

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**



2017 REPORT ON ENFORCEMENT

Docket No. AD07-13-011

Prepared by Staff of the

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

NOVEMBER 16, 2017



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.

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
INTRODUCTION	3
OFFICE OF ENFORCEMENT PRIORITIES	4
DIVISION OF INVESTIGATIONS.....	6
A. Overview.....	6
B. Orders to Show Cause and Related Proceedings	7
1. District Court Litigation	7
2. Administrative Hearings.....	10
C. Settlements.....	11
D. Self-Reports	16
1. Illustrative Self-Reports Closed with No Action.....	19
E. Investigations	23
1. Statistics on Investigations	24
2. Illustrative Investigations Closed with No Action.....	29
F. Enforcement Hotline.....	31
G. Other Matters	31
DIVISION OF AUDITS AND ACCOUNTING.....	33
A. Overview.....	33
B. Compliance	34
1. Compliance Reviews	34
2. Compliance Alerts.....	34
C. Significant Audit Matters.....	37
D. Other Audit Matters	40
1. Mergers and Acquisitions.....	40
2. Oil.....	40
3. Market-Based Rate & EQR	41
4. Electric Tariff & Accounting.....	42
E. Accounting Matters.....	42
1. Filings Reviewed by DAA	43
2. Requests for Approval of the Chief Accountant.....	44
3. Rate Proceedings	45
4. Certificate Proceedings.....	45
5. Merger and Acquisition Proceedings	45
6. Debt and Security Issuance Proceedings	46

7.	Accounting Inquiries	46
8.	Accounting for Pensions and Other Postretirement Benefits	46
9.	International Financial Reporting Standards	47
DIVISION OF ENERGY MARKET OVERSIGHT		48
A.	Overview.....	48
B.	Market Monitoring.....	48
1.	2016 State of the Markets Report.....	48
2.	Seasonal Market Assessments	49
C.	Market-Based Rate <i>Ex Post</i> Analysis	49
D.	Commission Orders and Rulemakings.....	50
E.	Forms Administration and Compliance	50
1.	Electric Quarterly Reports	50
2.	eForms Refresh Project	51
F.	Outreach and Communication	51
1.	Technical Conference: Developments in Natural Gas Index Liquidity and Transparency	51
2.	Website	52
3.	Snapshot Calls	52
4.	Domestic and Foreign Delegation Briefings	52
DIVISION OF ANALYTICS AND SURVEILLANCE		53
A.	Overview.....	53
B.	Surveillance.....	53
1.	Natural Gas.....	54
2.	Electricity	55
3.	Illustrative DAS Surveillance Inquiries Closed With No Referral.....	56
C.	Analytics	56
CONCLUSION.....		58
APPENDIX A: OFFICE OF ENFORCEMENT ORGANIZATION CHART		59
APPENDIX B: FY2017 CIVIL PENALTY ENFORCEMENT ACTIONS		60
APPENDIX C: FY2017 NOTICES OF ALLEGED VIOLATIONS		62

INTRODUCTION

The staff of the Office of Enforcement (Enforcement) 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 2017 (FY2017),² including an overview of, and statistics reflecting, the activities of the four divisions within Enforcement: Division of Investigations (DOI), Division of Audits and Accounting (DAA), Division of Energy Market Oversight (Market Oversight), 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. Because much of Enforcement's investigative work is non-public, most of the information the public receives about investigations comes from public Commission orders approving settlements, orders to show cause, publicly released staff reports, audit reports, and notices of alleged violations. However, not all of Enforcement's activities result in public actions by the Commission. As in previous years, the FY2017 report provides the public with more information regarding the nature of non-public Enforcement activities, such as self-reported violations and investigations that are closed without public enforcement action, and examples of surveillance inquiries initiated by DAS that are closed with no referral to DOI. This report also highlights Enforcement's work auditing jurisdictional companies, monitoring market trends and market competitiveness, and performing surveillance and analysis of conduct in wholesale natural gas and electric markets. In addition, DAA points out a number of areas to help companies enhance compliance programs.

¹ *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 12 (2008) (Revised Policy Statement). A current Enforcement 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. FY2017, the subject of this report, began on October 1, 2016 and ended on September 30, 2017.

OFFICE OF ENFORCEMENT PRIORITIES

The Commission's current Strategic Plan announced its mission of assisting consumers in obtaining reliable, efficient, and sustainable energy services at a reasonable cost, and through appropriate regulatory and market means.³ The Strategic Plan identifies three primary goals to fulfill this mission: (1) ensuring that rates, terms, and conditions of jurisdictional services are just, reasonable, and not unduly discriminatory or preferential; (2) promoting the development of a safe, reliable, and efficient energy infrastructure that serves the public interest; and (3) facilitating organizational excellence through increased transparency, communication, and managing Commission resources and employees. To further those goals and assist the Commission in its obligation to oversee regulated markets, Enforcement's four divisions gather information about market behavior, market participants, and market rules. 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 FY2017, Enforcement had the same priorities as in previous years, continuing to focus on matters involving:

- Fraud and market manipulation;
- Serious violations of the Reliability Standards;
- Anticompetitive conduct; and
- Conduct that threatens the transparency of regulated markets.

Enforcement does not intend to change these priorities in Fiscal Year 2018. Conduct involving fraud and market manipulation poses a significant threat to the markets the Commission oversees. Such intentional misconduct undermines the Commission's goal of ensuring provision of 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 Electric Reliability Organization (ERO), 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

³ The Federal Energy Regulatory Commission, Strategic Plan FY2014-2018 (Mar. 2014), available at <http://www.ferc.gov/about/strat-docs/FY-2014-FY-2018-strat-plan.pdf>.

focuses on cases involving repeat violations of the Reliability Standards or violations that present a substantial risk to the bulk power system.

In FY2017, DOI staff opened 27 new investigations, while bringing 16 pending investigations to closure either with no action or through a Commission-approved settlement.⁴ During the fiscal year, staff negotiated settlements allowing recovery of more than \$51 million in civil penalties, and disgorgement of over \$42 million in unjust profits.⁵ These settlements also included provisions requiring the subjects to enhance their compliance programs and periodically report back to Enforcement regarding the results of those compliance enhancements.

Staff from DAA reviewed the conduct of regulated entities through 11 audits of oil pipelines, electric utilities, and natural gas companies, resulting in 301 recommendations for corrective action, and directing refunds and recoveries totaling \$13.3 million.

Market Oversight continued its analysis of market fundamentals (including significant trends and developments) and enhanced its analytical capabilities related to identifying anticompetitive outcomes and anomalies that may indicate an exercise of market power. As in prior years, Market Oversight presented its annual State of the Markets report assessing significant events of the previous year, as well as Winter and Summer Energy Market and Reliability Assessments. Additionally, Market Oversight led a technical conference to discuss trends, concerns, and potential solutions relating to the declining levels of natural gas index liquidity, and continued ensuring compliance with the Commission's filing requirements for Electric Quarterly Reports (EQR) and various other financial forms.

Finally, in FY2017, DAS surveillance reviewed numerous instances of potential misconduct, sometimes resulting in referrals to DOI. In addition, DAS worked and provided analytical support on approximately 50 investigations with DOI.

⁴ Shortly after the conclusion of FY2017, the Commission reached a settlement with the respondents in the Barclays Bank, PLC matter pending in the Federal District Court for the Eastern District of California. See *Barclays Bank, PLC*, 161 FERC ¶ 61,147 (2017) (approving the settlement). As part of the settlement, the respondents will pay \$70 million in civil penalties and disgorge \$35 million in unjust profits. Because the settlement occurred in Fiscal Year 2018, the various figures cited in this report treat Barclays Bank, PLC as a pending litigation matter, with the civil penalties and disgorgement as originally assessed by the Commission, and do not reflect the matter as settled.

⁵ A table of FY2017 Civil Penalty Enforcement Actions, both those resolved through settlement and those resolved through agency proceedings, is attached to this report as Appendix B.

DIVISION OF INVESTIGATIONS

A. Overview

DOI conducts investigations of potential violations of the statutes, regulations, rules, orders, and tariffs administered by the Commission. These investigations may begin from self-reports, tips, calls to the Enforcement Hotline, referrals from organized markets or their monitoring units, other agencies, other divisions within Enforcement, other program offices within the Commission, or as a result of other investigations. DOI staff works closely, as appropriate, with other Enforcement divisions and other Commission offices. If staff finds significant violations, it reports its findings to the Commission and attempts to settle investigations for appropriate sanctions and future compliance improvements. Where settlement efforts fail, DOI may seek additional evidence, recommend that the Commission initiate a public show cause proceeding, or both.⁶

As in previous years, DOI staff continued in FY2017 to support the Commission's initiatives to increase transparency and promote consistency as it carried out its investigatory mission. Among other efforts to support these initiatives, the Director of Enforcement directed the Secretary to issue five notices of alleged violations (NAVs) involving conduct of six separate individuals or entities. The notices identified investigation subjects and included a concise description of alleged violations of the applicable statutes and Commission regulations and orders.⁷

If a settlement cannot be reached, the Commission may issue an order to show cause (OSC), directing the subject to explain why it did not commit a violation and why penalties and disgorgement are not warranted. The subject has a full opportunity to respond to the OSC, and Enforcement staff may reply to the subject's response. After considering the factual record and legal arguments submitted by the subject and Enforcement staff, if the Commission concludes that the subject committed a violation, and that the violation warrants penalties and/or disgorgement, the Commission will state those conclusions in a subsequent order. In matters arising under the Federal Power Act (FPA), that subsequent order is called an Order Assessing Civil Penalties. The Commission did not issue any OSCs or Orders Assessing Civil Penalties in FY2017.

If the company or individual against which the Commission assessed a civil penalty pursuant to the FPA does not pay the penalty in a timely fashion, DOI staff seeks to affirm and enforce that assessment in federal court. As of the end of FY2017, including actions filed in previous years, staff was litigating five such actions in federal court, seeking to enforce the Commission's combined assessment of more than \$575 million in penalties and disgorgement in those proceedings. Staff settled one FPA matter during FY2017 that was pending in federal court at the beginning of the fiscal year. One Natural Gas Act (NGA) related proceeding is pending before the Commission following the issuance of an OSC. In another NGA-related proceeding, the Commission's Order on Initial Decision assessing more than \$20 million in civil penalties, plus

⁶ For a discussion of the processes by which Enforcement staff conducts and concludes investigations, see Revised Policy Statement, *supra* note 1, at PP 23-40.

⁷ See Appendix C to this report for a complete listing of the notices of alleged violations that Enforcement issued in FY2017.

disgorgement and interest, is pending rehearing before the Commission as of the end of the fiscal year.

Most DOI investigations do not result in contested litigation, but are either closed without further action or settled. In all cases, staff attempts to settle matters when it is in the public interest to do so. In addition to the federal court matter staff settled in FY2017, Enforcement staff also settled with: (1) a power marketer for violations of the Commission's Anti-Manipulation Rule (18 C.F.R. § 1c.1); (2) an investor-owned vertically integrated utility for violations of the Anti-Manipulation Rule and a regional transmission organization/independent system operator (RTO/ISO) tariff; (3) a waste-to-energy generator for violations of an RTO/ISO tariff and one of the Commission's Market Behavior Rules (18 C.F.R. § 35.41(a)); and (4) a transmission provider for violations of FPA §§ 203 and 205, and parts 33 and 35 of the Commission's regulations.

Although the public NAVs, settlements, OSCs, and orders assessing penalties often receive the most public attention, DOI closes most of its investigations with no further action, and without the investigations becoming public. During the course of an investigation, if DOI concludes that there is insufficient evidence to establish a violation or otherwise concludes that further proceedings are not warranted, it will close the matter promptly. DOI closed 11 investigations in FY2017 either because staff found no violation or because there was not enough evidence to conclude that a violation had occurred. Adding those 11 closed investigations to the five investigations that DOI closed through settlement brings the total investigations closed in FY2017 to 16.

In addition to its investigation-related work, DOI continued its rigorous analysis of self-reports, Enforcement Hotline calls, referrals, and other matters within the Commission, and provided guidance and assistance as requested by other program offices on advisory matters.

B. Orders to Show Cause and Related Proceedings

DOI staff spent substantial time in FY2017 preparing reports, briefs, and other public filings related to OSC proceedings before the Commission and subsequent litigation in federal courts.

Enforcement staff continues litigating five FPA matters in United States District Courts, and settled one litigation matter that was pending in United States District Court at the beginning of the fiscal year.

Staff also continued its work on an NGA OSC proceeding, and awaits the Commission's decision on the respondent's motion for rehearing in another NGA OSC proceeding.

In total, as of the end of FY2017, counting all pending federal court matters and the two NGA OSC proceedings before the Commission, staff sought to recover \$806,865,000 in civil penalties and \$53,987,678 in unjust profits through seven litigation proceedings.

1. District Court Litigation

In FY2017, excluding matters that settled, Enforcement staff litigated five matters in United States District Courts to enforce the Commission's penalty assessments under the FPA. It also litigated a challenge to the Commission's jurisdiction brought in United States District Court by Total Gas & Power North America, Inc. and two of its traders. Those District Court litigation matters are:

a) *FERC v. Silkman, et al., No. 1:13-cv-13054 (D. Maine)*

On August 29, 2013, in Docket Nos. IN12-12-000 & IN12-13-000, the Commission issued orders assessing civil penalties in which it determined that Competitive Energy Services, LLC (CES), and Richard Silkman (CES's Managing Partner) had violated the Commission's Anti-Manipulation Rule by engaging in a scheme related to ISO-NE's day ahead load response program. Specifically, the Commission found that the respondents had engaged in a scheme to fraudulently inflate energy load baselines for a resource and then offer load reductions against that inflated baseline. It assessed civil penalties of \$7.5 million against CES, \$1.25 million against Silkman, and ordered disgorgement of \$166,841 from CES, plus interest.

On December 2, 2013, Enforcement staff filed a petition in the United States District Court for the District of Massachusetts to enforce the penalty assessment order against CES and Silkman. The respondents filed motions to dismiss the petitions in Fiscal Year 2014, which the District Court denied on April 11, 2016. In its order denying the respondents' motions to dismiss, the court specifically rejected the argument that the Commission was required to file its District Court action within five years of the violation (confirming that it has five years after the order assessing penalty to make such a filing), as well as their argument that the Commission cannot assess penalties against individuals for violating the Anti-Manipulation Rule. The court then transferred the cases to the United States District Court for the District of Maine.

On January 26, 2017, after briefing and oral argument, the United States District Court for Maine granted the respondents' motion to treat the proceeding as an ordinary civil action subject to the Federal Rules of Civil Procedure. The parties participated in mediation before Magistrate Judge John H. Rich III in Portland, Maine on March 31, 2017, and were unable to reach an agreement on resolution. The parties have been engaged in discovery since that time.

b) *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) had violated the Commission's Anti-Manipulation Rule by engaging in fraudulent Up-To Congestion (UTC) trades in the PJM Interconnection, LLC (PJM), market during the summer of 2010. The Commission determined that the respondents had engaged in trades to improperly collect certain market payments (called Marginal Loss Surplus Allocation, or "MLSA"). Specifically, the respondents 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, \$10.08 million against CU, and ordered disgorgement of unjust profits in the amounts of \$3,465,108 from Powhatan, \$173,100 from HEEP, and \$1,080,576 from CU, plus interest. 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. After rejecting the respondents' motion to dismiss, the court requested briefing on the *de novo* review procedures required by section 31(d)(3) of the FPA, which was filed in January 2016, followed by oral argument in April 2016. The court has not yet issued an order on this preliminary procedural matter.

c) *FERC v. ETRACOM LLC, No. 2:16-cv-01945 (E.D. Cal.)*

On June 17, 2016, in Docket No. IN16-2-000, the Commission issued an order assessing civil penalties against ETRACOM LLC (ETRACOM) and its majority owner and primary trader, Michael Rosenberg. The Commission determined that ETRACOM and Rosenberg violated the Commission's Anti-Manipulation Rule by submitting virtual supply transactions at the New Melones intertie at the border of the CAISO market in order to affect power prices and economically benefit ETRACOM's congestion revenue rights positions sourced at that location. The Commission assessed civil penalties against ETRACOM and Rosenberg in the amounts of \$2,400,000 and \$100,000, respectively, and directed ETRACOM to disgorge \$315,072 of unjust profits, with interest. On August 17, 2016, Enforcement staff filed a petition in the United States District Court for the Eastern District of California to enforce the Commission's order.

On March 8, 2017, following briefing on the scope of *de novo* review and applicable procedural rules, the court directed the parties to stipulate to a discovery schedule consistent with the Federal Rules of Civil Procedure. The parties' stipulated discovery schedule was approved on April 17, 2017, and the parties are currently engaging in discovery.

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

On May 27, 2016, in Docket No. IN16-4-00, 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, who developed and implemented the trading strategy. The Commission found that the respondents violated the Commission's Anti-Manipulation Rule by engaging in fraudulent UTC trades in the PJM market during the summer of 2010. In so doing, it determined that the "over-collected loss" or "OCL" trading strategy in which the respondents had engaged, which sought to capture payments by placing large volumes of UTC trades between trading points with negligible price separation, was fraudulent and manipulative. The Commission found that the respondents' OCL trading strategy involved three types of trades to improperly collect MLSA payments: (1) trading between export and import points (SOUTHIMP and SOUTHEXP) that had identical prices, (2) trading between export and import points (NCMPAIMP and NCMPAEXP) that had *de minimis* price differences, and (3) trading along various other paths and combinations of paths with minimal price differences. In each type of trade, the purpose was not to profit from spread changes, but instead to increase transmission volumes in order to collect MLSA payments.

The Commission also found that the respondents 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, in order 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 \$38 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 a petition in the United States District Court for the Southern District of Ohio to enforce the Commission's Order. On September 26, 2016, the respondents filed three separate motions to dismiss, and the Commission filed its opposition brief on October 20, 2016. The respondents filed reply briefs on November 7, 2016. The motions to dismiss are pending.

e) Total Gas & Power North America, Inc. v. FERC, No. 4:16-cv-01250 (S.D. Tex.)

On January 27, 2016, Total Gas & Power North America, Inc. and two of its traders filed a lawsuit in the United States District Court for the Western District of Texas seeking to prevent the Commission from adjudicating the violations identified by staff in the subsequently issued OSC regarding Total. The plaintiffs sought a declaratory judgment that: (1) the Commission has no legal authority to adjudicate NGA violations; (2) any such adjudication would violate Article III and the Fifth and Seventh Amendments of the United States Constitution; (3) the process by which FERC appoints administrative law judges is unconstitutional because those judges are not appointed by the Commission as a whole; and (4) communications among FERC staff before issuance of the OSC violated the prohibition on *ex parte* communications and the separation of function requirements established by the Administrative Procedure Act.

The court subsequently transferred the matter to the United States District Court for the Southern District of Texas, which dismissed the plaintiffs' complaint on July 15, 2016. The court held that: (1) the complaint was non-justiciable because the relief sought would not completely resolve the parties' dispute, and the plaintiffs' claims are hypothetical and not ripe; (2) the Commission does, as a matter of law, have jurisdiction to adjudicate NGA violations; and (3) the discretionary factors considered by courts in evaluating whether to exercise jurisdiction in such declaratory judgment matters favor dismissal. The discretionary factors cited by the court included its determination that the lawsuit was premature, inequitable, a waste of resources and that the plaintiffs were engaged in impermissible forum-shopping. Plaintiffs appealed that dismissal to the U.S. Court of Appeals for the Fifth Circuit on September 26, 2016, which on June 8, 2017, affirmed the dismissal. The Plaintiffs subsequently sought rehearing in the Fifth Circuit *en banc*, which was denied on August 8, 2017. On October 27, 2017, the Plaintiffs filed in the United States Supreme Court a request for an extension of time to determine whether to petition for certiorari.

2. Administrative Hearings

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

On August 5, 2013, the Commission issued an OSC in Docket No. IN13-15-000, directing BP America Inc., BP Corporation North America Inc., BP America Production Company, and BP Energy Company (collectively, BP) to demonstrate why they should not be required to pay \$28 million in civil penalties and disgorge \$800,000 of unjust profits related to certain trading by BP of next-day, fixed-price natural gas at the Houston Ship Channel (HSC). Enforcement staff alleged that such trading was uneconomic and part of an unlawful manipulative scheme to increase the value of BP's financial position that was based on HSC natural gas prices. The Commission later ordered that an ALJ hold a hearing as to whether BP violated the Commission's Anti-Manipulation Rule.

