UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

2023 REPORT ON ENFORCEMENT

Docket No. AD07-13-017

Prepared by Staff of the

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

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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 2023 (FY2023),[2] including an overview of, and statistics reflecting, the activities of the three divisions within Enforcement: Division of Investigations (DOI), Division of Audits and Accounting (DAA), and Division of Analytics and Surveillance (DAS).

Enforcement recognizes the importance of informing the public of the activities of its staff and prepares this report with that objective in mind. Most of the information the public receives about Enforcement's activities comes from public Commission orders approving settlements, orders to show cause, publicly released staff reports, Commission and delegated letter orders addressing accounting and financial reporting matters, and audit reports. This report summarizes the status and resolution of various matters that were public in FY2023. However, not all of Enforcement's activities result in public actions by the Commission. Like reports in previous years, the FY2023 report provides the public with more information regarding the nature of non-public Enforcement activities, such as investigations that are closed without action, self-reported violations, and examples of surveillance inquiries initiated by DAS that are terminated short of opening an investigation. This report also highlights Enforcement's work administering the audit and accounting programs and performing surveillance and analysis of conduct in wholesale natural gas and electric markets. In addition, DAA points out several areas to help companies enhance compliance programs.

OFFICE OF ENFORCEMENT PRIORITIES

The Commission's current Strategic Plan sets forth a mission to account for significant changes in energy supply due to a number of factors, such as the changes in the fuel mix of resources participating in the organized electric markets and the emergence and growth of new energy technologies.[3] In addition, the Strategic Plan sets forth a mission to address increasing threats to the nation's energy infrastructure. As the Strategic Plan notes, both the nation's energy infrastructure and energy markets must adapt to these changes to ensure that consumers have access to economically efficient, safe, reliable, and secure energy at a reasonable cost.[4] The Strategic Plan identifies three primary goals to fulfill this mission: (1) ensure just and reasonable

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

[2] The Commission's fiscal year begins October 1 and ends September 30 of the following year. FY2023, the subject of this report, began on October 1, 2022, and ended on September 30, 2023.

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

[4] *Id*.

rates, terms, and conditions; (2) promote safe, reliable, and secure infrastructure consistent with the public interest; and (3) support the mission through organizational excellence. To further those goals and assist the Commission in its obligation to oversee regulated markets, Enforcement gathers information about market rules, market participants, and market behavior through its investigations, audits, and surveillance. Enforcement also gathers information regarding energy infrastructure, as appropriate. Each of the divisions continues to work to bring entities into compliance with applicable statutes, Commission rules, orders, regulations, and tariff provisions.

In FY2023, Enforcement's priorities focused on matters involving:

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

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

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

In FY2023, Enforcement staff opened 19 new investigations, while bringing nine pending investigations to closure without further action. During the fiscal year, Enforcement staff negotiated twelve settlements that were approved by the Commission, nine of which resolved eight investigations[5] for a total of approximately $33.39 million ($11.72 million in civil penalties and $21.67 million in disgorgement).[6] The remaining three Commission-approved settlements resolved one district court litigation matter for $4 million in disgorgement, one order to show cause (OSC) proceeding for a $4.4 million civil penalty, and one United States court of appeals matter on remand to the Commission for a $10.75 million civil penalty.[7]

In FY2023, DAA completed 9 audits of public utility, natural gas, and oil companies covering a wide array of topics. The audits resulted in 68 findings of noncompliance and 332 recommendations for corrective action, the majority of which were implemented within six months, and directed approximately $33 million in refunds and other recoveries. Additionally, during the fiscal year, DAA acted through the Chief Accountant's delegated authority or advised on 380 proceedings, including acting on 162 accounting filings requesting approval of a proposed accounting treatment or financial reporting matter, and assisting with 218 rate, pipeline certificate, merger and acquisition, and debt and security issuance proceedings before the Commission. Also, in FY2023, the Commission received Electric Quarterly Report (EQR) submittals from over 3,000 entities each quarter. DAA assessed whether sellers had timely complied with the requirements set forth in the multiple orders regarding EQR filings and, through automated validations, whether the data was accurate. DAA also administered and oversaw compliance with the regulatory requirement to file FERC Form Nos. 1, 1-F, 2, 2-A, 3-Q (gas and electric), 6, 6-Q (oil), 60, and FERC-61, and responded to email inquiries pertaining to reporting and accounting instructions. During FY2023, the Commission received approximately 2,582 such financial form submittals.

In FY2023, DAS surveillance staff identified and reviewed numerous instances of potential misconduct, some of which resulted in DAS opening a surveillance inquiry or an in-depth review of a market participant's conduct to determine whether to recommend an investigation. In FY2023, DAS conducted enhanced surveillance related to two disruptive weather events, Winter Storm Elliott and the Winter 2022/2023 Western Energy Price Spike, both of which are ongoing, but have already resulted in referrals to DOI for investigation. During the fiscal year, natural gas surveillance screens produced approximately 23,769 screen trips, which resulted in 27 natural gas surveillance inquiries, and three referrals to DOI for investigation. In total, DAS closed 21 natural gas surveillance inquiries and, as of the end of the fiscal year, continued its analytic work on five. Electric surveillance screens produced approximately 566,933 screen trips, which resulted in 43 electric surveillance inquiries and six referrals to DOI for investigation. In total, DAS closed 25 electric surveillance inquiries with no referral and, as of the end of the fiscal year, continued its analytic work on twelve. DAS also worked and provided analytical support on approximately 60 investigations with DOI and 15 other matters involving inquiries or litigation. During FY2023, DAS staff reviewed over 2.6 million transactions filed through the Commission's EQRs by all market-based rate holders selling wholesale energy in the bilateral markets.

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[5] One investigation was partially resolved by the settlement with Todd Meinershagen (Docket No. IN23-4-000) but remains open for the remaining investigative subjects.

[6] A table of FY2023 Civil Penalty Enforcement Actions is attached as Appendix B to this report.

[7] As discussed in DOI section C below, the subject, BP America, Inc., had already paid the money for this civil penalty, as well as over $250,000 in disgorgement in a prior fiscal year.

DIVISION OF INVESTIGATIONS

A. Overview

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

DOI staff conducts investigations of potential violations of the statutes, regulations, rules, orders, tariffs, certificates, and licenses administered by the Commission. DOI staff learns of potential violations from various sources, including referrals from other program offices within the Commission and other divisions within Enforcement; referrals from Independent System Operators/Regional Transmission Organizations (ISOs/RTOs) in organized markets or their market monitoring units (both internal and external); referrals from other agencies (both federal and state); self-reports; calls to the Enforcement Hotline; whistleblowers; and information gathered in other investigations. After learning of a potential violation, DOI staff evaluates whether to open an investigation based on the factors outlined in the Commission's Revised Policy Statement on Enforcement.[8]

If, after opening an investigation and gathering and reviewing relevant facts, DOI staff finds no violation, insufficient evidence of a violation, or that a violation should not be subject to sanctions, DOI staff closes the investigation without further action and so informs the subject.[9] Most of DOI staff's investigations are closed without further action.[10] On the other hand, if DOI staff finds that a violation occurred that warrants sanctions, it provides the subject with its preliminary findings, either orally, in writing, or both. The subject then has the opportunity to respond to DOI staff's preliminary findings with any additional information or defenses. This stage presents an important opportunity for the subject to supplement factual information or to point out its views and theories of the case. Where warranted, DOI staff conducts additional fact-finding after reviewing a subject's response and may modify its findings based on the response and further fact-finding. At the preliminary findings stage, DOI staff also provides investigative subjects with third-party evidence gathered during the investigation.

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

[9] The nine investigations DOI closed with no action in FY2023 were closed because Enforcement staff found there was either no violation, insufficient evidence to conclude that a violation had occurred, or that a violation should not be subject to sanctions.

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

If, after reviewing the subject's response to the preliminary findings and conducting any supplemental fact-finding, DOI staff continues to conclude that violations occurred and that the violations warrant sanctions, it consults with Enforcement management and then seeks authority from the Commission to enter into settlement negotiations with the subject.[11] This request for settlement authority describes the facts and law that led to DOI staff's determination, recommends a range of settlement terms supported (where applicable) with a penalty analysis under the Commission's Penalty Guidelines, and attaches the subject's preliminary findings response(s). DOI staff also provides the Commission with the subject's response to the preliminary findings. If the Commission grants settlement authority, DOI staff seeks negotiated resolutions within the Commission-provided settlement authority range and terms. Settlements are sought with terms that will transparently inform the regulated industry about what conduct constitutes the violation. If an agreement is reached between Enforcement and the subject, it will be submitted to the Commission for approval. Then, if the Commission approves the settlement agreement, it issues a public order that typically states why the settlement serves the public interest and attaches the executed settlement agreement.

In FY2023, Enforcement resolved eight investigations via settlements approved by the Commission. These settlements involved:

(1) a company omitting material information responsive to a data request issued by Enforcement's DAA, in violation of the Commission's Duty of Candor rule, 18 C.F.R. § 35.41(b), and the audit provisions of the Public Utility Holding Company Act of 2005, section 301 of the FPA, and the related provisions of Commission regulations at 18 C.F.R. § 366.2;

(2) a company violating PJM's tariff and 18 C.F.R. § 35.41(a) for failure to comply with Parameter Limited Schedule requirements in the operation of its combustion turbine units;

(3) a company engaging in a fraudulent scheme to register demand response resources with MISO without those resources' knowledge or consent and clearing Load Modifying Resource capacity that would not have performed if the resources were dispatched;

(4) a company submitting erroneous offers for its generation facility, violating MISO's tariff and 18 C.F.R. §§ 35.41(a) and (b) of the Commission's regulations;

(5) two companies bidding into CAISO's day ahead and real time markets in quantities of demand response that were not actually available, violating CAISO's tariff;

(6) a company engaging in a related-positions fraudulent scheme involving physical trading for the purpose of benefiting related financial positions, in violation of section 4A of the Natural Gas Act (NGA), 15 U.S.C. § 717c-1, and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1;

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

(7) a company failing to reduce its load when it received demand response awards from MISO, in violation of the ISO's tariff; and

(8) a company violating section 7(b) of the NGA, 15 U.S.C. § 717f(b), by abandoning its pipeline without Commission approval, and section 157.5 of the Commission's regulations by failing to set forth all information necessary to fully advise the Commission concerning the company's request for approval to abandon the pipeline.[12]

These settlements are described more fully below in DOI section C.

If a settlement cannot be reached, and Enforcement intends to recommend to the Commission that it issue an OSC, DOI staff will provide the subject with notice and an opportunity to respond pursuant to section 1b.19 of the Commission's regulations. If DOI staff continues to believe violations have occurred after reviewing this response, it drafts an Enforcement Staff Report and Recommendation, which includes its findings of fact and conclusions of law regarding the investigation, as well as its recommendation to issue an OSC. This report, the subject's response to the section 1b.19 notice, and any other submissions from the subject are then submitted to the Commission for consideration along with a proposed OSC. If the Commission concurs with Enforcement staff's recommendation, it issues an OSC in a public docket directing the subject to explain why it did not commit a violation and why penalties, disgorgement, or any other remedies are not warranted. The subject then has an opportunity to respond to the OSC, and Enforcement staff may reply to the subject's response. The Commission's issuance of an OSC initiates a contested on-the-record proceeding, with Enforcement and subjects as participants and the Commission as a neutral adjudicator, which triggers the Commission's *ex parte* and separation of functions rules.[13] The Commission therefore issues a public notice designating Enforcement staff generally as "non-decisional," with the exception of the specific identified Enforcement staff designated as "decisional," who had no prior involvement in the underlying investigation.

After considering the factual record and legal arguments submitted by the subject and Enforcement, the Commission issues a decision, which will take different forms depending on the relevant statute. Under the NGA and a default process under the Federal Power Act (FPA), the Commission can either rule on the pleadings or set the matter for hearing before an Administrative Law Judge (ALJ), assuming genuine issues of material fact exist. In matters set for an ALJ hearing, the ALJ holds a hearing and issues an initial decision. Taking that into account, the Commission then issues a final decision that can be appealed to an appropriate United States court of appeals. Alternatively, in FPA matters, a subject can elect a process different from the ALJ route described above. Within 30 days following issuance of the OSC, a subject may elect prompt assessment by the Commission. If such an election is made, the Commission relies on the subject's response to the OSC, and any reply that staff submitted, to determine whether a violation occurred and, if it so finds, to assess a civil penalty through an order. If the subject does not pay the civil penalty within 60 days of the penalty assessment, the Commission is required by statute to file an action in district court for an order affirming the civil penalty. As of the end of FY2023, Enforcement staff was

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

[13] *See* 18 C.F.R. §§ 385.2201, 385.2202 (2023) (outlining the Commission's rules governing off-the-record communications and separation of functions). *See also* 5 U.S.C. § 554(d) (2014).

litigating two such actions in federal court—one in U.S. district court and one in U.S. bankruptcy court—seeking to enforce the Commission's combined assessment of more than $24 million in penalties and disgorgement. Enforcement staff also fully resolved one district court action through settlement during FY2023. As of the end of the fiscal year, there were two NGA trial-type ALJ proceedings pending before the Commission, both of which are currently stayed. Further, during FY2023, there was one FPA-related OSC proceeding, which settled, and one NGA-related OSC proceeding pending before the Commission. These litigation matters are described more fully below in DOI section B.

B. Significant Matters

DOI staff spent substantial time in FY2023 preparing briefs, reports, and other public filings related to litigation in federal courts and administrative proceedings before the Commission. During FY2023, DOI represented the Commission in three litigation matters in federal district courts, one of which has now been fully settled and one of which currently is being pursued in bankruptcy court following a default judgment in favor of the Commission. Currently pending at the Commission are two NGA trial-type proceeding before an ALJ, both of which are stayed. During FY2023, there were two other OSC proceedings pending before the Commission (one FPA-related and one NGA-related).

