAA notes that certain areas of noncompliance could have been prevented with more effective coordination between jurisdictional entities' accounting and rate staffs to prevent the recovery of costs that should have been excluded from the formula rate. Additionally, formula rate audits in recent years have identified patterns of noncompliance in the following areas:

- Revenue Credits – Public utilities understated the revenue credits that were used to reduce the revenue requirements of their transmission formula rates by improperly excluding certain transmission-related revenues. These revenue credits may be related to pole attachment revenue or rental revenue, among other items (FA20-9-000, FA20-3-000, FA17-2-000, FA18-3-000).

- Income Tax Overpayments – Public utilities have incorrectly recorded in Account 165, Prepayments, income tax overpayments for which they elected to receive a refund and not have such overpayments applied to a future tax year's obligation. This has led to excess recoveries through formula rate billings. These costs are properly recorded in Account 146, Accounts Receivable from Associated Companies, or Account 143, Other Accounts Receivable, as appropriate (FA21-4-000, FA20-9-000, FA19-8-000).

- Excess Accumulated Deferred Income Taxes (ADIT) – To address the tax effects of the Tax Cuts and Jobs Act of 2017 (TCJA), public utilities were required to adjust ADIT balances to reflect the change in the effective corporate tax rate from 35 percent to 21 percent. Audit staff found instances where utilities did not properly record excess ADIT related to the TCJA. Additionally, under certain formula rate tariffs, public utilities were required to neutralize the rate base impacts of these TCJA adjustments to ADIT balances. Audit staff found instances where utilities removed balances from the ADIT accounts but did not make the necessary adjustments to keep rate base neutral. This led to rate base

being overstated and wholesale transmission customers being overbilled. Further, audit staff found instances where utilities improperly netted the excess and deficient ADIT related to the TCJA and recorded the amount that resulted from the improper netting in Account 254, Other Regulatory Liabilities (FA20-9-000, FA20-3-000, FA18-3-000).

- Internal Merger Costs – Public utilities have included merger-related transaction costs in operating expense accounts, contrary to the long-standing Commission policy that such costs be recorded in non-operating expense accounts. This accounting resulted in companies misrepresenting utility operating income and expenses reported in their FERC Form No. 1 filings. In addition, public utilities subject to hold-harmless commitments have incorrectly recovered merger-related transaction and transition costs, including internal labor costs, in rates. Public utilities should obtain Commission approval to recover such costs and otherwise should have appropriate controls and procedures to ensure that the costs are tracked and excluded from formula rates (FA21-6-000, PA20-2-000, FA19-8-000, PA18-3-000, FA18-3-000).

- Asset Retirement Obligations (ARO) – Public utilities included ARO amounts in formula rates without explicit Commission approval, including the asset component that increases rate base, the depreciation expense related to the asset, and the accretion expense related to the liability (PA18-2-000, PA18-1-000).

- Regulatory Assets – Public utilities included amortized regulatory assets in formula rate calculations without first obtaining the required Commission approval for recovery of the regulatory asset (PA20-2-000, PA18-3-000).

- Administrative and General (A&G) Expenses – Most audits find that public utilities recorded non-operating expenses and functional operating and maintenance expenses in A&G expense accounts, leading to inappropriate inclusion of such costs in revenue requirements produced by their formula rates. Examples of these costs include: employment discrimination settlement payments, lobbying expenses, charitable contributions, storm damage to distribution systems, and payments of penalties (FA21-6-000, FA21-4-000, FA20-7-000, FA20-6-000, FA19-8-000, FA19-1-000).

- Electric Vehicle (EV) Charging Stations – Public utilities included EV charging stations as part of general plant, even though the EV charging stations serve a distribution function (FA19-3-000).

Transmission Rate Incentives. The Commission has granted many public utilities transmission incentive rate treatments as a means of promoting and developing a more efficient and robust transmission system. Recent audit activity has found that effective procedures and controls were lacking to ensure full compliance with the conditions of Commission orders approving transmission incentive rate treatments. Projects that did not qualify for the transmission incentive to include construction work in progress (CWIP) in rate base were inappropriately including it. DAA believes more robust procedures and controls to ensure compliance with the application of transmission incentive rate treatments could have prevented noncompliance in this area (FA20-2-000, FA16-1-000).

Open Access Transmission Tariffs. An essential goal of open access is to support efficient and competitive markets.[46] On recent OATT audits, DAA noted instances where company actions did not support this goal due to noncompliance with OATT terms and conditions. Specifically, DAA identified issues relating to transmission function employees procuring transmission service at the request of marketing function employees in violation of the independent functioning requirement[47] (PA18-1-000); improper use of network transmission service and secondary network transmission service (PA18-1-000, PA18-2-000); improper sales from designated network resources (PA19-3-000, PA17-7-000); inaccurate available transmission capacity or total transfer capability data posted on OASIS (PA20-1-000, PA19-3-000, PA17-7-000); and improper submissions outside of OASIS of the termination of network resources (PA18-1-000) or relating to the provisions of other transmission services (PA20-1-000).

NATURAL GAS INDUSTRY

Comprehensive natural gas pipeline audits have evaluated compliance with the Commission's accounting and financial reporting (FERC Form No. 2, Annual Report of Major Natural Gas Companies) requirements to ensure proper accounting and that transparent, complete, and accurate data is reported for use by all stakeholders in developing and monitoring rates. The audits also covered the administration and application of transportation services and rates among customers in accordance with approved gas tariffs. There have also been past audits with singular audit focuses, such as AFUDC, informational posting websites, capacity release, and more. In recent comprehensive natural gas audits, DAA has found noncompliance in the following areas:

Gas Tariff Provisions. Order No. 636 required that interstate natural gas pipelines maintain a tariff containing provisions regarding their services to effectively manage their systems. DAA audits have identified issues relating to noncompliance with natural gas pipelines' FERC Gas Tariffs, including: (1) improper valuation of certain system gas activities at the wrong cash-out index price rather than the cash-out price prescribed in the valuation methodology in the tariff (FA19-6-000); (2) tariff language that is inconsistent with the Commission's requirement that all interconnecting pipelines enter into Operating Balancing Agreements (OBAs) and inconsistencies with the administration and management of imbalances in accordance with the terms of a pipeline's tariff and standard OBA (PA16-4-000); (3) tariffs that were not updated to fully incorporate the Commission's reservation charge crediting policy[48] for force majeure and non-force majeure events (FA19-9-000, FA18-2-000, PA16-4-000, FA15-1-000); (4) penalty revenues that were collected from offending shippers and not properly refunded to non-offending

[46] *See Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119 (Order No. 890), *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007) (Order No. 890-A), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

[47] *See Standards of Conduct for Transmission Providers*, Order No. 717, 125 FERC ¶ 61,064 (2008), *order on reh'g and clarification*, Order No. 717-A, 129 FERC ¶ 61,043, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

[48] *Natural Gas Supply Ass'n*, 135 FERC ¶ 61,055, *order on reh'g*, 137 FERC ¶ 61,051 (2011).

shippers by the method prescribed in the tariff (FA19-9-000 (Other Matter), FA18-2-000, PA16-4-000); and (5) incomplete details in the tariff to explain a company's methodology used to adjust its company use gas percentage (FA21-1-000 (Other Matter)).

System Gas Accounting. Order No. 581 established the accounting for system gas activities to provide transparency to financial statement users. In recent audits, DAA identified common accounting findings pertaining to system gas accounting. Specifically, DAA identified issues relating to pipelines that improperly: (1) netted shipper imbalance payables and receivables and netted imbalance cash-out settlement losses, rather than accounting for these transactions in the correct accounts (FA19-6-000, FA15-1-000); (2) recorded amounts for lost and unaccounted-for gas and fuel used for underground storage compressor stations in a transmission expense account rather than in production and gas storage expense accounts (FA19-6-000, PA16-4-000, FA15-1-000); and (3) recorded revenues from cash-out sales in a sales for resale account rather than a revenue account. These practices reduced the transparency of the gas activities reported in the FERC Form No. 2 and deprived the financial statement users of the information and the transparency afforded to them by the Commission's regulations.

AFUDC and CWIP. As noted above in the Electric Industry compliance alerts, recent audit activity has shown deficiencies in how jurisdictional entities have calculated AFUDC, resulting in excessive AFUDC accruals above the maximum allowed by the Commission's regulations. Errors relating to natural gas pipelines' determinations of the short-term debt component and capital structure used in AFUDC calculations include: erroneously using the consolidated short-term debt and CWIP book balances of the pipeline's parent entity rather than the regulated pipeline's own book balances; only using a portion of the pipeline's short-term debt borrowed in the month such debt was incurred, rather than the total outstanding short-term debt amount; and using a capital structure and resulting AFUDC rate that exceeded the pipeline's overall rate of return underlying its recourse rates (FA19-6-000, PA16-4-000, FA15-16-000). Errors relating to the equity and long-term debt components include adding a pipeline's subsidiary's undistributed earnings and adding accumulated other comprehensive income (particularly unrealized gains and losses) to the equity component, which is contrary to Commission policy, and including unamortized discounts on long-term debt in the long-term debt component (FA18-2-000). Audits of natural gas pipelines also continue to find errors that directly impact, usually by inflating, the amount of CWIP, which causes excessive AFUDC as well as other negative effects. Such errors involving CWIP have included: allocating overhead costs to construction projects (*i.e.*, CWIP) not based on actual time expended or on representative time studies; including unpaid contract retention accruals in CWIP balances despite that CWIP should include amounts actually paid by the pipeline, not amounts remaining unpaid; and recording as CWIP contributions in aid of construction (CIAC) received from third parties (FA19-9-000, FA17-6-000, FA15-16-000, FA15-1-000).

Affiliate Transactions. Accounting for an affiliate transaction, including a shared service provided by a parent company, is to be in the account that matches the nature of the specific transaction and its associated cost, as required by General Instruction No. 14 in the Uniform System of Accounts, Transactions with Associated Companies. Audits are identifying that some gas companies are recording *all* affiliate transaction costs to a single account (often Account 923 or 930.2), rather than dividing affiliate transaction costs among the appropriate nonoperating, operating and maintenance, or administrative and general accounts based on the differing natures of the affiliate transactions. Recording affiliate transaction costs in a single account results in

incorrect accounting and can lead to recovering nonoperating expenses in cost of service; improper functionalization of operating and maintenance and administrative and general costs; improper rates for costs of service; and undermining the comparability of financial reporting results between one natural gas company and another (FA21-1-000, FA18-2-000).

General Accounting. Other common accounting findings include: (1) improperly classifying as operating expenses the non-operating expenses associated with employment discrimination settlements (FA15-16-000); donations, penalties/fines, and lobbying activities (FA21-1-000, FA19-9-000, FA19-6-000, FA17-6-000, FA15-16-000); and membership dues (FA19-6-000, FA18-2-000); (2) misclassification of costs within general and administrative expenses and operating expenses as general and administrative expenses (FA21-1-000, FA19-9-000, FA18-2-000, PA16-4-000, PA16-2-000); and (3) improperly accounting for replacement of minor items of property as capital expenses (FA18-2-000).

Reporting and Filing. Recent audits have found that some natural gas pipelines did not comply with the financial reporting requirements of the FERC Form No. 2. Reporting was inaccurate or incomplete (required information and footnote disclosures omitted) for various schedules supporting financial reporting (FA21-1-000, FA19-9-000, FA18-2-000, FA17-6-000, PA16-4-000, PA16-2-000, FA15-1-000). Other reporting matters pertained to: (1) unfiled nonconforming service agreements and cash management agreements (FA17-6-000); (2) inaccurate reporting of balances within fuel retainage quantity filings (FA19-9-000, PA16-4-000); (3) failing to file journal entries with the Commission for approval of the sale and purchase of an operating unit or system (FA15-16-000); and (4) failing to make required filings to show the inputs and calculations that support adjustments to company fuel use percentages (FA21-1-000).

OIL INDUSTRY

DAA incorporated oil pipeline audits into the annual audit plan beginning in Fiscal Year 2014. All oil pipeline audits have focused on accounting and financial reporting (FERC Form No. 6, Annual Report of Oil Pipeline Companies) with emphasis on Page 700 (Annual Cost of Service-Based Analysis Schedule) of FERC Form No. 6. Some audits have evaluated compliance with oil pipeline tariffs, specifically, a company's administration and application of transportation services and rates among customers in accordance with approved transportation rates in local and joint tariffs and other charges and procedures within rules, regulations, and tariffs.