After substantial discovery and a lengthy hearing, Judge Carmen Cintron issued an Initial Decision finding that BP's Texas team had engaged in market manipulation by flooding HSC with next day gas to benefit its corresponding short financial positions. The Commission affirmed Judge Cintron's decision on July 11, 2016, finding that the record showed that BP's trading practices during the investigative period were fraudulent or deceptive, undertaken with the requisite scienter, and carried out in connection with Commission-jurisdictional transactions. After reviewing the statutory factors for civil penalties under the NGA, the Commission assessed a civil penalty of \$20,160,000 and required BP to 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. On August 10, 2016, BP sought rehearing and a stay of the Commission's July 11, 2016, order. The Commission responded by staying the payment directive of the July 11, 2016, order until it issues an order on BP's request for rehearing. On September 7, 2016, while the request for rehearing of the merits was pending, BP appealed the Commission's original order setting the matter for hearing before an ALJ to the U.S. Court of Appeals for the Fifth Circuit.

b) 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 (together, the respondents) to show the Commission 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 directs 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 TGPNA's, Hall's, and Tran's 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 directs the 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; \$1,000,000 civil penalty against Hall (jointly and severally with TGPNA, Total, and TGPL), and \$2,000,000 civil penalty against Tran (jointly and severally with TGPNA, Total, and TGPL).

Respondents filed their answer to the OSC on July 12, 2016, staff replied on September 23, 2016, and the parties have submitted additional pleadings in the proceeding.

C. Settlements

In FY2017, the Commission approved five settlement agreements between Enforcement and six separate subjects to resolve pending matters. The settlements totaled almost \$52 million in civil penalties and disgorgement of just over \$42 million. Since 2007, Enforcement has negotiated settlements allowing for the recovery of approximately \$693 million in civil penalties (excluding pending proceedings and the proceedings against Brian Hunter) and total disgorgements of almost \$444 million.

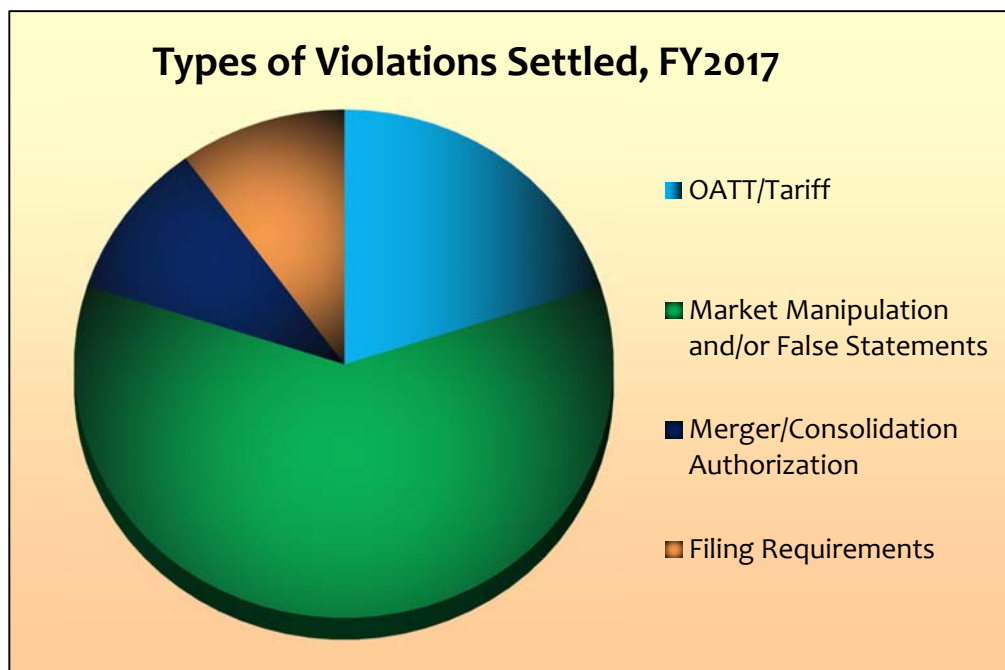
Since the 2010 issuance of the Revised Penalty Guidelines,⁸ most Commission-approved settlements subject to the Penalty Guidelines have fallen within the established applicable range. An organization's civil penalty can vary significantly depending on the amount of market harm caused by the violation, the amount of unjust profits, an organization's efforts to remedy the violation, and other culpability factors, such as senior-level involvement, prior history of violations, compliance programs, self-reporting of the violation, and cooperation with

⁸ *Revised Policy Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines).

Enforcement’s investigation. For example, under the Penalty Guidelines, an organization’s culpability score can be reduced through favorable culpability factors to zero, lowering the base penalty by as much as 95 percent.⁹

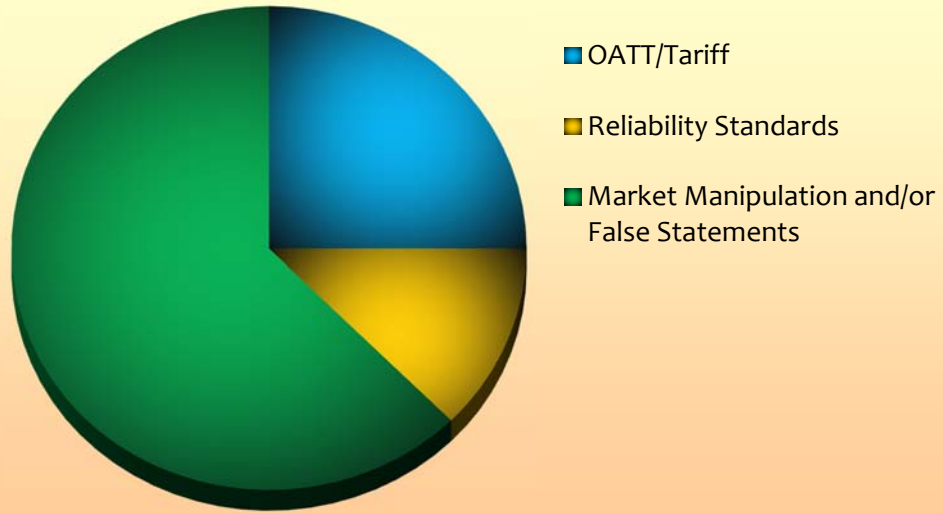
In FY2017, the Commission approved settlement agreements that resolved investigations concerning violations of the Anti-Manipulation Rule, tariff provisions, the market behavior rules, and FPA sections 203 and 205. Some settlements concerned multiple types of violations.

The charts below illustrate the types of violations settled in the last five fiscal years, Fiscal Years 2013-2017.

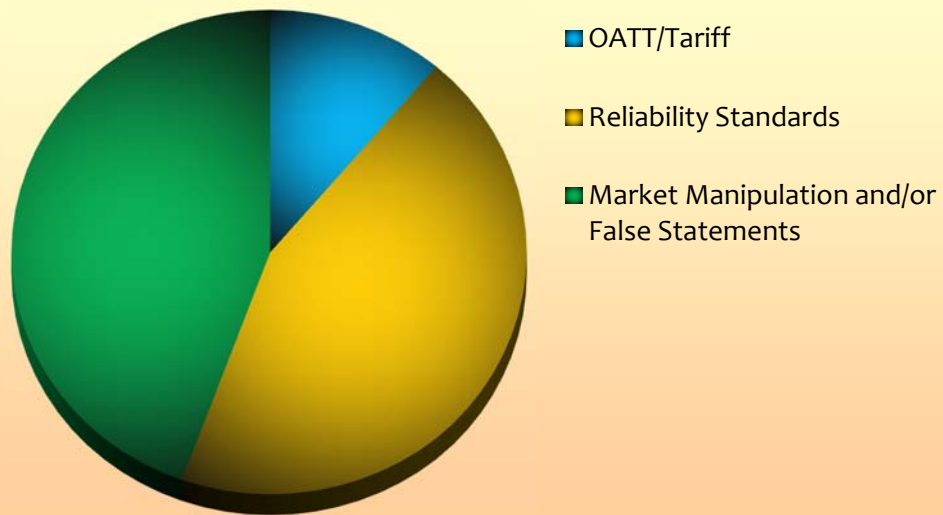


⁹ *Revised Penalty Guidelines*, 132 FERC ¶ 61,216 at P 109.

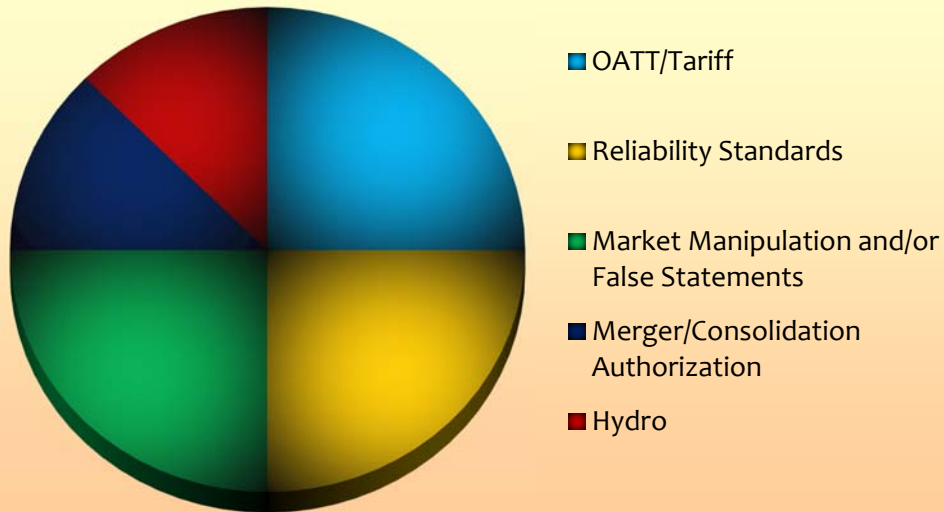
Types of Violations Settled, FY2016



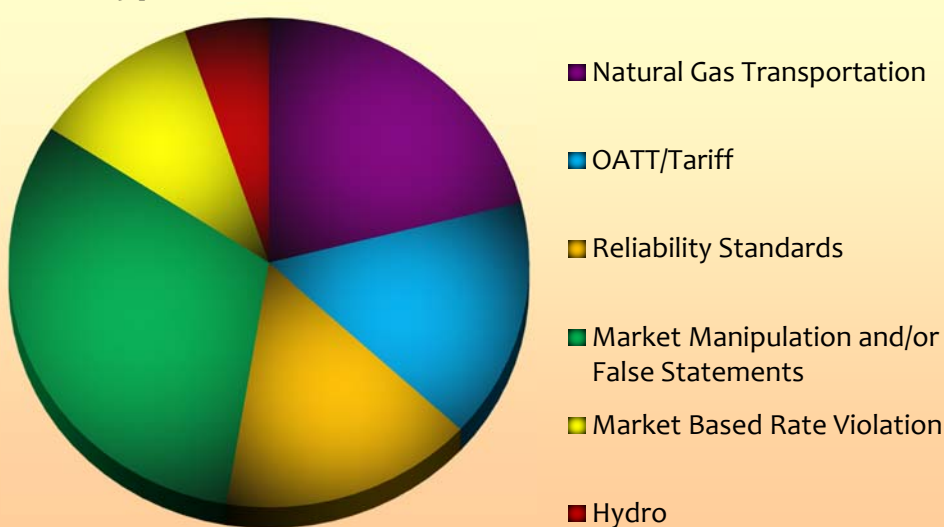
Types of Violations Settled, FY2015



Types of Violations Settled, FY2014



Types of Violations Settled, FY2013



The Commission approved the following settlement agreements in FY2017:

GDF Suez Energy Marketing NA, Inc., Docket No. IN17-2-000. On February 1, 2017, the Commission issued an order approving the settlement of an investigation of GDF Suez Energy Marketing NA, Inc. (GSEMNA), relating to lost opportunity cost credits (LOCs) in the PJM market. Following an investigation, staff concluded that GSEMNA violated the Commission’s Anti-Manipulation Rule by targeting and inflating its receipt of LOCs paid to combustion turbine units that cleared the day-ahead market and were not dispatched in the real-time market. During

the period May 2011 to September 2013, GSEMNA offered the units in the day-ahead market with below-cost offers when the units otherwise would be out of the money, and when GSEMNA expected that they would not be dispatched in real time. In settling, GSEMNA stipulated and agreed to the facts, but neither admitted nor denied the violations. GSEMNA agreed to pay a civil penalty of \$41 million and disgorgement to PJM of \$40.8 million, and to submit a compliance monitoring report in one year, with a second annual report at Enforcement's option.

Covanta Haverhill Associates LP, Docket No. IN17-3-000. On February 1, 2017, the Commission issued an order approving the settlement of an investigation into Covanta Haverhill Associates LP (Covanta Haverhill) regarding real time meter reporting obligations under the ISO New England Tariff. Under the terms of the settlement, Covanta Haverhill stipulated to the facts, but neither admitted nor denied the violations. It agreed to pay a civil penalty of \$36,000 and implement certain procedures to improve compliance, subject to monitoring via submission of semi-annual reports for at least two years.

FERC v. City Power Marketing, LLC, No. 1:15-cv-01428-JDB (D.D.C.). On August 22, 2017, the Commission issued an order approving the settlement of an investigation of City Power Marketing, LLC (City Power) and its owner, K. Stephen Tsingas. In March 2015, the Commission issued an OSC, and in July 2015 issued an Order Assessing Civil Penalties, in which it determined that City Power and Tsingas placed fraudulent financial trades designed to extract improper payments from PJM, and made false and misleading statements to conceal the existence of highly relevant instant messages. In September 2015, the Commission filed suit in federal district court in Washington, D.C. to enforce the penalty order. Following the Court's rulings on preliminary motions, defendants and staff agreed to a settlement in March 2017, which the Commission approved on August 22, 2017. Under the agreement, Tsingas will pay \$1.3 million in disgorgement to PJM, and a civil penalty of \$1.42 million. City Power will pay a civil penalty of \$9 million. Finally, Tsingas agreed to a ban from trading in Commission jurisdictional markets for three years.

Westar Energy, Inc., Docket No. IN15-8-000. On August 24, 2017, the Commission issued an order approving the settlement of an investigation into violations by Westar Energy, Inc. (Westar), of Southwest Power Pool (SPP) Tariff provisions related to the submission of mitigated energy offer curves, including: (1) section 2.13 of Attachment AE by failing to update its mitigated energy offer curves on a daily basis; (2) section 2.13 of Attachment AE and sections 3.2 and 3.2(C) of Attachment AF, by submitting offers that did not reflect the short run marginal cost of producing energy; (3) section 3.5 of Attachment AF and section 3.2(D) of Attachment AF by not providing sufficiently detailed responses to the SPP's Market Monitoring Unit's data requests; and (4) 18 C.F.R. § 35.41(b) by submitting mitigated energy offer curves that did not reflect actual costs or a reasonable estimate thereof. In the settlement agreement, Westar admitted the violations, paid a civil penalty of \$180,000, and agreed to implement procedures to improve compliance going forward, subject to monitoring through the submission of annual reports for two years, with a potential one-year extension at Enforcement's discretion.

American Transmission Company, LLC, Docket No. IN17-5-000. On August 28, 2017, the Commission approved a stipulation and consent agreement between Enforcement and American Transmission Company, LLC (ATC). Following an investigation, staff determined that ATC violated: (1) section 203 of the FPA by transferring 21 jurisdictional assets prior to obtaining Commission authorization; and (2) section 205 of the FPA by commencing or terminating jurisdictional services without providing the Commission with the requisite notice on 42 occasions. ATC sought and obtained the proper approvals from the Commission. ATC paid \$1,401,575 in

time-value refunds to its customers for services commenced prior to making the filings required. In settling this matter, ATC admitted the violations, agreed to pay a civil penalty of \$205,000, agreed to make compliance reports to Enforcement for one year, and implemented measures to ensure future compliance.

D. Self-Reports

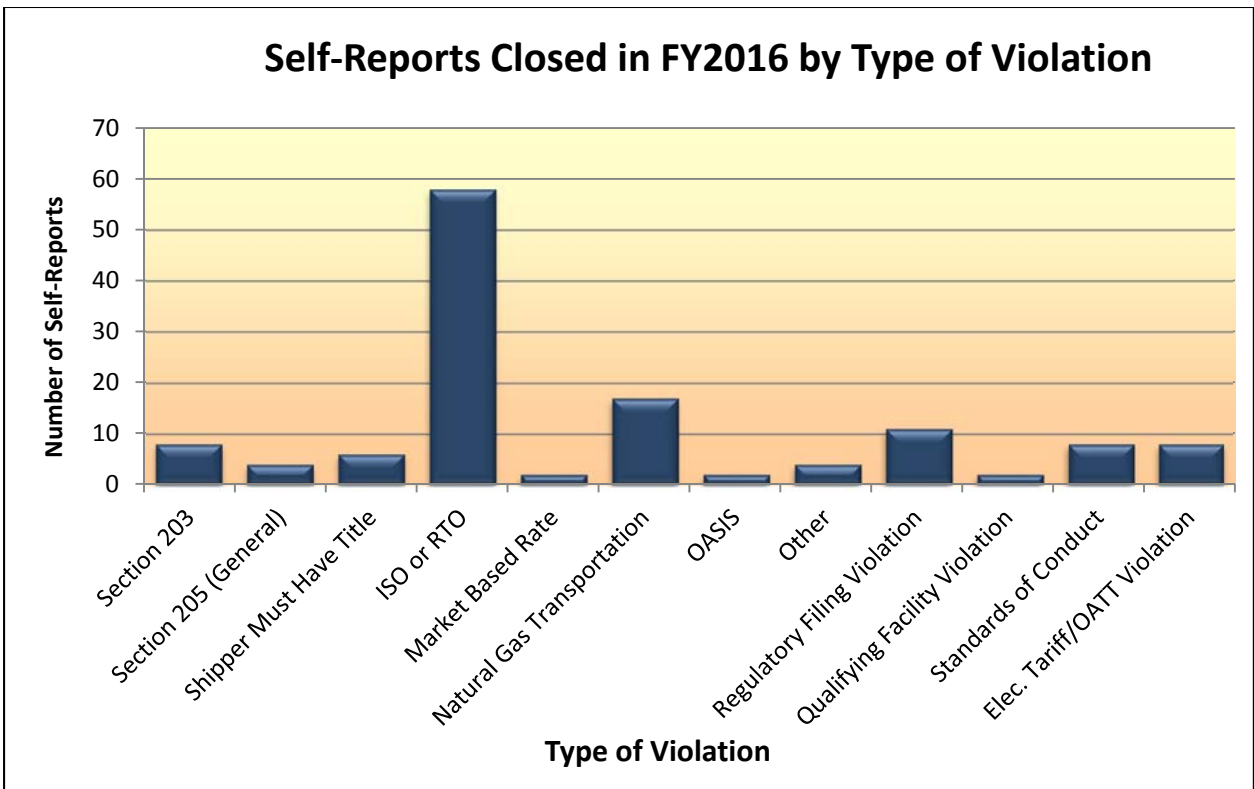
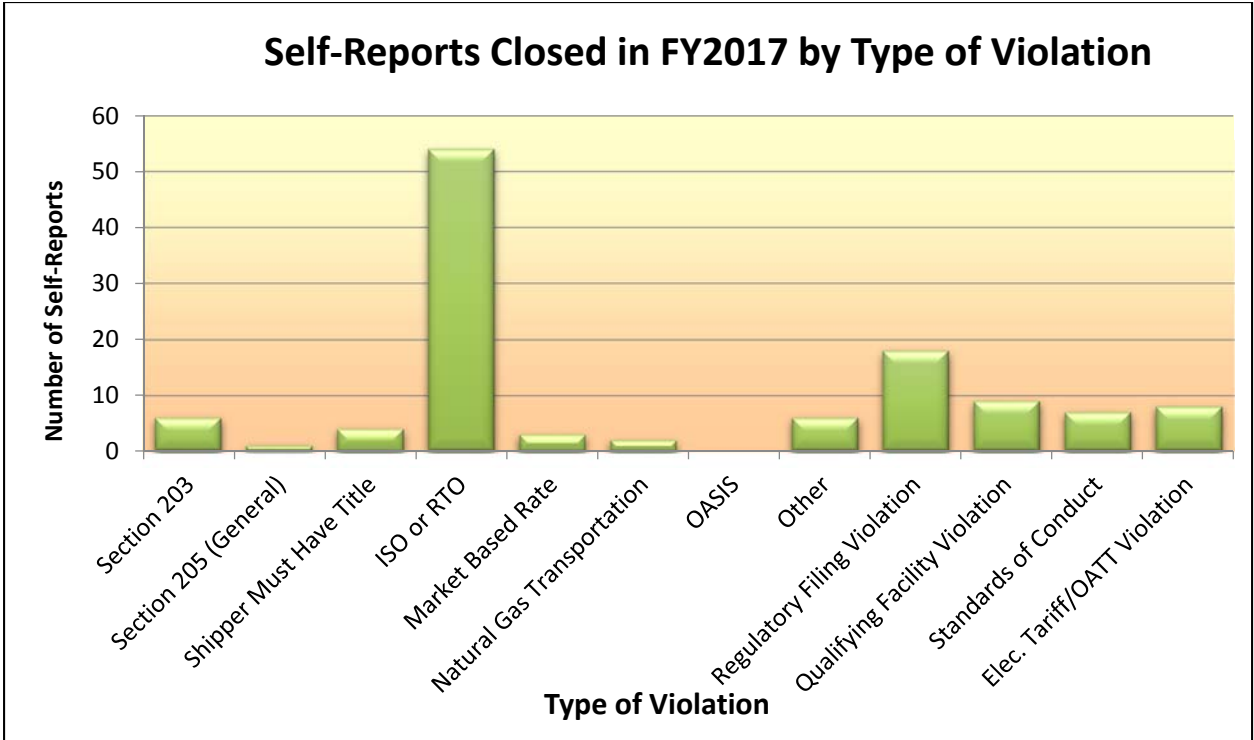
Over the past five fiscal years (Fiscal Years 2013-17), staff has received approximately 452 self-reports. The vast majority of those self-reports were concluded without further enforcement action because, for example, there was no material harm (or the reporting companies already had agreed to remedy any harms), and the companies had taken appropriate corrective measures (including appropriate curative filings), both to remedy the violation and to avoid future violations through enhancements to their compliance programs.