As of the end of FY2023, a total of approximately $19.3 million in civil penalties and $4.7 million in disgorgement of unjust profits, plus interest, remained pending in the federal court matters.

1. District Court Litigation

Over the past ten years, Enforcement has filed ten enforcement actions in district courts across the country, including two that were still pending at the end of FY2023. In those proceedings, district courts have issued rulings to address a variety of procedural and substantive legal issues, including: (1) when does a claim accrue for purposes of the federal statute of limitations under 28 U.S.C. § 2462; (2) whether the Commission's civil actions seeking to enforce its penalty assessments should follow the Federal Rules of Civil Procedure; (3) the sufficiency of the Commission's notice of fraud and deceptive conduct pleadings; (4) what constitutes individual culpability under the FPA; (5) particular activity that establishes manipulation; (6) what evidence satisfies the scienter requirement under section 222 of the FPA; (7) what is required to establish "due diligence" to overcome a section 35.41(b) violation; and (8) the sufficiency of defendants' affirmative defenses.

In FY2023, Enforcement staff continued litigating two matters in federal district courts to enforce the Commission's penalty assessments under the FPA. Those district court litigation matters are:

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

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

On July 31, 2015, Enforcement staff filed a petition in the United States District Court for the Eastern District of Virginia to enforce the Commission's order. Over the ensuing seven years, staff engaged in extensive proceedings in the district court, which led to decisions rejecting the Powhatan Defendants' statute of limitations defense in both the district court and the United States Court of Appeals for the Fourth Circuit.[14] On October 29, 2021, the Commission approved a settlement between Enforcement staff and Chen, HEEP, and CU (collectively, Chen Defendants). The terms of that settlement, which are laid out in more detail in 177 FERC ¶ 61,076, required the Chen Defendants to disgorge $600,000 to PJM after the Chen Defendants demonstrated an inability to pay the entire amount of the Commission-assessed penalty and disgorgement. Chen also agreed to a trader ban of two years in FERC jurisdictional markets.

Enforcement staff continued the Commission's case against Powhatan, completing both fact and expert discovery. On February 16, 2022, following the close of fact and expert discovery, Powhatan filed for Chapter 7 bankruptcy, resulting in the United States District Court for the Eastern District of Virginia staying the litigation pending the disposition of proceedings in the United States Bankruptcy Court for the District of Delaware.

On March 7, 2023, after successfully moving for an order lifting the stay, the Commission filed a Motion for Default Judgment against Powhatan. The Commission moved for the judgment after the Trustee for Powhatan's bankruptcy estate determined he would no longer defend the district court litigation. On March 22, 2023, the United States District Court for the

[14] On September 24, 2018, the district court found that the Commission had met the statute of limitations established in 28 U.S.C. § 2462, but authorized Defendants to seek interlocutory appeal. On October 4, 2018, Defendants petitioned the United States Court of Appeals for the Fourth Circuit to review the district court order, and the Commission did not oppose the appeal. After granting the petition for review and holding oral arguments, on February 11, 2020, the Fourth Circuit issued an opinion affirming the district court and endorsing the Commission's construction and application of the statute of limitations to civil penalty actions arising under section 31 of the FPA. In upholding the district court's opinion, the Fourth Circuit recognized that "Congress plainly conditioned FERC's right to bring an action in federal district court on the occurrence of a number of statutorily-mandated events," and that "[o]nly upon satisfaction of these requirements . . . did § 2462's statutory limitations period for filing suit commence." *FERC v. Powhatan Energy Fund, LLC*, 949 F.3d 891, 899 (4th Cir. 2020).

Eastern District of Virginia granted that motion and issued a final judgment against Powhatan.[15] The court fully affirmed both the legal holding and penalties contained in the Commission's Order Assessing Penalties. In reaching this decision, the court held, "[t]he well-pleaded allegations, deemed admitted as a result of Powhatan's default, meet the requirements for market manipulation because FERC shows Powhatan committed (1) fraud, with the (2) requisite scienter, (3) in connection with the purchase or sale of electric energy within FERC's jurisdiction."[16] This marks the first time a federal district court has issued a final judgment against an entity the Commission has found to have committed market manipulation.

Enforcement staff is working in conjunction with the United States Department of Justice in pursuing remedies in the bankruptcy court, including filing in August 2022 a proof of claim in the Bankruptcy Court seeking payment based on the Commission's Order Assessing Penalties.

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

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

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

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

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15 *FERC v. Powhatan Energy Fund, LLC*, No. 3:15-452, 2023 WL 2603381 (E.D. Va. Mar. 22, 2023).

16 *Id.* at *4.

to stay the litigation. The Vitol Defendants filed their Answers on March 25, 2022. Discovery commenced on April 8, 2022 and is ongoing.

The Vitol Defendants' petition to appeal to the United States Court of Appeals for the Ninth Circuit, which the Commission did not oppose, was filed on March 7, 2022. On April 20, 2022, the Ninth Circuit granted Defendants' request for interlocutory appeal. The Vitol Defendants filed their opening brief on August 9, 2022, and the Commission filed its opposition brief on September 28, 2022. Defendants' reply brief was filed November 18, 2022. Oral argument was held on February 14, 2023. On August 18, 2023, the Ninth Circuit issued an opinion affirming the district court's holding that FERC's complaint was timely filed, consistent with the Fourth Circuit's opinion in *Powhatan*, described above. In upholding the district court's opinion, the Ninth Circuit recognized that, "until there is a civil penalty, a cause of action for affirming the penalty cannot exist."[17]

2. United States Court of Appeals Matters

At the beginning of FY2023, the Fifth Circuit issued an opinion in BP America, Inc., (BP), Docket No. IN13-15-000, granting in part and denying in part BP's appeal and remanding the matter back to the Commission for reassessment of the penalty. Among its holdings, the court held that: (1) the Commission could not base its market manipulation charges on BP's intrastate transactions, but that it properly asserted jurisdiction over other transactions that were subject to NGA jurisdiction because they involved gas that had, at one time, been sold or transported interstate; (2) the NGA and the Commission have provided proper definition and notice of market manipulation; (3) the Commission's finding of market manipulation was supported by substantial evidence, including BP's changed trading behavior and the "suspicious nature" of BP's trading patterns; and (4) the Commission complied with the Administrative Procedure Act's separation of functions rule.[18] On remand from the Fifth Circuit to address BP's penalty in light of the jurisdictional holding, this matter has now been settled.[19]

3. Administrative Proceedings at the Commission

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

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

[17] *FERC v. Vitol, Inc.*, 79 F.4th 1059, 1063 (9th Cir. 2023).

[18] *BP Am., Inc. v. FERC*, No. 16-60604, 2022 WL 11717175 (5th Cir. Oct. 20, 2022).

[19] A summary regarding the BP settlement can be found in DOI section C.

OSC directed Respondents to show cause why disgorgement and civil penalties should not be assessed in the following amounts: $9,180,000 in disgorgement and $213,600,000 in civil penalties against TGPNA, Total, and TGPL, jointly and severally; a $1,000,000 civil penalty against Hall (jointly and severally with TGPNA, Total, and TGPL), and a $2,000,000 civil penalty against Tran (jointly and severally with TGPNA, Total, and TGPL).

In advance of the OSC, on January 27, 2016, Respondents filed a lawsuit in the United States District Court for the Western District of Texas, challenging (among other things) the Commission's authority to assess penalties for violations of the NGA.[20] After the case was transferred to the United States District Court for the Southern District of Texas, that court rejected Respondents' challenge on multiple grounds. Respondents appealed that dismissal to the United States Court of Appeals for the Fifth Circuit on September 26, 2016, which on June 8, 2017, affirmed the dismissal. Respondents subsequently sought rehearing in the Fifth Circuit *en banc*, which was denied on August 8, 2017. Respondents then petitioned the United States Supreme Court for certiorari, which the Court denied on June 18, 2018.

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

During 2022, the parties engaged in extensive motions practice regarding discovery and privilege disputes. On February 18, 2022, Enforcement staff filed its pre-filed direct testimony; Respondents filed their responsive testimony on July 22, 2022, and Enforcement staff filed its rebuttal testimony on October 21, 2022. During the last quarter of 2022, the parties deposed Respondents Hall and Tran, one another's experts, the whistleblowers, and corporate representatives of TGPNA. Discovery closed in December 2022, and on December 12, 2022, the parties filed prehearing briefs and motions, with the hearing scheduled to commence on January 23, 2023.

On December 13, 2022, Respondents filed a complaint against the Commission in U.S. District Court for the Southern District of Texas, citing *Jarkesy v. SEC*, 34 F.4th 446 (5th Cir. 2022), and *BP America, Inc. v. FERC*, 62 F.4th 204 (5th Cir. 2022), and asking the court to enjoin the Commission proceeding. On December 16, 2022, Respondents filed for a preliminary injunction from the same court. On December 21, 2022, the Commission placed its proceeding in abeyance for 90 days pending the outcome of the suit in district court. On March 10, 2023, the district court stayed both the district court and Commission proceedings pending the U.S. Supreme Court's resolution of *SEC v. Cochran* and *Axon Enterprise, Inc. v. FERC*, which the Supreme Court decided on April 14, 2023.

On June 14, 2023, the Commission issued an order directing the Chief Administrative Law Judge to reassign the proceeding to another ALJ not previously involved in the proceeding. According to the order, it was issued out of an abundance of caution and to remove any doubt about the authority of the presiding officer in the proceeding. The order further directed that the

[20] Additional details about this district court matter and subsequent appeals can be found in the 2018 Annual Report on Enforcement (Docket No. AD07-13-012), at 10, *available at* https://www.ferc.gov/legal/staff-reports/2018/11-15-18-enforcement.pdf.

new ALJ offer the participants the opportunity to specify alleged defects in the hearing procedures, request further discovery, or seek reconsideration of past decisions by the prior ALJ. The order also directed that the new ALJ not extend any deference to past decisions made by the prior ALJ. On July 14, 2023, the district court ordered that the Chief Administrative Law Judge could reassign the proceeding to another ALJ, subject to conditions, including that the Commission proceeding remain stayed, and noting the Commission's directions to the new ALJ regarding alleged defects and deference. On July 18, 2023, the Chief Administrative Law Judge reassigned the proceeding to Judge Patricia M. French.

As of November 2023, both the district court and Commission proceedings remain stayed and Respondents' preliminary injunction motion in district court remains pending.

b) Rover Pipeline, LLC and Energy Transfer Partners, LP, Docket No. IN19-4-000

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

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

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

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

On June 14, 2023, the Commission issued an order directing the Chief Administrative Law Judge to reassign the proceeding to another ALJ not previously involved in the proceeding. According to the order, it was issued out of an abundance of caution and to remove any doubt about the authority of the presiding officer in the proceeding. The Commission stated that the order will take effect upon an order from the district court either clarifying that its stay does not prevent the order from taking effect or lifting its stay for the limited purpose of allowing the order to take effect. A motion to lift the stay for this limited purpose is pending before the court.

On September 13, 2023, the Northern District of Texas denied FERC's motion for clarification or, in the alternative, to lift the stay for the limited purpose of allowing the Commission's Chief ALJ to assign a different ALJ. The case remains stayed pending resolution of *Jarkesy*.

c) Rover Pipeline, LLC and Energy Transfer Partners, LP, Docket No. IN17-4-000

On December 16, 2021, the Commission issued an OSC directing Rover Pipeline, LLC and Energy Transfer Partners, LP to show cause why they should not be found to have violated section 7(e) of the NGA; section 157.20 of the Commission's regulations, 18 C.F.R. § 157.20; and the Commission's Order Issuing Certificates, issued to Rover in 2017, by: (1) intentionally including diesel fuel, other toxic substances, and unapproved additives in the drilling mud during its horizontal directional drilling (HDD) operations under the Tuscarawas River in Stark County, Ohio, (2) failing to adequately monitor the right-of-way at the site of the Tuscarawas River HDD operation, and (3) improperly disposing of inadvertently released drilling mud that was contaminated with diesel fuel and hydraulic oil. Rover filed an answer to the OSC on March 21, 2022, and Enforcement staff filed its response to the answer on April 20, 2022. Rover filed a surreply on May 13, 2022.

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

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

On April 21, 2022, noting that "the record suggests that Ampersand Cranberry Lake deliberately attempted to shirk its obligations under the Project license by voluntarily entering into an agreement to terminate its access to the Project property," the Commission issued an order finding that Ampersand Cranberry Lake had violated Article 5 and assessing a civil penalty of $600,000 for the violation. On December 7, 2022, Ampersand Cranberry Lake filed an application to surrender its license for the Cranberry Lake Project.[21]

4. Joint Reliability Inquiry

From December 21 to 26, 2022, the Eastern Interconnection experienced below average temperatures, high winds and precipitation including snow and freezing rain, which came to be known as Winter Storm Elliott. During the storm, 1,702 individual generating units in the Eastern Interconnection experienced 3,565 unplanned outages, derates, or failures to start. At the worst point, there were 90,500 MW of coincident unplanned generating unit outages, derates and failures to start (meaning they all occurred at the same time). Including generation that was already out of service, a total of over 127,000 MW of generation was unavailable, representing 18 percent of the U.S. portion of the anticipated resources in the Eastern Interconnection. Several Balancing Authorities (BAs) (grid operators that balance demand and electric energy) in the southeast U.S. needed to shed firm load to maintain system reliability, which in total (at different points in time) exceeded 5,400 MW. This was the largest controlled firm load shed recorded in the history of the Eastern Interconnection. This event was the fifth in the past 11 years in which unplanned cold weather-related generation outages jeopardized grid reliability.