An essential part of oil pipeline audits is an examination of the accounting and operating data reported on Page 700 of the FERC Form No. 6. This Schedule requires each oil pipeline company to report its total annual cost of service (as calculated under the Order No. 154-B methodology), operating revenues, and throughput in barrels and barrel-miles for the current and previous reporting year. The amounts reflected on Page 700 represent only interstate service (i.e., Commission-jurisdictional) amounts, while the rest of the FERC Form No. 6 includes both interstate and intrastate amounts. The information reported on Page 700 is used by the Commission and interested parties to evaluate interstate pipeline rates and facilitate the

Commission's review of the five-year index.[49] Oil pipeline audits have identified noncompliance in the following areas:

Carrier and Noncarrier Property. Carrier property represents assets used to provide interstate and intrastate transportation of crude oil and other petroleum products. This includes property that is inactive or not in current use but held for future use within a reasonable time under a definite plan for pipeline operations. Property or assets that are not used in carrier operations or held for future use with a definite plan are considered noncarrier property and, as such, should be excluded from Page 700. Recent audits have found that oil pipelines have misclassified idled property that has no definite plan for future carrier use in Account 30, Carrier Property, rather than Account 34, Noncarrier Property. Related accrued depreciation should have been reclassified from Account 31, Accrued Depreciation-Carrier Property, to Account 35, Accrued Depreciation-Noncarrier Property. Oil pipelines also did not retire carrier and noncarrier property when it was no longer used and useful in carrier operations. These errors resulted in overstated carrier property and depreciation expense, which also overstated rate base and other inputs in the cost of service on Page 700 (FA20-5-000, FA19-10-000, FA19-4-000, FA18-1-000, FA16-7-000, FA15-12-000).

Depreciation Rates and Studies. Under 18 C.F.R. Part 352, General Instruction 1-8, oil pipelines are required to conduct their own depreciation studies and to request approval of new depreciation rates, or to change existing depreciation rates. In accordance with 18 C.F.R. Part 352, General Instruction 1-8(b), Depreciation Accounting – Carrier Property, companies are required to use the composite method of depreciation unless they receive specific approval from the Commission to use the component method. Recent audits have found that oil pipelines have not complied with these Commission regulations by: (1) using depreciation rates not approved by the Commission (FA20-5-000, FA20-4-000, FA19-5-000, FA18-1-000, FA16-6-000, FA14-1-000); (2) using the component method rather than composite method of depreciation without Commission approval or misapplying the component method of depreciation (FA20-5-000, FA19-10-000); and (3) using outdated and stale depreciation studies, leading to depreciation rates not aligning with the actual service lives of carrier property, and leaving certain asset groups with negative book values (FA19-5-000, FA16-5-000, FA15-12-000).

Operating and Nonoperating Expenses. The Commission's accounting instructions in 18 C.F.R. Part 352 designate the 300 and 500 series of accounts as "Operating Expenses." Expenses associated with charitable contributions, fines, penalties, and lobbying activities are nonoperating in nature, and should be recorded in Account 660, Miscellaneous Income Charges. Further, the 300 and 500 series of accounts are included on Page 700, line 1, Operations and Maintenance Expenses, of the FERC Form No. 6, whereas nonoperating expenses are excluded from Page 700. Oil pipelines did not comply with Commission accounting requirements, specifically with regard

[49] Page 700 is used as a preliminary screening tool by shippers and other stakeholders to gauge whether an oil pipeline's cost of service substantially diverges from revenues generated by its rates. The Commission also uses the expense and barrel-mile data from this page to support its determination of its proposed oil pipeline transportation rate index adjustment for a five-year, forward-looking period. The current five-year index became effective in 2021 and is based on the Commission's evaluation of the increase in costs, on a dollar per barrel-mile basis, from 2014 to 2019, as reflected on Page 700 in oil pipelines' filings.

to the misclassification of: (1) charitable donations, fines/penalties, and lobbying activities as operating rather than non-operating expenses (FA20-5-000, FA19-10-000, FA19-5-000, FA19-4-000, FA16-7-000, FA16-6-000, FA15-12-000, FA15-4-000); (2) affiliate transaction mark-ups as operating rather than non-operating expenses (FA16-7-000, FA16-4-000); and (3) material and infrequent transactions and casualty and other losses involving oil spills as normal, rather than material and infrequent, operating expenses (FA16-6-000).

Equity Method of Accounting for Investments. The Commission's long-standing policy on accounting for investments in affiliated companies has been to use the equity method of accounting rather than the consolidation method. The use of the equity method prevents investments in affiliated companies from being consolidated in the financial statement and ensures that their cost and revenue balances are not factored into the cost of service on Page 700. Oil pipelines improperly accounted for investments in wholly owned subsidiaries and joint ventures using the consolidation method rather than equity method of accounting, did not maintain records to support initial investments and net income and distributions of income, or engaged in other incorrect accounting for investments (FA19-10-000, FA16-6-000, FA16-5-000, FA14-4-000).

Pipeline Loss Allowance (PLA) and Gravity Shrinkage Deduction (GSD). Oil pipeline tariffs provide for the retainage of PLA and GSD from receipts of shippers' oil on pipeline systems. PLA is retained to cover oil lost during transportation due to evaporation, measurement inaccuracies, and other operational losses. GSD is retained to cover density differences in an individual shipper's oil compared to the density of the common stream of oil being transported in the pipeline. Oil pipelines incorrectly accounted for and reported activities associated with PLA and GSD, which resulted in omitting the interstate portion of the revenues and expenses associated with these activities from Page 700 (FA20-5-000, FA19-10-000, FA19-4-000), and a lack of transparency in reporting the sales of excess oil retainage in the FERC Form No. 6 (FA16-6-000).

Capital Structure and Return on Equity (ROE). The Commission has used a two-step DCF (Discounted Cash Flow) model to derive the ROE for pipelines' cost of service since the 1980s. On May 21, 2020, the Commission revised its ROE methodology in Docket No. PL19-4-000, recommending that oil pipelines derive an ROE based on an equal weighting of the results from the DCF model and CAPM (Capital Asset Pricing Model). The capital structure is used in conjunction with the ROE to derive an oil pipeline's return on rate base. The Commission has stated that a 100 percent equity capital structure is unacceptable and results in overstated capital costs. When an equity ratio moves beyond generally accepted limits, pipelines should use a hypothetical capital structure consistent with Opinion No. 502. Oil pipelines calculated the weighted cost of capital using methods not supported by the Commission for determining ROE and capital structure (FA20-4-000) or inappropriately used an all-equity capital structure to calculate the weighted cost of capital to derive the return on rate base for Page 700 (FA19-10-000).

Reporting and Filing. Submitting the FERC Form No. 6 is an annual regulatory reporting requirement that provides financial and operational information about pipelines. The Commission has other filing requirements: Order Nos. 634 and 634-A require oil pipeline companies that participate in cash management programs to disclose those programs to the Commission; Instruction for Carrier Property Accounts 3-11(c) requires approval of accounting entries for the cost of the acquisition of properties comprising a distinct operating system, or an integral portion thereof, when the purchase price exceeds $250,000; and General Instruction 1-6(g) requires

Commission approval for a prior period adjustment to retained earnings. Recent audits have found that oil pipelines did not comply with these reporting and filing requirements: (1) FERC Form No. 6 reporting was inaccurate or incomplete (required information and footnote disclosures omitted) for various schedules (FA20-5-000, FA20-4-000, FA19-10-000, FA19-5-000, FA19-4-000); (2) oil pipelines inaccurately reported input balances or misapplied interstate allocation percentages on Page 700 (FA20-5-000, FA20-4-000, FA19-10-000, FA18-1-000, FA16-7-000, FA15-4-000, FA14-4-000); (3) oil pipelines failed to file cash management agreements (FA20-4-000, FA15-4-000, FA14-1-000); and (4) oil pipelines did not file journal entries with the Commission for approval for the purchase of distinct operating systems (FA19-10-000) or seek Commission approval to adjust retained earnings (FA16-7-000).

Oil Tariff Provisions. Oil pipelines did not comply with certain tariff rates and procedures; specifically, pipelines: (1) charged incorrect rates for transportation service using intermediate delivery points (FA15-4-000, FA14-1-000) and for other interstate movements on stated paths in the tariff (FA18-1-000, FA16-5-000, FA15-4-000); and (2) incorrectly applied prorationing procedures when allocating capacity among shippers (FA16-6-000, FA16-5-000).

D. Audit Matters

DAA's audits are risk-based and cover a variety of audit scope areas. The entities selected for an audit are not typically suspected of any wrongdoing. Rather, selections are based upon DAA's development of audit risk factors using publicly available information. DAA also consults with other divisions within Enforcement and other Commission program offices to inform DAA's risk-based methodology for selecting audit scope areas and audit candidates. DAA is not limited in the types of audits it conducts; rather, it responds to the needs and priorities of the Commission and the industry. Individual audits may contain multiple and different scope areas, but every audit includes a review of the audited entity's internal compliance program.

DAA's public audit reports detail each audit's scope, methodology, findings of noncompliance, and corrective recommendations, with the expectation that all jurisdictional entities will use this information to be better informed, avoid noncompliance, and improve internal accounting, financial reporting, and other procedures. Although not all audits result in findings of noncompliance, when they do, timely implementation of the audit report's corrective recommendations is expected. Timely implementation demonstrates an entity's commitment to improving compliance with the Commission's regulations and precedents and to reducing the risk of future noncompliance.

In FY2022, DAA completed 12 audits of public utility, natural gas, and oil companies covering a wide array of topics. The audits resulted in 51 findings of noncompliance, 258 recommendations for corrective action, and directed approximately $158,359,820 in refunds and other recoveries. Specifically, DAA directed $18,729,888 to be refunded to jurisdictional customers and prevented approximately $139,629,932 from being inappropriately collected through customer rates. These refunds and other recoveries addressed DAA findings concerning, among other subjects, the improper application of merger-related costs; lobbying, charitable donation, membership dues, and employment discrimination settlement costs; improper labor overhead capitalization rates; accounting for production-related or distribution-related expenses as general or transmission-

related expenses; pending income tax refunds being treated as prepayments; and compliance with the Commission's AFUDC regulations.

Besides these refunds and other recoveries, audit recommendations directed improvements to the audited companies' internal accounting processes and procedures, financial reporting for accuracy and transparency, web site postings, and efficiency of operations. Collectively, these refunds, other recoveries, and recommendations prevented unjust charges in jurisdictional rates and provided procedural and process enhancements that benefit ratepayers and market participants. The 12 audits summarized below were completed in FY2022 and provide a sample of DAA findings and results. Further samples are contained in prior years' enforcement reports. The complete audit reports are publicly available in the Commission's eLibrary system.[50] In addition, a directory with copies of recently issued audit reports can be accessed at https://www.ferc.gov/audits.

DAA continued to adjust its audit procedures during FY2022 to accommodate companies during the COVID-19 pandemic. Recognizing the challenges, the pandemic created for jurisdictional entities, DAA communicated to such entities its willingness to be flexible as needed and relaxed some of its audit requirements to reduce the burden on companies. These changes included extending the time to respond to data requests and draft audit reports and conducting virtual site visits in lieu of traveling to companies. These accommodations did not preclude DAA from effectively administering its audit responsibilities.

Improved Access to Audit Reports

In FY2022, to provide a convenient means by which members of the public can access and review existing audit reports, DAA has added to the Commission's website on its Enforcement (Audits) page, a directory of recently issued audit reports, arranged by calendar year of issuance and industry. The directory can be reached at https://www.ferc.gov/audits.

1. Formula Rates

FirstEnergy Corporation (FirstEnergy) and its subsidiaries – Docket No. FA19-1-000. At FirstEnergy, DAA evaluated compliance with: (1) cross-subsidization restrictions on affiliate transactions under 18 C.F.R. Part 35; (2) service company accounting, recordkeeping, and reporting requirements under 18 C.F.R. Parts 366, 367, and 369; (3) accounting and reporting requirements prescribed for public utilities pertaining to transactions with affiliated companies under 18 C.F.R. Parts 101 and 141; and (4) preservation of records requirements for holding companies and service companies under 18 C.F.R. Part 368.[51] The audit identified seven findings and 38 recommendations that required FirstEnergy to take corrective action. The company did not contest the seven findings and 38 recommendations.

The seven findings covered the following areas: (1) capitalizing overhead labor costs using an allocation method not based on actual time that employees were engaged in construction or on a

[50] The Commission's eLibrary system can be accessed at elibrary.ferc.gov.