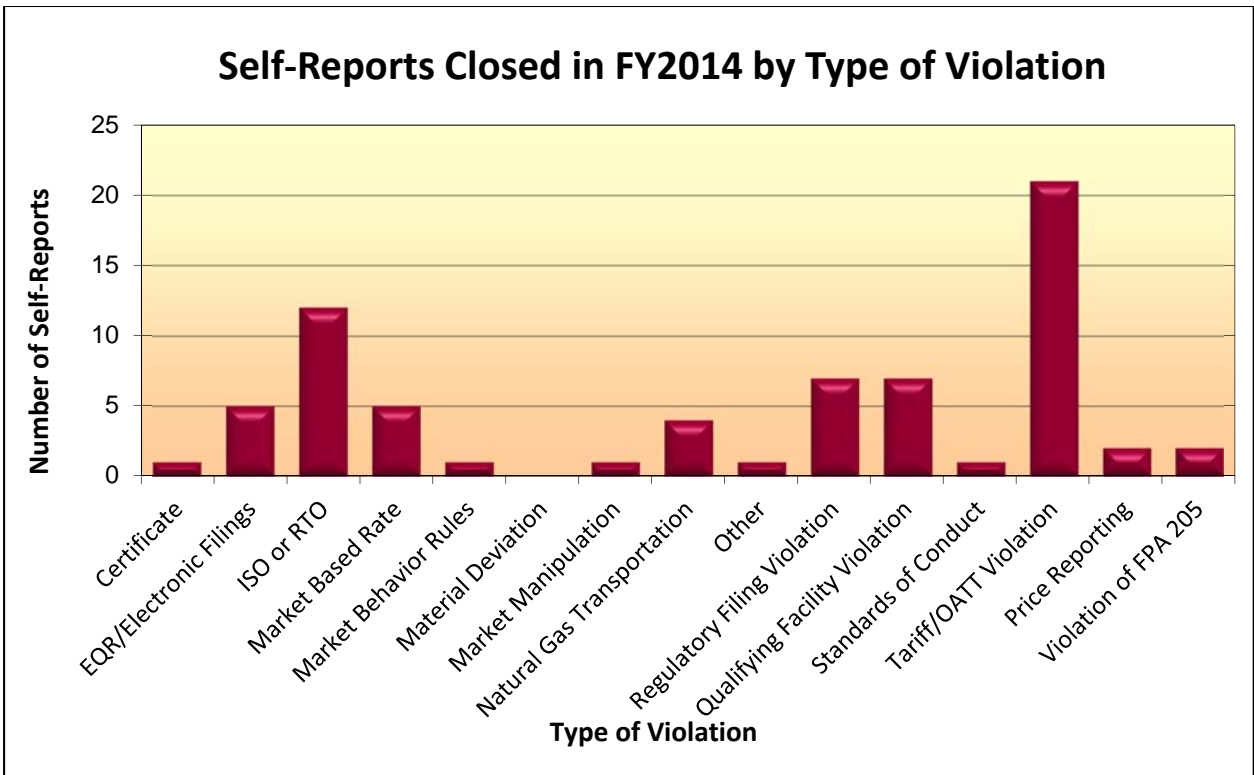
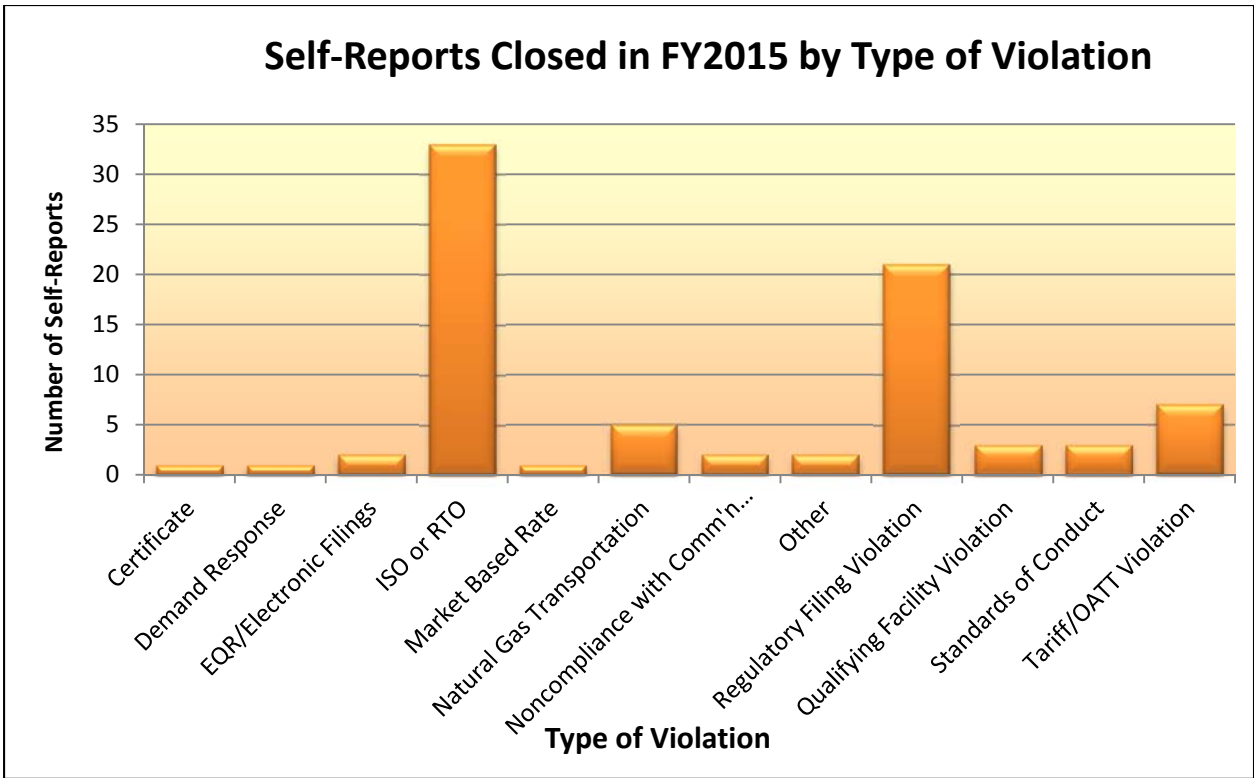
In FY2017, staff received 80 new self-reports from a variety of market participants, including electric utilities, natural gas companies, generators, and RTO/ISOs. A significant number of these self-reports were from RTOs/ISOs. Staff closed 121 self-reports, which included some carried over from previous fiscal years.

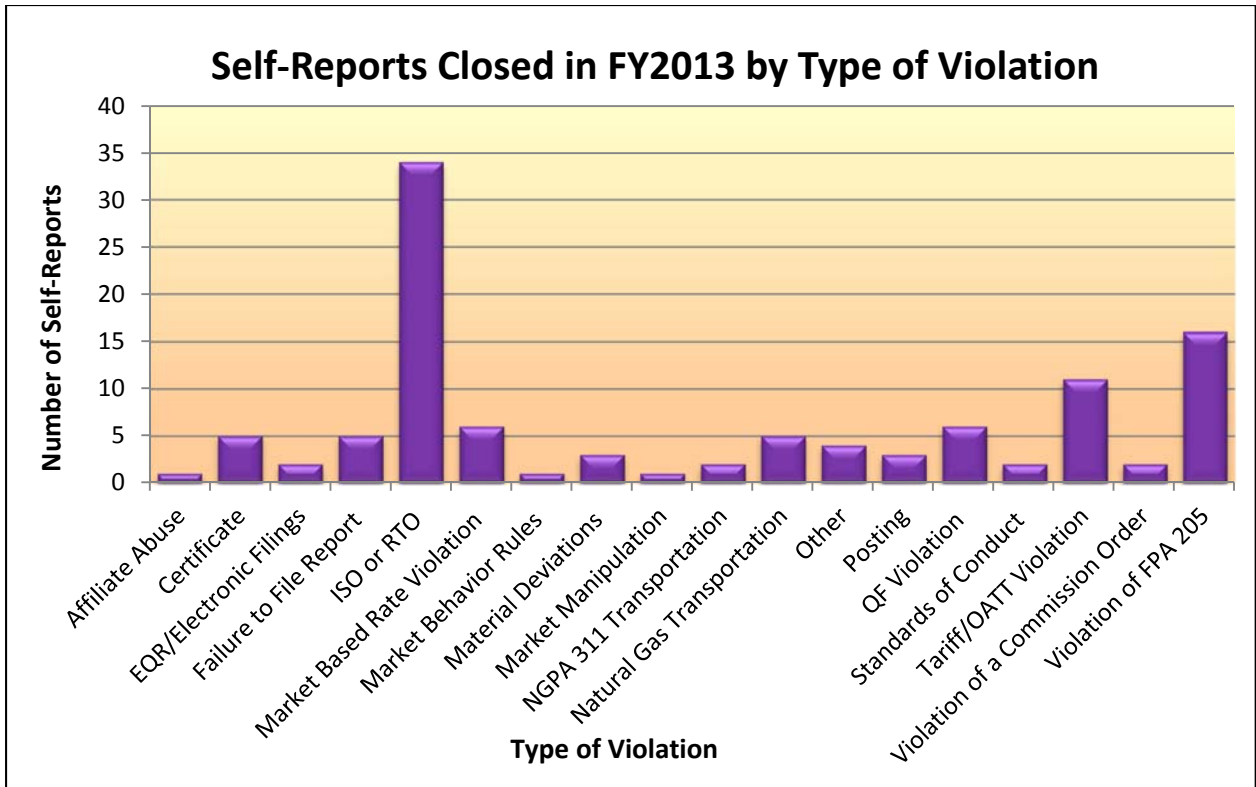
The Penalty Guidelines emphasize the importance of self-reporting by providing credit that can significantly mitigate penalties if a self-report was made.¹⁰ Staff continues to encourage the submission of self-reports, and views self-reports as showing a company's commitment to compliance.

The following charts depict the types of violations for which staff received self-reports from Fiscal Years 2013 through 2017. Some self-reports include more than one type of violation. In FY2017, RTO/ISO self-reports and regulatory filing violations accounted for the majority of self-reports received.

¹⁰ *Revised Penalty Guidelines*, 132 FERC ¶ 61,216, at P 127 (2010).







1. 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 FY2017 without conversion to an investigation. In determining whether to close a self-report or open an investigation, staff considers the factors set forth in the Commission’s Revised Policy Statement on Enforcement.¹¹ The 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.

Shipper Must Have Title and the Prohibition on Buy-Sell Transactions. A large public utility self-reported, on behalf of certain recently-acquired retail natural gas marketing subsidiaries, violations of the Commission’s prohibition against Buy-Sell transactions and the Shipper Must Have Title Requirements. The violations were discovered by employees of the self-reporting company due to compliance training provided to these employees, which enabled them to identify the problematic transactions when they observed them during the integration process. Staff closed the matter with no further action because the violations: (1) were inadvertent; (2) involved modest volumes of gas; and (3) did not result in harm to other market participants.

¹¹ *Revised Policy Statement on Enforcement*, 123 FERC ¶ 61,156 at P 25 (2008).

Qualifying Facilities. Several owners of small generating facilities separately self-reported that they made jurisdictional sales of electricity without first self-certifying as a qualifying facility (QF) by filing Form No. 556. The sales violated FPA section 205 because the facilities had not self-certified as QFs, which exempts some sales from the requirement under FPA section 205 to obtain Commission authorization prior to commencing jurisdictional sales of electricity. In each of these instances, upon self-reporting, the entities self-certified, made time-value refunds to customers of the money collected from the unauthorized sales, and implemented policies and procedures to prevent similar violations in the future. Because prompt remedial measures were taken, and because each such instance was limited in scope and voluntarily self-reported, these matters were closed without further action.

Oil Tariff Violation. A jurisdictional common carrier oil company self-reported that it owned and operated a crude oil pipeline for approximately two years prior to filing a tariff or obtaining a waiver of the relevant tariff filing provisions of the Interstate Commerce Act (ICA) and the Commission's related regulations. In addition to self-reporting, the Company filed a request for a temporary waiver of the filing requirements and the ICA, which the Commission subsequently granted. The order, however, noted that the company did not have a tariff on file and reminded the company to submit filings in a timely manner or face possible sanctions by the Commission. Enforcement closed the self-report without further action because there was no harm to the market, the company promptly self-reported and remedied the violation, and put measures in place, including training its employees, to prevent future similar violations.

Natural Gas Transportation. A formerly intrastate pipeline made jurisdictional sales without first receiving a Blanket Certificate from the Commission. The pipeline had previously operated entirely intrastate, but began transporting a small quantity of gas across state lines when the flow of the pipeline was reversed. The pipeline was unaware of the interstate sales and filed an application for a Blanket Certificate upon learning of them. Given the small volume of sales, the lack of intent to avoid Commission jurisdiction, and the pipeline's remedial steps (namely the filing of an application with the Commission), staff closed the self-report without further action.

Violation of the Standards of Conduct. A vertically-integrated utility with an affiliated power marketer self-reported a violation of the Standards of Conduct under Part 358 of the Commission's regulations. A non-marketing function employee who had received information about an upcoming outage forwarded that information to a distribution list that included marketing function employees. Unbeknownst to the non-marketing function employee, the outage information was not publicly available at the time, and thus the disclosure to marketing function employees was prohibited by the Commission's Standards of Conduct, which generally prohibits transmission function employees from conveying non-public information to marketing function employees. The error was promptly discovered, remedied, and self-reported. Because the violation was isolated, inadvertent, limited in scope and potential impact, and was promptly reported, Enforcement took no further action.

Electricity Trading Violation. A company self-reported that due to manual error, it placed erroneous offers by entering Economic Minimum and Economic Maximum parameters with the same value (zero or one) for three hours on one day. Because of the erroneous parameters, the offers were not in the dispatchable range. The offers violated the RTO/ISO tariff and section 35.41(b) of the Commission's regulations, which provides, in relevant part, that sellers must provide accurate and factual information to Commission-approved independent system operators. Staff closed the matter without further action because the company implemented procedures to prevent future occurrences, and the violation was limited in scope, inadvertent, promptly self-reported, and did not result in any discernable harm to the market.

Demand Response Registration. An energy consulting company self-reported that it violated an RTO/ISO's tariff by incorrectly registering some of its generators in the RTO/ISO's demand response program. The company represented in its registration that the generators complied with certain emissions standards, but later determined that they did not. Upon discovering the erroneous registrations, the company promptly withdrew the generators from the demand response program. The violation caused no market harm because the company had sufficient MWs registered to cover its obligation in the demand response program, even without the withdrawn generators. Staff closed the matter with no action because (1) the violation did not result in any market harm; and (2) the violation was unintentional, isolated, and promptly self-reported upon discovery.

RTO/ISO Violations. Multiple RTO/ISOs reported relatively minor violations of their tariffs, resulting from either software errors or human errors. Such errors included: making payments to generating units that were not authorized by the RTO/ISO's tariff; failing to post information, settle the market, respond to settlement mitigation requests, or make billing adjustments within the applicable tariff-mandated periods; permitting market participants to take actions not permitted by the tariff or inconsistent with the RTO/ISO's business practices; and inadvertently forwarding market participants' confidential information to other companies or individuals (but promptly notifying the recipients about the disclosures and directing them to destroy the confidential information). In all such instances, the harm from the self-reported violations were relatively small and inadvertent, and the RTO/ISO took appropriate steps to ameliorate any such harm and prevent future violations. Accordingly, staff closed those matters with no further action.

FPA Section 203 Violation. An investor-owned utility (IOU) self-reported that it failed to seek Commission approval prior to receiving a free, non-energized, and unused conductor from a neighboring public utility, in violation of FPA section 203(a)(1)(B), which requires public utilities to obtain Commission authorization to "merge or consolidate, directly or indirectly, . . . such facilities or any part thereof with those of any other person, by any means whatsoever." The neighboring public utility was no longer using the conductor, and the IOU used it for overhead transmission lines it was reconfiguring. Due to simple oversight, the IOU neglected to first seek Commission authorization. Staff closed the matter with no action because the violation did not result in any market harm, was unintentional, and the IOU filed to obtain Commission approval.

Violation of the Standards of Conduct. A utility self-reported that when informing its employees of the removal of a high-voltage transmission line from service, the distribution list used erroneously included six marketing function employees, who consequently received the information before it was made public on its Open Access Same-Time Information System. Part 358 of the Commission's regulations prohibits transmission function employees from preferentially conveying non-public transmission function information to marketing function employees. The utility immediately conducted an internal review, requested that the marketing function employees delete the email, and submitted a self-report. Staff closed the matter without further action because the violation was limited to a single instance, was unintentional, and did not result in any identifiable harm.

Shipper Must Have Title Violation. A natural gas pipeline self-reported a violation of the Shipper Must Have Title rule when it incorrectly transported gas owned by third parties using a shipping contract controlled by a different entity. An employee of the pipeline erroneously transported volumes not controlled by a third party on the third party's contract. Immediately upon realizing the error, the operator's employees notified compliance and senior management personnel, and reimbursed the third party for the incorrect use of its shipping contract. Because the violation lasted less than 24 hours, was not intentional, and was quickly identified through the pipeline's internal compliance processes, staff closed the matter without further action.

Demand Response Violation. A company self-reported the submission to an RTO/ISO of incorrect meter readings from a Load Management Demand Response resource over a period of months, in violation of the RTO/ISO Tariff and 18 C.F.R. § 35.41(a). The meter, owned by the local electric utility serving the facility, was giving faulty readings due to a blown fuse, which was not discovered until the utility upgraded its substation switchgear. All parties involved jointly agreed to provide interval meter data for periods when those loads were estimated, and to rebill using an agreed upon methodology for estimating the company's actual load during the relevant period. Because of the prompt self-reporting of the violation upon discovery, the remedial action taken, and the inadvertence of the conduct, staff closed the matter without further enforcement action.