Immediately following the event, the Commission announced the formation of a joint inquiry with the North American Electric Reliability Corporation (NERC) and all six of the relevant regional reliability entities (the Team) to determine the causes of the event and make recommendations to prevent such events in the future. Enforcement staff were part of the Team, and its Reliability Enforcement Counsel co-led the inquiry.

The Team reviewed entity data and conducted site visits and interviews to determine the causes of the generation and natural gas system outages and develop recommendations. The Team issued its findings and recommendations on September 21, 2023 and issued its final report on November 7, 2023. The report found that 96 percent of all outages, derates, and failures to start were attributed to three causes: Freezing Issues (31 percent), Fuel Issues (24 percent) and Mechanical/Electrical Issues (41 percent). Natural Gas Fuel Issues (a subset, but the majority, of Fuel Issues) were 20 percent of all causes, and issues with other fuels were four percent.

The team made 11 recommendations to help prevent similar future events.

[21] The Commission granted that request and terminated the project license via delegated letter order on October 20, 2023.

C. Settlements

In FY2023, the Commission approved twelve settlement agreements to resolve pending enforcement matters, including eight investigations,[22] one federal district court matter,[23] one OSC proceeding, and one United States court of appeals matter on remand to the Commission. The settlements totaled approximately $26.84 million in civil penalties and disgorgement of $21.92 million.[24] Since 2007, Enforcement has negotiated settlements totaling approximately $857.98 million in civil penalties[25] and approximately $583.54 million in disgorgement.[26]

In 2010, the Commission issued revised Penalty Guidelines, which apply to organizations.[27] Under the Penalty Guidelines, an organization's civil penalty can vary significantly depending on the amount of market harm caused by the violation, the amount of unjust profits, an organization's efforts to remedy the violation, and other culpability factors, such as senior-level personnel involvement, prior history of violations, compliance programs, self-reporting of the violation, acceptance of responsibility, and cooperation with Enforcement's investigation. For example,

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[22] One investigation was partially resolved by the settlement with Todd Meinershagen (Docket No. IN23-4-000) but remains open for the remaining investigative subjects.

[23] Given the date of the Commission's order approving the settlement agreement that resolved *FERC v. Coaltrain Energy, L.P., et al.*, No. 2:16-cv-00732 (S.D. Ohio), the matter was described in last year's report, but the monies paid will be included in Enforcement's FY2023 statistics. Additional information about this litigation matter can be found in the FY2022 OE Annual Report at pages 12-13, and in Appendix B.

[24] The monies from *BP America, Inc.* (Docket No. IN13-15-000) were paid in a prior fiscal year.

[25] Total civil penalties does not include the $30,000,000 assessed in *Hunter* and overturned on jurisdictional grounds by the U.S. Court of Appeals for the District of Columbia Circuit. It also does not include penalties proposed or assessed in the following currently pending matters: $213,600,000 civil penalty against TGPNA, $1,000,000 civil penalty against Hall, and $2,000,000 civil penalty against Tran proposed in *Total Gas & Power North America, et al.*; $1,515,738 civil penalty assessed against Vitol, Inc. and $1,000,000 civil penalty assessed against Federico Corteggiano in *Vitol, Inc. and Federico Corteggiano*; $15,000,000 civil penalty assessed against Boyce Hydro Power, LLC; or $20,160,000 civil penalty proposed against Rover Pipeline Company, LLC and Energy Transfer Partners, LP (Docket No. IN19-4-000); or $40,000,000 civil penalty proposed against Rover Pipeline Company, LLC and Energy Transfer Partners, L.P. (Docket No. IN17-4-000); or $600,000 civil penalty proposed against Ampersand Cranberry Lake Hydro, LLC.

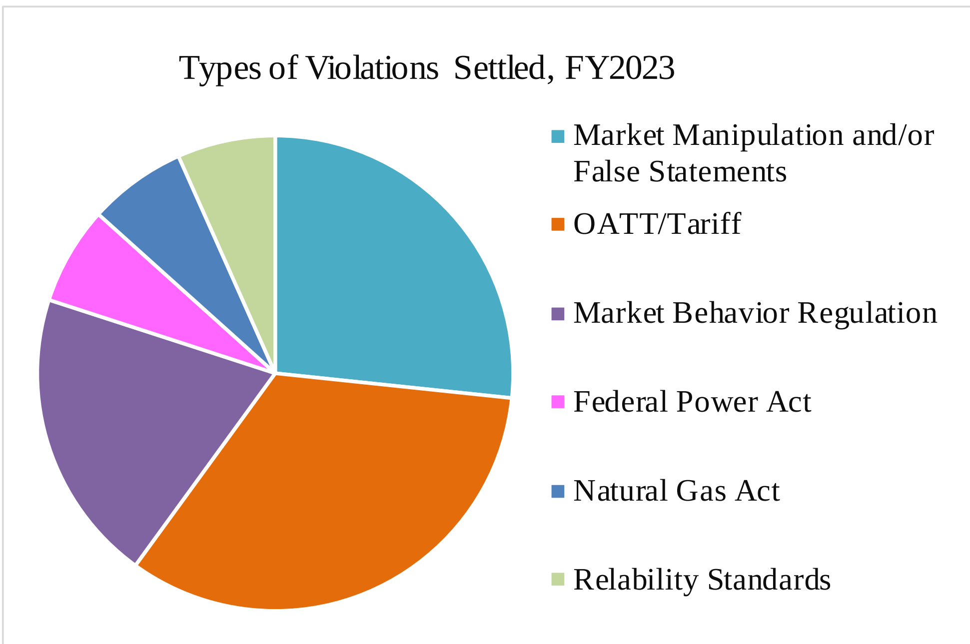
[26] Total disgorgement does not include amounts ordered in the following currently pending matters: $9,180,000 proposed in *Total Gas & Power North America, et al.*; or $1,227,143, plus interest, assessed against Vitol in *Vitol Inc. and Federico Corteggiano*.

[27] *Revised Policy Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines), https://www.ferc.gov/whats-new/comm-meet/2010/091610/M-1.pdf.

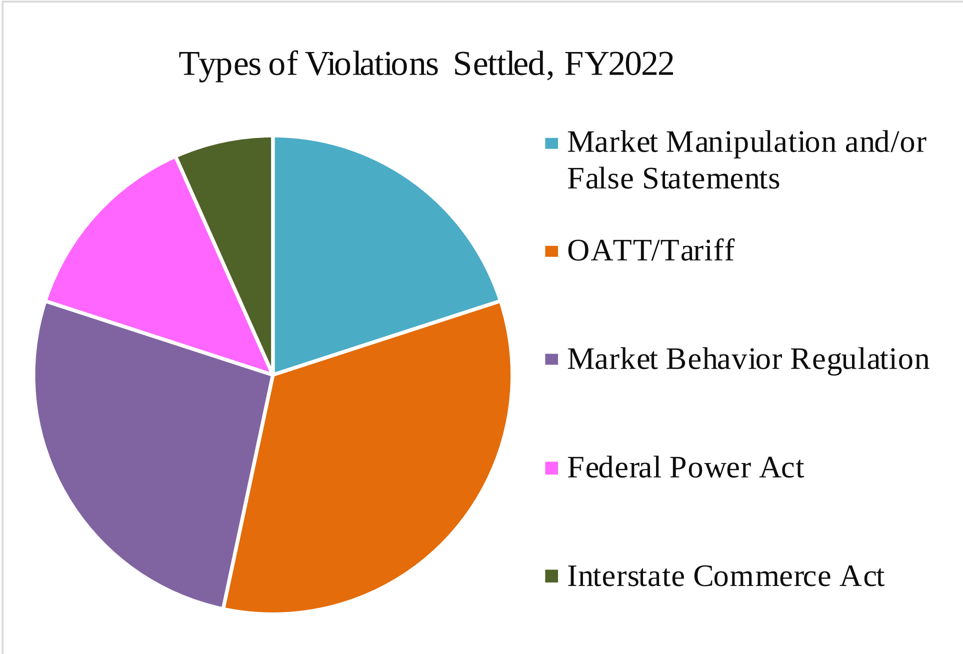
under the Penalty Guidelines, an organization's culpability score can be reduced to zero through favorable culpability factors, lowering the base penalty by as much as 95 percent.[28]

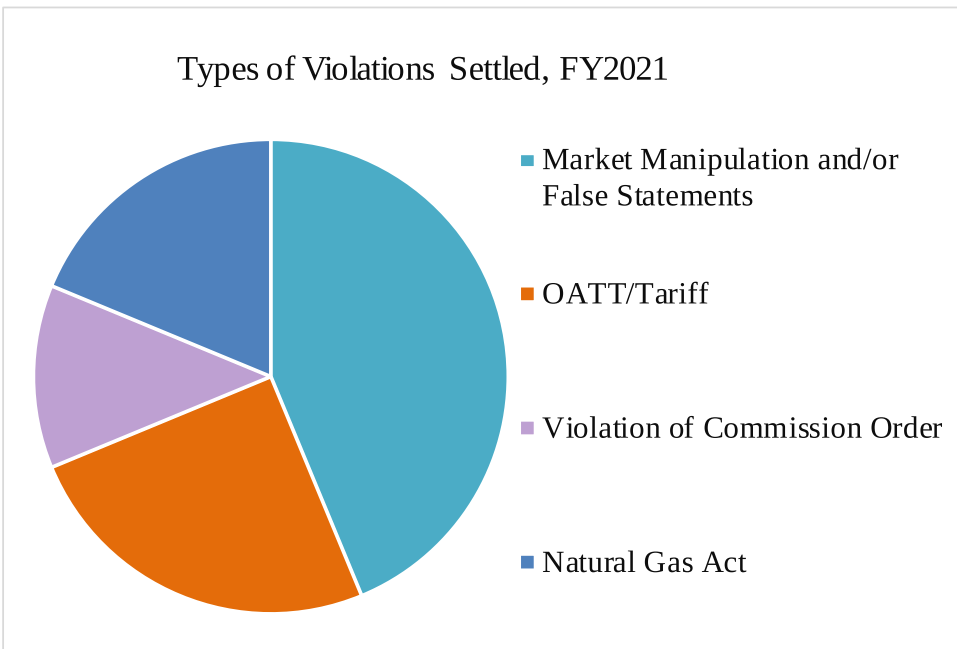
In FY2023, the Commission approved settlement agreements that resolved investigations concerning several different types of violations, including the Anti-Manipulation Rule, 18 C.F.R. Part 1c; the Commission's market behavior regulations, 18 C.F.R. §§ 35.41(a) and (b); section 301 of the FPA, and the related provisions of Commission regulations at 18 C.F.R. § 366.2; section 4A of the NGA, 15 U.S.C. § 717c-1; section 7(b) of the NGA, 15 U.S.C. § 717f(b); and ISO/RTO tariffs.

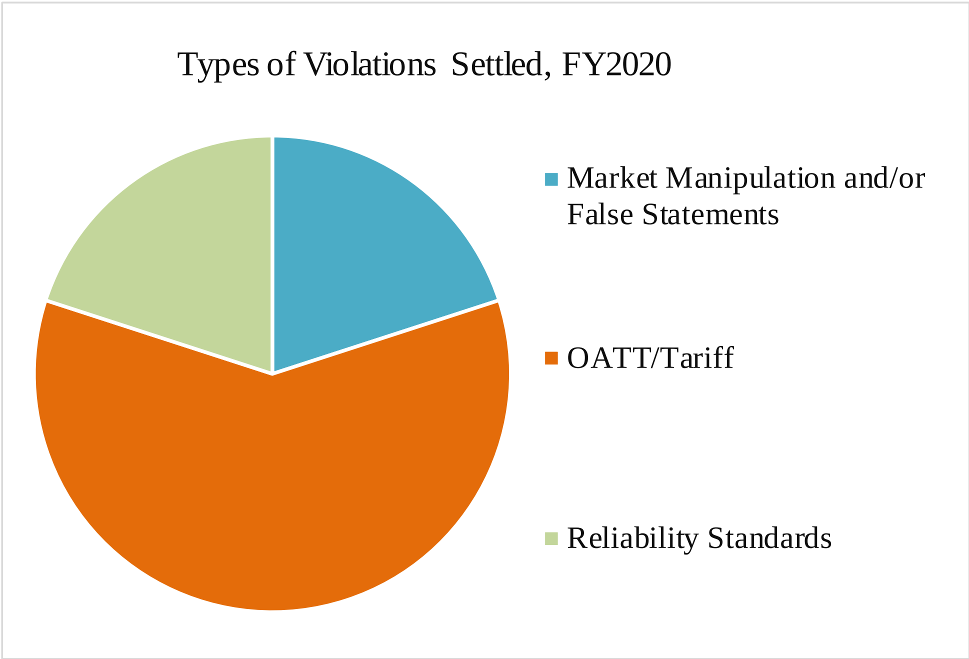
The charts below illustrate the types of violations settled in the last five fiscal years, Fiscal Years 2019-2023. Some settlements concerned multiple types of violations.