[51] *FirstEnergy Corp.*, Docket No. FA19-1-000 (Feb. 4, 2022) (delegated letter order).

representative time study, which led to overstating annual transmission revenue requirements and transmission customer billing charges; (2) inappropriately capitalizing maintenance expenses incurred to remove vegetation surrounding in service distribution powerlines thereby understating operating expenses incurred and overstating electric plant in service, accumulated depreciation, ADIT, depreciation expenses, and other account balances; (3) improperly amortizing $3.8 million of deferred costs associated with vegetation removal in transmission corridors and including approximately $2.7 million of this amount in annual transmission revenue requirements and transmission customer charges without obtaining the required Commission approval to recover these regulatory assets in rates; (4) improperly accounting for and reporting as utility operating costs lobbying expenses, donations, and other costs that lacked proper supporting documentation or were misclassified, resulting in FirstEnergy affiliated transmission companies improperly including these costs in annual transmission revenue requirements and transmission customer billing charges; (5) improperly including undistributed subsidiaries' earnings and accumulated other comprehensive income in equity balances used for the purpose of computing AFUDC rates, resulting in over-accrued AFUDC, CWIP, and plant-in-service balances; (6) providing insufficient information from the service company to affiliates regarding charges being directly assigned or allocated that, contrary to Commission regulations, did not provide detailed information to reflect the services provided, causing the public utility affiliates to misclassify costs assigned or allocated; and (7) the FirstEnergy affiliate Monongahela Power Company improperly accounting for fixed monthly consulting fees in Account 501, Fuel, as a component cost of coal used in operations, leading to costs being included in fuel used in operations that were not directly assignable and likewise not properly allocable to the cost of coal. As a result of the audit, FirstEnergy and its associated companies were directed to make refunds to transmission customers and revise accounting and reporting policies and procedures in the identified areas of noncompliance.

The Connecticut Light and Power Company (CL&P) – Docket No. FA19-8-000. At CL&P, DAA evaluated compliance with: (1) approved terms, rates, and conditions of its transmission formula rate mechanism as provided in the ISO-NE Transmission, Markets, and Services Tariff on file with the Commission; (2) accounting requirements of the Uniform System of Accounts Prescribed for Public Utilities and Licensees under 18 C.F.R. Part 101 (Uniform System of Accounts (Public Utilities)); (3) reporting requirements of the FERC Form No. 1 under 18 C.F.R. § 141.1; and (4) the preservation of records requirements under 18 C.F.R. Part 125.[52] The audit identified five findings and 26 recommendations that required CL&P to take corrective action, and one other matter. The company did not contest the five findings and the 26 recommendations.

The five findings covered the following areas: (1) improperly including accumulated other comprehensive income and unamortized debt-related balances in long-term debt and equity balances used to compute AFUDC rates, resulting in over-accrued AFUDC and overstated transmission revenue requirements and customer billing charges; (2) incorrectly accounting for compromise settlement costs in operating expense accounts instead of Account 426.3, Penalties, or Account 426.5, Other Deductions, as required, resulting in overstated transmission revenue requirements and customer billing charges; (3) incorrectly recording accounts receivable that represented refunds for overpayments of income taxes in Account 165, Prepayments, instead of in

[52] *The Connecticut Light and Power Co.*, Docket No. FA19-8-000 (Feb. 4, 2022) (delegated letter order).

Account 143, Other Accounts Receivable, leading to overstatement of transmission revenue requirements and customer billing charges; (4) improperly including merger transaction costs in operating accounts, contrary to the Commission's policy that such expenses be recorded in nonoperating accounts, resulting in overstated transmission revenue requirements and customer billing charges; and (5) using a depreciation rate for accounting and transmission ratemaking purposes that was not filed with, and approved by, the Commission.

The other matter related to DAA's observation that capital compensation costs relating to CL&P's service company were included in both CL&P's retail and its Commission-jurisdictional rate determinations; however, the description of such capital costs in CL&P's state commission filings was more transparent than in the Commission-jurisdictional transmission rate filings. Staff requested that CL&P consider providing the same more detailed information in its Commission filings.

As a result of the audit, CL&P made refunds to wholesale transmission customers and revised its accounting policies and procedures in the identified areas of noncompliance.

2. Gas Tariff & Accounting

Northern Border Pipeline Company (Northern Border) – Docket No. FA21-1-000. At Northern Border, DAA evaluated compliance with: (1) the rates and non-rate terms and conditions of Northern Border's FERC NGA Tariff; (2) the financial reporting requirements of the FERC Form No. 2 under 18 C.F.R. § 260.1; and (3) accounting requirements of the Uniform System of Accounts Prescribed for Natural Gas Companies under 18 C.F.R. Part 201.[53] The audit identified four findings, one other matter, and 15 recommendations that required Northern Border to take corrective action. The company did not contest the four findings and 15 recommendations.

The four findings covered the following areas: (1) not making required annual filings showing the inputs and calculations supporting adjustments to Company Use Gas Percentages, resulting in a lack of transparency and lost opportunity for interested parties to review inputs and calculations supporting the percentages and opine on changes to the Company Use Gas Percentages; (2) improperly recording all shared services costs allocated to Northern Border by affiliates in Account 923, Outside Services, rather than recording these costs to the appropriate operations and maintenance (O&M) and administrative and general (A&G) accounts based on the nature of each cost, and improperly recording *nonoperating* expenses allocated to it (specifically political and lobbying expenses, the lobbying portion of membership dues, charitable contributions, and fees for late payment of bills) in Accounts 853, Compressor Station Labor and Expenses; 923, Outside Services; and 930.2, Miscellaneous General Expenses, instead of the appropriate 426 series accounts for nonoperating expenses; (3) inappropriately including unpaid contract retentions in its AFUDC accrual calculation and improperly accruing AFUDC on delayed and completed construction projects, resulting in over accrual of AFUDC and overstated plant in service accounts; and (4) not reporting complete and accurate information required in certain supporting schedules of the FERC Form No. 2, thereby reducing the overall accuracy and usefulness of the form's information.

[53] *Northern Border Pipeline Co.*, Docket No. FA21-1-000 (Sept. 28, 2022) (delegated letter order).

The other matter noted that Northern Border's FERC NGA Tariff did not include a detailed explanation of the methodology used to adjust its Company Use Gas Percentage, as directed by the Commission's Order No. 582.

As a result of the audit, Northern Border was directed to revise accounting and reporting policies and procedures in the areas of noncompliance, submit corrected FERC Form No. 2 filings, and remove from its plant and operating expense accounts certain improperly recorded expenses, thereby preventing amounts from potentially being inappropriately collected through future rates.

3. Oil Tariff & Accounting

Enterprise Crude Pipeline LLC (ECPL) – Docket No. FA20-5-000. At ECPL, DAA evaluated compliance with: (1) Page 700, Annual Cost of Service Based Analysis Schedule, of the FERC Form No. 6; (2) Uniform System of Accounts (Oil Pipeline Companies) in 18 C.F.R. Part 352; and (3) FERC Form No. 6 in 18 C.F.R. § 357.2.[54] The audit identified six findings of noncompliance and 25 recommendations that required ECPL to take corrective action. The company did not contest the six findings and 25 recommendations.

The six findings covered the following areas: (1) incorrectly including barrel-miles for intrastate transportation movements, pump-over services, and a pipeline segment the pipeline did not own in ECPL's interstate allocation percentage, causing ECPL to overstate its total cost of service, barrels, and barrel-miles reported on Page 700 of its FERC Form No. 6, and not excluding, to the extent practicable, costs associated with ECPL's terminal and pipeline system facilities that were used solely to support intrastate transportation service and other FERC non-jurisdictional services, before applying the interstate allocation percentage; (2) incorrectly omitting Pipeline Loss Allowance (PLA) and Gravity Shrinkage Deduction (GSD) revenues recorded in Account 230, Allowance Oil Revenues, from Page 700, Line 10, Interstate Operating Revenues, resulting in understating annual interstate operating revenues on Page 700; (3) incorrectly accounting for and reporting idled property as carrier property, which affected the accuracy of balances reported in FERC Form No. 6, resulting in overstating ECPL's cost of service; (4) with respect to depreciation: not using Commission approved depreciation rates; incorrectly applying the group method to calculate depreciation expense; over accruing depreciation reserve balances for some accounts; and incorrectly deriving depreciation expense, causing ECPL to improperly calculate depreciation expense and accumulated depreciation reserve balances for carrier property assets, and including incorrect amounts in its cost of service since 2010; (5) incorrectly classifying (a) administrative and general expenses associated with an affiliate's pipeline, (b) a civil penalty, and (c) lobbying expenses as operating, rather than non-operating, expenses resulting in overstating Page 700, Line 1, Operating and Maintenance Expenses; and (6) incorrectly reporting and calculating the AFUDC input on Page 700 and misreporting barrels and barrel-miles for one pipeline segment on Pages 600-603 of FERC Form No. 6, resulting in reducing the accuracy, transparency, and usefulness of ECPL's FERC Form No. 6 submissions.

As a result of the audit, ECPL restated and footnoted certain balances in its FERC Form No. 6 filings; conducted and submitted to the Commission a depreciation study; performed analyses to determine the full scale of impacts to Page 700 and various accounts caused by certain errors;

[54] *Enterprise Crude Pipeline Co.*, Docket No. FA20-5-000 (June 1, 2022) (delegated letter order).

reclassified idled pipeline segments and submitted proposed accounting entries supporting adjustments; submitted journal entries supporting the reclassification of expenses; and strengthened ECPL's accounting and reporting procedures relating to the identified findings, particularly relating to Page 700 of its FERC Form No. 6 filings, thereby improving shippers', the Commission's, and other parties' use of Page 700.

4. Electric Tariff & Accounting

Ameren Corporation (Ameren) and its subsidiaries – Docket No. FA20-6-000. At Ameren, DAA evaluated compliance with: (1) cross-subsidization restrictions on affiliate transactions under 18 C.F.R. Part 35; (2) accounting, recordkeeping, and reporting requirements under 18 C.F.R. Part 366; (3) accounting requirements of the Uniform System of Accounts (Centralized Service Companies) under 18 C.F.R. Part 367; (4) preservation of records requirements for holding companies and service companies under 18 C.F.R. Part 368; and (5) FERC Form No. 60 Annual Report requirements under 18 C.F.R. Part 369. The audit also evaluated the associated public utilities' transactions with affiliated companies for compliance with the Commission's accounting requirements under 18 C.F.R. Part 101, the applicable reporting requirements in the FERC Form No. 1 under 18 C.F.R. Part 141, and jurisdictional rates on file.[55] The audit identified nine findings and 47 recommendations that required Ameren to take corrective action. The company did not contest the nine findings and 47 recommendations.

The nine findings covered the following areas: (1) incorrectly reporting materials and supplies (M&S) on page 227 of Ameren Missouri's FERC Form No. 1 reports, leading to an overstatement of Ameren Missouri's annual transmission revenue requirements and transmission customer billings; (2) overstating ADIT during the adjustments to ADIT resulting from the Tax Cuts and Jobs Act of 2017 through inclusion of undocumented expenses, leading to overstatement of transmission revenue requirements and transmission customer billings; (3) the Ameren public utilities accounting for the affiliated service company's allocated depreciation, amortization, tax, and interest expenses in Account 923, Outside Services Employed, instead of Account 930.2, Miscellaneous General Expenses, which did not impact transmission revenue requirements; (4) the Ameren public utilities improperly recording costs of providing non-power goods and services to their associated companies in Account 921, Office Supplies and Expenses, rather than in the appropriate accounts for transactions of the same nature, resulting in overstated annual transmission revenue requirements and transmission customer billings; (5) improperly allocating costs associated with a non-regulated affiliate to the Ameren public utilities, leading to overstated transmission revenue requirements and transmission customer billings; (6) capitalizing overhead labor costs using an allocation method not based on actual time that employees were engaged in construction or on a representative time study, which may have led to overstating annual transmission revenue requirements and transmission customer billing charges; (7) misclassifying as transmission-related expenses the following costs: expenses relating to a distribution construction project; lobbying expenses, particularly time spent by Ameren employees working for Ameren PACs; the portion of membership dues related to lobbying; and prepayments recorded to operating accounts prior to the time period to which they applied, which led to overstating transmission revenue requirements and may have impacted transmission customer billing charges; (8) failing to submit the FERC-61 Form for one affiliate and untimely submitting the 2016 and

[55] *Ameren Corp.*, Docket No. FA20-6-000 (Nov. 17, 2021) (delegated letter order).

2017 FERC-61 Forms for another affiliate; and (9) not notifying the Commission as required when the company discovered certain records were prematurely destroyed or lost.

As a result of the audit, Ameren and its associated companies were directed to make refunds to transmission customers and revise accounting and reporting policies and procedures in the identified areas of noncompliance.

Arizona Public Service Co. (APS) – Docket No. PA20-1-000. At APS, DAA evaluated compliance with: (1) the terms and conditions of APS's OATT; and (2) the regulations regarding OASIS prescribed in 18 C.F.R. Part 37.[56] The audit identified two findings and five recommendations that required APS to take corrective action. APS did not contest the two findings and five recommendations.