Natural Gas Transportation Billing Violations. A natural gas pipeline self-reported that it billed customers incorrectly for their firm transmission service. Specifically, it had charged two customers incorrectly for multiple years based on manual selection of an incorrect delivery point due to poor labeling. Upon discovery, it immediately corrected the labeling errors, made a customer whole which had been overbilled through refunds, and released another customer from any obligation to pay amounts owed for instances where the customer had been under-billed. Although the errors lasted for most of two years, the violations were isolated and inadvertent events, and the pipeline corrected the underlying issue promptly upon becoming aware. Accordingly, staff closed the matter without further action.

Interlocking Directors Violations. Multiple companies reported that they had created interlocking positions with a subsidiary by appointing their parent company's officers as officers of the subsidiaries without prior authorization. Section 305(b) of the FPA generally prohibits such interlocking positions absent a prior Commission finding that neither public nor private interests will be adversely affected. The companies had not identified the potential violations until after they had made the appointments, but each company promptly made the requisite filing with the Commission and implemented additional compliance measures to avoid similar violations in the future. There was no indication that any of the relationships led to market harm. Accordingly, staff closed these matters without further action.

Tariff/OATT Violation. An electric utility self-reported a violation of tariff provisions related to lost opportunity cost (LOC) credits, which a generator receives when it clears the day-ahead energy market but the system operator either does not dispatch the unit in real-time, or directs the unit to reduce output. The system operator notified the company that it had erroneously received a significant amount of LOC credits over two years when some of the relevant units were not able to run, and requested repayment. The utility reviewed its records and determined the amount of LOC credits at issue were even greater than the system operator knew, and voluntarily refunded all the erroneously received payments. Although the violations occurred over a substantial time, staff closed the matter without further action because: (1) any harm done to the market was remedied by the company; (2) the company voluntarily refunded the erroneous payments and located additional such payments on its own; and (3) the company adopted reforms which make it unlikely that additional violations will occur.

Regulatory Filing Violation. A natural gas company self-reported that it failed to file FERC Form 552, Annual Report of Natural Gas Transactions, based on inaccurate advice of counsel. Some months after the company was advised that it did not need to file Form 552, it learned the advice had been incorrect, and immediately submitted a Form 552 out-of-time. Staff took no further action because the company put in place procedures to prevent future occurrences, and the violation occurred over a limited period of time, caused no harm to the market, was quickly rectified, and was not intentional.

Regulatory Filing Violation & Electric Quarterly Reports. An electric utility self-reported that it failed to file four transmission interconnection agreements and two generation dispatch agreements, as required by Section 205 of the FPA and 18 C.F.R. § 35.1, and also did not include the agreements in its EQR submissions. The utility filed the agreements simultaneously with its submission of the self-report, will include them in future EQRs and will amend past EQRs. In the self-report and the filings, the utility stated that it would make refunds pursuant to Commission precedent, and that it was conducting a comprehensive review to identify other contracts that should have been filed, but were not. Given the utility's remedial measures and the lack of market harm, staff closed this self-report with no further action.

Regulatory Filing Violation. A public utility holding company self-reported that it had inadvertently failed to file Form FERC-65, Notice of Holding Company Status, within 30 days of becoming a holding company after acquiring indirect downstream ownership of an electric utility, as required by section 366.4 of the Commission's regulations. The failure was discovered while the company was engaged in due diligence for a potential sale of a related subsidiary. Upon discovery, the holding company self-reported the violation, and the electric utility took steps to self-certify as a Qualifying Facility by filing Form 556, Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility, making the holding company an exempt holding company under section 366.3(a), and therefore relieving it of the obligation to file Form FERC-65. Staff closed the matter with no action, because the violation was isolated, inadvertent, promptly remedied, and caused no harm.

Natural Gas Transportation Postings Violation. A natural gas pipeline self-reported that for several years it had failed to post a substantial amount of excess capacity, and incorrectly estimated its peak-day capacity in its annual Commission filings, in violation of 18 C.F.R. §§ 284.13(d) (1) and (2). Staff determined that the errors were unintentional and unlikely to reoccur. Staff closed the matter without further action because the entity took action as soon as the violations were uncovered by initiating an internal investigation, promptly self-reporting, and instituting compliance training for its employees.

FPA Section 205 Violation. An electric transmission provider self-reported that it had inadvertently failed to file certain jurisdictional agreements relating to its charges for construction of a new transmission line, as required by FPA section 205. Upon learning that the filings may be overdue, the company retained outside counsel to perform an in-depth review of its compliance with the filing requirements. At the conclusion of the internal investigation, the company promptly filed the agreements and reported the late filings to Enforcement. It also provided enhanced training to the personnel responsible for making the filings. The late filing did not adversely affect ratepayers or the other parties to the agreements. Given the lack of harm, the company's prompt self-report, and the additional training that the company provided, staff closed the self-report with no further action.

E. Investigations

During FY2017, DOI staff opened 27 investigations, as compared to 17 investigations opened in Fiscal Year 2016 (FY2016). The vast majority of these new investigations arose from referrals by DAS and/or RTO/ISO market monitors, with several others coming from the Commission or other program offices. Staff closed 16 investigations in FY2017 through a settlement or closure without further action, as compared to 11 investigations closed in FY2016.

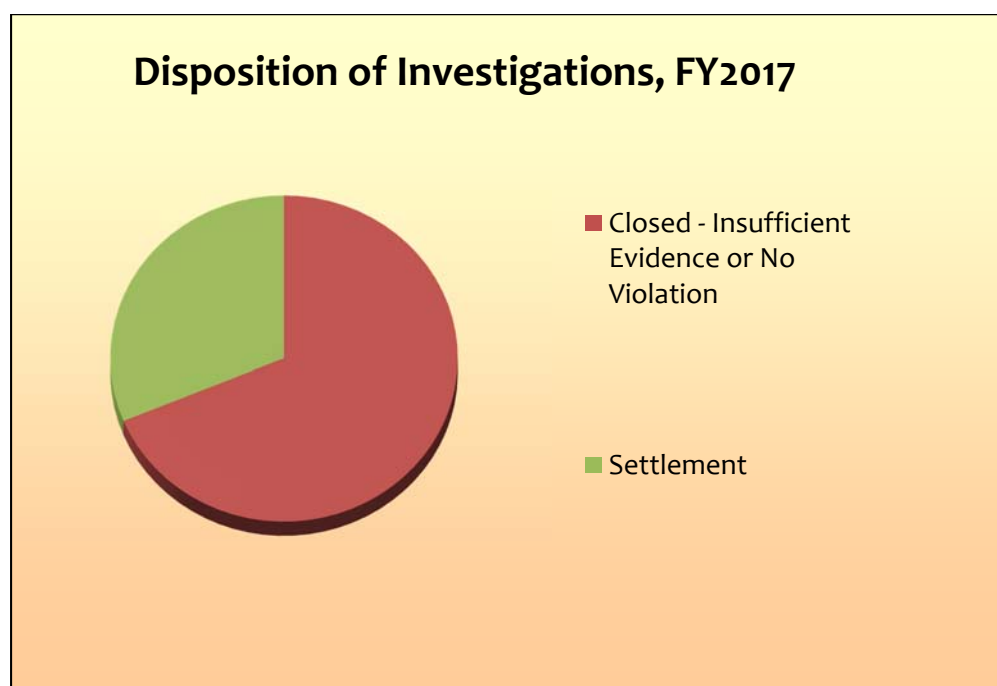
1. Statistics on Investigations

Of the 27 investigations staff opened this fiscal year (some of which involve more than one type of potential violation or multiple subjects), 15 involve potential market manipulation, 16 involve potential tariff violations, four involve potential violations of a Commission order, and two involve potential violations of a Commission filing requirement.

DOI staff closed 16 investigations in FY2017. 11 investigations were closed without further action because staff concluded that the evidence did not support finding a violation, with the remaining five closing through settlement. The Commission-approved settlements of investigations are summarized above in section C, and illustrative examples of investigations closed without enforcement action are discussed below.

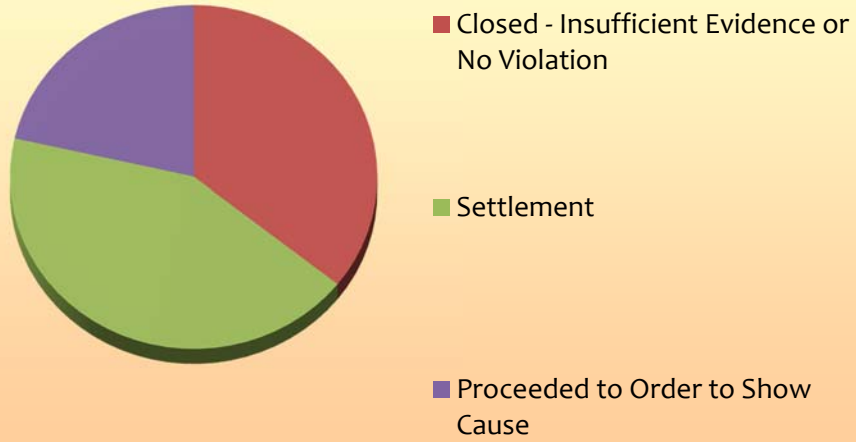
Among the closed investigations in FY2017 is one that was publicly announced by the Commission in its OSC to ISO New England, Inc. (ISO-NE) in 2014.¹² Enforcement conducted an investigation into certain bidding behavior in ISO-NE's eighth annual Forward Capacity Auction (FCA 8), following a non-public referral from ISO-NE and its market monitor for potential tariff violations and market manipulation. Staff has concluded its investigation and determined that there was insufficient evidence of intent to manipulate and insufficient evidence to substantiate a tariff or rule violation.

The following charts show the year-by-year disposition of investigations that closed over the past five years (FY2013-2017) and the aggregate disposition of investigations that closed in fiscal years 2007 through 2017.

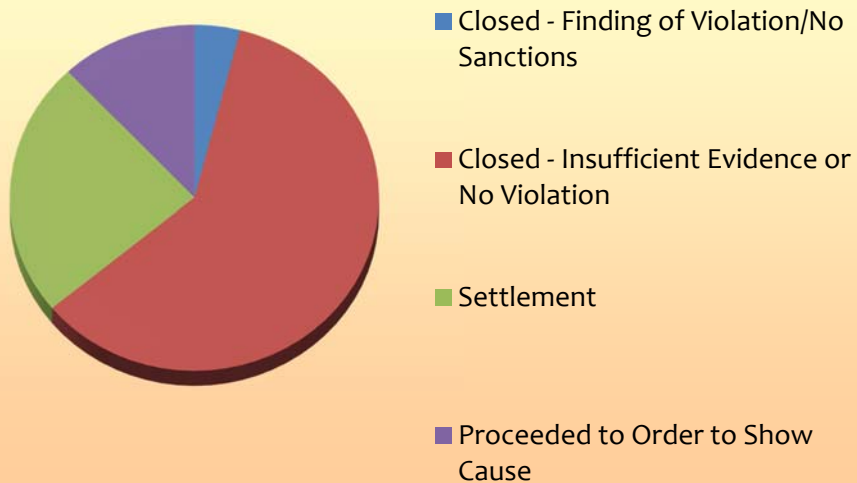


¹² *ISO New England Inc.*, 148 FERC ¶ 61,201, at P11 (2014).

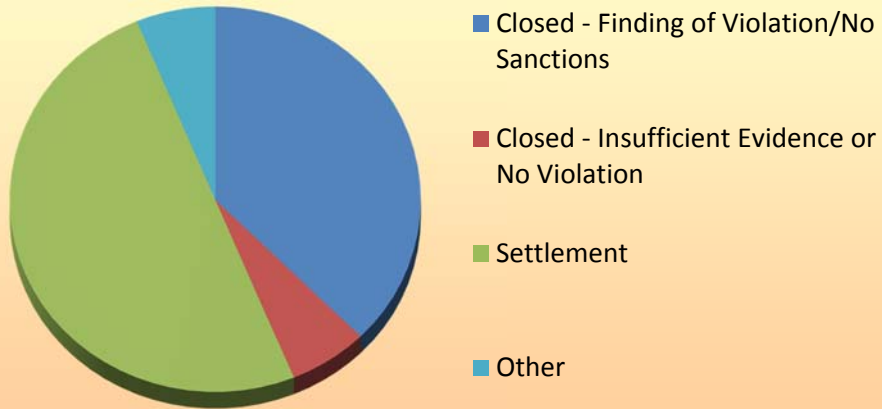
Disposition of Investigations, FY2016



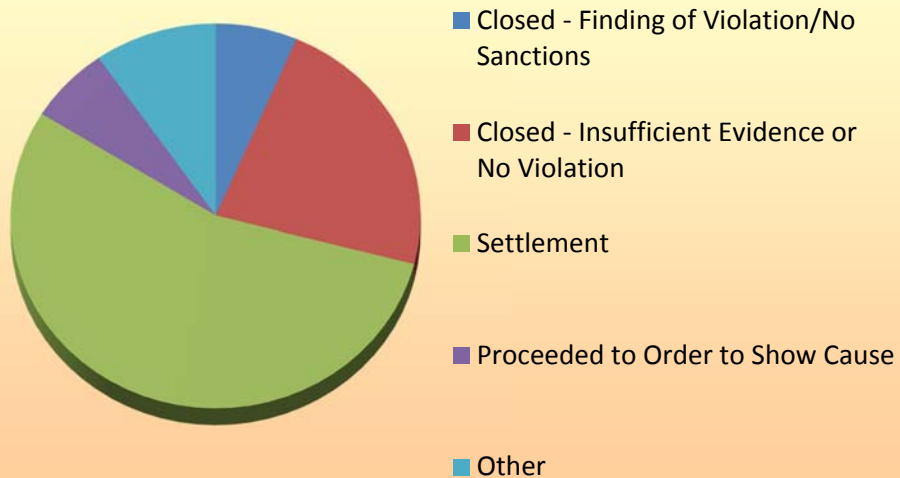
Disposition of Investigations, FY2015

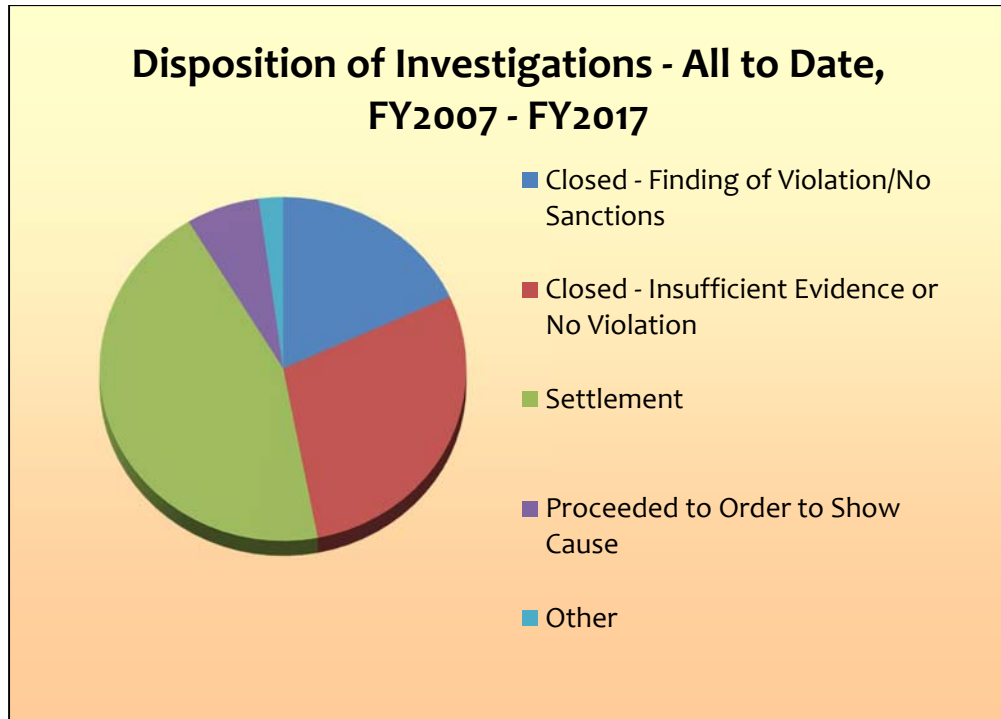


Disposition of Investigations, FY2014

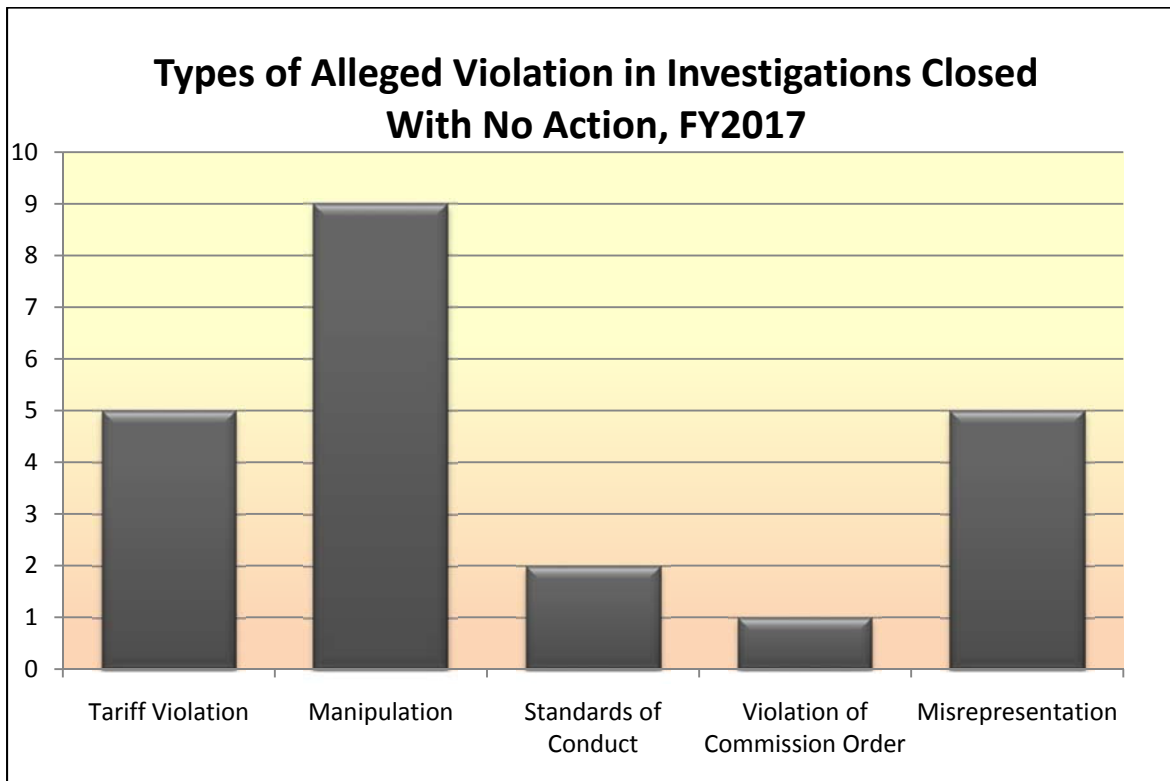


Disposition of Investigations, FY2013





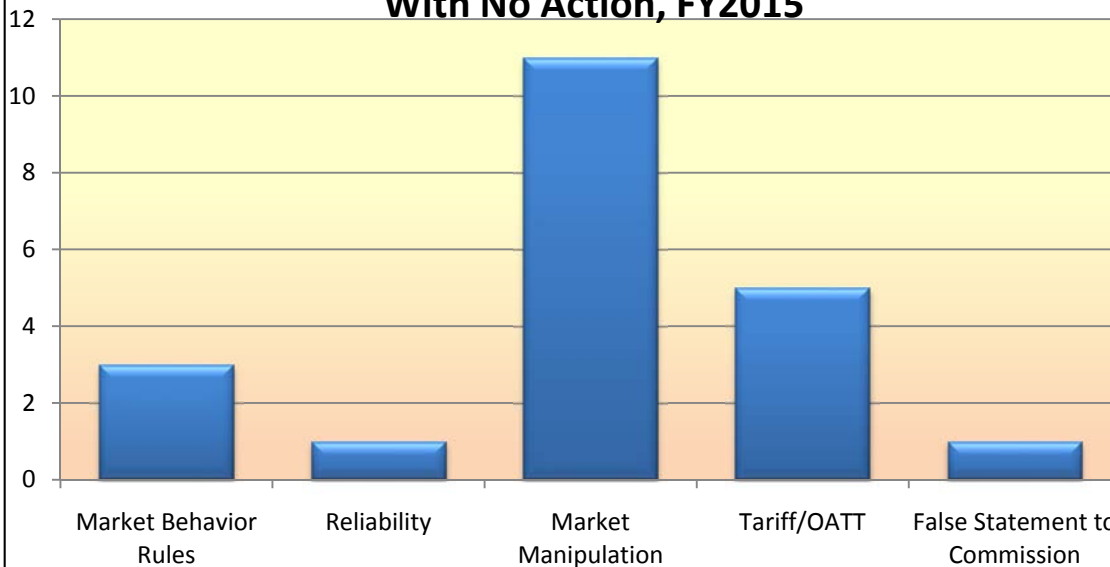
The following charts summarize the nature of the conduct at issue for those investigations that were closed without action in Fiscal Years 2013-2017.