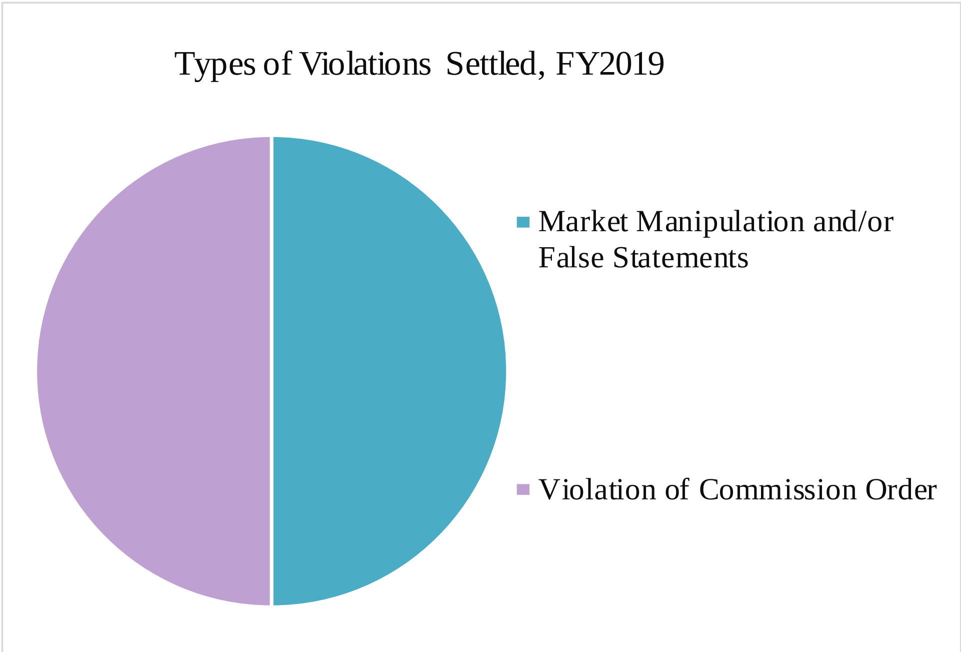


[28] *Id.* P 109.


Types of Violations Settled, FY2022
Market Manipulation and/or False Statements
OATT/Tariff
Market Behavior Regulation
Federal Power Act
Interstate Commerce Act


Types of Violations Settled, FY2021
Market Manipulation and/or False Statements
OATT/Tariff
Violation of Commission Order
Natural Gas Act


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


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

The Commission approved the following settlement agreements resolving investigations in FY2023:[29]

a) *Todd Meinershagen, Docket No., IN23-4-000*

On December 21, 2022, the Commission issued an order approving the settlement of Enforcement staff's investigation of Todd Meinershagen, co-owner of a demand response aggregator (Company A), into whether Company A engaged in a fraudulent scheme to register demand response resources with MISO without those resources' knowledge or consent and cleared Load Modifying Resource capacity that would not have performed if the resources were dispatched. Enforcement staff's investigation determined that Company A violated the Commission's Anti-Manipulation Rule and sections 69A.3.5 and 69A.7.1 of the MISO Tariff. Under the settlement agreement, Mr. Meinershagen agreed to disgorge $525,451.93 to MISO. Mr. Meinershagen stipulated to the facts and, based on the stipulated facts, as co-owner of Company A admitted to the violations by Company A described in the agreement. As part of approving this agreement, the Commission considered that Mr. Meinershagen was unaware of Company A's fraudulent scheme, but received the funds arising from the violations.

b) *FirstEnergy Corp., Docket No. IN23-2-000*

On December 30, 2022, the Commission issued an order approving the settlement of Enforcement staff's investigation of FirstEnergy Corp. (FirstEnergy). Enforcement investigated whether FirstEnergy omitted material information that was responsive to data requests issued by auditors from Enforcement's DAA during its audit of FirstEnergy and its affiliates and subsidiaries. Enforcement staff determined that FirstEnergy had omitted certain material information, which violated the Commission's Duty of Candor rule, 18 C.F.R. § 35.41(b), and the audit provisions of the Public Utility Holding Company Act of 2005, section 301 of the FPA, and the related provisions of Commission regulations at 18 C.F.R. § 366.2. Under the terms of the settlement, FirstEnergy stipulated to the facts, admitted to the violations, and agreed to pay a civil penalty of $3,860,000 and undertake compliance monitoring for two years.

c) *OhmConnect, Inc., Docket No. IN23-6-000 and Leapfrog Power, Inc., Docket No. IN23-7-000*

On May 22, 2023, the Commission issued an order approving the settlement of Enforcement staff's investigations of OhmConnect, Inc. (Ohm) and Leapfrog Power, Inc. (LEAP). Enforcement staff investigated whether the companies, both demand response aggregators, bid into CAISO's day ahead and real time markets in quantities of demand response that were not actually available, thereby violating CAISO's tariff. Enforcement staff concluded that a substantial majority of the bids Ohm and LEAP made into CAISO's day ahead market from January through June 2018 and February through August 2019 respectively exceeded the registered metered load of Ohm's and

[29] Given the date of the Commission's order approving the settlement agreement that resolved *FERC v. Coaltrain Energy, L.P., et al.*, No. 2:16-cv-00732 (S.D. Ohio), the matter was described in last year's report, but the monies paid will be included in Enforcement's FY2023 statistics. Additional information about this litigation matter can be found in the FY2022 OE Annual Report at pages 12-13, and in Appendix B.

LEAP's individual customers. Thus, Enforcement staff found that neither Ohm nor LEAP could have reasonably expected to fulfill the bids in violation of CAISO tariff section 37.3.1.1. In the settlement, Ohm stipulated to the facts but neither admitted nor denied the alleged violation and agreed to: (a) pay a civil penalty of $141,094, (b) disgorge $8,906 to CAISO, and (c) provide at least one, and up to three, compliance reports. LEAP stipulated to the facts but neither admitted nor denied the alleged violation and agreed to: (a) pay a civil penalty of $73,880, (b) disgorge $46,120 to CAISO, and (c) provide at least one, and up to three, compliance reports

d) Entergy Arkansas, LLC, Docket No. IN23-5-000

On June 22, 2023, the Commission issued an order approving the settlement of Enforcement staff's investigation of Entergy Arkansas, LLC (Entergy). Enforcement staff investigated whether Entergy submitted erroneous offers for its Hot Springs generation facility on April 21, July 14, and September 17 and 18, 2020. Enforcement staff determined that Entergy violated section 40.2.5e of the MISO Tariff and sections 35.41 (a) and 35.41(b) of the Commission's regulations by submitting Economic Minimum and Economic Maximum values that restricted MISO's ability to dispatch Hot Springs above or below a certain MW level while indicating that Hot Springs was available for dispatch by MISO. Under the terms of the settlement, Entergy neither admitted nor denied the violations, but agreed to pay a civil penalty of $52,000 and undertake compliance monitoring for two years with an option for Enforcement to extend it an additional year.

e) Pacific Summit Energy, LLC, Docket No. IN23-9-000

On June 30, 2023, the Commission issued an order approving the settlement of Enforcement staff's investigation of Pacific Summit Energy, LLC (Pacific Summit). Enforcement staff's investigation found that Pacific Summit engaged in a related-positions fraudulent scheme involving physical trading at Transco Zone 6 for the purpose of benefiting related financial positions during the October 2017 Bidweek (Sept. 25-29, 2017), in violation of section 4A of the NGA, 15 U.S.C. § 717c-1, and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1. Under the terms of the settlement, Pacific Summit stipulated to the facts, but neither admitted nor denied the violations. Pacific Summit agreed to: (a) pay a civil penalty of $360,000; (b) disgorge $154,623; and (c) submit annual compliance monitoring reports to Enforcement for a period of two years.

f) NRG Energy, Inc., Docket No. IN23-3-000

On July 20, 2023, the Commission issued an order approving a settlement agreement with NRG Energy, Inc. (NRG). The order resolved Enforcement staff's investigation into whether NRG violated Attachment K-Appendix, section 6.6 of the PJM Tariff and 18 C.F.R. § 35.41(a) for failure to comply with Parameter Limited Schedule requirements in the operation of its combustion turbine units at its Fisk facility in Chicago, Illinois for the entirety of the delivery years beginning June 2018 and June 2019, and 10 months of the delivery year beginning June 2020 (the Delivery Years). Parameter limits establish operating standards for the non-dollar denominated portion of the offers for generation capacity resources such that the submitted offer parameters are at least as flexible as the parameter limits. These include, as applicable to Enforcement staff's investigation, a minimum notification time, which is the time needed by a generation resource from inception of the PJM dispatch notification to the initiation of the start sequence for generation. PJM determined the minimum unit notification time for combustion turbine units to be 0.1 hours. Enforcement found that NRG did not comply with the 0.1-hour notification time required by PJM during the Delivery Years, and instead used a three-hour notification time. NRG stipulated to the facts but neither admitted nor denied the alleged violations. It agreed to: (a) pay a civil penalty of $37,342; (b) disgorge $32,658 to PJM, inclusive of interest; and (c) submit an annual compliance monitoring report to Enforcement for one year with a second year at Enforcement's sole discretion.

g) Big River Steel, LLC and Entergy Arkansas, LLC, Docket No. IN23-11-000

On August 21, 2023, the Commission issued an order approving a settlement agreement to resolve Enforcement staff's investigation of Big River Steel, LLC (Big River Steel) and Entergy over Big River Steel's participation, through Entergy as its sponsoring utility, in a MISO demand response program. Big River Steel operates a large steel plant in Arkansas, which uses as much as 300 MW to run smelters and other equipment. During the period in question (2016-2022, with the exception of a few days in February 2021), Big River Steel took no steps to reduce its energy usage when it received demand response awards from MISO. But because its electricity use varied widely in the normal course of business, Big River Steel collected "demand response" payments when its load levels were lower than a baseline calculated according to a MISO formula.

Enforcement staff determined that Big River Steel's failure to reduce its loads when it received demand response awards from MISO violated the ISO's tariff. The two companies agreed to pay approximately $27 million to resolve the matter: $15.9 million in disgorgement from Big River Steel, $5 million in disgorgement from Entergy, and a $6 million civil penalty from Big River Steel. As a result of the settlement, Entergy will refund $8.8 million to its ratepayers in Arkansas and refund $7.1 million to other utilities. In addition, Big River Steel will provide compliance training to its staff should it again participate in a MISO demand response program.

h) Georgia-Pacific Crossett, LLC, Docket No. IN23-12-000

On September 13, 2023, the Commission issued an order approving the settlement of Enforcement staff's investigation into whether Georgia-Pacific Crossett, LLC (Georgia-Pacific) violated any Commission statutes, rules, regulations, or orders, including but not limited to 18 C.F.R. section 157, in connection with the abandonment of the 19.5 mile, 8-inch diameter interstate pipeline at issue in Commission Docket No. CP22-16. Enforcement staff's investigation found that Georgia-Pacific: (a) violated section 7(b) of the NGA, 15 U.S.C. § 717f(b), by abandoning the pipeline without Commission approval, and (b) violated section 157.5 of the Commission's regulations by failing to set forth all information necessary to fully advise the Commission concerning the company's request for approval to abandon the pipeline. In its abandonment application and in its later communications with the Commission in response to Commission information requests, Georgia-Pacific described abandonment activities that already occurred as if they would be occurring in the future. Under the terms of the settlement, Georgia-Pacific stipulated to the facts, but neither admitted nor denied the violations. Georgia-Pacific agreed to pay a civil penalty of $1,200,000.

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

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

On December 30, 2022, while the OSC proceeding was pending, the Commission approved a settlement agreement resolving the Commission's investigation and proceeding. PacifiCorp agreed to: (a) pay a civil penalty of $4.4 million, of which $1.9 million would be paid to the United States Treasury, and, as an offset to the remaining $2.5 million in civil penalty, PacifiCorp would invest $2.5 million (subject to Enforcement's approval) in reliability enhancement measures identified in the agreement that go above and beyond what the Reliability Standards require; and (b) be subject to compliance monitoring.

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

Following an OSC proceeding and a hearing before an ALJ, the Commission determined that BP engaged in market manipulation in violation of NGA section 4A and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1, when, in the aftermath of Hurricane Ike, it traded physical, next-day fixed price natural gas with the intent to depress the Platts Gas Daily index prices at Houston Ship Channel to benefit financial spread positions held by BP that settled off the index prices. Based on this determination and the findings in the ALJ hearing, the Commission ordered a civil penalty of $20,160,000 and disgorgement of $207,169. The Commission set forth these decisions in both its 2016 Order on Initial Decision and Rehearing and its 2020 Order Addressing Arguments Raised on Rehearing.

BP appealed the Commission's 2020 Order to the United States Court of Appeals for the Fifth Circuit, which, in October 2022, affirmed the Commission's findings—including the finding of manipulation—with the exception of the Commission's jurisdictional rulings. On jurisdiction, the Fifth Circuit held that the Commission could not base its market manipulation charges on BP's intrastate transactions, but that it properly asserted jurisdiction over 18 other transactions that were subject to NGA jurisdiction because they involved gas that had, at one time, been sold or transported interstate. The Fifth Circuit remanded the case to the Commission to calculate a civil penalty consistent with the Fifth Circuit's ruling on jurisdiction. Before the Commission took action with regard to the remand, BP and OE entered into a settlement.

On July 7, 2023, the Commission approved a settlement resolving this matter. In the settlement, BP: (a) stipulates to the facts set forth in the settlement, (b) acknowledges that an earlier Fifth Circuit opinion and order upheld the Commission's finding of manipulation as to 18 jurisdictional transactions, (c) agrees to pay a civil penalty amount of $10,750,000 (including interest), and (d) agrees that it will not seek return of the $250,295 (including interest) of disgorgement it paid under protest in 2021. BP previously had paid under protest a civil penalty (including interest) amount of $24,356,686; therefore, Enforcement agreed in the settlement not to object to BP seeking a return of $13,606,686 from the United States Treasury.

D. Self-Reports

Over the previous five fiscal years (Fiscal Years 2019-2023), Enforcement staff received approximately 702 self-reports. The vast majority of those self-reports were concluded without further enforcement action because, among several factors, there was no material harm (or the reporting companies already had agreed to remedy any harms) and the companies had taken appropriate corrective measures (including appropriate curative filings) to remedy the violation and, through enhancements to their compliance programs, to avoid future violations.