The two findings covered the following areas: (1) not timely posting transmission line outages on OASIS on six occasions, resulting in Available Transfer Capability (ATC)/Total Transfer Capability (TTC) values not being updated to reflect the outages, which led to the curtailment of 16 transmission service schedules; and (2) improperly directing existing long-term firm Point-to-Point (PTP) customers to execute a short-term transmission service agreement when requesting non-firm redirect service, a process arising from an OASIS configuration error that prevented existing long-term firm PTP customers from requesting non-firm redirect service on APS's OASIS and, instead, required such customers to manually request redirect service.

As a result of the audit, APS was directed to correct certain OASIS settings and to revise policies and procedures relating to tariff implementation and OASIS operations in the identified areas of noncompliance.

Florida Power & Light Company (FPL) – Docket No. FA21-6-000. At FPL, DAA evaluated compliance with: (1) accounting requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Part 101; (2) reporting requirements of the FERC Form No. 1 under 18 C.F.R. § 141.1; (3) generator interconnection requirements in Attachments M and N of FPL's OATT; and (4) preservation of records requirements under 18 C.F.R. Part 125.[57] The audit identified four findings and 10 recommendations that required FPL to take corrective action. FPL did not contest the four findings and 10 recommendations.

The four findings covered the following areas: (1) improperly recording environmental cleanup costs in Account 930.2, Miscellaneous General Expenses, and Account 105, Electric Plant Held for Future Use, instead of in Account 186, Miscellaneous Deferred Debits, which resulted in misstating administrative and general (A&G) and Electric Plant Held for Future Use account balances reported in FPL's FERC Form No. 1 filings; (2) improperly recording certain advance payments applicable to future accounting periods in A&G and O&M accounts, instead of in Account 165, Prepayments, resulting in not accurately recognizing certain expenses in the accounting period in which they were incurred and leading to the misstatement of A&G, O&M, and balance sheet account balances reported in FPL's FERC Form No. 1 filings; (3) misclassifying

[56] *Arizona Public Service Co.*, Docket No. PA20-1-000 (Mar. 23, 2022) (delegated letter order).

[57] *Florida Power & Light Co.*, Docket No. FA21-6-000 (Apr. 15, 2022) (delegated letter order).

costs associated with charitable contributions; legal costs associated with mergers and acquisitions and an internal reorganization; property insurance brokerage fees; and software license renewal, update services, and maintenance serving the transmission function; and (4) not reporting all information required in the FERC Form No. 1.

As a result of the audit, FPL was directed to revise policies and procedures relating to accounting and reporting in the identified areas of noncompliance and propose revised accounting entries relating to the environmental clean-up costs mis-recorded in a plant account.

NorthWestern Corporation, d/b/a NorthWestern Energy (NorthWestern) – Docket No. FA20-7-000. At NorthWestern, DAA evaluated compliance with: (1) the accounting requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Part 101, and (2) the reporting requirements of the FERC Form No. 1 under 18 C.F.R. § 141.1.[58] The audit identified five findings and 29 recommendations that required NorthWestern to take corrective action. NorthWestern did not contest the five findings and 29 recommendations.

The five findings covered the following areas: (1) when calculating AFUDC, inappropriately using prior *month* balances, instead of prior *year* balances, for the long-term debt and equity components when computing the AFUDC rate; inappropriately including undistributed subsidiary earnings as a part of the equity component; improperly compounding the AFUDC on a monthly, rather than semi-annual basis; and inappropriately including unpaid contract retention amounts in CWIP balances used in the AFUDC calculations, resulting in overstating annual transmission revenue requirements and transmission customer billing charges; (2) inappropriately recording in Account 181, Unamortized Debt Expense, upfront fees paid when establishing NorthWestern's revolving line of credit, and inappropriately recording in Account 921, Office Supplies and Expenses, commitment fees paid for NorthWestern's revolving credit facility; (3) misclassifying the lobbying portion of trade association membership dues in Account 930.2, Miscellaneous General Expenses, and Account 921, Office Supplies and Expenses, instead of in Account 426.4, Expenditures for Certain Civic, Political and Related Activities; (4) misclassifying lobbying expenses in various administrative and general expense accounts instead of Account 426.4, Expenditures for Certain Civic, Political and Related Activities, leading to inappropriately including these costs in transmission formula rate service cost determinations; and (5) misclassifying various costs in its books and records, including misclassifying certain general advertising expenses in Account 923, Outside Services Employed, resulting in overbillings to FERC-jurisdictional transmission customers.

As a result of the audit, NorthWestern made refunds to transmission customers and revised its accounting policies and procedures in the identified areas of noncompliance.

The Dayton Power and Light Company (DP&L) – Docket No. FA21-4-000. At DP&L, DAA evaluated compliance with: (1) the accounting requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Part 101; and (2) the FERC Form No. 1's reporting requirements

[58] *NorthWestern Corp.*, Docket No. FA20-7-000 (May 20, 2022) (delegated letter order).

under 18 C.F.R. § 141.1.[59] The audit identified eight findings and 43 recommendations that required DP&L to take corrective action. DP&L did not contest the eight findings and 43 recommendations.

The eight findings covered the following areas: (1) when calculating the AFUDC *rate*, erroneously excluding use-restricted long-term debt (here pollution control bonds) from the long-term debt component; erroneously including balances of Account 219, Accumulated Other Comprehensive Income, in the equity component; and improperly using month-end, rather than prior calendar year-end, balances for the long-term debt and common equity components, resulting in over accrued AFUDC included in CWIP and utility plant accounts, and overbilled transmission customers; (2) when computing the *amount* of AFUDC, in June 2019 erroneously compounding the AFUDC by adding to the CWIP balance the *total* AFUDC accumulated since the beginning of each project rather than just the AFUDC accumulated in the past six months; failing to suspend AFUDC accrual during delays and interruptions in construction; and improperly including removal work in progress (RWIP) in the CWIP balance, resulting in over accrued AFUDC included in CWIP and utility plant accounts, and overbilled transmission customers; (3) improperly recording refunds for tax overpayments in Account 165, Prepayments, instead of in Account 143, Other Accounts Receivable, resulting in overstating transmission rate base used in transmission formula rate calculations and overbilling transmission customers; (4) improperly recording distribution-related expenses as transmission-related expenses by allocating almost 100% of the residual time of a system's operating group to the transmission function; (5) improperly accounting for customer-related expenses – specifically the cost of labor, materials used, and expenses incurred in work on customer applications, contracts, orders, credit investigations, billing and accounting, collections, and complaints – in general and administrative accounts, *i.e.*, Account 920, Administrative and General Salaries; Account 921, Office Supplies; and Account 923, Outside Services Employed, rather than correctly in Account 903, Customer Records and Collection Expenses, resulting in overstating DP&L's transmission revenue requirement under its formula rate and overbilling transmission customers; (6) improperly accounting for A&G labor expenses billed to DP&L by its service company affiliate in Account 921, Office Supplies and Expenses, resulting in misreporting account balances in FERC Form No. 1 filings; (7) improperly accounting for the purchase of renewable energy credits (RECs) in Account 154, Materials and Supplies, and improperly amortizing an Alternative Energy Rider regulatory asset in Account 930.2, Miscellaneous General Expenses, resulting in misreporting account balances in FERC Form No. 1 filings; and (8) improperly recording various A&G expenses, resulting in A&G expense account balances being misstated in FERC Form No. 1 filings.

As a result of the audit, DP&L made refunds to transmission customers and revised its accounting and reporting policies and procedures in the identified areas of noncompliance.

5. ISO/RTO Tariffs, Agreements, and Rules

PJM Interconnection, L.L.C. (PJM) – Docket No. PA19-2-000. At PJM, DAA evaluated compliance with: (1) provisions of PJM's OATT, business practices, corporate bylaws, policies, and codes of conduct relating to its market administration obligations; (2) provisions of selected

[59] *The Dayton Power and Light Co.*, Docket No. FA21-4-000 (Sept. 15, 2022) (delegated letter order).

rate schedules and agreements, including PJM's Amended and Restated Operating Agreement; and (3) Order Nos. 825, 831, and other relevant Commission orders.[60] The audit identified one finding of noncompliance and three recommendations, and four other matters with 17 recommendations. PJM did not contest the one finding and three recommendations.

The one finding covered the following area: not offer capping a self-scheduled generation resource in the Day-ahead energy market for 18 hours on January 21, 2019, despite the fact that its owner had failed the Three Pivotal Supplier test, an error caused by operators applying outdated provisions of PJM's OATT and not applying the updated offer capping provisions in effect since November 1, 2017.

The four other matters related to DAA's observations that: (1) PJM should consider improving its data reporting under Order No. 760[61] by strengthening policies and procedures, devoting additional resources, and enhancing its internal data gathering and reporting processes related to Order No. 760; (2) PJM should consider increasing transparency regarding whether Day-ahead resource commitments minimize overall system production cost as required by OATT Attachment K-Appendix, Section 6.4.1(a); (3) PJM should consider strengthening internal procedures to encourage generation resources to follow dispatch instructions; and (4) PJM should consider improving limitations in certain software applications to ensure accuracy of results – particularly software applications relating to commitment of resources/units in the Day-ahead energy market; offer-capping of resources in the Real-time energy market; logging resources that failed the Three Pivotal Supplier test but were nonetheless committed on market-based offers; and scheduling of UTC transactions.

As a result of the audit, PJM was directed to develop written procedures, controls, and instructions for operators, and to conduct a study relating to the area covered by the one finding, and PJM agreed in its response to the audit report to implement the three recommendations relating to the finding, and the additional 17 recommendations relating to the four other matters.

6. Audits with No Findings of Noncompliance

Tampa Electric Company (Tampa Electric) – Docket No. PA19-5-000. At Tampa Electric, DAA evaluated the company's compliance with: (1) the regulations regarding OASIS prescribed in 18 C.F.R. Part 37; (2) Business Practice Standards and Communication Protocols for Public Utilities under 18 C.F.R. Part 38; (3) the Transparency Rule under 18 C.F.R. § 358.7; and (4) information posting requirements contained within Tampa Electric's OATT.[62] The audit did

[60] *PJM Interconnection, L.L.C.*, Docket No. PA19-2-000 (Sept. 1, 2022) (delegated letter order).

[61] *Enhancement of Electricity Market Surveillance and Analysis through Ongoing Electronic Delivery of Data from Regional Transmission Organizations and Independent System Operators*, Order No. 760, 139 FERC ¶ 61,053 (2012) (Order No. 760). In Order No. 760, the Commission directed ISOs/RTOs to provide to the Commission ongoing electronic delivery of a range of non-public data relating to the markets they administer.

[62] *Tampa Electric Co.*, Docket No. PA21-1-000 (Mar. 21, 2022) (delegated letter order).

not identify any findings of noncompliance that required Tampa Electric to take corrective action.

Duke Energy Florida, LLC (DEF) – Docket No. PA20-3-000. At DEF, DAA evaluated the company's compliance with: (1) the terms and conditions of its OATT; and (2) the regulations regarding OASIS prescribed in 18 C.F.R. Part 37.[63] The audit did not identify any findings of noncompliance that required DEF to take corrective action.

E. Accounting Matters

DAA administers the Commission's accounting programs established for the electric, natural gas, and oil industries as vital components of the Commission's strategy of setting just and reasonable cost-of-service rates. The foundation of the Commission's accounting programs is the Uniform Systems of Accounts codified in the Commission's regulations for public utilities and licensees, centralized service companies, natural gas companies, and oil pipeline companies. In addition, the Commission issues accounting rulings relating to specific transactions and applications through orders and Chief Accountant guidance letters based upon a consistent application of the uniform systems of accounts. This body of accounting regulations, orders, and guidance letters comprises the Commission's accounting requirements and promotes consistent, transparent, and decision-useful accounting information used by the Commission and other stakeholders to set and monitor cost-of-service rates. DAA enables the Commission to achieve this strategic goal through careful consideration of the Commission's ratemaking policies, past Commission actions, industry trends, and external factors (e.g., economic, environmental, and technological changes, and mandates from other regulatory bodies) that impact the industries under the Commission's jurisdiction.

A substantial part of DAA's accounting workload involves coordination across various Commission program offices to provide regulatory accounting input and analysis on various types of filings made by jurisdictional entities. In addition, DAA provides accounting expertise to Commission program offices in developing Commission policies and rulemakings to ensure these initiatives fully consider and evaluate accounting and financial issues affecting jurisdictional entities. DAA also holds pre-filing meetings with jurisdictional entities seeking to make filings with the Commission to inform them of relevant accounting requirements. To better serve the Commission and other stakeholders in these capacities, DAA monitors and participates in projects initiated by the Financial Accounting Standards Board (FASB), Securities and Exchange Commission (SEC), Internal Revenue Service (IRS), and International Accounting Standards Board (IASB) to address issues that may impact the Commission or its jurisdictional entities.