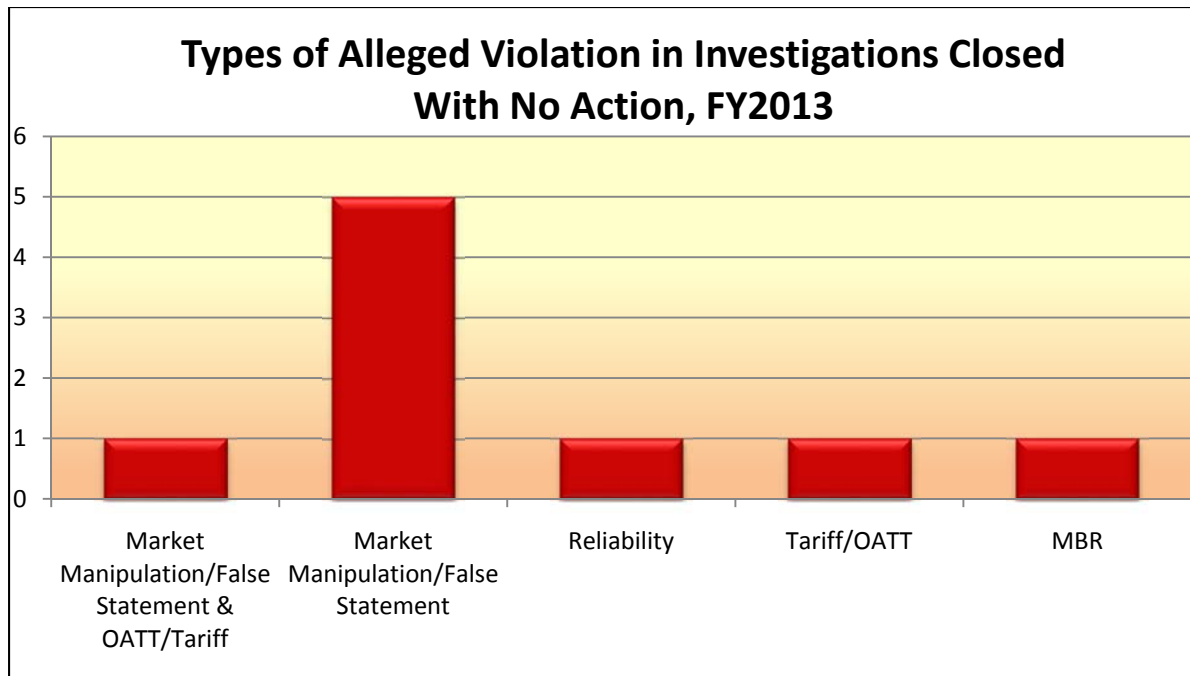


Types of Alleged Violation in Investigations Closed With No Action, FY2016



Types of Alleged Violation in Investigations Closed With No Action, FY2015





2. Illustrative Investigations Closed with No Action

The following summaries of investigations that Enforcement closed without action in FY2017 are intended to provide guidance to the public while preserving the non-public nature of DOI's investigations.

Market Manipulation (Natural Gas). Acting on a referral from DAS's Surveillance Group, staff opened an investigation to determine whether an energy trading firm had violated the Commission's Anti-Manipulation Rule by engaging in high-concentration bid-week sales at two trading hubs where the company also held significant financial short positions that would benefit from such sales. In the same months, these traders had made repeated next-day gas purchases at a loss against index where the traders had similar-sized financial long positions. Staff took testimony from the relevant traders who claimed that the suspect positions were the product of independent strategies that had evolved over several years. The traders directed staff to documents and data that they believed would corroborate their legitimate explanations for their trading activity in these markets. Staff's review of the contemporaneous documents confirmed important aspects of the traders' testimony, and staff's independent data analysis also showed that the financial spread positions appeared to have been profitable primarily based upon the movement of the price at the hub where the company had the long financial position, not where they had engaged in heavy bid-week selling. In addition, the evidence revealed that initially suspicious next-day purchases were directly tied to an independent transportation strategy by which the company had been able to make significant profits by transporting the purchased next-day gas to an even higher priced location. The investigation was closed because the evidence and the traders' credible testimony demonstrated that the trading had been done for non-manipulative reasons.

Market Manipulation, Misrepresentations to the Commission and Index Publishers (Natural Gas). Following a self-report, staff investigated whether a natural gas company engaged in market manipulation by improperly and selectively reporting natural gas transactions to an index publisher. Staff commenced an investigation to determine whether the company's behavior was part of a manipulative scheme based on staff's analysis of the self-report, which revealed that the company had either failed to report or erroneously reported thousands of reportable natural gas trades over a period of several years. In conjunction with DAS's analysis of market data and data from the company regarding its trades and exposures to various indices, staff determined that while the company's reporting behavior fell short of the parameters set forth in the Commission's various policy statements on indices, the observed behavior was the result of sloppiness and a lack of internal controls, not an intent to manipulate. Because of this, the company's voluntary self-report, its implementation of changes that would prevent future occurrences, and the small amount of market harm that resulted, staff closed the investigation without further action.

Market Manipulation (Electric). Acting on a referral from an RTO/ISO market monitor, DOI staff investigated whether an electric cooperative violated the Commission's Anti-Manipulation Rule by engaging in physical withholding in the RTO/ISO's Day Ahead market. The referral alleged that the cooperative might have been withholding part of its capacity at one resource to increase the prices it received for its partial output at that resource. After taking testimony and reviewing data and documents, staff closed the investigation with no further action, based on findings that (1) the cooperative limited its Day Ahead offers due to non-manipulative purposes related to the resource's operational issues and fuel supply restrictions; and (2) the cooperative lacked the financial incentive to withhold capacity at the relevant resource.

Market Manipulation, Misrepresentation, Tariff Violation (Electric). In response to a referral from an RTO/ISO market monitor, staff opened an investigation into whether a utility had violated the RTO/ISO Tariff and corresponding Commission rules and regulations when it informed the RTO/ISO of potential unavailability in response to a dispatch instruction. After receiving a real-time dispatch, the utility contacted the RTO/ISO to advise that if the utility operated in response to the instruction, it might be unavailable later in the week because of potential fuel unavailability issues. As a result, the RTO/ISO rescinded the dispatch instruction. Staff investigated the utility's

fuel supply arrangements and the related communications with the RTO/ISO, and concluded there was not sufficient evidence of scienter to find a violation. Staff closed the investigation with no further action.

Market Manipulation (Electric). Acting on a referral from an RTO/ISO market monitor, staff investigated whether some or all of a group of entities that submitted bids into various Financial Transmission Rights (FTR) auctions engaged in a scheme intended to defeat a rule by that RTO/ISO that was designed to preclude certain zero-cost FTRs, in the hopes of profiting from predictable positive spreads when the FTRs paid out. Based on the testimony, interviews, and documents obtained from market participants, and on DAS's detailed analysis of market data, staff concluded that there was insufficient evidence of wrongful intent. Accordingly, staff closed the matter with no action.

F. Enforcement Hotline

DOI staff fields calls and other inquiries made to the Enforcement Hotline (Hotline).¹³ 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 calls lead to investigations by DOI.

In FY2017, Enforcement received 182 Hotline calls and inquiries, 174 of which were promptly resolved within the fiscal year through advice provided by staff or otherwise, and eight of which remained pending as of the end of the fiscal year. Staff also closed several Hotline matters that had been pending from previous years. Every year, a significant percentage of the calls received 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 directing them to the appropriate Commission office or docketed proceeding.

G. Other Matters

In addition to its investigative work, DOI staff worked on other important matters in FY2017, including:

Revision of Maximum Civil Penalties. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires all Federal agencies to make annual inflation adjustments to the maximum civil penalties that may be assessed under the laws administered by those agencies.¹⁴ Pursuant to that statutory obligation, DOI proposed for Commission approval an instant final rule increasing the civil penalties that the Commission may assess under the FPA, the NGA, the Natural

¹³ See 18 C.F.R. § 1b.21 (2017).

¹⁴ See Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, § 701, 129 Stat. 584, 599 (2015).

Gas Policy Act of 1978, and/or the Interstate Commerce Act.¹⁵ The Commission adopted that rule on January 9, 2017, and the revised maximum penalties took effect on January 24, 2017.

Collaboration with Other Commission Offices. DOI staff regularly coordinates with other Commission offices regarding potential enforcement matters. This includes working with the Office of the General Counsel (OGC) and the Office of Energy Market Regulation (OEMR) to address late filings submitted under sections 203 or 205 of the FPA. There were over 150 such late filings in FY2017. Such collaboration also includes assisting with the Commission's Compliance Help Desk. Regulated entities can submit questions to the Compliance Help Desk to reduce their risk of subsequent findings of noncompliance and potential enforcement actions.¹⁶ Staff assisted in six Compliance Help Desk inquiries in FY2017. Finally, DOI staff confers with OGC and OEMR on requests for waiver of the Standards of Conduct under Order No. 717 and requests for waiver of the Affiliate Restrictions under Order No. 697. During FY2017, DOI staff reviewed approximately eight such requests for waivers.

¹⁵ See Civil Monetary Penalty Inflation Adjustments, Order No. 834, Docket No. RM17-9-000, 158 FERC ¶ 61,017 (2017), 82 Fed. Reg. 8,137 (Jan. 24, 2017).

¹⁶ See *Interpretive Order Modifying No-Action Letter Process and Reviewing Other Mechanisms for Obtaining Guidance*, 123 FERC ¶ 61,157 (2008).

DIVISION OF AUDITS AND ACCOUNTING

A. Overview

DAA administers the Commission's audit and accounting 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 is composed of four audit branches and one regulatory accounting branch.

DAA's audit branches perform various types of audits that respond to the needs of the Commission, the public, and industry, and also advise the Commission on compliance and other matters. The regulatory accounting branch: (1) helps the Commission establish just and reasonable rates, terms, and conditions; (2) acts as a resource for interpretive guidance concerning the Commission's financial accounting and reporting rules, orders, regulations and statutes; and (3) advises the Commission and industry on accounting and other financial issues. In conducting its audit and accounting activities, DAA's primary goal is to increase compliance with Commission regulations and policies.

DAA's audit program supports Commission strategic objectives through the implementation of public risk-based audits. The audit program enables the Commission to examine risk areas within the regulated industries, and informs the Commission's actions regarding rates, tariffs, financial and operational transparency, policy initiatives, law, reliability, and other areas in the electric, natural gas, and oil industries. DAA's audits also provide jurisdictional entities an opportunity to work with audit staff to evaluate and improve their overall compliance, and to identify potential areas of noncompliance before they escalate. For the Commission's regulated industries, the publicly published commencement letters and audit reports provide insight into areas of emphasis and concern, giving the industries and other stakeholders a valuable source of guidance.

DAA's accounting program is a vital component of the Commission's efforts to establish just and reasonable rates. It ensures the consistency of financial information affecting rate design, and that accounting outcomes present an entity's operations in a manner to best support ratemaking analysis. DAA's accounting program also provides accounting expertise to the Commission's program offices to assist 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 programs, through their outreach and guidance, inform the industry, public, and others about what constitutes effective compliance, accountability, and transparency. DAA actively engages in industry outreach through interactions with trade associations, such as the Interstate Natural Gas Association of America, Edison Electric Institute, Association of Oil Pipe Lines, and Energy Bar Association, and encourages interested parties to contact DAA with any inquiries or concerns. In addition, DAA continues to provide formal accounting guidance in response to accounting requests filed with the Commission. Informal accounting guidance may also be requested and obtained from DAA via email (accountinginquiries@ferc.gov) and phone ((202) 502-8877), and informal guidance on all other compliance matters may be obtained through the Compliance Help Desk (www.ferc.gov/contact-us/compliance-help-desk.asp). The goal of DAA's outreach efforts 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.

B. Compliance

1. Compliance Reviews

Assessing internal compliance programs related to the scope of the audit remains a key activity in DAA's audit program. This evaluation serves to help identify and understand the presence of risks that internal compliance efforts may fail to detect, helps prevent noncompliance, and factors into audit fieldwork, e.g., the level of required testing. Assessing compliance programs generally entails a review of the entity's compliance culture related to specific audit scope areas. The results of this assessment are communicated to the entity under audit to help it achieve a more robust compliance program. Providing such feedback is in line with the Commission's strategic plan, and enables jurisdictional entities to quickly implement corrective actions, reducing the risk of future noncompliance. The Federal Energy Regulatory Commission Strategic Plan, Fiscal Years 2014-2018, continues to encourage strong compliance programs, and places emphasis on timely implementation of corrective actions within six months of audit completion. In FY2017, DAA achieved a 98 percent success rate of audit recommendations implemented within six months.

2. Compliance Alerts

DAA continues to observe certain areas where compliance has been problematic for some entities, and believes that highlighting these areas will increase awareness and facilitate compliance efforts. The topics presented below represent areas where DAA has found consistent compliance concerns or noncompliance.

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 always 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 fees-committed lines of credit in the calculation of the short-term debt rate; while this might be permitted in certain circumstances, it is not automatic, and Commission approval is required to include such fees as part of the short-term rate derivation. Other common findings during audits include: failure to exclude goodwill-related equity from the equity component of the AFUDC rate, absent Commission approval; failure to include short-term debt in computing the AFUDC rate; computing AFUDC on contract retention and other noncash accruals; compounding AFUDC more frequently than semi-annually; inclusion of unrealized gains and losses from other comprehensive income; and use of an AFUDC methodology not prescribed by the Commission in Order No. 561.

Formula Rate Matters. Compliance with the Commission's accounting and FERC Form No. 1 requirements for costs that are included in formula rate recovery mechanisms used to determine billings to wholesale customers continues to be a focal point of DAA's formula rate audits. DAA notes that certain areas of noncompliance could have been avoided, had there been more effective coordination between jurisdictional entities' accounting and rate staffs to prevent the recovery of costs that should be excluded from the formula rate. Additionally, formula rate audits in recent years have identified patterns of noncompliance in the following areas:

- Income Tax Overpayments – Utilities have incorrectly recorded income tax overpayments for which they elect to receive a refund and not apply to a future tax year’s obligation as a prepayment in Account 165, Prepayments. 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.
- Storm Damages – Utilities have collected excess amounts for storm damages from wholesale customers by either recovering estimates that do not reflect actual experience or recovering both estimated and actual storm damage expenses.
- Investment Tax Credits (ITCs) – Utilities have improperly accounted for ITCs associated with utility plant as income tax prepayments in Account 165. ITCs are generated as a result of investments made in utility plant. DAA found instances in which tax credits were used to reduce taxable income, but not all of the ITCs were used at once and resulted in an ITC carry-forward. DAA found the ITC carry-forwards were recorded in an incorrect account and factored into formula rate billings, leading to customer overbillings.
- Internal Merger Costs – Utilities have included merger-related costs in operating accounts, contrary to the directives of the Merger Order and long-standing Commission policy that such costs be recorded in non-operating accounts. This accounting resulted in companies misrepresenting utility operating income and expenses reported in their FERC Form No. 1, Annual Reports (Form No. 1). In these cases, utilities were subject to hold-harmless commitments to exclude merger-related costs from rates unless the Commission approves recovery of such costs and were required to have appropriate controls and procedures to ensure that merger-related costs are tracked and excluded from formula rates.
- Asset Retirement Obligation (ARO) – Utilities have 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, the accretion expense related to the liability, and associated deferred taxes.
- Commitment Fees – Utilities improperly accounted for commitment fees in Account 165, Prepayments, which led to excess recoveries through formula rate billings.
- Formula Rate Errors – Utilities’ transmission formula rates contained errors, omissions, and miscalculations related to various accounts. Some accounts that should have been added were incorrectly subtracted. In other instances, the formula pulled information from the wrong Form No. 1 line. Finally, there were instances where items specifically excluded by formula rate protocols were included in the formula rate.
- Merger Goodwill – Utilities have included goodwill in the equity component of the capital structure, absent Commission approval. It is the Commission’s long-standing policy that goodwill should be excluded from rates.
- Allocated Labor – Utilities have charged labor costs to transmission projects without using an appropriate cost allocation method or time tracking. Specifically, DAA observed that controls were not sufficient to ensure that labor costs charged were appropriately allocated between transmission and distribution capital projects when employees worked on both, resulting in an inappropriate or unsupported allocation of labor costs to transmission projects.

- Administrative and General (A&G) Expenses – Utilities have recorded non-operating expenses and functional operating and maintenance expenses in A&G expense accounts, leading to inappropriate inclusion of such costs in the formula rates.
- Unused Inventory and Equipment – Utilities have included the cost of materials, supplies, and equipment purchased for a construction project without removing the cost of items unused in whole or in part from the cost of a project.

Open Access Transmission Tariffs (OATT). An essential goal of open access transmission is to support efficient and competitive markets. During recent OATT audits, DAA noted instances where company actions did not support this goal due to noncompliance with the OATT’s terms and conditions. Specifically, DAA identified issues related to improper use of network transmission service, improper sales from designated network resources, transmission capacity not released in accordance with Commission-approved tariffs, inaccurate available transmission capacity data posted on the Open Access Same-Time Information System, and transmission service provided to customers under expired transmission service agreements.

Natural Gas Accounting and Tariff Matters. DAA continues to evaluate natural gas pipelines’ compliance with the Commission’s accounting and FERC Form No. 2 reporting requirements to ensure transparency and accuracy of data reported to the Commission. DAA’s evaluations also continue to cover the administration and application of transportation services and rates among customers in accordance with approved gas tariffs. In recent comprehensive natural gas audits, DAA has found noncompliance in the following areas:

- Gas Tariff – Natural gas pipelines did not comply with FERC gas tariff procedures, specifically with regard to: using the method specified in the tariff for valuing system gas activities; enforcing stipulations in operational balancing agreements to manage and monitor gas imbalance activities between interstate and intrastate pipelines; updating reservation credit procedures for force majeure and non-force majeure events to be consistent with Docket No. RP11-1538-000; and reporting operational available capacity data consistent with North American Energy Standards Board requirements.
- Accounting and Reporting – Natural gas pipelines did not comply with Commission accounting requirements, specifically with regard to: penalty revenues assessed to noncompliant shippers; transmission mains and compression station expenses; line pack inventory changes; shipper imbalances and cash-outs; lost and unaccounted-for gas; and fuel used in compressor stations. Other common areas of noncompliance included: derivation of allowance for funds used during construction; classification of non-operating activities associated with donations, fines, penalties and lobbying activities; and capital project reimbursements and advances from customers. Regarding FERC Form No. 2 reporting, there was inaccurate or incomplete information for affiliate transactions and other subsidiary investment activities. There were also omissions and incomplete information from various schedules supporting the financial statements.
- Pipeline Integrity Management Costs – Certain natural gas pipelines have misclassified integrity management costs that should be recorded as maintenance expenses. Commission accounting requirements, including the accounting guidance in Docket No. AI05-1-000, provide that costs to develop integrity management programs, prepare pipelines for inspection, conduct pipeline assessments, and make repairs are to be charged to maintenance expense in the period the costs are incurred.

- **Capacity Transparency and Allocation** – Interstate natural gas pipelines are required to post available pipeline capacity on their web sites. These postings promote transparency of available pipeline capacity and enable more competitive and efficient use of such capacity. Recent audits identified deficiencies in reporting available pipeline capacity because quantities were omitted or incorrectly reported. This means some shippers may not have been aware or able to avail themselves of operational opportunities for use of available pipeline capacity.