1. Statistics on Self-Reports

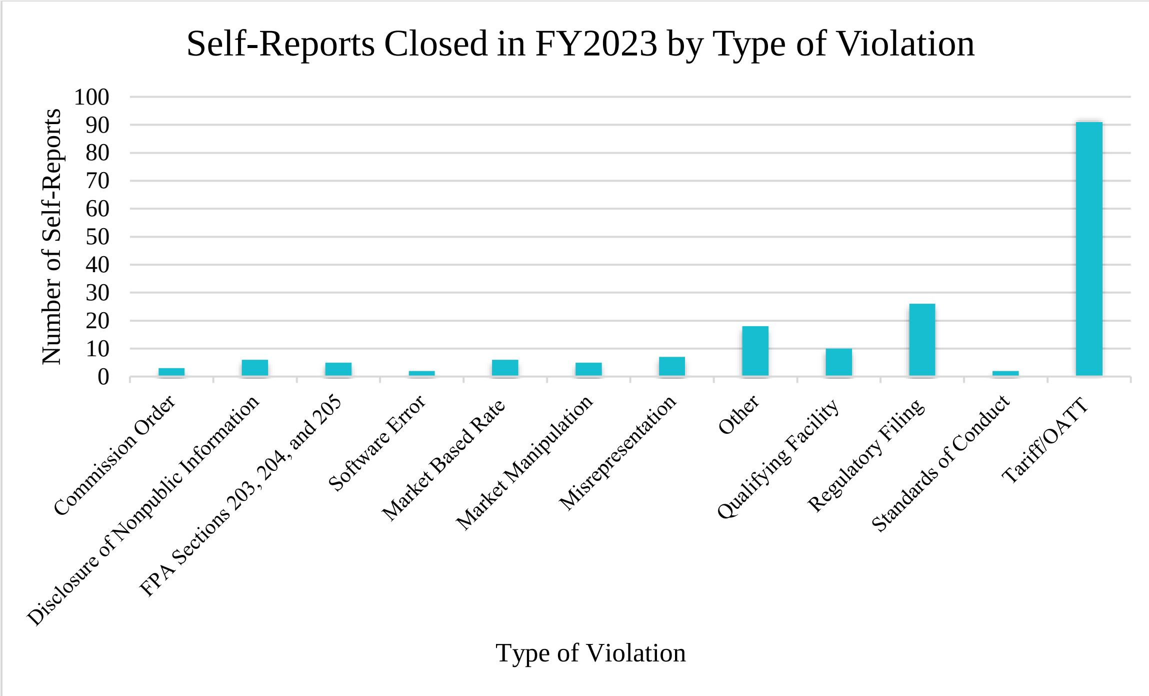
In FY2023, Enforcement staff received 148 new self-reports from a variety of market participants, including public utilities, natural gas companies, generators, and ISOs/RTOs. Many of these self-reports (64) were from ISOs/RTOs and involved relatively minor violations of tariff provisions. Enforcement staff closed 172 self-reports in FY2023, 50 of which were carried over from previous fiscal years. Of the self-reports received in FY2023, 23 remained pending at the end of the fiscal year.

The Penalty Guidelines emphasize the importance of self-reporting by providing credit that can significantly mitigate penalties if a self-report is made.[30] Enforcement staff continues to encourage the submission of self-reports and views self-reports as showing a company's commitment to compliance. Additional information about self-reports, including how to submit them to DOI, is contained on the Commission's website at www.ferc.gov/self-reports.

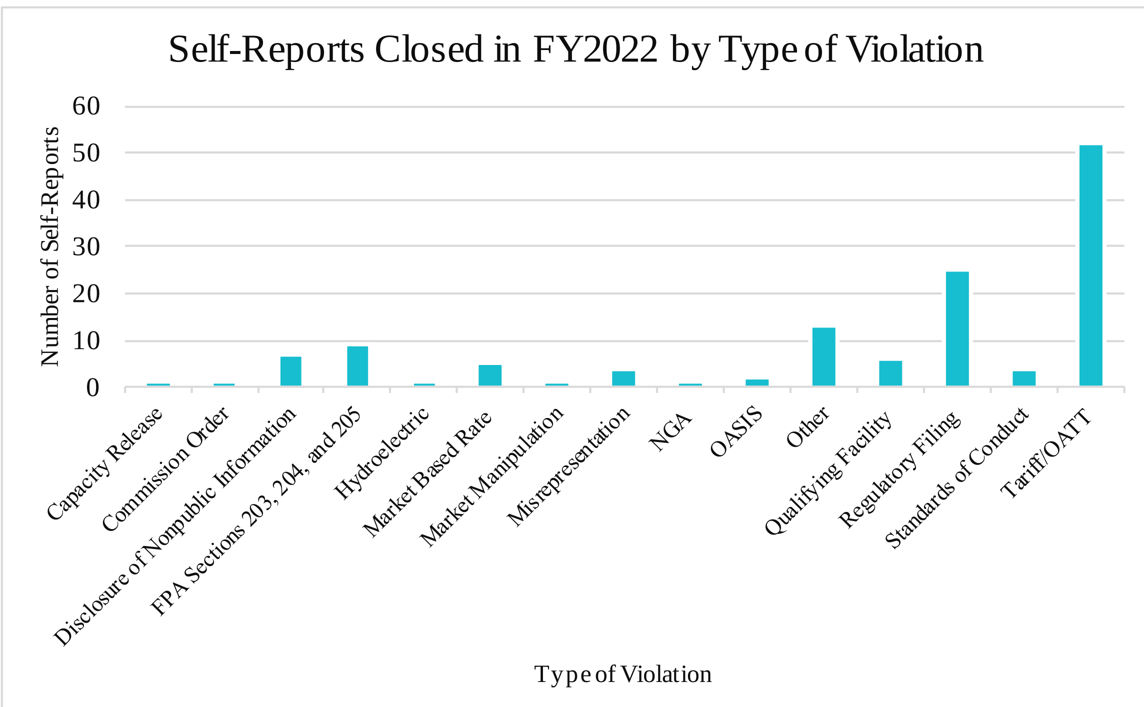
The following charts depict the types of violations for which Enforcement staff received self-reports from Fiscal Years 2019 through 2023.[31] Some self-reports include more than one type of violation.

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

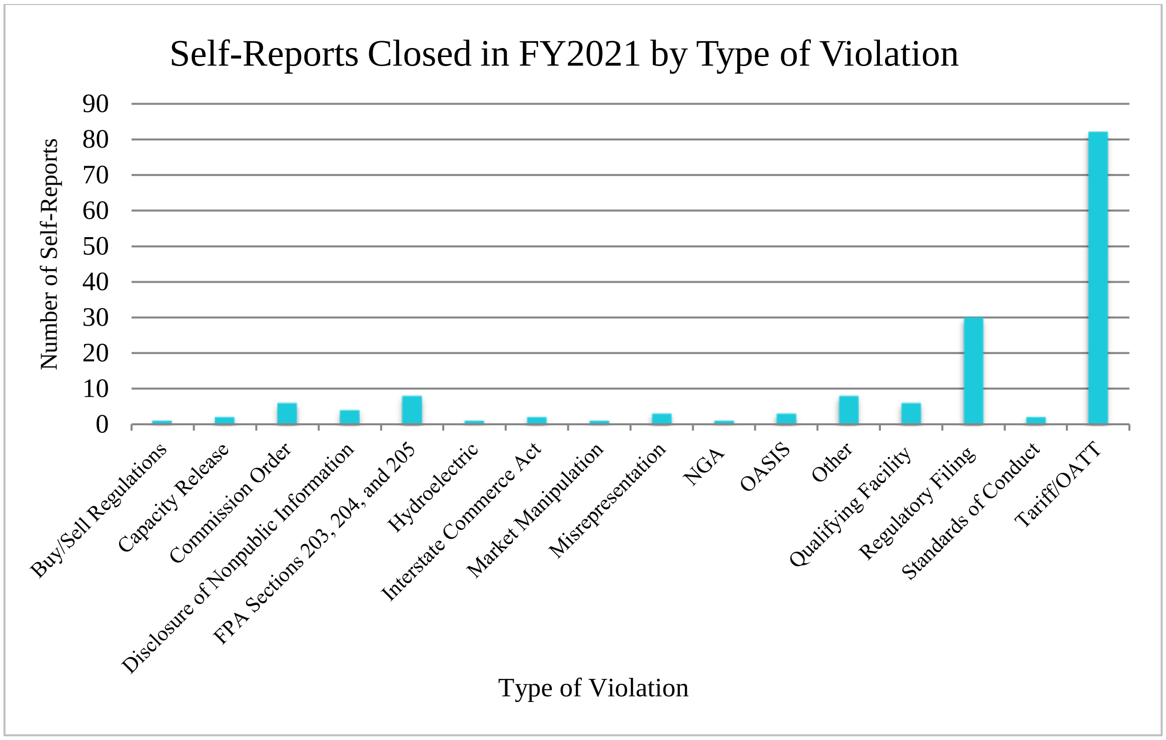
[31] Consistent with the Annual Reports for FY2019 through FY2022, the Self-Reports Closed chart in this FY2023 Annual Report includes the substantive violations reported by an ISO/RTO and replaces the "ISO/RTO" category used in previous years.

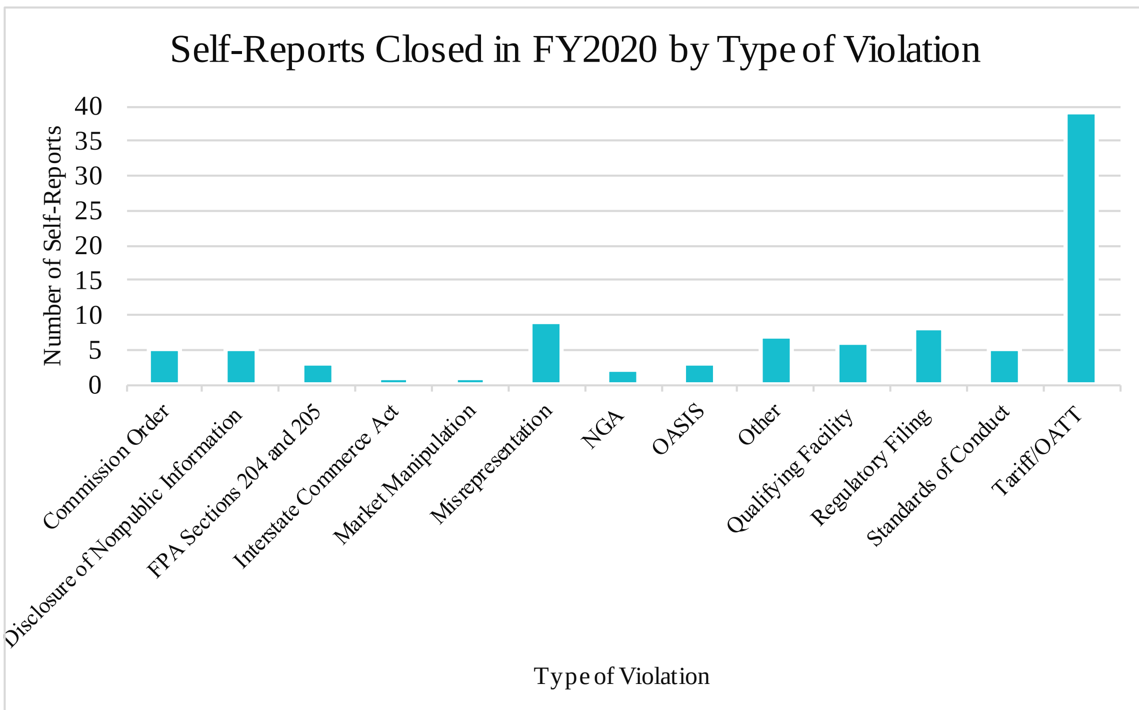


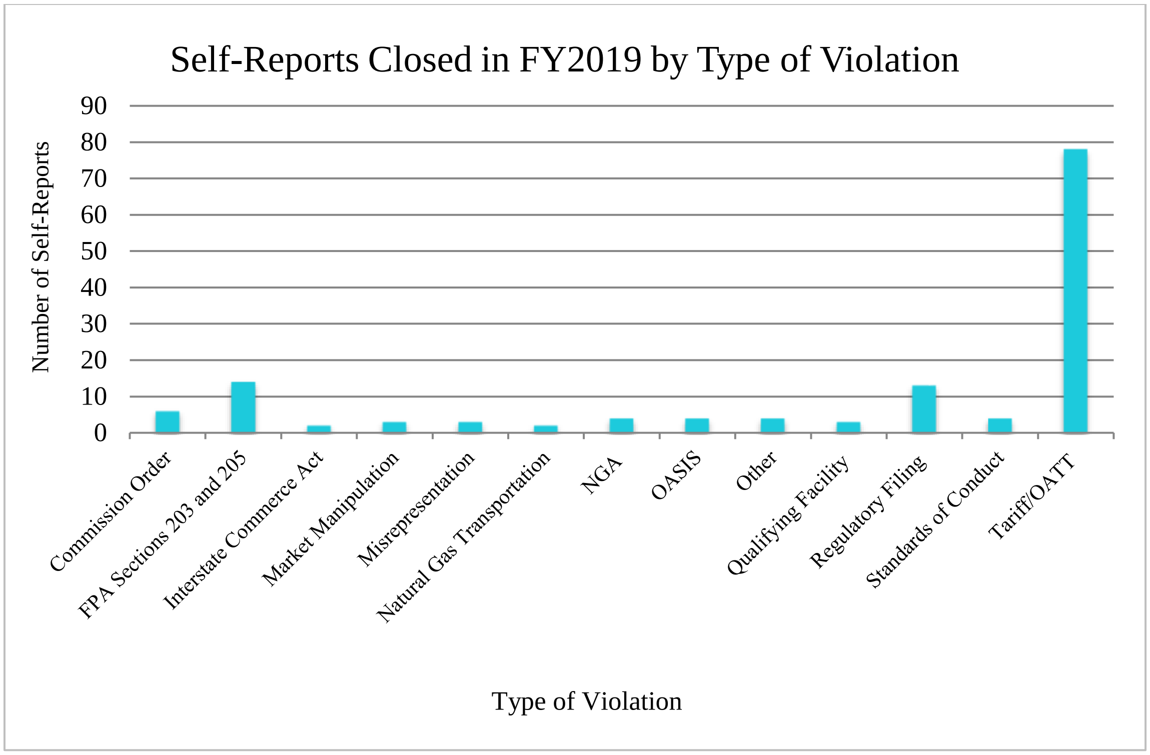
Self-Reports Closed in FY2023 by Type of Violation
Number of Self-Reports
100
90
80
70
60
50
40
30
20
10
0
Commission Order
Disclosure of Nonpublic Information
FPA Sections 203, 204, and 205
Software Error
Market Based Rate
Market Manipulation
Misrepresentation
Other
Qualifying Facility
Regulatory Filing
Standards of Conduct
Tariff/OATT
Type of Violation