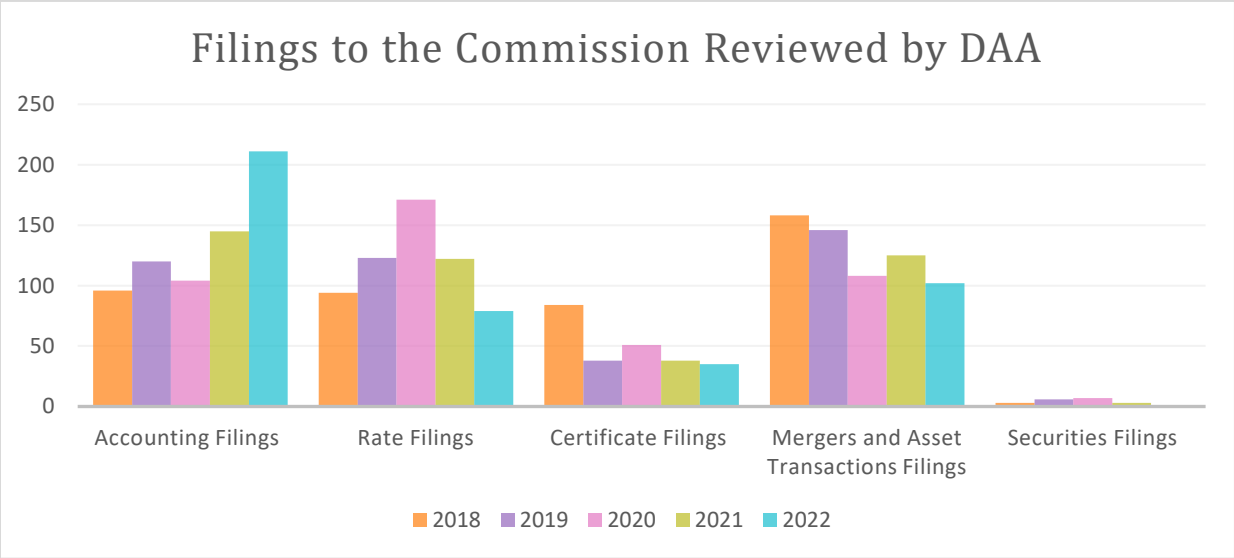
DAA also receives accounting inquiries and provides informal feedback on the Commission's accounting and financial reporting regulations. These inquiries come directly from jurisdictional entities, industry trade groups, legal and consulting firms, and other industry stakeholders, as well as through the Commission's Compliance Help Desk, Office of External Affairs, Enforcement Hotline, and other Commission program offices. DAA encourages jurisdictional entities to also seek formal guidance on accounting issues of doubtful interpretation to ensure compliance with the Commission's accounting and financial reporting regulations. Finally, a critical part of DAA's workload includes educating regulated entities and promoting compliance with the Commission's

[63] *Duke Energy Florida, LLC*, Docket No. PA20-3-000 (Mar. 31, 2022) (delegated letter order).

regulations through participation in various formal speaking engagements and industry accounting meetings.

1. Overview of FY2022 Filings Reviewed by DAA

In FY2022, DAA advised and acted on 427 proceedings at the Commission covering various accounting matters with cost-of-service rate implications, such as accounting for mergers and divestitures, asset transactions, early plant retirements, AFUDC, pensions and other post-retirement benefits, and income taxes. These proceedings included requests for declaratory orders, natural gas certificate applications, merger and acquisition applications, electric and natural gas rate filings, applications for issuance of securities, and requests for accounting approval. In many of these cases, DAA served in an advisory role to other program offices in identifying and analyzing the accounting implications of those requests. Additionally, in FY2022, DAA participated with the Commission's program offices in several rulemaking proceedings.[64] Over the past five years, DAA has reviewed approximately 2,200 Commission proceedings to ensure proper accounting is followed and to advise the Commission of potential rate impacts.

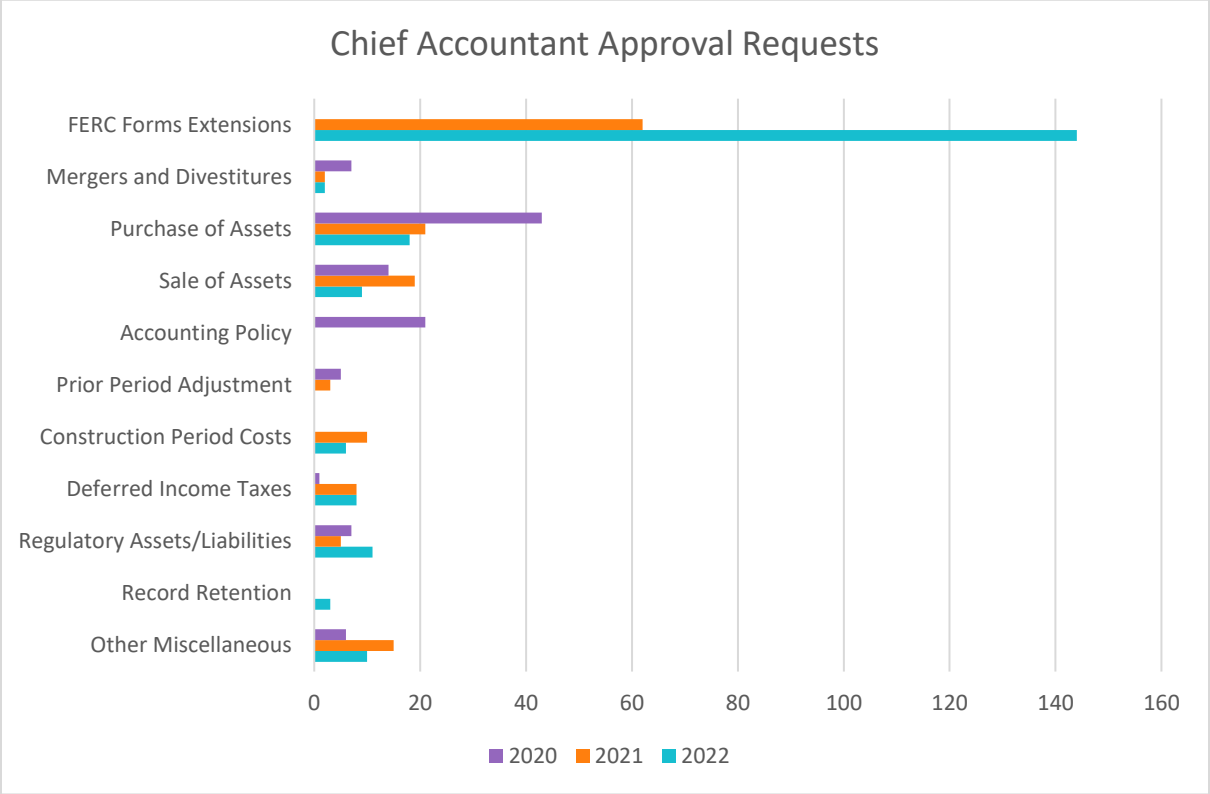


2. Requests for Approval of the Chief Accountant

In FY2022, DAA acted through the Chief Accountant's delegated authority on 211 accounting or reporting filings requesting approval (or authorization, acceptance, acknowledgement,

[64] These proceedings include a NOPR related to the accounting and reporting treatment of certain renewable energy assets (Docket No. RM21-11-000), which is discussed in more detail later in this report, and an NOI seeking comment on the rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses (Docket No. RM22-5-000).

confirmation) of a proposed accounting treatment or financial reporting matter.[65] The topics covered in these filings addressed various issues within the Commission's accounting and financial reporting requirements for electric, natural gas, and oil pipeline entities. Of note in FY2022, there was a continued high volume of accounting filings related to asset sales and acquisitions, similar to FY2021. These accounting requests also related to adjustments of ADIT balances; sales of land; acquisition of facilities; transfers of plant assets related to mergers; early/premature retirement of plant assets; deferral in regulatory assets account; accounting for unusual or infrequent items; acquisition of carrier and noncarrier assets; transfer of newly constructed interconnection facilities; reclassification of certain depreciation reserve balances for cost of removal; reclassification of certain balances associated with intangible plant; prepayments; premature destruction or loss of records; and waiver requests related to the calculation of AFUDC.



3. Rate Proceedings

In FY2022, DAA participated in 79 rate proceedings that continued to predominately involve electric formula rate proceedings, but also included natural gas and oil rate proceedings. DAA worked with other Commission program offices to discuss various accounting and financial issues and their effects on rates. Because many electric and natural gas rates are derived from accounting information in the FERC Form Nos. 1 and 2, DAA sought to ensure that accounting information in the rate proceedings was presented consistently with the Commission's requirements. DAA also worked with other program offices to enhance the transparency of financial information

[65] The accounting filings are docketed in the Commission's eLibrary with the "AC" docket prefix (AC Dockets), and "AI" docket prefix (for issuances of accounting guidance).

affecting formula rates so that all stakeholders had an opportunity to review the costs included in rates. Recurring areas of emphasis in DAA's review of rate filings during FY2022 included stranded costs associated with early plant retirements; asset retirement obligations; pensions and postretirement benefits other than pensions; taxes and tax credits; depreciation; leases; prepayments; capitalization of costs; capital structure and cost of service considerations; and allocation of expenses to production, transmission, and distribution.

4. Certificate Proceedings

In FY2022, DAA reviewed 35 natural gas pipeline certificate applications seeking various Commission authorizations, including to: construct, own, and operate new pipeline facilities; acquire pipeline facilities; abandon pipeline facilities in place, by removal, or by sale; and authorization to operate natural gas facilities. DAA continued to work with other Commission program offices to assist in the development of just and reasonable rates by reviewing construction costs and other items used to determine initial recourse rates, including operation and maintenance expenses, depreciation, taxes, and overall rate of return. In reviewing such information during FY2022, DAA's focus continued to be whether applicants followed Commission accounting requirements related to asset abandonment, construction, AFUDC, contributions in aid of construction (CIAC), regulatory assets and liabilities, leases, and asset retirement obligations.

5. Merger and Acquisition Proceedings

In FY2022, DAA reviewed 102 applications from public utilities under Section 203 of the FPA consisting of a combination of merger and divestiture transactions, and asset acquisition and sales transactions. The accounting review for merger transactions entails examining proposed accounting for costs to execute the transaction, costs to achieve integration and synergies, purchase accounting adjustments to assets and liabilities, and goodwill. DAA examines whether the accounting is consistent with any hold-harmless or other rate requirements discussed in a merger order. DAA also reviews accounting entries to determine that they provide enough transparency to the Commission and all interested parties for evaluating the impact on rates. For asset acquisition and sales transactions, staff conducts accounting reviews to examine whether applicants properly accounted for the purchase and sale of plant assets consistent with Commission regulations. The review focuses on whether jurisdictional entities maintain the appropriate original cost and historical accumulated depreciation of acquired utility plant and properly record acquisition premiums or discounts and gains or losses. DAA also consistently reminded jurisdictional entities to file accounting entries timely, within six months of a finalized merger or asset transaction, in accordance with Electric Plant Instruction No. 5 and the requirements of Account No. 102, Electric Plant Purchased or Sold.

6. Accounting Inquiries

In FY2022, DAA responded to 191 accounting inquiries from jurisdictional entities, industry trade associations, legal and consulting firms, other regulators, academia, other Commission program offices, and other stakeholders on various accounting and financial topics. Accounting inquiries are made through the Compliance Help Desk, the Accounting Inquiries phone line and email, or directly to DAA staff. Many accounting inquiries during FY2022 sought accounting and financial reporting direction on asset retirement obligations, capitalization of various costs, deferred income taxes, CIAC, AFUDC, leases, depreciation, and functional classifications of plant.

DAA responds to these accounting inquiries by providing informal accounting and financial reporting guidance based on Commission precedent and regulations, in addition to instructing individuals how to find documents and regulations using the Commission's eLibrary system[66] and Title 18 of the Code of Federal Regulations.[67] Such informal accounting and reporting guidance is not binding on the Commission and cannot grant waiver of a Commission regulation or order.

7. Renewable Energy Assets Notice of Proposed Rulemaking

On July 28, 2022, the Commission issued a NOPR in Docket No. RM21-11-000, *Accounting and Reporting Treatment of Certain Renewable Energy Assets*, that proposes to modernize its Uniform System of Accounts (USofA) by creating new accounts for wind, solar and other non-hydro renewable assets, establishing a new functional class for energy storage accounts, codifying the accounting treatment for renewable energy credits, and creating new accounts for computer hardware, software and communication equipment.[68] The NOPR intends to increase transparency and improve the Commission's ratemaking processes, and the creation of these discrete accounts would provide more accurate information to the Commission and the public during the ratemaking process by enabling more reasonable estimates for plant service lives and related depreciation. Additionally, the NOPR seeks comment on whether the Chief Accountant should issue guidance on accounting for hydrogen. DAA's Regulatory Accounting staff presented the draft NOPR to the Chairman and Commissioners at the July 2022 open meeting, and the Commission subsequently issued the NOPR with a 45-day comment period from the date of publication in the Federal Register. Comments are due on November 17, 2022.