Oil Pipelines (Page 700). An essential part of oil pipeline audits is an examination of the accounting and operating data included on page 700 of FERC Form No. 6, Annual Cost of Service-Based Analysis Schedule.¹⁷ This information is sometimes used by the Commission and interested parties to evaluate interstate pipeline rates. Recent oil pipeline audits have identified accounting errors that impact the accuracy of amounts reported on page 700, including incorrectly designating intrastate amounts as interstate, and misclassification of carrier property, charitable donations, fines/penalties, and lobbying activities. DAA also found that some companies are not conducting depreciation studies as required, leading to depreciation rates not aligning with the actual service lives of the plants, and ultimately to plants with negative book balances.

Nuclear Decommissioning Trust Funds. The Commission’s regulations concerning nuclear decommissioning trust funds require utilities owning nuclear power plants to file annual trust fund reports. Recent audits have identified utilities that failed to submit annual decommissioning trust fund reports, clearly distinguish Commission-jurisdictional monies from non-jurisdictional monies held in the funds, and accurately report the amount of Commission-jurisdictional money in the trusts.

Consolidation. Commission accounting regulations require the equity method of accounting for all investments in subsidiaries. Recent audits continue to find jurisdictional companies incorrectly using the consolidation method of accounting for subsidiaries instead of the equity method. As a result, improper amounts were included in formula rate billings. Entities must seek a waiver from the Commission to use the consolidation method for an investment in a subsidiary.

Untimely Filing of Commission Reports. DAA identified several companies that failed to timely file various reports with the Commission, including decommissioning trust fund reports and required filings, and reports related to mergers. Failure to timely file these reports prevents the Commission and industry from using relevant data. It also negatively impacts transparency and creates doubt regarding the effectiveness of these companies’ compliance programs.

C. Significant Audit Matters

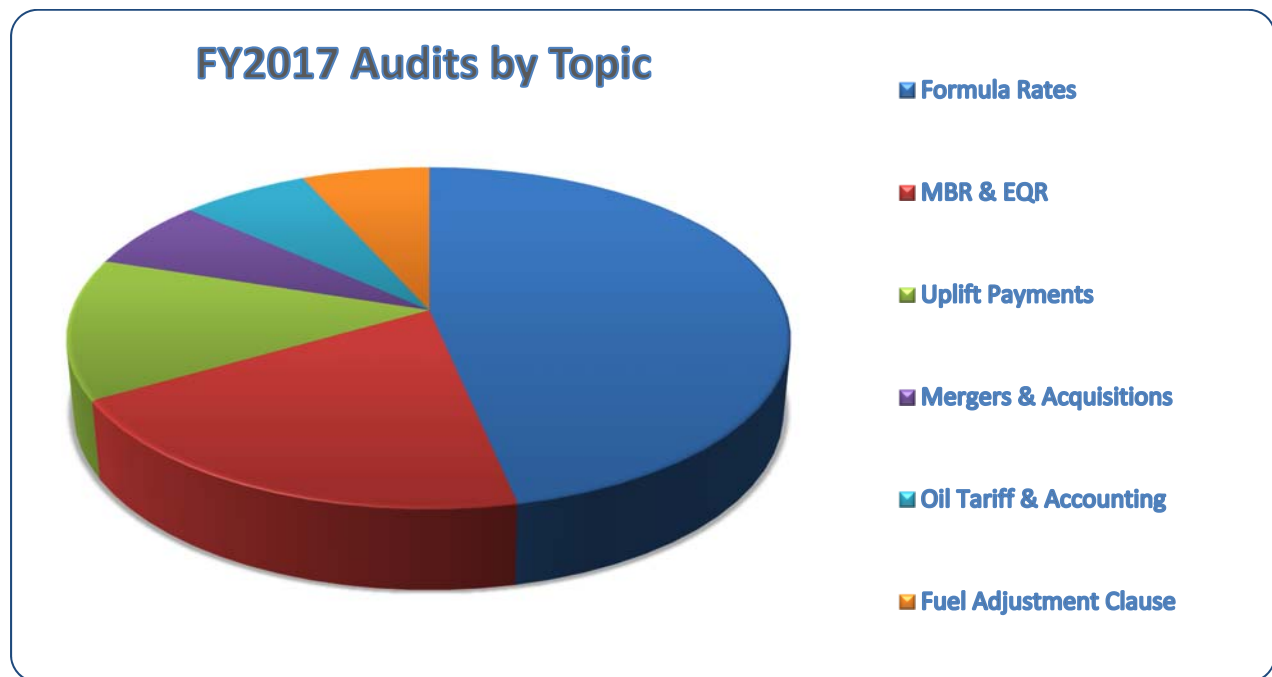
DAA’s audits are public, risk-based, cover a variety of audit scope areas, and typically are commenced without allegation of wrongdoing. DAA consults with other divisions within

¹⁷ The 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 interstate service (i.e., FERC-jurisdictional) amounts, while the rest of the FERC Form No. 6 includes both interstate and intrastate amounts.

Enforcement and other program offices to inform DAA’s risk-based methodology in the selection of audit scope areas and audit candidates. DAA also works with other program offices to support Commission actions addressing rates, tariffs, financial and operational transparency, policy initiatives, law, reliability, and other areas in the electric, natural gas, and oil industries. DAA is not limited in the types of audits it conducts; rather, it responds to the needs of the Commission and industry. Individual audits often contain multiple and different scope areas, but every audit generally includes a review of the internal compliance with respect to the audit scope area.

DAA’s public audit reports provide great detail on the audit scope, methodology, and findings of noncompliance, with the expectation that all jurisdictional entities will use this information to be better informed, avoid noncompliance, and improve operational performance. DAA expects timely implementation of all audit recommendations, which demonstrates an entity’s commitment to improve compliance with FERC rules and precedents, and reduces the risk of future noncompliance.

In FY2017, DAA completed 11 audits of oil pipeline, public utility, and natural gas companies covering a wide array of topics. The audits resulted in 301 recommendations for corrective action, all of which were accepted by the audited companies, and directed \$13.3 million in refunds and recoveries. Specifically, DAA directed \$8.2 million to be refunded to jurisdictional customers, and prevented \$5.1 million from being inappropriately amortized and collected through future wholesale formula rates. These refunds and other recoveries addressed storm damages, income tax receivables, uplift payments, commitment fees, and formula rate errors. Audit recommendations also directed improvements to the audited companies’ internal processes and procedures, financial reporting for accuracy and transparency, web site postings, and efficiency of operations. Collectively, these refunds, recommendations, prevented charges (i.e., savings), and procedural and process enhancements benefit ratepayers and market participants.



The audits below were completed in FY2017 and provide a sample of DAA findings and results.

Southern Company Audits – FA15-5-000, FA15-6-000, FA15-7-000, FA15-8-000. At Southern Company, DAA evaluated operating companies Gulf Power, Georgia Power, Alabama Power, and Mississippi Power’s (collectively Southern) compliance with: (1) the approved terms, rates, and conditions of its transmission formula rate mechanism as provided in their OATT, and other jurisdictional rates on file with the Commission; (2) the accounting requirements of the Uniform System of Accounts Prescribed for Public Utilities and Licensees under 18 C.F.R. Part 101; and (3) the reporting requirements of FERC Form No. 1, Annual Report, under 18 C.F.R. § 141.1.¹⁸ Additionally, the audit of Mississippi Power evaluated its compliance with the Commission’s requirements for a fuel adjustment clause under 18 C.F.R. § 35.14. The audits identified 47 findings of noncompliance, and made 193 recommendations that require the Southern operating companies to take corrective actions.

The audit reports include findings on accounting for income tax receivables that will be held in abeyance pending the outcome of a filing for a rate determination from the Commission. Southern improperly included approximately an aggregate \$683 million related to income tax receivables in its formula rate from 2012 to 2014. This increased the revenue requirement by approximately \$3.6 million. Additional findings of noncompliance found at Southern covered the following topics: wholesale storm damage revenues, commitment fees, AROs, formula rate calculations, accounting for Southern nuclear transactions, separation of nuclear decommissioning trust fund monies, accounting for abandoned transmission projects, regulatory assets, accounting for subsidiary investment, prior period adjustments, coal handling expenses, and FERC Form No. 1 reporting. These additional findings led to the Southern operating companies improperly including approximately \$451 million in their formula rate calculations, resulting in the revenue requirement being overstated by roughly \$17 million. In total, these audits led to refunds of nearly \$3.86 million to wholesale customers.

PacifiCorp – FA16-4-000. At PacifiCorp, DAA evaluated compliance with: (1) approved terms, rates, and conditions of its wholesale formula rate mechanism as outlined in PacifiCorp’s OATT, and other jurisdictional rates on file with the Commission; (2) the accounting requirements of the Uniform System of Accounts Prescribed for Public Utilities and Licensees under 18 C.F.R. Part 101; and (3) the reporting requirements of Form No. 1, Annual Report, under 18 C.F.R. § 141.1.¹⁹ The audit identified nine findings of noncompliance and 38 recommendations for corrective action. The nine areas of noncompliance include: (1) inappropriate accounting and rate recovery of storm damage costs; (2) inappropriate recovery of production related coal mining assets; (3) inappropriate recovery of certain regulatory assets; (4) inappropriate accounting and rate recovery of accruals for injuries and damages that were covered by insurance policies; (5) incorrect computation of the AFUDC rate; (6) inappropriate inclusion of AROs in rates; (7) inappropriate

¹⁸ *Gulf Power Company*, Docket No. FA15-5-000 (Sept. 26, 2017); *Georgia Power Company*, Docket No. FA15-6-000 (Sept. 26, 2017); *Alabama Power Company*, Docket No. FA15-7-000 (Sept. 26, 2017); *Mississippi Power Company*, Docket No. FA15-8-000 (Sept. 26, 2017) (delegated letter orders).

¹⁹ *PacifiCorp*, Docket No. FA16-4-000 (Aug. 29, 2017) (delegated letter order).

accounting for two coal settlement payments; (8) improper accounting for liquidated damages; and (9) improper accounting for employee benefit costs.

Of note, PacifiCorp inappropriately recovered both actual and estimated costs associated with the same storms from its wholesale customers. Specifically, PacifiCorp accounted for transmission-related storm damage costs by recording the actual storm damage costs in Account 571, Maintenance of Overhead Lines (Major only), and at the same time recorded the estimated costs for the storm damages in Account 924, Property Insurance. Both accounts were used in PacifiCorp's wholesale formula rates in determining billings to wholesale customers. This led to PacifiCorp overbilling its merchant function through interdepartmental billings by \$5.8 million and third-party wholesale customers by \$1.1 million.

Collectively, DAA's findings directed PacifiCorp to refund approximately \$14.0 million to its merchant function and approximately \$2.6 million to third party wholesale transmission customers. In addition, \$36 million in accounting adjustments resulting from the audit will save third-party wholesale customers approximately \$5.1 million in future rates.

D. Other Audit Matters

1. Mergers and Acquisitions

NV Energy, Inc. (NV Energy) – PA15-2-000. At NV Energy, DAA evaluated whether NV Energy and its public utility subsidiaries, Nevada Power Company (Nevada Power) and Sierra Pacific Power Company (Sierra Pacific), complied with conditions established in the Commission order authorizing the merger of NV Energy with Silver Merger Sub, Inc. DAA also evaluated Nevada Power and Sierra Pacific's compliance with tariff requirements relating to their Commission jurisdictional rates and Commission accounting and reporting requirements.²⁰ The audit identified six findings of noncompliance and 21 recommendations for corrective actions. DAA found that Nevada Power and Sierra Pacific inappropriately accounted for the cost of consummating the merger in operating accounts, incorrectly accounted for changes in expected future cash flows associated with certain AROs, improperly accounted for special-purpose funds held in an external trust and non-operating lobbying-related expenses, miscalculated their respective AFUDC rates using a calculation method not consistent with Commission accounting requirements, and filed FERC Form No. 580 two years after the due date. As a result of DAA's findings, \$17.7 million was prevented from inclusion in future rate cases before the Commission wherein the companies' cost of service rates would have been determined.

2. Oil

Plantation Pipe Line Company (Plantation) – FA15-12-000. At Plantation, DAA evaluated compliance with Commission regulations for oil pipeline companies under 18 C.F.R. Parts 340-357, including the Uniform System of Accounts in 18 C.F.R. Part 352, and FERC Form No. 6 financial reporting requirements in 18 C.F.R. § 357.2.²¹ The audit identified eight findings of noncompliance and 20 recommendations for corrective actions. In one finding, audit staff noted

²⁰ *NV Energy, Inc.*, Docket No. PA15-2-000 (Feb. 1, 2017) (delegated letter order).

²¹ *Plantation Pipe Line Company*, Docket No. FA15-12-000 (Dec. 23, 2016) (delegated letter order).

that Plantation's composite depreciation rates to compute depreciation expenses were no longer applicable, and that Plantation improperly continued to accrue depreciation expenses on carrier property accounts after certain accounts became fully depreciated. This resulted in Plantation recording \$16.4 million of depreciation expense in excess of the book cost of the assets in these accounts. The audit directed Plantation to perform a new depreciation study that accounts for the changes in assumptions used for physical and economic service lives of the underlying assets. Plantation filed a depreciation study with the Commission on May 19, 2017, which the Commission accepted on July 18, 2017, in DO17-14-000.

3. Market-Based Rate & EQR

Dynegy, Inc. (Dynegy) – PA15-3-000. At Dynegy, DAA evaluated compliance with: (1) tariff rules regarding uplift payments from organized markets in which Dynegy participated; (2) the requirements of its MBR authorizations under 18 C.F.R. § 35 Subpart H; and (3) EQR filing requirements under 18 C.F.R. § 35.10b.²² The audit identified one finding of noncompliance and four recommendations for corrective actions. The noncompliance concerned numerous errors in Dynegy's EQR filings, some of which were significant, including uplift payments in the wholesale organized markets and misclassification of transactions as energy sales, as well as unreported and inaccurately reported capacity sales, particularly in the MISO markets. These errors hindered the ability of the Commission and other interested entities to monitor wholesale electricity market activities. As a result, Dynegy initiated an IT automation project to improve the data extraction, consolidation and review process. In addition, Dynegy prepared written protocols for verifying the accuracy and completeness of its EQRs, and added the issue to its internal audit plan.

Calpine Corporation (Calpine) – PA15-5-000. At Calpine, DAA evaluated compliance with: (1) tariff rules regarding uplift payments from organized markets in which Calpine participated; (2) the requirements of its market-based rate (MBR) authorizations under 18 C.F.R. § 35 Subpart H; and (3) Electric Quarterly Report (EQR) filing requirements under 18 C.F.R. § 35.10b.²³ The audit identified three findings of noncompliance and six recommendations for corrective actions. Calpine's submission of inaccurate data to PJM resulted in overpayments of approximately \$1.18 million for Lost Opportunity Cost uplift credits as well as Day-Ahead Scheduling Reserve overpayments. As a result of the audit, Calpine agreed to make refunds totaling \$1.78 million, including associated interest. Calpine has also taken steps to ensure that any future uplift costs from PJM are warranted.

SESCO Enterprises, LLC (SESCO) – PA16-3-000. At SESCO, DAA evaluated its wholesale electric trading activity, including compliance with applicable tariff provisions of markets in which SESCO participates, as well as compliance with requirements of its MBR authorizations, including, but not limited to the Commission's MBR and Electric Quarterly Report filing requirements.²⁴ The audit did not identify any findings of noncompliance that required SESCO to take corrective action.

²² *Dynegy, Inc.*, Docket No. PA15-3-000 (Oct. 14, 2016) (delegated letter order).

²³ *Calpine Corporation*, Docket No. PA15-5-000 (Dec. 2, 2016) (delegated letter order).

²⁴ *SESCO Enterprises, LLC*, Docket No. PA16-3-000 (Aug. 21, 2017) (delegated letter order).

4. Electric Tariff & Accounting

NorthWestern Corporation (NorthWestern) – PA15-1-000. DAA evaluated NorthWestern’s compliance with requirements in its OATT.²⁵ The audit identified six findings of noncompliance, one other matter, and 19 recommendations for corrective actions. The six findings were: (1) improper approval of 79 non-firm transmission redirect requests that were assigned a higher priority than was permitted under its OATT; (2) six instances of improperly reserved hourly secondary network transmission service to support off-system sales to non-network customers by NorthWestern’s merchant function; (3) two improper disclosures of nonpublic transmission information to NorthWestern merchant function employees by transmission function employees, contrary to the Commission’s Standards of Conduct; (4) information required by section 30.3 of NorthWestern’s OATT missing from the standard form provided to its network customers for temporarily terminating a network resource and re-designating the same resource; (5) failure to file 15 large generator interconnection agreements containing nonconforming terms and conditions with the Commission prior to commencing service and receiving customer payments under those agreements; and (6) failure to file reports of issued securities in a timely and accurate manner. As a result of DAA’s findings, NorthWestern implemented policies and procedures to strengthen its processes for detecting, analyzing, mitigating, correcting, and reporting issues concerning compliance with Commission regulatory matters, including OATT compliance, and to ensure compliance going forward. Further, NorthWestern implemented training for employees to further strengthen and support compliance with the different risk areas identified during the audit.

E. Accounting Matters

DAA administers the Commission’s accounting programs for the electric, natural gas, and oil industries as a vital component of the Commission’s strategy for setting cost-of-service rates that are just and reasonable. The foundation of the Commission’s accounting programs are the uniform systems of accounts codified in its regulations for electric 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 allows for consistent and transparent accounting information to be used by the Commission and other stakeholders to set and monitor cost-of-service rates. DAA helps the Commission to achieve this strategic goal through insightful consideration of the Commission’s ratemaking policies, past Commission actions, industry trends, and outside influences (e.g., economic environment, 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 with Commission program offices to provide regulatory accounting advice and analysis on various types of filings. In addition, DAA provides accounting expertise to Commission program offices in developing Commission policies and rulemakings to ensure these initiatives fully consider and evaluate the accounting and financial implications for 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

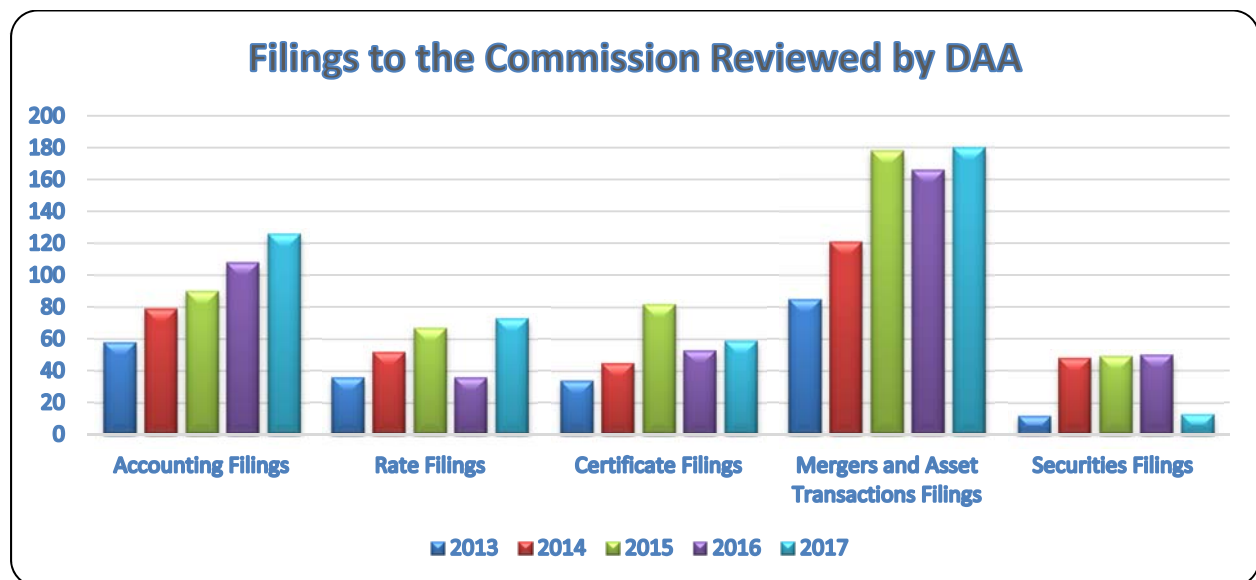
²⁵ *North Western Corporation*, Docket No. PA15-1-000 (Mar. 14, 2017) (delegated letter order).

these capacities, DAA monitors and participates in projects initiated by the Financial Accounting Standards Board, Securities and Exchange Commission, and International Accounting Standards Board 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, consultants, 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 enhance 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 regulations through participating in various formal speaking engagements and industry accounting meetings.