Self-Reports Closed in FY2022 by Type of Violation
Number of Self-Reports
60
50
40
30
20
10
0
Capacity Release
Commission Order
Disclosure of Nonpublic Information
FPA Sections 203, 204, and 205
Hydroelectric
Market Based Rate
Market Manipulation
Misrepresentation
NGA
OASIS
Other
Qualifying Facility
Regulatory Filing
Standards of Conduct
Tariff/OATT
Type of Violation


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


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



2. Illustrative Self-Reports Closed with No Action

In a continuing effort to promote transparency while encouraging the compliance efforts of regulated entities, Enforcement presents the following illustrative examples of self-reports that Enforcement closed in FY2023 without conversion to an investigation. In determining whether to close a self-report or open an investigation, Enforcement staff considers the factors set forth in the Commission's Revised Policy Statement on Enforcement.[32] As examples, in FY2023 several ISOs/RTOs and market participants reported minor tariff and reporting violations, standards of conduct violations, violations of the FPA, and regulatory filing violations. The illustrative summaries below are intended to provide guidance to the public and to regulated entities as to why Enforcement staff chose not to pursue an investigation or enforcement action, while preserving the non-public nature of the self-reports.

Tariff/OATT Violation (Electric). An independent power producer and service provider self-reported that its solar facility equipment failed to comply with specific voltage requirements of the related ISO. Due to its failure, the solar facility was unable to remain online during voltage disturbances on three occasions. Thereafter, the solar facility upgraded its equipment to meet the voltage requirements. Given that the equipment was upgraded and the violations did not impact customers or reliability, Enforcement staff closed this self-report without further action.

Tariff/OATT Violation (Electric). A power marketer self-reported that it failed to offer 15 MW of capacity into an ISO capacity market auction. The power marketer had recently taken over responsibility for scheduling and balancing the capacity for other entities, and an oversight in the

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

marketer's processes caused it to fail to offer into the market the 15 MWs of capacity not used by the other entities. Enforcement staff closed this self-report without further action because the error was inadvertent, the power marketer cooperated with the ISO regarding the error, the error had little-to-no impact on capacity prices, and the power marketer took steps to improve its internal processes so as to reduce the likelihood of making a similar mistake in the future.

18 C.F.R. § 35.42 (Electric). Affiliates of a renewable energy power producer that have market-based rate authorization self-reported that they did not timely file non-material change in status notices with the Commission, pursuant to 18 C.F.R. § 35.42, after they learned about their affiliation with a certain amount of uncommitted "remote capacity" in the CAISO market. The affiliates had historically treated this uncommitted capacity as "available for import" into the market, as opposed to "remote capacity," and, therefore, had not filed the requisite forms. Within 10 days of discovering this issue, the affiliates filed notices of non-material change in status and changed their internal compliance measures to ensure better reporting of market-based rate changes in the future. As the violation was promptly reported and remediated, and did not cause economic harm, Enforcement staff closed this self-report without further action.

Buy/Sell Violation (Gas). A producer and marketer of natural gas self-reported a potential buy/sell violation. The company entered into a marketing services agreement with a counterparty to transport and market natural gas in the Permian Basin. In a later agreement, the company agreed to sell to the same counterparty a small quantity of natural gas for the counterparty's use at a processing facility. The company discovered the potential violation less than three weeks after the potentially violative sales began and promptly rescheduled the delivery gas from another source; the company also implemented additional buy/sell compliance training for relevant personnel. Given the minimal potential harm and prompt remedial action by the company, Enforcement staff closed the self-report without further action.

FPA Section 204 Violation (Failure to Obtain Prior Authorization). An entity developing a solar-powered electric generating facility self-reported that it failed to obtain prior authorization from the Commission under FPA section 204 to enter into a construction financing agreement. Because there was no apparent market harm and the entity implemented new procedures to prevent a recurrence, staff closed this self-report without further action.

Regulatory Filing Violation (FPA Section 305). Several affiliated utilities self-reported their failure at two separate times to timely file notices of withdrawal from interlocking positions for several individuals as required under FPA section 305 and implemented by Part 45 of the Commission's regulations. The initial failure to file a required notice (which led to the first self-report) prompted an internal review of policies and procedures. This internal review identified the need to file additional notices of withdrawal. Because these errors were inadvertent and the utilities took steps to improve their policies and procedures, and in light of a recent Commission rulemaking involving Part 45 that recognized good-faith errors and oversights in relation to the timely filing of notices of withdrawal should not be penalized absent indicia of abuse or inattentiveness, Enforcement staff closed this self-report without further action.

Regulatory Violation (Gas). A natural gas storage facility owner self-reported that the volume of base gas in a storage facility it owned was below certificated levels. The owner discovered the issue after acquiring the facility. Enforcement staff closed this self-report without further action because there was little-to-no market harm caused by the violation, there was no apparent operational or reliability problems, the owner provided a plan to bring base gas volumes to certificated levels and committed to providing updates regarding its progress in this regard, and the owner did not intentionally cause the violation.

Regulatory Filing Violation (FERC Form No. 552). A gas retail marketer self-reported that it had failed to file an accurate FERC Form No. 552 (Annual Report of Natural Gas Transactions) for reporting years 2020 and 2021 in violation of section 260.401 of the Commission's regulations. Pursuant to this regulation, unless otherwise exempted, each natural gas market participant, *i.e.*, any buyer or seller that engaged in physical natural gas transactions the previous calendar year, must prepare and file with the Commission a FERC Form No. 552 addressing its natural gas transactions by May 1 for the previous calendar year. The marketer reported that it had failed to include certain physical tier transaction data in its Form No. 552 submissions due to a software error. As soon as the violation was identified, the marketer modified its software to capture this data going forward, conducted a staff training to prevent similar filing errors, and filed corrected Form No. 552 submissions for 2020 and 2021. For these reasons, and because the violations resulted in no economic harm, Enforcement staff closed this self-report without further action.

Regulatory Filing Violation (Failure to File Certain Agreements). A utility self-reported that it had failed to timely submit an amended cash management agreement pursuant to 18 C.F.R. § 141.500. Pursuant to that Commission regulation, public utilities and licensees that participate in cash management programs must file: (1) their original cash management agreement within 10 days of the effective date; and (2) any amendments to those agreements within 10 days of the change. The utility represented that it did not know about the 10-day deadline to file amendments and, upon learning about it, promptly filed the appropriate form, as well as updated its internal database to better track Commission deadlines. Because the error was inadvertent, there was no broader harm to the market, and the utility underwent compliance measures to ensure the error would not reoccur, Enforcement staff closed this self-report without further action.

Regulatory Filing Violation (FPA Section 203). A provider of distributed energy services self-reported its failure to file certain regulatory filings associated with a change-in-control transaction. The provider did not submit an application for FPA section 203 authorization prior to the transaction, and following the transaction, the provider did not file a change in status as required by 18 C.F.R. § 35.42. The failures to file were discovered when the provider engaged new counsel to advise the company on building new lines of business in compliance with FERC regulations. The filings were late-filed within one month of counsel discovering the error. As the missed filings were inadvertent, resulted in minimal harm, were discovered as the company improved its regulatory compliance functions, and were effectively remedied to mitigate the harm, Enforcement staff closed the self-report without further action.

Reporting Violations (Electric). The owner of 5 small solar generation entities self-reported violations related to various filing requirements arising from the entities' market-based rate authority, QF status (Form 556), and FPA section 203. Staff at the entities discovered the violations during a recent acquisition. The entities agreed to make all corrective filings, including any appropriate time value refunds. Because the errors were inadvertent and quickly resolved and mitigated, Enforcement staff closed this self-report without further action.

Regulatory Filing Violation (Transmission Service Agreements). A utility company self-reported that it had determined that dozens of its Transmission Service Agreements (TSAs) contained provisions that had been modified from the form agreement contained in its tariff. The company belatedly filed these agreements with the Commission concurrent with its self-report. Enforcement staff closed this self-report without further action because the late filings were inadvertent and the company complied with the Commission's order to make time-value refunds in connection with many of the late-filed TSAs.

Reporting Violations (FPA Section 203). A retired generating plant's former owner self-reported that the plant had been sold for one dollar to a new owner without the required Commission approval pursuant to FPA section 203. The companies explained that because the plant had not generated electricity for over a decade and was sold for so little money, they believed that Commission approval was not necessary; however, they subsequently learned that the interconnection equipment had remained onsite, which brought the sale under section 203. Shortly after submitting the self-report, the companies made the required section 203 filings, and the Commission approved the sale. Enforcement staff closed this self-report without further action because the violation was inadvertent, there was no market harm, and the relevant companies self-reported the violation and took prompt remedial action.

Standards of Conduct Violation (Training). A utility self-reported that it had failed to provide FERC-mandated Standards of Conduct training to a new hire within 30 days of the employee's start date. After discovering and correcting the initial violation, the company initiated an internal investigation that revealed several violations of the 30-day training requirement had occurred during the review period. The violations resulted from the manual process by which the utility assigned and monitored training for new hires as well as insufficient internal controls to ensure compliance. The utility updated its systems by automating training assignment and tracking, and it implemented a periodic compliance assessment tool to ensure the utility remains in full compliance. Given the inadvertent nature of the error, the lack of any apparent harm, and the utility's proactive mitigation efforts, Enforcement staff closed this self-report without further action.

Tariff Violation (Gas). A natural gas transmission company self-reported that due to a coding error, a shipper did not receive notice of its right to match a capacity release bid, in violation of the company's tariff. As a result, the capacity release was awarded to the initial bidder. After the company discovered the coding error, it promptly fixed it, and notified the initial bidder that the shipper with the right to match would have matched the bid and was the rightful recipient of the capacity release. The initial bidder did not object to the company awarding the capacity release to the shipper with matching rights. Because the company promptly fixed the coding error, and was able to reverse the impact of the error, Enforcement staff closed this self-report without further action.

Tariff Violation (Gas). A gas pipeline self-reported that it had failed to comply with its tariff requirement that it publicly post capacity subject to a contractual right of first refusal six months before the termination of the contract. Because there was no market harm and the pipeline implemented procedures to prevent a recurrence, Enforcement staff closed this self-report without further action.

Tariff/OATT and Reporting Violations (Electric). An investor-owned utility self-reported several errors at its generating units related to submission of Generation Verification Test Capacity (GVTC) results. The self-report covered errors in the utility's normalization of GVTC results reported to the ISO. The utility identified the reporting errors during its preparation of responses to Enforcement staff's data requests in connection with Enforcement staff's investigation of one its units. The utility self-reported them because they constituted potential violations of the ISO's tariff. Enforcement staff closed this self-report with no further action because the utility had been thorough and transparent in its dealing with both Enforcement and the IMM, the violations resulted in limited market harm, and the utility had implemented compliance measures to address the violation and reduce the likelihood of recurrence.

Tariff/OATT Violation (Electric). A generation and transmission cooperative self-reported that its energy management company, while acting on the cooperative's behalf, had: (1) failed to electronically submit derate data in accordance with the RTO's binding market protocols; and (2) made an incorrect change in day ahead offer prices based on a manual miscalculation, in violation of the RTO's OATT. Because these errors were caused by inadvertent human error, did not appear to result in market harm, and were promptly remedied through changes in internal compliance measures, Enforcement staff closed this self-report without further action.

Tariff/OATT Violation (Electric). A company self-reported that its OATT was inadvertently removed from its website for approximately eight hours, contrary to the requirement of 18 C.F.R. § 37.6(c)(2). Because the company self-reported the issue, the potential violation was inadvertent and minor, resulted in no harm, and the company implemented additional measures to prevent recurrence, Enforcement staff closed this self-report without further action.

Tariff/OATT Violation (Electric). An electric utility self-reported that it had failed to timely process generator interconnection applications in accordance with its tariff. The utility missed tariff mandated deadlines nine times and the violations were cured within several days in some instances and several weeks in other instances. Because the utility self-reported the issue, the error was inadvertent, and the utility took steps to improve its internal processes, Enforcement staff closed this self-report without further action.

Tariff/OATT Violation (Electric). A generation facility self-reported that it had failed to comply with the LGIA with its interconnecting transmission provider. The generator had failed to timely install certain reporting and metering equipment as required by the LGIA. The transmission provider knew of the violation, agreed that it was minor and technical in nature, and provided a mechanism by which the violation could be quickly cured. Given that the violation was corrected, the duration of the violation was minimal, and there was no identifiable harm caused by the violation, Enforcement staff closed the self-report without further action.

Change in Status (Electric). A generation company with market-based rate authority filed a self-report regarding a failure to timely notify the Commission of a change in status pursuant to the requirements of 18 C.F.R. § 35.42(a)(2) and to timely submit data pursuant to Order No. 860 (Data Collection for Analytics and Surveillance and Market-Based Rate Purposes). Upon identification, the company promptly submitted the required data and notice of change in status. The company also implemented preventive measures to mitigate the risk of future violations. As a result, Enforcement staff closed the self-report without further action.