8. Commission Order No. 864 Compliance

On November 21, 2019, the Commission issued Order No. 864,[69] a final rule which requires public utility transmission providers with transmission formula rates under an OATT, a transmission owner tariff, or a rate schedule to revise those transmission formula rates to account for any changes caused by the Tax Cuts and Jobs Act of 2017. The Tax Cuts and Jobs Act, among other things, reduced the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018. This tax rate reduction resulted in a reduction in ADIT assets and liabilities on the books of most public utilities. Accordingly, public utilities are required to adjust their ADIT assets and ADIT liabilities to reflect the effect of the change in tax rates in the period that the change is enacted.[70] Furthermore, as a result of the federal income tax rate reduction, a portion of

[66] The Commission's eLibrary system can be accessed at elibrary.ferc.gov.

[67] The Commission's regulations in 18 C.F.R. can be found at www.ecfr.gov.

[68] *See Accounting and Reporting Treatment of Certain Renewable Energy Assets*, Notice of Proposed Rulemaking, 180 FERC ¶ 61,050 (2022).

[69] *Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 169 FERC ¶ 61,139 (2019), *order on reh'g and clarification*, Order No. 864-A, 171 FERC ¶ 61,033 (2020).

[70] *See* 18 C.F.R. §§ 35.24 and 154.305 (2022); *see also Regulations Implementing Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or*

an ADIT liability that was previously collected from customers will no longer be due from public utilities to the IRS and is considered excess ADIT. Conversely, for public utilities that have an ADIT asset, the federal income tax rate reduction will result in a reduction to the ADIT asset, or deficient ADIT.

To adequately evaluate adjustments made to ADIT, Order No. 864 requires public utilities with transmission formula rates to make a filing demonstrating compliance with the final rule. A public utility can demonstrate that its formula rate already meets the requirements specified in the final rule, or it can make revisions to its formula rate to include: a mechanism to deduct any excess ADIT from or add any deficient ADIT to rate base; incorporate a mechanism to decrease or increase the income tax allowance by any amortized excess or deficient ADIT, respectively; and incorporate a new permanent worksheet that will annually track the information related to excess or deficient ADIT. Since issuance of the final rule, the Commission has received over 174 compliance filings to date, including approximately 57 in FY2022. DAA has actively supported the other program offices in the overall review and assessment of each compliance filing. DAA has provided its expertise to ensure, among other things, that public utilities properly remeasure ADIT accounts to establish the excess or deficient ADIT, record a regulatory asset (Account 182.3) associated with deficient ADIT or a regulatory liability (Account 254) associated with excess ADIT,[71] properly account for the amortization of excess or deficient ADIT, and support adequate amortization periods for the return or recovery of excess or deficient ADIT, respectively.

F. Forms Administration and Compliance

DAA staff administers and ensures compliance with certain Commission filing requirements. The Commission requires companies subject to its jurisdiction to submit financial statements, operational data, and annual and quarterly reports regarding jurisdictional sales. It uses these reports for various analyses, such as evaluations of whether existing rates continue to be just and reasonable. Other government agencies and industry participants also use them for a variety of business purposes.

1. Electric Quarterly Reports

Section 205 of the FPA, 16 U.S.C. § 824d (2018), and Part 35 of the Commission's regulations, 18 C.F.R. Part 35 (2022), require, among other things, that all rates, terms, and conditions of jurisdictional service be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements to require public utilities, including power marketers, to file EQRs summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and providing transaction information (including rates) for short-term and long-term power sales

Revenues for Ratemaking and Income Tax Purposes, Order No. 144, FERC Stats. & Regs. ¶ 30,254 (1981) (cross-referenced at 18 FERC ¶ 61,163), *order on reh'g*, Order No. 144-A, FERC Stats. & Regs. ¶ 30,340 (1982) (cross referenced at 15 FERC ¶ 61,142).

[71] *See Accounting for Income Taxes*, Docket No. AI93-5-000 (Apr. 23, 1993).

during the most recent calendar quarter.[72] The Commission extended the EQR filing requirement to apply to certain non-public utilities in Order No. 768.[73]

In FY2022, the Commission received EQR submittals from over 3,000 entities each quarter. DAA assesses whether sellers have timely complied with the requirements set forth in the multiple orders regarding EQR filings and, through automated validations, whether the data is accurate. DAA also reviews EQR issues that arise during audits and self-reports and submits candidate entities that do not timely file their EQRs to OEMR for possible revocation of MBR authority. In FY2022, DAA continued the public outreach it began in 2020 on its EQR Reassessment Project, which aims to review the current EQR reporting requirements and to improve both the data being collected and the submission platform. DAA held one EQR technical conference via webcast in FY2022 with the filing community on potential updates and improvements to the existing data collection. At the October 14, 2021 technical conference, staff discussed potential proposed modifications to 11 data fields. During FY2022, staff also updated the EQR webpage and provided filing assistance to filers.

2. eForms Refresh Project

On April 16, 2015, the Commission directed Commission staff to begin the process of replacing its electronic filing format used for many of the forms submitted by industry, as the then-current Visual FoxPro filing software was no longer supported.[74] The eForms Refresh Project included FERC Form Nos. 1, 1-F, 3-Q (electric), 2, 2-A, 3-Q (natural gas), 6, 6-Q (oil), 60, and 714 (collectively, Commission Forms). On June 20, 2019, the Commission issued a final rule adopting XBRL as the standard for filing these forms.[75] In March 2020, the Commission held a virtual staff-led technical conference via webcast to discuss the use of XBRL for filing the Commission Forms. On July 17, 2020, the Commission issued an order adopting the final XBRL taxonomy, protocols, implementation guide, and other supporting documents. The Commission also established an implementation schedule for filing the Commission Forms using the XBRL

[72] *Revised Public Utility Filing Requirements*, Order No. 2001, 99 FERC ¶ 61,107, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, 125 FERC ¶ 61,103 (2008).

[73] *Electric Market Transparency Provisions of Section 220 of the Federal Power Act*, Order No. 768, 140 FERC ¶ 61,232 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013), *order on reh'g*, Order No. 768-B, 150 FERC ¶ 61,075 (2015).

[74] *Electronic Filing Protocols for Commission Forms*, 151 FERC ¶ 61,025 (2015).

[75] *Revisions to the Filing Process for Commission Forms*, Order No. 859, 167 FERC ¶ 61,241 (2019).

process.[76] In particular, the schedule required these forms to be submitted using the XBRL process starting with the third quarter of 2021 filings for FERC Form Nos. 3-Q (electric), 3-Q (natural gas), and 6-Q (oil) and indicated that all of the other Commission Forms due subsequent to the third quarter of 2021 must be submitted using the XBRL process. As of September 30, 2021, the Commission no longer accepted filings in the Visual FoxPro system. Immediately following that deadline, on October 1, 2021, the XBRL system went live, allowing filers to submit their 2021 third quarter filings using the XBRL process and to resubmit in XBRL any filing from Q3 2011 to the present. Since that time, filers have successfully submitted 2021 third and fourth quarter filings and 2022 first and second quarter filings using the XBRL process.

3. Financial Forms

DAA administers and oversees compliance with FERC Form Nos. 1, 1-F, 2, 2-A, 3-Q (gas and electric), 6, 6-Q, 60, and FERC-61. During FY2022, the Commission received approximately 2,607 financial forms submittals. As discussed above, on July 28, 2022, the Commission issued a NOPR in RM21-11-000, proposing reforms to USofA for public utilities and licensees to include new accounts for wind, solar, and other non-hydro renewable assets; create a new functional class for energy storage accounts; codify the accounting treatment of renewable energy credits; and create new accounts within existing functions for hardware, software, and communication equipment. The Commission also proposed revisions to the relevant FERC financial forms to accommodate these changes.[77]

DIVISION OF ANALYTICS AND SURVEILLANCE

A. Overview

The Division of Analytics and Surveillance (DAS) develops surveillance tools, conducts surveillance, and analyzes transactional and market data to detect potential manipulation, anticompetitive behavior, and other anomalous activities in the energy markets. DAS focuses on: (1) natural gas surveillance; (2) electric surveillance; and (3) analytics for reviewing market participant behavior. The analysts and economists in DAS identify market participants whose conduct may potentially call for investigation or further Commission action. They do this not only by conducting surveillance and inquiries of the natural gas and electric markets, but also by reviewing market monitor referrals[78] and Hotline complaints against the non-public data available to the Commission. This internal review process reduces burden on the industry by resolving some matters without the need for investigation. When an investigation is opened, DAS staff

[76] *Revisions to the Filing Process for Commission Forms*, *Order on Technical Conference*, 172 FERC ¶ 61,059 (2020).

[77] *Accounting and Reporting Treatment of Certain Renewable Energy Assets*, Notice of Proposed Rulemaking, 180 FERC ¶ 61,050 (2022).

[78] Specific examples of this review of market monitor referrals are included in DOI Section F.2. of this report under "Illustrative MMU Referrals Closed with No Action."

participates in investigations with attorneys from DOI, providing detailed transactional analyses, market event analyses, and subject matter expertise.

To perform these functions, access to high quality, relevant, and timely data is essential. Since the creation of DAS in 2012, the Commission has been enhancing its data collection through orders, agreements, and subscription services in a manner designed to minimize burden on market participants. In Order No. 760, the Commission directed the ISOs/RTOs to provide, on an ongoing basis and in a format consistent with how the data is collected in each market, critical information on market bids, offers, and market outcomes.[79] On average, the Commission receives, on a non-public basis, approximately 24 gigabytes of data in more than 1,454 tables each day from the six organized markets combined. Each ISO/RTO database is different, and DAS is responsible for understanding the nuances of each database and preparing them for use in surveillance screens and analyses.

Similarly, pursuant to Order No. 771,[80] the Commission gained access to the electronic tags (eTags) used to schedule the transmission of electric power interchange transactions in jurisdictional wholesale markets by requiring that each covered eTag identify the Commission as a party authorized to review its contents. The Commission has access to approximately 14 million eTags and gains access to approximately 3,800 new eTags each day. The Commission also routinely receives non-public physical electric and natural gas market data from the Intercontinental Exchange (ICE) and a subset of the Large Trader Report from the Commodity Futures Trading Commission (CFTC) through a Memorandum of Understanding. DAS staff continue to use these data sources, EQR data, and data from a variety of subscription-based services, extensively.

B. Surveillance

As part of its surveillance function, DAS develops, refines, and implements surveillance tools and algorithmic screens to perform continuous surveillance and analysis of market participant behavior, economic incentives, operations, and price formation, both in the natural gas and electricity markets. In the context of surveillance, DAS seeks to: (1) detect anomalous activities in the markets; and (2) identify potential investigative subjects. When a surveillance screen trips, staff conducts a series of analyses to gain information about the activity that caused it. First, staff evaluates the activity using available market data and information to determine whether there is a fundamentals-based explanation for the activity. Most often, staff finds such an explanation. However, when the follow-up analyses fail to explain the screen trip or surveillance alert, staff performs a more in-depth review of the conduct, which may involve contacting the market participant to request additional information and discuss the conduct at issue. Staff classifies this enhanced review as the opening of a surveillance inquiry. If, after conducting a surveillance

[79] *Enhancement of Electricity Market Surveillance and Analysis through Ongoing Electronic Delivery of Data from Regional Transmission Organizations and Independent System Operators*, Order No. 760, 139 FERC ¶ 61,053 (2012).