1. Filings Reviewed by DAA

In FY2017, DAA advised the Commission and acted on filings submitted to the Commission covering various accounting matters with cost-of-service rate implications, such as accounting for mergers and carve-outs, asset acquisitions and dispositions, depreciation, AFUDC, pensions and other post-retirement benefits, income taxes, and prior-period corrections. While DAA focused on accounting matters within the filings, many of the filings were primarily to seek Commission approval over matters other than accounting, such as requests for declaratory orders, natural gas certificate applications, merger and acquisition applications, electric and natural gas rate filings, and securities and debt applications. In these cases, DAA served other program offices in an advisory role, identifying and analyzing the accounting implications of the requests. Over the past five years, DAA has reviewed 1,900 Commission filings to ensure proper accounting is followed and to advise the Commission of potential rate impacts. In FY2017 alone, DAA reviewed a total of 451 filings.



2. Requests for Approval of the Chief Accountant

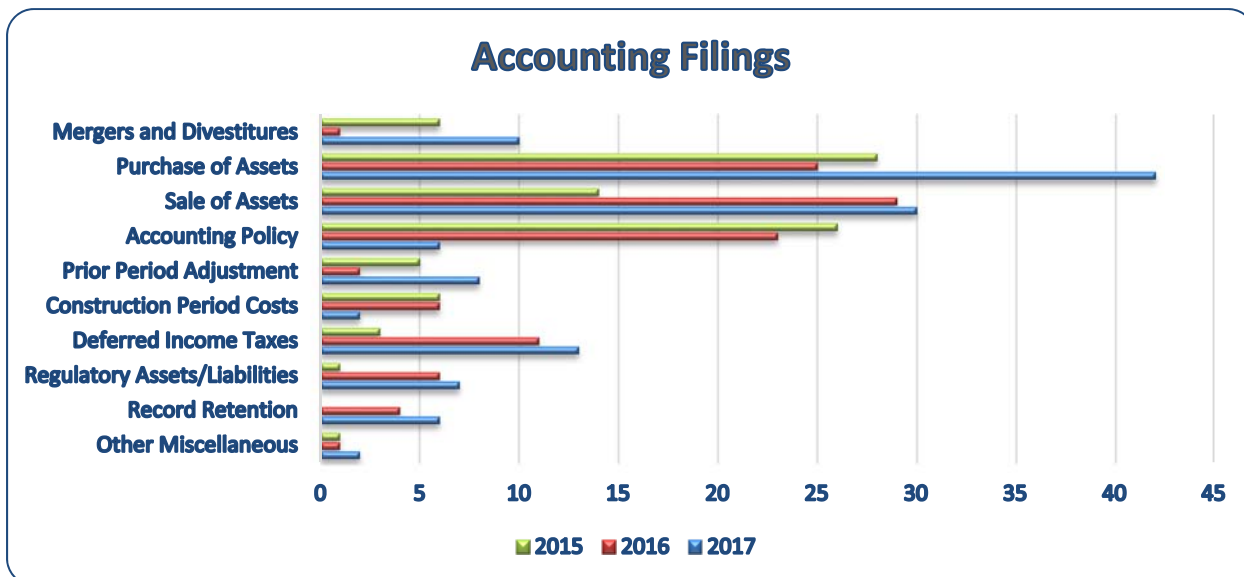
In FY2017, DAA, through the Chief Accountant's delegated authority, responded to 126 accounting filings requesting approval of or seeking guidance for proposed accounting treatment or financial reporting. The matters in these filings related to various topics within the Commission's accounting and financial reporting requirements for electric, natural gas, and oil pipeline entities. Of note in FY2017, there was a sharp increase in accounting filings related to mergers and divestitures, including internal reorganizations. There was also a large increase in filings during FY2017 requesting approval to record public utility asset sales and acquisitions.

Because of the increase in filings related to mergers and divestitures activity, DAA has continued concern about accounting related to these transactions. Specifically, staff is focused on ensuring that companies are properly recording transaction-related costs, which include costs to consummate the transaction and costs to transition operations from the previous organizational structure to the post-transaction structure. DAA encourages all jurisdictional entities to be familiar with the Commission's policy on hold harmless commitments.²⁶ Additionally, DAA is concerned with the purchase accounting associated with these transactions, either originating at the jurisdictional entity level, or pushed down from a jurisdictional entity's holding company. Staff is focused on the integrity and continuity of original cost accounting related to utility plant assets, and the effect of the transactions on the debt and equity accounts of the jurisdictional entity.

Also notable in FY2017 were letters to the Chief Accountant requesting approval to adjust retained earnings and deferred taxes, in response to an accounting change required by the Financial Accounting Standards Board. The change involved the calculation of deferred taxes related to employee share-based payments.²⁷ The Commission's accounting regulations require that jurisdictional entities write to the Commission and receive approval before making prior period adjustments and using Account 439, Adjustments to Retained Earnings, for electric utilities and licensees, centralized service companies, and natural gas companies, and Account 705, Prior Period Adjustments to Beginning Retained Income Account, for oil pipeline companies. In reviewing these filings, DAA staff was concerned that increases in deferred tax asset balances and retained earnings would result in an increase in rate base and cost of capital in future rate filings. After careful consideration and review, the Chief Accountant concluded that the requests to make the prior period adjustments were reasonable and adequately supported, and issued letters approving the requests. DAA encourages companies making similar filings to include all relevant historical evidence and analyses to support the adjustments.

²⁶ *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189 (2016) (Policy Statement).

²⁷ See FASB Accounting Standards Update No. 2016-19, Improvements to Employee Share-based Payment Accounting (March 2016).



3. Rate Proceedings

In FY2017, DAA participated in 73 rate filings that continued to predominately involve electric formula rate proceedings, but also included natural gas and oil rate proceedings. DAA worked with other program offices to discuss various accounting and financial issues and their effects on rates. Since many electric and natural gas rates are derived from accounting information in FERC Form Nos. 1 and 2, DAA ensured that all proposed accounting in the rate proceedings was consistent with the Commission’s accounting requirements. DAA also worked with other program offices to enhance the transparency of financial information affecting formula rates so that all stakeholders had an opportunity to review the costs included in rates. Particular items that DAA emphasized as critical information during FY2017 included plant assets’ historical costs, merger-related costs, AROs, and deferred taxes.

4. Certificate Proceedings

In FY2017, DAA reviewed 59 natural gas pipeline certificate applications seeking various Commission authorizations: to construct, own, and operate new pipeline facilities; to acquire pipeline facilities; to abandon pipeline facilities in place, by removal, or by sale; and to establish rates for new pipeline service. DAA continues to work with other program offices to assist in the development of just and reasonable rates by reviewing construction costs and other items used to determine initial rates, including operation and maintenance expenses, depreciation, amortization, taxes, and return on investment. DAA also continues to ensure that applicants follow Commission accounting requirements related to asset abandonment, construction, AFUDC calculations, contributions in aid of construction, regulatory assets and liabilities, leases, and system gas.

5. Merger and Acquisition Proceedings

In FY2017, DAA reviewed three merger and divestiture applications and approximately 177 acquisition and sales applications from electric utilities under section 203 of the FPA. 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 also ensures that the accounting is consistent with any hold-harmless or other rate requirements discussed in a merger order. In acquisition filings, staff conducts an accounting review to ensure applicants properly account for the purchase and sale of plant assets consistent with Commission regulations. It ensures that jurisdictional entities maintain the appropriate original cost and historical accumulated depreciation of acquired utility plant and properly recorded acquisition premiums or discounts. DAA also reviewed merger and acquisition accounting entries to ensure they provide enough transparency to the Commission and all interested parties for evaluating the impact on rates. It also consistently reminded jurisdictional entities to file accounting entries timely, within six months of a finalized merger or acquisition transaction, in accordance with Electric Plant Instruction No. 5 and the requirements of Account No. 102, Electric Plant Purchased or Sold.

6. Debt and Security Issuance Proceedings

In FY2017, the Chief Accountant reviewed 13 electric utility security/debt applications. Section 204(a) of the FPA requires jurisdictional entities to receive Commission authorization before issuing securities or assuming liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person. In reviewing filings under section 204, the Commission evaluates an applicant's viability based on a review of financial statements submitted with the application, interest coverage ratio, debt maturities and cash-flow projections. DAA's review of debt and security applications provides critical analysis that helps prevent public utilities from borrowing substantial amounts of money and using the proceeds to finance nonutility businesses. This also ensures that future issuance of debt is consistent with public interest.

7. Accounting Inquiries

In FY2017, DAA responded to 102 accounting inquiries from jurisdictional entities and other stakeholders on dozens of accounting and financial topics. Accounting inquiries are made through the Compliance Help Desk, the Accounting Inquiries phone line and email, or are sent directly to DAA staff. The majority of accounting inquiries during FY2017 sought accounting and financial reporting direction on topics such as capitalization and original cost. Other topics included depreciation, the appropriate functional classification of costs, deferred taxes, and record-retention requirements. 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 eLibrary system²⁸ and Title 18 of the Code of Federal Regulations.²⁹ Such informal accounting guidance is not binding to the Commission, and cannot grant waiver of a Commission regulation or order.

8. Accounting for Pensions and Other Postretirement Benefits

DAA has received multiple inquiries from jurisdictional entities regarding the accounting for pensions and other postretirement benefits (jointly referred to as net benefit cost), in light of Financial Accounting Standards Board's Accounting Standards Update (ASU) 2017-07, Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit

²⁸ The Commission's eLibrary system can be accessed at www.ferc.gov/docs-filing/elibrary.asp.

²⁹ The Commission's regulations in 18 C.F.R. can be found at www.ecfr.gov.

Cost (to be effective for calendar year 2018, if companies do not elect to early adopt). Prior to the ASU, net benefit cost was recognized on the income statement as one amount net of all the components that make up net benefit cost. The ASU now requires companies to separate net benefit cost into the service cost component and all other components. The service cost component will be recognized as part of operating income or loss, while the other components will be recognized in the non-operating section. Also, only service cost will be eligible to be capitalized.

Under the Commission's accounting requirements for electric utilities and licensees, centralized service companies, natural gas companies, and oil pipeline companies, the net benefit cost is recognized entirely in operating income. After deliberations and discussions amongst DAA and other program offices, staff finds no basis to record any portions of net benefit cost to any account except for the one designated specifically for that purpose in each current respective system of accounts. Regarding capitalization, capitalizing only a portion of the service cost component of net benefit costs while the other components are expensed does not conflict with the Commission's current accounting requirements. Staff recommends that jurisdictional entities who may change their capitalization practice for benefit costs should include all relevant disclosures in the footnotes to the financial statements filed annually with the Commission, and be transparent in this accounting change in any relevant future rate filings if there is an impact on rates.

Staff notes that changes in accounting by the Financial Accounting Standards Board, such as this ASU, are not to be construed as a change to, or a waiver from, the Commission's accounting requirements. When necessary, the Chief Accountant or the Commission will issue guidance on the implementation of new changes in accounting.

9. International Financial Reporting Standards

DAA continued its participation with the International Financial Reporting Standards (IFRS) Foundation, the International Accounting Standards Board (IASB), and their project on Rate-Regulated Activities (RRA) which remains of special interest to the Commission and its regulated entities. In FY2017, the Chief Accountant, a Consultative Group member for the RRA Project, participated in informal and formal meetings with U.S. regulated entities, state commissions, and international regulators to inform the development of an IFRS accounting standard that provides for regulatory assets and liabilities in IFRS financial statements. During this period, the IASB continued its consideration of the prior comment letters and discussions with the Consultative Group but has yet to issue an accounting standard that provides for regulatory assets and liabilities in IFRS financial statements. In Fiscal Year 2018, the Chief Accountant stands ready to continue providing expert advice to IASB staff to develop permanent standards on rate-regulated activities.

DIVISION OF ENERGY MARKET OVERSIGHT

A. Overview

In support of the Commission's responsibility to ensure just and reasonable rates, terms, and conditions for consumers, Market Oversight is responsible for monitoring and analyzing the nation's wholesale natural gas and electric power markets. Market Oversight performs this monitoring and analysis by: (1) examining and analyzing the structure and operation of the markets to identify significant market events and trends, inefficient market rules, tariff and rule violations, and other unusual market behavior; (2) analyzing market-based rate transactions to determine whether entities are exercising market power, and reporting its various analyses and observations to the Commission; (3) collaborating with other Commission offices to develop regulatory strategies, focusing on the competitiveness, fairness, and efficiency of wholesale energy markets; (4) administering, analyzing, and ensuring compliance with the filing requirements of EQRs and various Commission forms; and (5) conducting outreach to and communication with the public.

B. Market Monitoring

Market Oversight staff examines data from a variety of sources to review market fundamentals and emerging trends, and to examine the structure, operation, and interaction of natural gas and electric markets. As developments warrant, Market Oversight staff initiates projects designed to evaluate market trends and assess participant behavior. Staff also presents analyses at Commission meetings. During FY2017, such presentations included the following:

1. 2016 State of the Markets Report

Market Oversight annually submits to the Commission, and makes public, its State of the Markets report, which assesses the significant events in the energy markets during the prior year.³⁰ Posted on April 13, 2017, the report for 2016 observed near record low wholesale power prices, and record low natural gas prices. Natural gas prices fell by roughly 30 percent across trading hubs nationwide. The report explained that changes in the North American natural gas demand drove down U.S. natural gas spot prices in 2016, despite decreases in natural gas production for the first time since large-scale shale production began in 2005. Low gas prices resulted in the annual share of electricity produced from natural gas surpassing electricity produced from coal for the first time. Besides describing natural gas developments in the power sector, the report provided updates on major electric capacity additions and retirements, and discussed distributed energy resources and net metering trends nationwide.

³⁰ See State of the Market Report 2016, available at <http://www.ferc.gov/market-oversight/reports-analyses/st-mkt-ovr/2016-som.pdf>.

2. Seasonal Market Assessments

Market Oversight prepares seasonal assessments that it presents at Commission meetings and makes available to the public on the Commission website. In FY2017, Market Oversight's seasonal assessments included the following:

Winter 2016/2017 Energy Market Assessment, October 20, 2016. Market Oversight staff presented the outlook for natural gas markets, highlighting both increasing expected demand and near record inventories of natural gas in storage.³¹ Additionally, declining gas production was expected as a result of lower natural gas and oil prices. Market Oversight staff explained that new natural gas pipeline expansions and projects would provide more transportation capacity from producing regions to market areas during the 2016-17 winter.

Regarding the wholesale electricity markets, staff presented information on expected transmission expansion during winter 2016-17, as well as anticipated changes in generating capacity. Staff also discussed CAISO's operational considerations with respect to the management of solar generation and load patterns during the winter.

Summer 2017 Energy Market and Reliability Assessment, June 15, 2017. This assessment reviewed the outlook for the electric market for summer 2017, highlighting the adequacy and diversity of electric power supplies, trends in fuel markets, and region-specific issues.³² This assessment also covered details relating to capacity markets in PJM and other Eastern RTOs/ISOs, and discussed CAISO's preparations for the August 21, 2017, solar eclipse.

Market conditions going into the summer reflected the rising natural gas prices that resulted from a decrease in natural gas production rates. Moreover, despite modest load growth, regional electric system reserve margins were forecast to be adequate.

C. Market-Based Rate *Ex Post* Analysis

Market Oversight develops, refines, and implements tools and algorithmic screens to conduct ongoing analysis of transactional and other market data to detect the presence of market power, and to ensure that jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential. This *ex post* analysis evaluates 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 an exercise of market power. Once such outcomes are identified, Market Oversight coordinates with other Commission program offices to determine whether to recommend that the Commission take action to remedy market power concerns. Market Oversight also uses these tools to analyze applications and filings for market-based rates, public utility mergers, and other docketed proceedings.

³¹ See 2015-16 Winter Energy Market Assessment, available at <http://www.ferc.gov/market-oversight/reports-analyses/mkt-views/2016/10-20-16-A-3.pdf>.

³² See Summer 2017 Energy Market and Reliability Assessment, available at <http://www.ferc.gov/market-oversight/reports-analyses/mkt-views/2017/2017-summer-assessment.pdf>.

D. Commission Orders and Rulemakings

Market Oversight assists the Commission in evaluating the efficacy of certain regulatory policies in light of evolving energy markets and ensures that the Commission has the information necessary to administer and monitor the markets effectively. In FY2017, Market Oversight participated in over 60 docketed Commission proceedings. Through its work on these matters, Market Oversight seeks to enhance market transparency and efficiency while balancing the regulatory burden on market participants.

E. Forms Administration and Compliance

Market Oversight staff administers and ensures compliance with certain Commission filing requirements. The Commission requires jurisdictional entities 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 and Part 35 of the Commission's regulations, 18 C.F.R. Part 35, 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 during the most recent calendar quarter.³³

In FY2017, the Commission received EQR submittals from over 2,000 entities each quarter. Market Oversight assesses whether sellers have timely complied with the requirements set forth in the multiple orders surrounding EQR filings, and, through automated validations, whether the data is accurate and reliable. It also coordinates with DAA on EQR issues that arise during the audits, and refers candidate entities to OEMR that do not timely file their EQRs for possible revocation of market-based rate authority. Market Oversight held two EQR user group meetings in FY2017 to conduct outreach with the filing community and to discuss potential system improvements and enhancements. Each meeting had over 300 participants attend either in person or through

³³ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127 (2002), *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074 (2002), *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342 (2002), *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003), *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 (2007), *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

webcast/phone. Staff also updated the Frequently Asked Questions section of the EQR page on the Commission website to provide additional assistance to filers.³⁴

2. eForms Refresh Project

On April 16, 2015, the Commission directed Commission staff to begin the process of replacing its electronic filing format for many of the forms submitted by the industry, as the current filing software is no longer supported.³⁵ Throughout FY2017, Market Oversight staff, with the assistance of subject matter experts from other Commission offices and the North American Energy Standards Board, have developed a robust framework of rules and validations for the forms included in this project. This initiative will upgrade the filing system that supports the eForms program, assist the Commission with processing and data management improvements, and enhance data quality for all users.

F. Outreach and Communication

Market Oversight makes some of its analyses available to the public by posting reports on its website and hosting periodic snapshot presentations. Staff also briefs visiting industry participants, state and federal officials, and foreign delegations.

1. Technical Conference: Developments in Natural Gas Index Liquidity and Transparency

On June 29, 2017, Market Oversight staff led a technical conference to discuss trends, concerns and potential solutions related to the declining levels of natural gas index liquidity.³⁶ The technical conference attracted nearly 100 attendees, including 22 panelists who spoke on a wide range of topics relating to natural gas indices. The purpose of the technical conference was to solicit feedback and develop a record regarding index robustness, and to discuss what, if anything, the industry and/or the Commission could do to increase transparency and support greater robustness in natural gas index price formation. Panelists at the technical conference discussed the following topics: (1) the current state of natural gas index liquidity and voluntary reporting to index developers; (2) the use of natural gas indices over time; and (3) possible actions that the industry and/or the Commission could take to increase transparency and support greater robustness in natural gas index formation. Following the conference, written comments were also submitted by 15 commenters relating to these topics.

³⁴ See FERC: FAQs Electric Quarterly Reports (EQRs) for 3rd Quarter 2013 and Beyond, <https://www.ferc.gov/resources/faqs/eqr-2013.asp4037931413>.

³⁵ *Order Instituting Proceeding to Develop Electronic Filing Protocols for Commission Forms*, 151 FERC ¶ 61,025 (2015).

³⁶ See Notice of Technical Conference, <https://elibrary-backup.ferc.gov/idmws/common/OpenNat.asp?fileID=14586688>.

2. Website

Market Oversight publishes data and analyses on its website (<http://www.ferc.gov/market-oversight/market-oversight.asp>), which is organized into pages for: (1) national overviews of natural gas and electricity markets; and (2) ten regional electricity and five regional natural gas markets. The regional market pages provide charts, tables, and maps displaying market characteristics and outcomes. The Market Oversight website also has information on other relevant markets, including liquefied natural gas (LNG), coal, and oil.