Tariff/OATT Violation (ISOs/RTOs). Multiple ISOs/RTOs self-reported what staff determined upon factual review to be relatively minor violations of their tariffs, resulting from either software or human error. Those errors included: the late posting of documents and/or data; failing to maintain confidentiality of market participant project information; failing to properly calculate market participants' credit requirements under certain conditions; software errors that caused *de minimis* market harm; small over/underpayments and small errors in calculating capacity and reserve values; failing to implement small subsets of market monitor mitigation; sale of emergency energy to a neighboring balancing authority without an agreement authorizing such sales; using incorrect price inputs to calculate fees to hybrid resources in a limited number of circumstances; failing to provide timely project updates and forecasts to market participants; and failing to maintain certain deadlines for informational filings. The ISOs/RTOs also reported certain other potential mistakes in implementing tariff provisions. In all such instances, the violations were inadvertent, resulted in minimal harm, and were promptly and effectively remedied to mitigate the harm and prevent future violations. Accordingly, staff closed these self-reports without further action.

E. Investigations

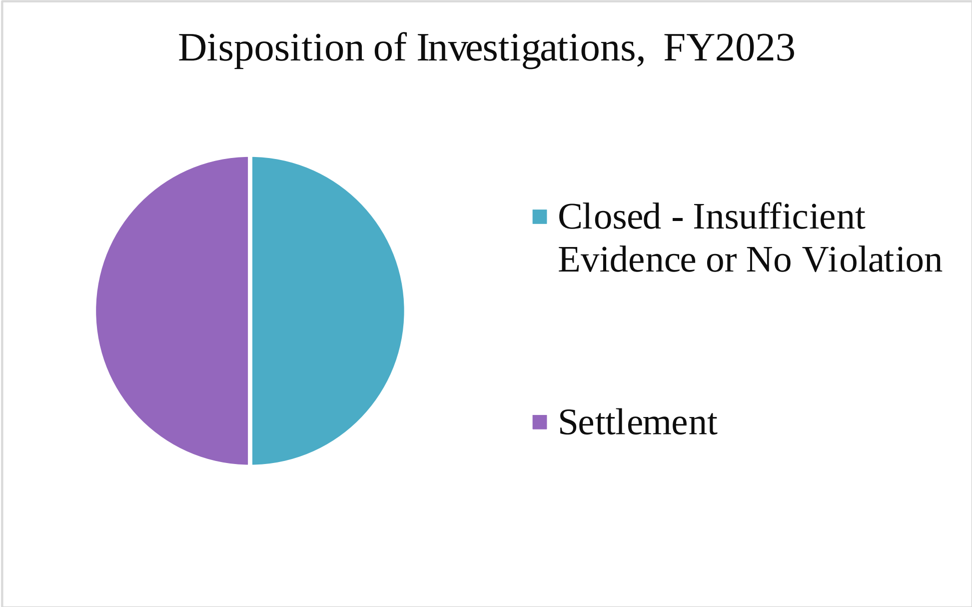
In FY2023, Enforcement staff opened 19 new investigations, as compared with 21 investigations opened in FY2022 and 12 investigations opened in FY2021. These investigations arose from several sources, including referrals by ISO/RTO market monitors and Enforcement's DAS and DAA. In addition to cases closed through settlement, Enforcement staff closed nine investigations without further action in FY2023, as compared to seven closed without further action in FY2022. In addition to closing these investigations during the fiscal year, Enforcement staff closed seven Market Monitoring Unit (MMU) referrals following inquiries into and analyses of the referred conduct and alleged violations. These MMU referrals, discussed in DOI section F below, were closed without being converted into investigations.

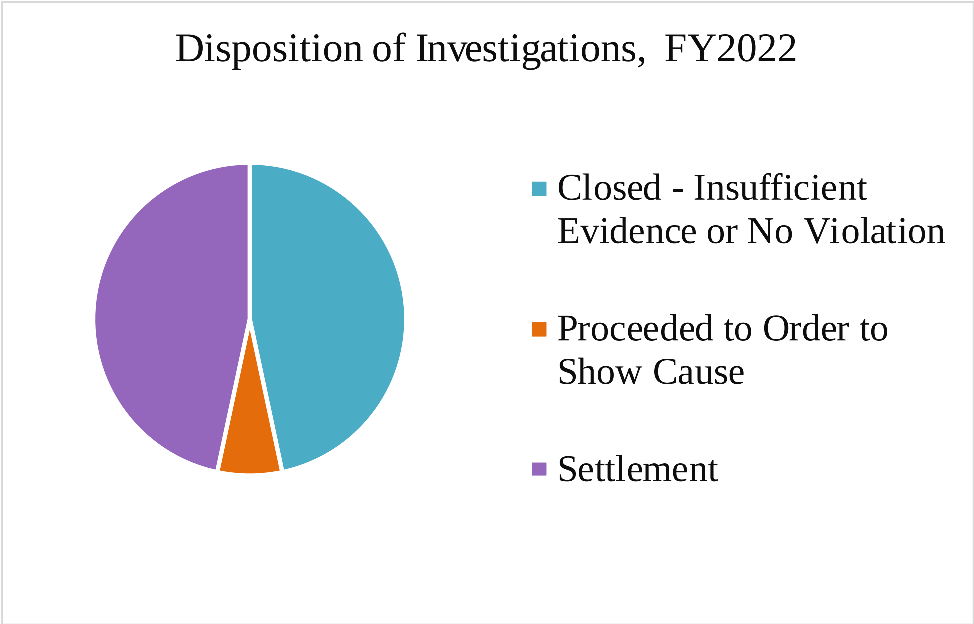
1. Statistics on Investigations

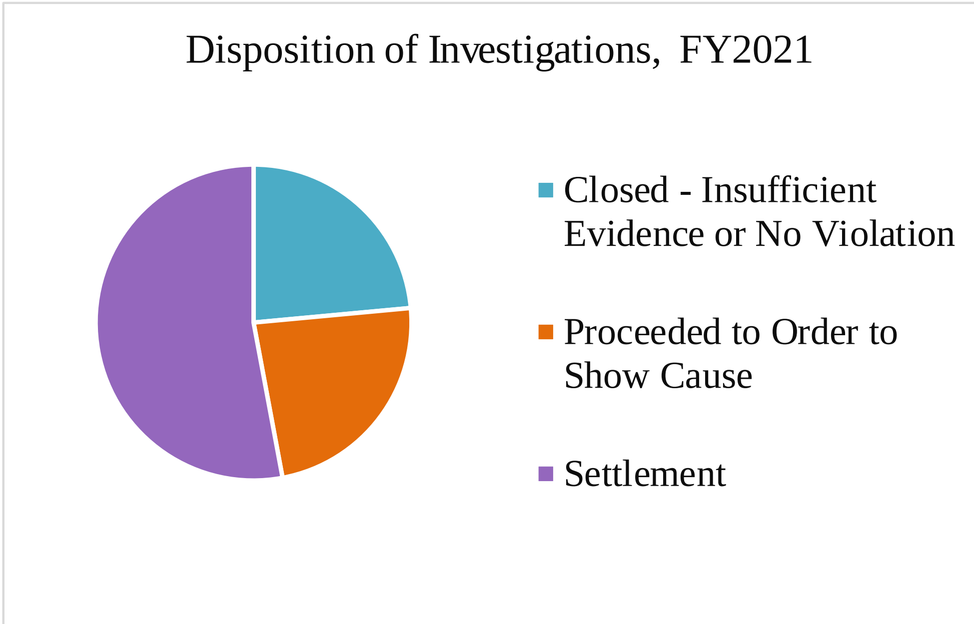
Of the 19 investigations Enforcement staff opened this fiscal year (some of which involved more than one type of potential violation or multiple subjects), at least eleven involved potential market manipulation, six involved potential tariff violations, and three involved potential misrepresentations prohibited by the Commission's Duty of Candor rule, 18 C.F.R. § 35.41(b). The 19 investigations also involved a wide range of additional issues, including ISO/RTO must-offer requirements, pipeline discrimination, and demand response.

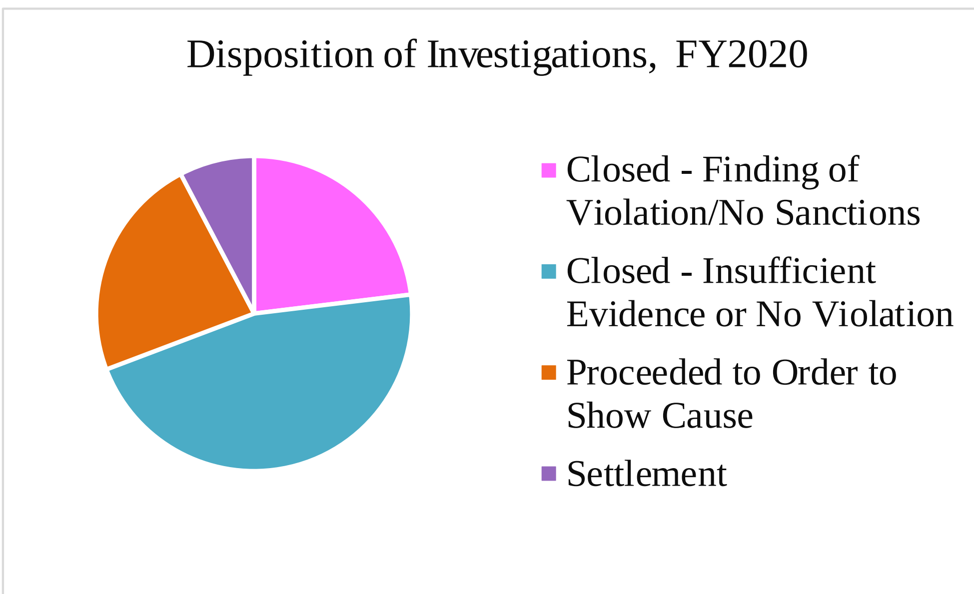
In each of the nine investigations DOI closed with no action in FY2023, Enforcement staff found that there was either no violation, insufficient evidence to conclude that a violation had occurred, or that a violation should not be subject to sanctions. The nine closings were in addition to the eight investigations closed pursuant to settlements that staff reached with subjects. The Commission-approved settlements in these investigations are summarized above in DOI section C and listed in Appendix B. The investigations closed without enforcement action are discussed below.

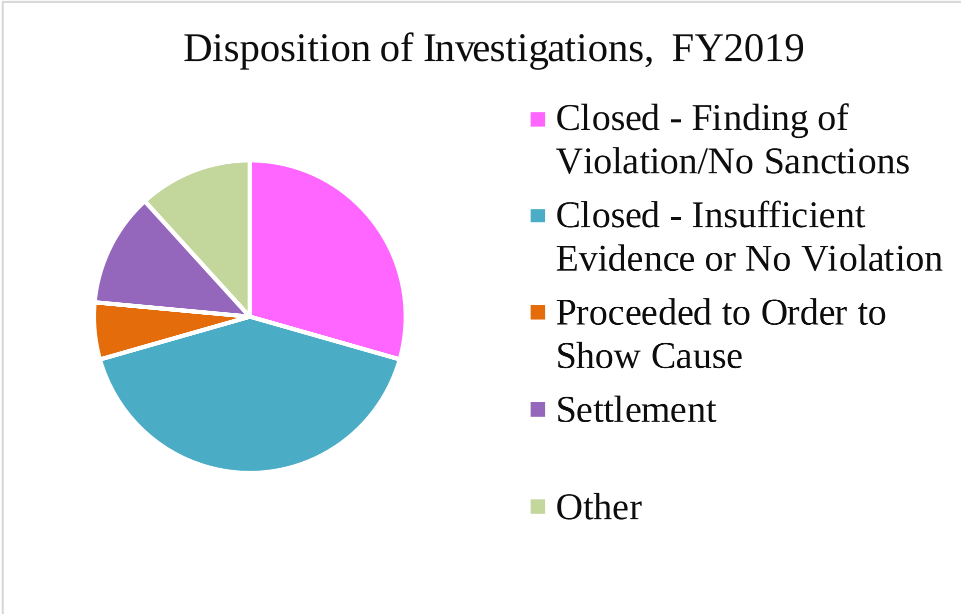
The following charts show the year-by-year disposition of investigations that closed over the past five years (FY2019-2023) and the aggregate disposition of investigations that closed from Fiscal Years 2013 through 2023.