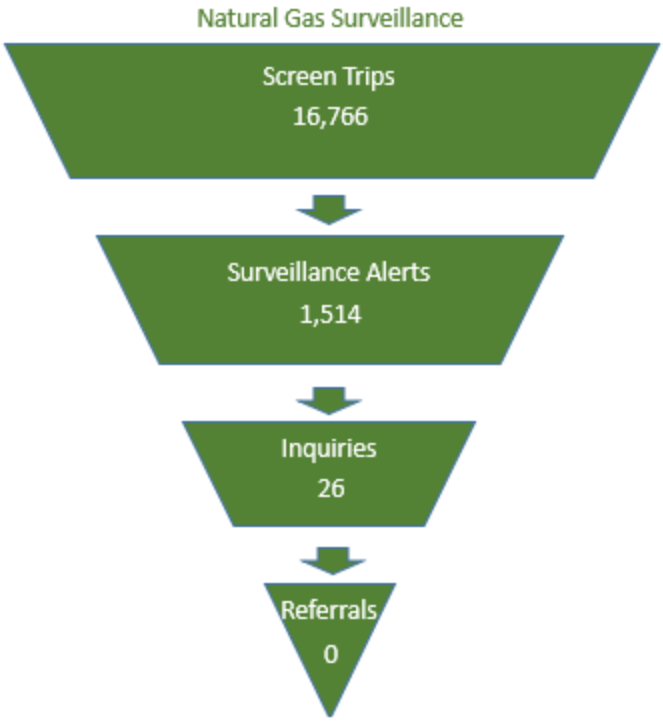
[80] *Availability of E-Tag Information to Commission Staff*, Order No. 771, 141 FERC ¶ 61,235 (2012).

inquiry, staff is still concerned that there is a potential violation, it will recommend that DOI open an investigation into the matter.

1. Natural Gas

DAS conducts surveillance and analysis of the physical natural gas markets to detect potential manipulation and anti-competitive behavior. Automated natural gas screens cover the majority of physical and financial trading hubs in the United States, monitoring daily and monthly markets. These screens and data feeds alert staff to anomalous market conditions and market participant actions based on a review of supply, demand, pipeline utilization, operational notices, and physical and financial trading. Asset-based screens evaluate natural gas trading around infrastructure, including natural gas storage, pipeline capacity, and electric generation. In addition, DAS uses Large Trader Report data from the CFTC to weigh potential financial incentives that might encourage a market participant to engage in a manipulative scheme.

In FY2022, natural gas surveillance screens produced approximately 16,766 screen trips. Staff reviewed these automated screen trips, compared the conduct that triggered the screen trips to conduct at other hubs, and evaluated whether a fundamentals or physical asset-based explanation existed for the activity. DAS also reviewed other observed anomalous market outcomes for potential concern. In FY2022, staff reviewed and dismissed most of the screen trips as consistent with concurrent conditions. Where concerns remained, staff classified specific screen trips and market activity as "surveillance alerts." Staff documented 1,514 surveillance alerts that ranged in severity from low to high concern. When concerns persisted through more thorough review, DAS opened a surveillance inquiry, a more in-depth staff review of the specific trading behavior, which in some cases involves contacting market participants for additional information or to discuss the conduct at issue. In FY2022, DAS opened 26 such natural gas surveillance inquiries and closed a total of 28 inquiries with no referrals. All four pending inquiries from FY2021 were closed in FY2022, 24 inquiries were both opened and closed in FY2022, and two inquiries initiated in FY2022 remain open with DAS staff continuing its analytic work.



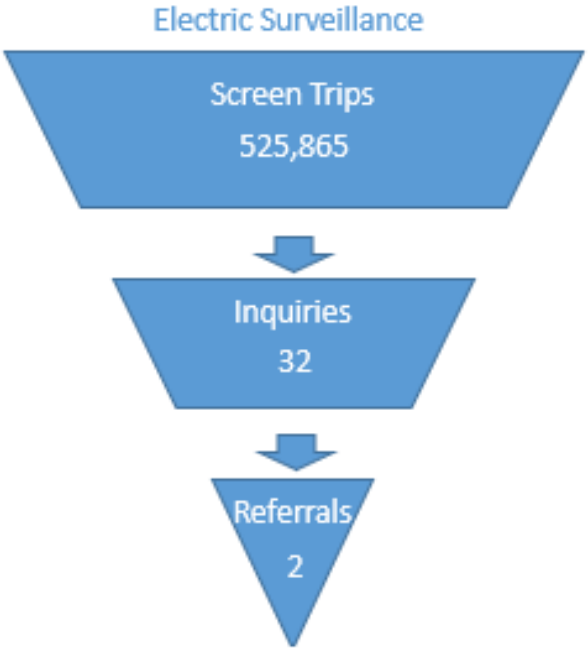
2. Electricity

DAS accesses data from a variety of sources to screen for anomalies and potentially manipulative behavior in the ISO/RTO markets and bilateral wholesale electricity markets. During FY2022, staff ran monthly and weekly screens to identify patterns by monitoring the interactions between bids and cleared physical and financially settled electricity products. These screens identify financial transmission rights and swap-futures that settle against nodes that are affected by transmission constraints where market participants also trade virtuals, generate electricity, purchase electricity, or move power between Balancing Authorities.

During FY2022, staff continued to refine its processes for screening to detect: (1) uneconomic virtual transactions by node, zone, and constraint; (2) potential day-ahead and real-time market congestion manipulation that would benefit financial transmission rights in the ISO/RTO markets, synthetic real-time financial transmission rights, swap-futures positions for physical load, and generation portfolios; (3) anomalies in physical offer patterns, particularly in non-price based parameters; (4) abnormal out-of-market payments; (5) irregularities in capacity market sell offers; and (6) loss making physical fixed-price offer strategies in bilateral electricity markets. DAS also continued to bolster its tools to view patterns of behavior on a portfolio basis, across Balancing Authority borders and jurisdictional commodities.

Each month during FY2022, DAS ran and reviewed 96 electric surveillance screens; monthly, hourly, and intra-hour sub-screens; and reports for over 41,000 hub and pricing nodes within the six ISOs/RTOs. Additionally, DAS screened non-ISO/RTO markets and cross-ISO/RTO portfolio trades for potential manipulation. In reviewing screen trips and, in some cases, after communicating with the ISO/RTO MMUs, DAS identified 32 instances of market behavior that

required further analysis through a surveillance inquiry. Of the 32 electric surveillance inquiries, two were referred to DOI for investigation, 26 were closed with no referral, and four remain open with DAS staff continuing its analytic work.



3. Illustrative DAS Surveillance Inquiries Closed with No Referral

Market Manipulation (Gas). DAS natural gas surveillance screens identified a market participant buying next-day fixed priced gas at high prices and market concentrations compared to others at a market hub in the Northeast for a few consecutive months, while holding a large, long index future position and deliverability from pipeline contracts and asset management agreement (AMA) capacity. DAS interviewed the trader, who detailed off-exchange, IFERC-priced term index gas sales of a larger volume than its long index futures and the need to purchase next-day gas to fulfill sales obligations. Further, the trader explained that the long index futures offset short index risk from the term index gas sales, and that sales were made to meet calls embedded in the AMA's referenced upstream indexes rather than the market hub in question. After staff considered the explanations provided, DAS closed the surveillance inquiry with no referral to DOI.

Market Manipulation (Gas). DAS natural gas surveillance screens identified a pattern of a market participant's sales at prices below others at a discounted component hub in multiple consecutive bidweeks at a Western hub, where the market participant held a large, short basis futures position. DAS contacted the market participant regarding this pattern. The trader described a longstanding trading strategy on basis valuation and discussed index gas purchases made at a discount to index, creating stranded physical length that needed to be sold upstream of a constraint. Staff verified that the market participant had no capacity to move the gas downstream. DAS closed the surveillance inquiry with no referral to DOI.

Market Manipulation (Gas). DAS natural gas surveillance screens identified a market participant selling next-day fixed price at a Gulf hub with consistent losses and high concentration for the entirety of a season, while holding a large, short exposure to prompt NYMEX lookalike LD1 futures. DAS interviewed the trader, who detailed how the sales marketed a producer's gas at a premium downstream market using in-the-money pipeline capacity. The trader and company explained that the NYMEX lookalike position was part of an independent strategy and trading desk in another part of the firm. The company also demonstrated that it was a new physical market participant frequently lacking counterparty credit with the best bidder. DAS verified the participant's claims about its pipeline capacity and closed the inquiry without referral to DOI.

Market Manipulation (Gas-Electric). In previous winters, LNG imports into the United States have been the subject of extensive DAS analysis. These analyses have focused on the ability of an LNG importer to depress gas and power prices and thereby benefit from short financial positions. DAS conducted a similar analysis for FY2022. During the fall, a market participant had built up large, short natural gas and power positions. In addition, the market participant chartered an LNG tanker and brought in one tanker that discharged during winter peak days. The size of the cargo dovetailed with the short position, and thus appeared to be a full hedge. While the cargo could have been more economic to move to European markets, DAS also considered the timing and terms of the charter, which were such that shipping to the United States also appeared to be reasonable.

Market Manipulation (Electric). DAS surveillance routinely discusses market issues with its partners in ISO/RTO MMUs. In one of those meetings, SPP's MMU alerted DAS to an issue related to a large transmission line outage. The outage was taken by the transmission side of a large load-serving entity for the purpose of interconnecting a new wind plant owned and operated by another company. The MMU noted that the outage had been extended multiple times and had a large impact on congestion and that the timing of the extensions had caused significant FTR underfunding. DAS examined the participants' financial positions and found no correlating positions. In addition, DAS staff was concerned about the potential for cross-product manipulation using extended transmission outages for the benefit of a generator's portfolio. DAS conducted an analysis into the generator behavior of the two participants' fleets. DAS looked for changing offer behavior to receive additional revenues from increased congestion as well as increased uplift. DAS found no changed generator behavior or benefitting financial positions, and, therefore, closed the inquiry.

Market Manipulation (Electric). DAS staff routinely reviews uplift payments for anomalous patterns. As a result, DAS screens flagged a natural gas peaker, which received over $3M in day-ahead Lost Opportunity Costs (LOC) for a 5-hour period. DAS reviewed the plant's supply offers and non-price parameters and compared them to those of its peer group. These were within a relatively normal range, and the plant appeared to be committed economically. In real-time, however, the plant was not dispatched despite very high LMPs. After further inquiry, staff discovered that severe storms had impacted transmission facilities and forced the ISO to issue load-shed directives to alleviate local thermal overloads. This in turn led to the units not being committed in real-time but receiving LOC instead. Thus, staff closed the inquiry.

Market Manipulation (Electric). While conducting routine surveillance screening of SPP generator offer parameters, DAS noted that one particular coal plant received a very large amount

of uplift and had concerning offer parameters. The unit raised and lowered its economic maximum (Ecomax) and economic minimum (Ecomin) throughout the day. In other words, the market participant was raising and lowering the amount of MW that the unit could produce over the course of single day. It changed these parameters every day for over a month. These parameters tended to change between the on-peak and off-peak hours. DAS noted that this behavior was extremely unusual. DAS was concerned that the unit lowered its Ecomin to get committed at a lower value, and then raised it to receive uplift. Upon further review, staff could not find any correlation between the uplift and the parameter switching, and found that the unit had responded to dispatch instructions. After a short period, the unit ceased offering its parameters in such a manner. As a result, staff closed the inquiry.

C. Analytics

During FY2022, DAS worked on approximately 50 investigations and 15 other matters involving inquiries or litigation. Some of these matters are discussed above in the DOI section. Many of the investigations in which DAS participated involved allegations of manipulation in the Commission-jurisdictional natural gas and electricity markets, or violations of tariff provisions that are intended to foster open, competitive markets. DAS staff's investigative activities generally include: (1) analyzing companies' portfolios, transactions, and other market actions; (2) identifying patterns of market activity that could indicate potential market manipulation or other violations and time periods in which they may have occurred; (3) assessing market conditions and other contextual information during periods of potential manipulation or other violations; (4) supporting DOI in taking investigative testimony; and (5) calculating the amount of unjust profits and market harm resulting from alleged violations to assist with determining a civil penalty recommendation under the Commission's Penalty Guidelines. Upon completion of the analytical process, DAS staff develops data-based explanations to inform the structure and substance of further investigation, settlement discussions, and recommended Commission actions. DAS staff also coordinates internally to refine and develop new screens to detect improper behavior discovered in prior investigations.