3. Snapshot Calls

Market Oversight holds semi-annual conference calls with representatives of public utility commissions and state agencies in the eastern, central, and western states. These calls provide a current “snapshot” of energy markets. Regional Snapshot Reports, which include data and information on natural gas, electricity, LNG, weather, infrastructure development, and other market developments, serve as the basis for discussion on the calls. Market Oversight’s Snapshot Reports are available on the website at <http://www.ferc.gov/market-oversight/mkt-snp-sht/mkt-snp-sht.asp>, and are archived back to 2007.

4. Domestic and Foreign Delegation Briefings

Market Oversight periodically hosts visitors, including foreign and domestic delegations of regulators and industry participants, who are interested in energy markets and in the Commission’s market monitoring activities. In FY2017, Market Oversight conducted 14 briefings in the Market Monitoring Center, including briefings to Congressional delegations, groups of delegates from federal and state agencies, and delegations from industry, academia, and foreign governments.

DIVISION OF ANALYTICS AND SURVEILLANCE

A. Overview

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 calls for investigation, and participate in investigations with attorneys from DOI, providing detailed transactional analysis, market event analysis, 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 continued 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 RTO/ISOs to provide, on an ongoing basis, and in a format consistent with how the data is collected in each market, critical information on bids, offers, and market outcomes.³⁷ On average, the Commission receives, on a non-public basis, approximately six gigabytes of data in more than 1,000 tables each day from the six organized markets combined. Each RTO/ISO database is drastically 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. 771,³⁸ 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 now has access to approximately 15,000 new eTag requests and 5,000 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 Commodities Futures Trading Commission (CFTC) through a Memorandum of Understanding. DAS surveillance and analytics 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

³⁷ *Enhancement of Electricity Market Surveillance and Analysis through Ongoing Electronic Delivery of Data from Regional Transmission Organizations and Independent System Operators*, Order No. 760, FERC Stats. & Regs. ¶ 31,330 (2012).

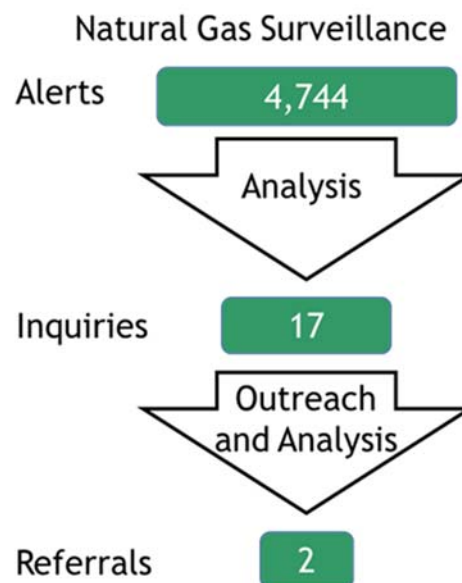
³⁸ *Availability of E-Tag Information to Commission Staff*, Order No. 771, 141 FERC ¶ 61,235 (2012).

electricity markets. In the context of surveillance, DAS seeks to detect anomalous activities in the markets, and identify potential investigative subjects. When a surveillance screen issues an alert, staff conducts a series of analyses to gain information about the activity that caused it. First, staff evaluates the activity using available information and market data 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 alert, staff performs a more in-depth review of the conduct, which may involve contacting the market participant to request additional information and explanations for the conduct. Staff classifies this enhanced review as the opening of a surveillance inquiry. If staff is still concerned that there is a potential violation after conducting a surveillance inquiry, it may 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 on a daily and monthly basis. DAS also employs asset-based screens that monitor cash trading around infrastructure, including natural gas storage, pipeline capacity, and electric generation. These screens alert staff to a variety of market conditions and market participant actions. In addition, DAS uses Large Trader Report data from the CFTC to identify potential financial incentives that might relate to a manipulative scheme.

In FY2017, DAS's natural gas surveillance screens produced approximately 4,744 alerts. Staff reviewed these screen alerts by comparing the conduct that caused the alert to activity at other hubs, and evaluating whether there was a fundamentals-based explanation for the activity based on a review of supply, demand, pipeline utilization, operational notices, and physical and financial trading. In most cases, this follow-up analysis provided an explanation for the alert. When it did not, DAS began an inquiry and performed a more in-depth review of the specific trading behavior. In FY2017, DAS conducted 17 such natural gas surveillance inquiries. Of these inquiries, DAS referred two to DOI for investigation.

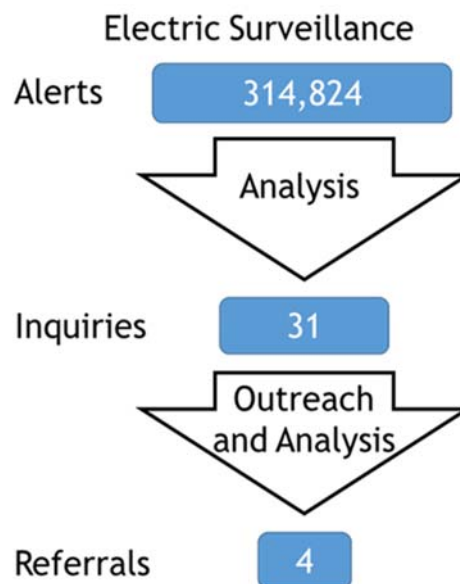


2. Electricity

DAS regularly accesses data from a variety of sources to screen for anomalies and potentially-manipulative behavior in the RTO/ISO and bilateral electricity markets. During FY2017, staff ran monthly and weekly screens to identify patterns at the hourly level by monitoring the interactions between bids and cleared physical and financially-settled electricity products. In particular, these screens identify FTRs 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 the fiscal year, staff continued to refine its analytic tools and screens for, among other things: (1) determining uneconomic virtual transactions by node, zone, and constraint; (2) detecting Day-Ahead market congestion manipulation that would benefit FTRs, swap-futures positions for physical load, and generation portfolios; (3) identifying anomalies in physical offer patterns; (4) identifying abnormal out-of-market payments; (5) detecting irregularities in capacity market sell offers; and (6) identifying 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.

During FY2017, DAS ran and reviewed 70 monthly electric surveillance screens, hourly and intra-hour sub-screens, and reports for over 37,000 hub and pricing nodes within the six RTO/ISOs. Additionally, DAS screened non-RTO markets and cross-RTO portfolio trades for potential manipulation. In reviewing screen alerts and, in some cases, after communicating with the RTO/ISO market monitors, DAS identified 31 instances of market behavior that required further analysis through a surveillance inquiry. Of the 31 electric surveillance inquiries, four were referred to DOI for investigation, 17 were closed with no referral, and 10 remain open with staff continuing its analysis.



3. Illustrative DAS Surveillance Inquiries Closed With No Referral

Market Manipulation (Gas). DAS natural gas surveillance screens identified a market participant buying at elevated prices and with a high market concentration during bidweek. The price levels of the physical natural gas purchases exceeded valuations implied by contemporaneous financial transactions by more than 40 percent. In addition, the market participant held benefiting positions tied to the index settlement. Staff contacted the market participant, who explained both its physical and financial activities. Financially, the market participant bought basis going into bidweek, which it perceived was undervalued compared to premiums on physical index gas. Physically, the market participant was covering a short position and had to buy at escalating prices due to its perception of developing colder weather and the fact that gas was scarce. After reviewing the market participant's internal documentation pertaining to weather progression and verifying the pricing information, the surveillance inquiry was closed with no referral to DOI.

Market Manipulation (Gas). DAS natural gas surveillance screens identified a market participant in the cash market trading early, buying at elevated levels, and engaging in concentrated trading. The activity occurred while the market participant held financial and physical natural gas positions priced at the relevant index, and pipeline transportation capacity at the traded location. After the alerts, DAS reviewed the market participant's trading and positions over time and perceived that the trading did not always align with the its index positions, and that the financial benefit was modest on average. Staff also concluded the market participant's purchases were strongly profitable, assuming the purchased gas was shipped to a higher value zone via the pipeline capacity holdings. The matter was closed with no referral to DOI.

Market Manipulation (Electric). DAS electric surveillance screens identified large, loss making virtual increment offers (INCs) at an RTO Hub placed by a market participant who held a leveraged FTR path sourcing at that same hub. DAS contacted the market participant and was informed that the entity held a tolling agreement with a generation facility in the RTO and that the contract priced against the real time locational marginal price. The market participant explained that the observed INCs covered a period of a planned outage, and that the virtual position shifted a non-leveraged real time position to the day ahead market where the market participant hedged commodity risk. After verifying the relevant information, the inquiry was closed with no referral to DOI.

Market Manipulation (Electric). DAS electric surveillance screens identified elevated, early session sales placed by a market participant in fixed-price next-day contracts at a bilateral hub. The fixed-price next day sales were uneconomic when marked against the daily index. DAS contacted the market participant and was informed that the entity was flattening physical index exposure created to hedge an off-take agreement from a generation facility. With the additional information, it was clear that the long physical index exposure and short fixed-priced next day exposure were not leveraged, and that losses in the fixed-priced next day market were confined to a limited number of trading sessions. After verifying the relevant information, the inquiry was closed with no referral to DOI.

C. Analytics

During FY2017, DAS worked on approximately 50 investigations, some of which are discussed above in the DOI section. Many of these investigations involve 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's investigative activities generally include: (1) assessing market conditions during periods of suspected

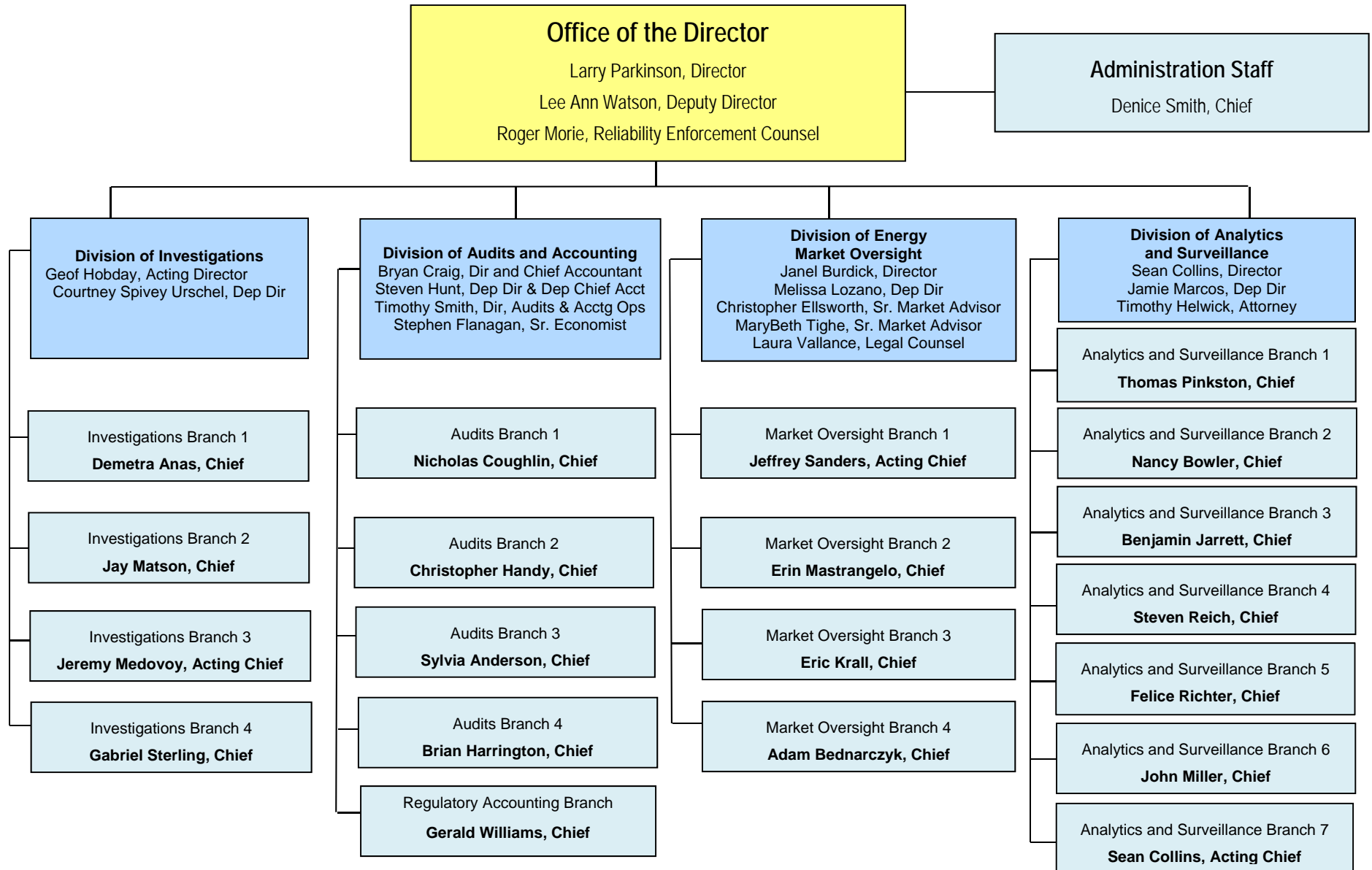
manipulation; (2) identifying patterns of market activity that could indicate market manipulation; (3) identifying time periods in which potentially manipulative activities occurred; (4) reconstructing and analyzing companies' trading portfolios; (5) supporting DOI in taking investigative testimony and other fact finding; (6) analyzing the subject's contentions and arguments; and (7) calculating the amount of unjust profits and market harm resulting from violations to assist with determining a civil penalty recommendation under the Commission's penalty guidelines. Upon completion of the analytical process, staff develops data-based explanations to inform the structure and substance of further investigation, settlement discussions, and Commission actions. Staff also coordinates internally to refine and develop new screens to detect improper behavior discovered in prior investigations.

CONCLUSION

The information in this Report is provided to promote transparency and to encourage jurisdictional entities to develop strong internal compliance programs. As discussed in this Report, Enforcement promotes compliance with the Commission's statutes, rules, orders, regulations, and tariff provisions by investigating a wide variety of matters, auditing regulated entities for both compliance and performance issues, conducting surveillance to detect potential manipulation or violations of rules or tariffs, and actively overseeing the gas and electric markets to assist the Commission in ensuring reliable, efficient, and sustainable energy for consumers. As a whole, by monitoring jurisdictional entities and enforcing the Commission's rules, Enforcement will continue to support the Commission's core functions of ensuring just and reasonable rates, and promoting secure and sustainable energy infrastructure.

APPENDIX A: OFFICE OF ENFORCEMENT ORGANIZATION CHART

OFFICE OF ENFORCEMENT



APPENDIX B: FY2017 CIVIL PENALTY ENFORCEMENT ACTIONS³⁹

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
City Power Marketing, LLC and K. Stephen Tsingas and FERC v. City Power Marketing, LLC and K. Stephen Tsingas, Order Approving Stipulation and Consent Agreement, 160 FERC ¶ 61,013.	\$1,300,000 disgorgement; \$9 million civil penalty against City Power; \$1,420,000 civil penalty against Tsingas.	The Commission approved a settlement resolving: (a) the Commission's claims against Tsingas and City Power for violations of section 222 of the Federal Power Act (FPA) and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c (2017), and of the Commission's rule requiring truthful communications with (among others) the Commission, 18 C.F.R. § 35.41(b) (2017); and (b) the Federal District Court action, captioned FERC v. City Power Marketing, LLC, No. 1:15-cv-01428-JDB (D.D.C.), that the Commission had filed to enforce its July 2, 2015, Order Assessing Penalties, 152 FERC ¶ 61,012.
GDF SUEZ Energy Marketing NA, Inc., Order Approving Stipulation and Consent Agreement, 158 FERC ¶ 61,102.	\$40,800,000 disgorgement; \$41,000,000 civil penalty.	The Commission issued an Order approving a Stipulation and Consent Agreement between the Office of Enforcement (Enforcement) and GDF SUEZ Energy Marketing NA, Inc. (GSEMNA), resolving Enforcement's investigation into whether GSEMNA violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c (2016), by improperly targeting and increasing its receipt of lost opportunity cost credits (LOCs) in the PJM Interconnection, L.L.C. (PJM) market.
Covanta Haverhill Associates L.P., Order Approving Stipulation and Consent Agreement, 158 FERC ¶ 61,105.	\$36,000 civil penalty.	The Commission issued an Order approving a Stipulation and Consent Agreement between Enforcement and Covanta Haverhill Associates L.P. (Covanta Haverhill), resolving Enforcement's investigation into whether Covanta Haverhill violated the ISO-New England (ISO-NE) Tariff and one of the Commission's Market Behavior Rules, 18 C.F.R. § 35.41(a) (2016), by failing to provide required instantaneous metered powered output data to ISO-NE.

³⁹ A list of all post-EPAAct 2005 civil penalty orders is available at <http://www.ferc.gov/enforcement/civil-penalties/civil-penalty-action.asp>.

<p>Westar Energy, Inc., Order Approving Stipulation and Consent Agreement, 160 FERC ¶ 61,025.</p>	<p>\$180,000 civil penalty.</p>	<p>The Commission approved a Stipulation and Consent Agreement between Enforcement and Westar Energy, Inc., resolving Enforcement’s investigation into whether Westar violated provisions of the Southwest Power Pool Tariff and 18 C.F.R. § 35.41(b) by submitting inaccurate cost inputs for its mitigated energy offer curves, or by intentionally targeting oversized make-whole payments.</p>
<p>American Transmission Company, LLC, 160 FERC ¶ 61,030.</p>	<p>\$205,000 civil penalty.</p>	<p>The Commission approved a Stipulation and Consent Agreement between Enforcement and American Transmission Company, LLC (ATC) resolving Enforcement’s investigation into (i) whether ATC violated section 203(a)(1)(B) of the Federal Power Act (FPA) and Part 33 of the Commission’s regulations, 18 C.F.R. Part 33, by acquiring certain Commission-jurisdictional facilities without prior Commission approval; and (ii) whether ATC violated section 205 of the FPA and Part 35 of the Commission’s regulations, 18 C.F.R. Part 35, by failing to timely file certain Commission jurisdictional agreements.</p>

APPENDIX C: FY2017 NOTICES OF ALLEGED VIOLATIONS⁴⁰

Issue Date	Subject(s) of Investigation	Description of Alleged Misconduct	Dates of Alleged Misconduct
December 2, 2016	GDF SUEZ Energy Marketing NA, Inc.	Violation of the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2016), by engaging in a strategy to target and inflate its receipt of lost opportunity cost credits (LOCs) in the PJM Interconnection, L.L.C. (PJM) market.	May 2011 to September 2013
January 23, 2017	Covanta Haverhill Associates LP	Violation of section 35.41(a) of the Commission's regulations and various provisions of the ISO-New England (ISO-NE) Tariff by failing to provide required instantaneous metered output data to ISO-NE.	September 2007 through June 2016
March 30, 2017	Westar Energy, Inc.	Violated the Southwest Power Pool (SPP) Tariff by including incorrect cost inputs in its mitigated energy offer curves and failing to timely update other cost inputs, as required by the Tariff.	May 2014 through May 2015
July 7, 2017	American Transmission Company, LLC	Violation of FPA Section 203 by failing to seek preapproval from the Commission before acquiring 22 jurisdictional facilities, and failing to timely file with the Commission 42 jurisdictional agreements in violation of FPA Section 205.	Between 2006 and 2014

⁴⁰ A list of all notices of alleged violations is available at <http://www.ferc.gov/enforcement/alleged-violation/notices.asp>.

July 13, 2017	Rover Pipeline, LLC and Energy Transfer Partners, L.P.	Violation of section 7 of the Natural Gas Act, 15 U.S.C. § 717, et seq., and section 157.5 of the Commission's Regulations, 18 C.F.R. § 157.5 (2016), by falsely promising in its Application for a Certificate of Public Convenience and Necessity and supporting filings in Docket No. CP15-93, avoidance of adverse effects to a historic resource while simultaneously working to purchase and destroy the historic resource. Rover subsequently made several misstatements in its docketed response to the Commission's questions about why it had purchased and demolished the resource.	Between February 2015 and September 2016
---------------	--	--	--