D. Market-Based Rate *Ex Post* Analysis

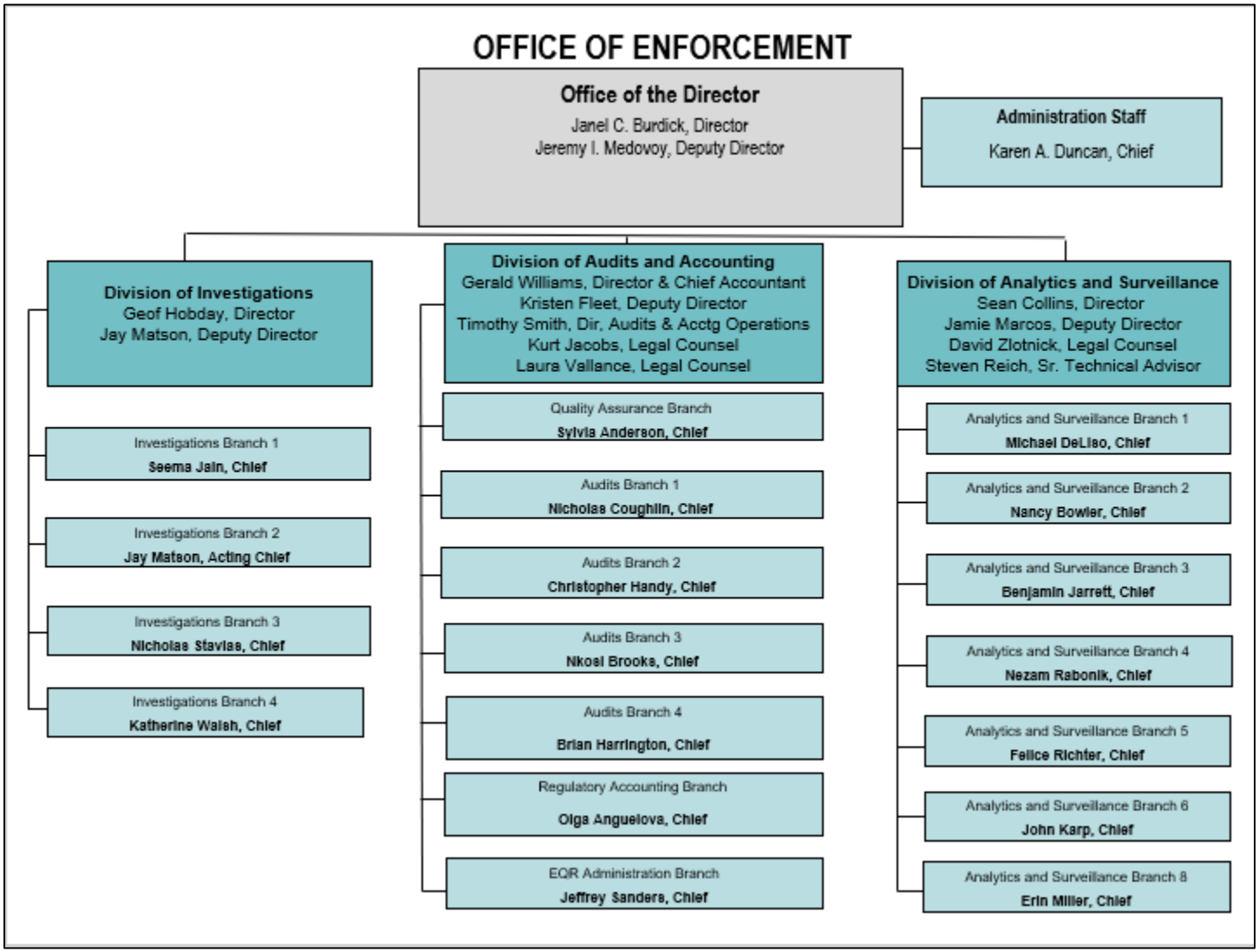
DAS conducts analytical reviews of wholesale electric MBR transactions to detect the potential exercise of market power. To accomplish this function in FY2022, DAS staff continued to develop, refine, and implement tools and algorithmic indicators to conduct ongoing analysis of transactional and other market data to ensure that jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential. This *ex post* analysis evaluated transactions against market fundamentals at the time of execution, with the primary goal of identifying outcomes that may be inconsistent with expectations of a competitive market, and thus an indication of a potential exercise of market power. Staff also analyzed transactions for compliance with market mitigation and rules such as the soft price cap in the Western Interconnection. Once such outcomes were identified, DAS coordinated with other Commission program offices to determine whether to recommend that the Commission take action to remedy market power or compliance concerns. DAS also used these tools to assist in analyzing applications and filings for MBRs, and other docketed proceedings. During FY2022, DAS staff reviewed over 2.5 million transactions filed through the Commission's EQRs by all market-based rate holders selling wholesale energy in the

bilateral markets. DAS staff routinely analyzed the combined results of 25 statistical indicators to detect potential instances of the exercise of market power within 59 geographic regions or market hubs.

E. Data Management

During FY2022, DAS focused on two major data management and technology initiatives. First, under an initiative started in FY2020, DAS continued to develop a data warehouse that simplifies Commission analyst use of Order No. 760 data. In FY2022, the data warehouse team completed development and validation on three additional data models. To date, the team has developed seven of the 11 data models in the Order No. 760 database, incorporating 540 of the roughly 1,500 Order No. 760 tables into the data warehouse. The team projects completing the effort in FY2023. Second, under a Commission-wide initiative started in FY2020, DAS supported its counterparts in the FERC Office of the Chief Information Office (CIOO) to migrate Commission analytics into the cloud. In the new cloud environment, Commission analysts will have state-of-the-art analytics tools and powerful data platforms to analyze voluminous Commission data assets. This year, DAS helped the CIOO test and configure two enterprise-wide analytics products in the cloud. In this process and to demonstrate capability, DAS deployed several production analyses onto the new analytics products. In addition, DAS identified its key data assets for migration to the cloud; this migration is expected to be completed in late FY2023. In the meantime, DAS migrated some of its data into the new platform to demonstrate some of the capabilities of the new cloud tools. In FY2023, DAS will continue to use the new tools and anticipates further maturing of the cloud environment.

APPENDIX A: OFFICE OF ENFORCEMENT ORGANIZATION CHART (CURRENT)



APPENDIX B: FY2022 CIVIL PENALTY ENFORCEMENT ACTIONS

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
Constellation NewEnergy, Inc., Docket No. IN22-4-000, March 29, 2022 Order Approving Stipulation and Consent Agreement, 178 FERC ¶ 61,231	$2,400,000 civil penalty; $2,300,000 disgorgement.	On March 29, 2022, the Commission issued an order approving the settlement of Enforcement's investigation of Constellation NewEnergy, Inc. (CNE) into whether CNE complied with the pertinent CAISO tariff provisions regarding the treatment of imports for Resource Adequacy (RA) purposes. Enforcement's investigation found that CNE violated 18 C.F.R. § 35.41(a) and Sections 4.2.1, 37.2.1.1, and 37.3.1 of the CAISO tariff, by failing to purchase capacity in support of its RA-related imports and otherwise failing to reasonably plan for the circumstance of those imports being dispatched by CAISO. Under the terms of the settlement, CNE admitted to the facts, but neither admitted nor denied the violations.
Dynegy Marketing and Trade, LLC, Docket No. IN22-3-000, March 28, 2022 Order Approving Stipulation and Consent Agreement, 178 FERC ¶ 61,230	$450,000 civil penalty; $119,425.10 disgorgement.	On March 28, 2022, the Commission issued an order approving a Stipulation and Consent Agreement with Dynegy Marketing and Trade, LLC (Dynegy). The order resolved Enforcement's investigation into whether Dynegy's Real-Time energy market offers in Summer 2017 for ten GE 7FA (7FA) dual-fuel combustion turbines (CTs) in the PJM market misrepresented that the units could ramp to their maximum oil-based output attained during their capacity tests (ICAP) while running on gas. Enforcement's investigation found that Dynegy's conduct violated (1) the Commission's Duty of Candor rule, 18 C.F.R. § 35.41(b); and (2) Section 1.7.19 of Schedule 1 of the Amended and Restated Operating Agreement and Attachment K – Appendix of the PJM Open Access Transmission Tariff (OATT), which require each unit to be able to change output at the ramping rate specified in the Offer Data. The Commission's order also resolved Enforcement's separate finding that Dynegy violated Section 35.41(b) when it maintained a prospective 16 MW capacity increase for one of its dual-fuel units,

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
		based on (a) unit upgrades that were never completed by the previous owner and (b) the use of auxiliary generators during capacity tests, which was prohibited by PJM. Dynegy stipulated to the facts, but neither admitted nor denied the alleged violations. Dynegy also agreed to submit annual compliance reports for at least two years and potentially a third year at Enforcement's discretion.
Enerwise Global Technologies, LLC d/b/a CPower, Docket No. IN22-7-000, August 25, 2022 Order Approving Stipulation and Consent Agreement, 180 FERC ¶ 61,126	$2,539,372 civil penalty; $2,460,628 disgorgement.	On August 25, 2022, the Commission issued an order approving the settlement of Enforcement's investigation of Enerwise Global Technologies, LLC d/b/a CPower (CPower). Enforcement investigated whether CPower complied with its offer obligations in the ISO-NE energy market during the period June 1, 2018 through February 28, 2019. Enforcement determined that CPower failed to offer the megawatts (MWs) required by ISO-NE tariff provisions governing its participation in the ISO-NE energy market. Those failures constituted violations of Section III.13.6.1.5.1 of the ISO-NE tariff. Under the terms of the settlement, CPower admitted to the facts, neither admitted nor denied the violations, and agreed to undertake compliance monitoring for one year with the option of Enforcement to extend it to two years.
Salem Harbor Power Development LP and ISO-New England, Inc., Docket No. IN18-8-000, June 27, 2022 and September 30, 2022 Orders Approving Stipulation and Consent Agreement, 179 FERC ¶ 61,228, 180 FERC ¶ 61,223	$17,100,000 civil penalty as to Footprint; $500,000 civil penalty as to ISO-NE; and $26,693,237.67 disgorgement.	On June 27, 2022, and September 30, 2022, the Commission issued orders approving related settlements of Enforcement's investigations of Salem Harbor Power Development LP (Footprint) and ISO-NE. Enforcement's investigation found that ISO-NE made over $100 million in capacity payments to Footprint for Footprint's New Salem Harbor Generating Station project (Project) even though the Project had not yet been constructed or started commercial operation. Enforcement determined that this conduct violated provisions of the ISO-NE tariff, and one of the Commission's market behavior rules, which required

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
		Footprint to sell off its capacity award prior to its capacity commitment period or, barring that, required ISO-NE to sell it off on Footprint's behalf. Enforcement also determined that ISO-NE committed a further tariff violation by denying the ISO-NE Internal Market Monitor's (IMM's) access to a database of information regarding Footprint after the IMM investigated these violations. After the investigation, Footprint lost an arbitration with its main contractor for the Project and declared bankruptcy. In their respective settlements, Footprint and ISO-NE both stipulated to the facts and neither admitted nor denied the violations. Footprint agreed that the Commission would have unsecured bankruptcy claims of over $43 million – $17,100,000 as a civil penalty and $26,693,237.67 in disgorgement. ISO-NE agreed to pay a civil penalty of $500,000. The entities also agreed to various compliance measures, including compliance monitoring.
Golden Spread Electric Cooperative, Inc., Docket No. IN21-9-000, November 18, 2021 Order Approving Stipulation and Consent Agreement, 177 FERC ¶ 61,109	$550,000 civil penalty; $375,000 disgorgement.	On November 18, 2021, the Commission issued an order approving the settlement of Enforcement's investigation of Golden Spread Electric Cooperative, Inc. (Golden Spread) into whether Golden Spread violated the Commission's Anti-Manipulation Rule by offering its Mustang Station generating unit into the SPP market in a manner that improperly targeted and increased Day-Ahead Market make whole payments. Under the agreement, Golden Spread agreed to submit annual compliance reports and make enhancements to its compliance program, including additional training for its employees. Golden Spread neither admitted nor denied the alleged violation.

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
sPower Development Company, LLC, Docket No. IN22-5-000, June 24, 2022 Order Approving Stipulation and Consent Agreement, 179 FERC ¶ 61,220	$24,000 civil penalty.	On June 24, 2022, the Commission issued an order approving the settlement of Enforcement's investigation of sPower Development Company, LLC (sPower) into whether sPower violated Section 36.2A of the PJM tariff by submitting to PJM two interconnection study agreements that inaccurately stated sPower had site control over property for a proposed interconnection (which was necessary for the interconnection process to proceed) when it did not have such control. Under the agreement, sPower agreed to submit annual compliance monitoring reports for two years, with a possible third year. sPower stipulated to the facts, but neither admitted nor denied the alleged violation.
M3 Ohio Gathering LLC and Utica East Ohio Midstream LLC and UEOM NGL Pipelines LLC, Docket No. IN22-6-000, June 24, 2022 Order Approving Stipulation and Consent Agreement, 179 FERC ¶ 61,221	$30,000 civil penalty.	On June 24, 2022, the Commission issued an order approving the settlement of Enforcement's investigation of M3 Ohio Gathering LLC (M3) and Utica East Ohio Midstream LLC, and UEOM NGL Pipelines LLC (Utica East) into whether M3/Utica East violated Part I, Section 20(1) of the Interstate Commerce Act and the Commission's regulations (18 C.F.R. § 357.2(a)) when they failed to submit annual and quarterly Form No. 6s during the period 2013-2019. Under the agreement, Utica East agreed to certify and submit all outstanding FERC Form No. 6 filings through the Commission's eForms portal. M3 and Utica East stipulated to the facts, but neither admitted nor denied the alleged violation.