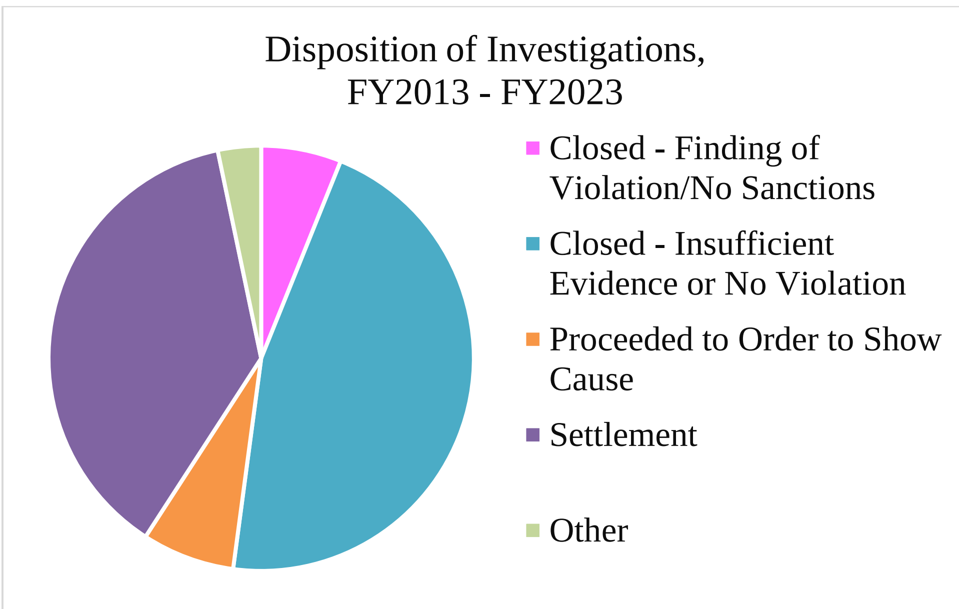





Disposition of Investigations, FY2021
Closed - Insufficient Evidence or No Violation
Proceeded to Order to Show Cause
Settlement

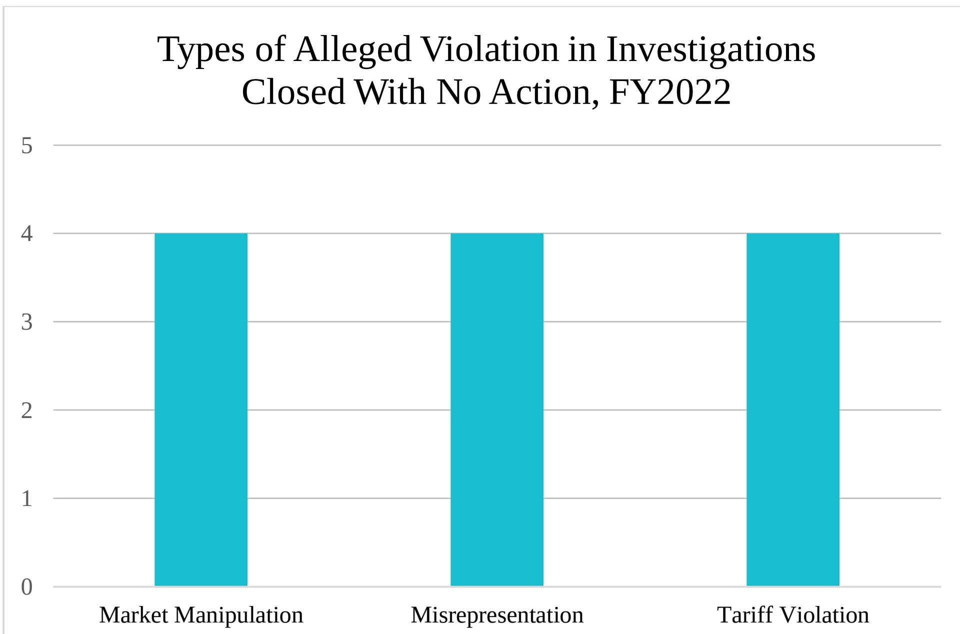

Disposition of Investigations, FY2020
Closed - Finding of Violation/No Sanctions
Closed - Insufficient Evidence or No Violation
Proceeded to Order to Show Cause
Settlement

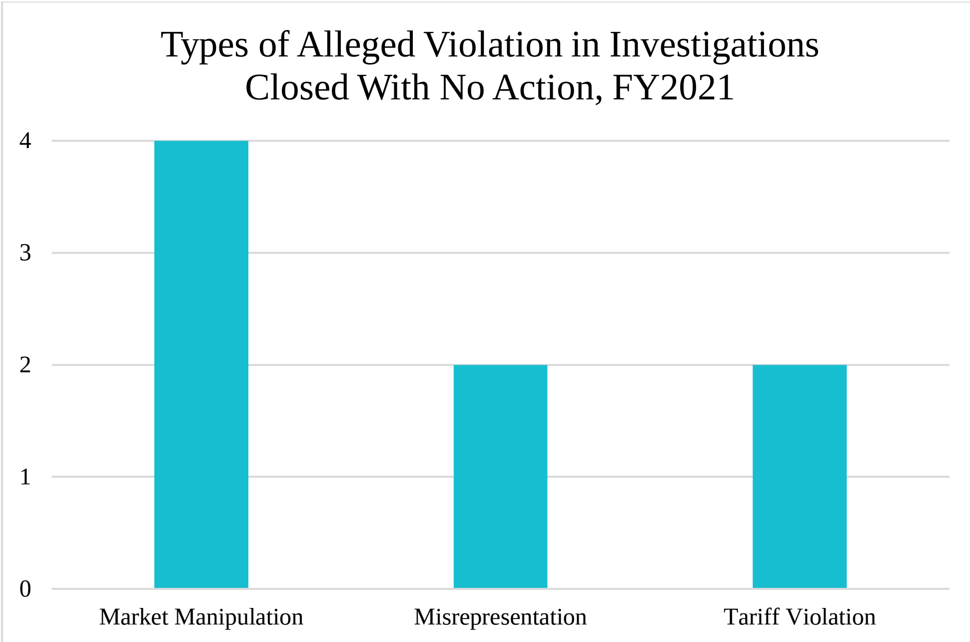


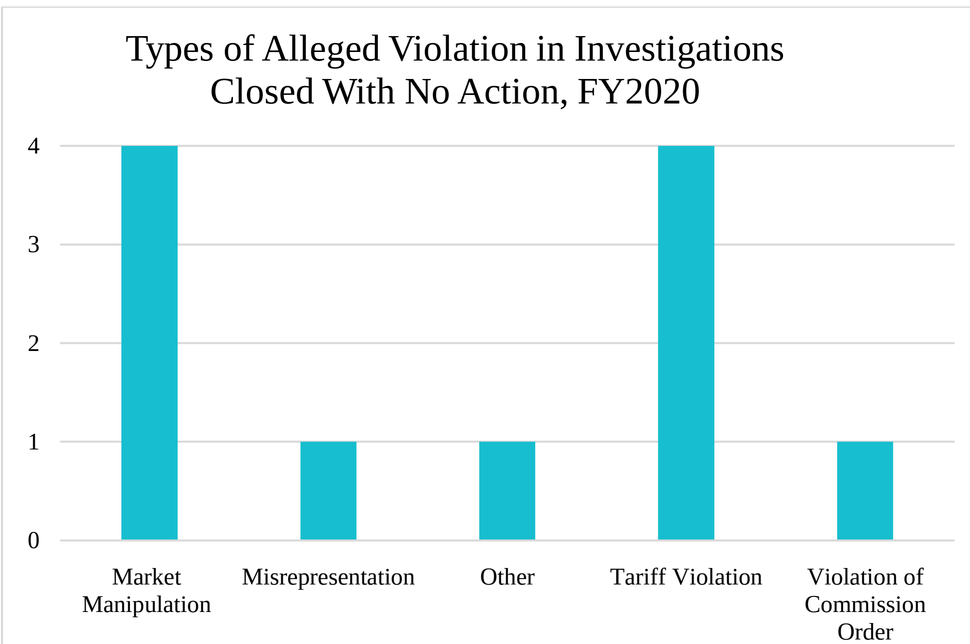


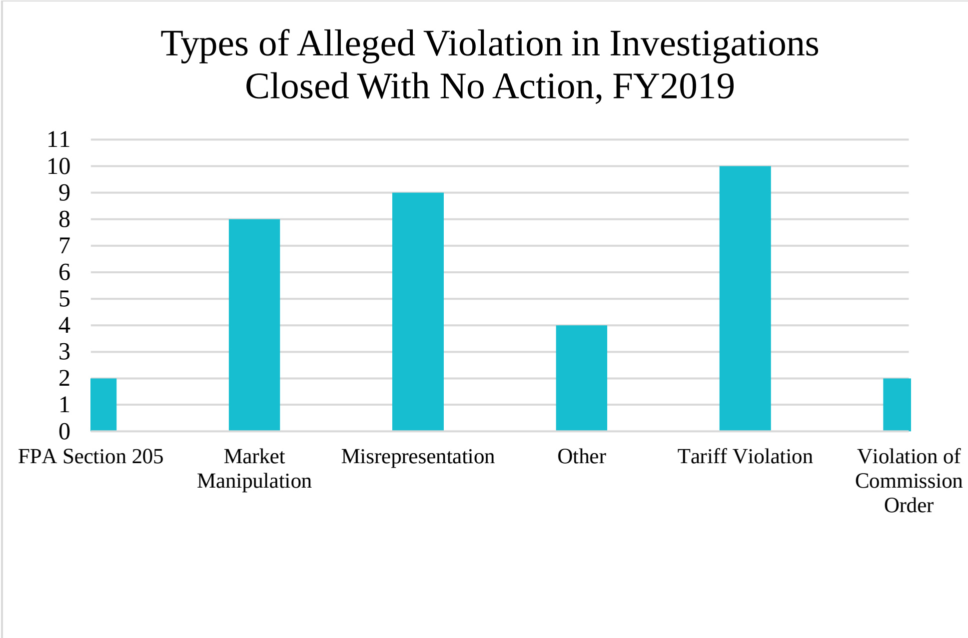
The following charts summarize the nature of the conduct at issue for those investigations that were closed without further action in Fiscal Years 2019-2023.


Types of Alleged Violation in Investigations Closed With No Action, FY2023
8
7
6
5
4
3
2
1
0
Market Manipulation
Misrepresentation
Tariff Violation


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


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


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



2. Illustrative Investigations Closed with No Action

The following summaries of investigations that Enforcement closed without action in FY2023 are intended to provide guidance to the public while preserving the non-public nature of DOI's investigations.

Market Manipulation, Tariff Violation, and Misrepresentations Prohibited by Duty of Candor (Electric). Following a referral from NERC, Enforcement staff opened an investigation into whether a company violated its balancing authority's tariff, the Commission's Anti-Manipulation Rule, and the Commission's Duty of Candor rule (18 C.F.R. § 35.41(b)) by failing to notify its balancing authority of generator outages and by failing to fully cooperate with a regional reliability entity's investigation into its violations of NERC's Reliability Standards. Enforcement staff found insufficient evidence that the market participant's failures to communicate its unit's status were part of an intentional market manipulation scheme. In addition, Enforcement staff determined that the market participant's settlement agreement with the regional reliability entity adequately addressed the conduct and that the market participant implemented improved compliance measures to address compliance weaknesses identified in the regional reliability entity investigation and prevent reoccurrences of similar behavior. For these reasons, Enforcement staff closed the investigation without further action.

Market Manipulation, Tariff Violation, and Misrepresentations Prohibited by Duty of Candor (Electric). Following a referral from a market monitor, Enforcement staff opened an investigation to determine whether a market participant misrepresented the available capacity of its resources and/or failed to comply with its must-offer obligations. Enforcement staff reviewed capacity and energy market data, outages and other data, along with technical information about the resources and interviewed multiple individuals at the company. Enforcement staff did not find evidence supporting the allegation that the company misrepresented available capacity and concluded that any failure to meet the must-offer obligations was immaterial or otherwise did not merit further enforcement action. Accordingly, Enforcement staff closed the investigation without further action.

Market Manipulation (Electric). Following a referral from DAS, Enforcement staff opened an investigation to determine whether a market participant in an ISO engaged in fraudulent virtual trading to benefit the market participant's congestion positions. After taking testimony from key personnel and reviewing substantial documentation and internal communications regarding the trading and the trader's purported trading strategy, Enforcement staff determined that there was insufficient evidence of a violation. More specifically, Enforcement staff determined that the trading at issue was primarily supported by market signals (though the trader mistakenly had relied on some incorrect data), was not clearly uneconomic, and did not significantly deviate from the market participant's prior trading patterns. Based on these findings, Enforcement staff closed the investigation without further action.

Market Manipulation (Gas). Following a referral from DAS, Enforcement staff conducted an investigation into whether a gas marketing company violated the Commission's Anti-Manipulation Rule during the 2021 cold snap caused by Winter Storm Uri. The company curtailed gas supply customers to whom it had delivery obligations, citing force majeure, and concurrently sold gas to a different customer at elevated prices. After reviewing documents produced by the company and taking sworn testimony from company employees, Enforcement staff determined that there was insufficient evidence to support a finding that a violation of the Anti-Manipulation Rule occurred. Enforcement staff found that the marketing company's decision to sell gas to the different customer appeared to have been made during a small window of time when the marketing company believed its curtailments would be less substantial. Enforcement staff also did not find evidence that the marketing company actively sought out buyers to sell gas to at an elevated price. To the contrary, the purchaser unilaterally reached out to the marketing company requesting gas. Based on this evidentiary record, Enforcement staff closed the investigation without further action.

Market Manipulation and Tariff Violation (Electric). Based on an analysis by DAS, Enforcement staff opened an investigation into whether a company violated an ISO tariff and the Commission's Anti-Manipulation Rule by submitting No Load values in its generator bids designed principally to collect make-whole payments. Shortly after Enforcement staff contacted the company, its counsel reported that the high No Load values were the product of a software error; no one at the company had known about the error or the resulting No Load values. The company provided Enforcement staff with a detailed report about how the software error had occurred. After reviewing the report, Enforcement staff took testimony from the relevant personnel and determined that the company's claims were credible. The company voluntarily returned to the ISO the excess make-whole payments it had received as a result of the software error. Because the matter arose from an inadvertent software error and the company voluntarily returned the excess payments, Enforcement staff closed the investigation without further action.

F. MMU Referrals

ISO and RTO MMUs perform a critical function surveilling organized electric markets to detect potential violations, including market manipulation, anticompetitive behavior, and tariff noncompliance. As the Commission has recognized, "effective market monitoring requires close collaboration between the [MMUs], ISOs, RTOs, and [Enforcement]."[33] This collaboration occurs formally, through certain reporting requirements set forth in Commission regulations, as well as informally, through regular dialogue with Enforcement. Both types of collaboration facilitate a high level of situational awareness among Enforcement staff and ensure a robust knowledge base for investigations and surveillance. In an effort to promote transparency and provide guidance to regulated entities and MMUs, this section highlights the MMUs' functions, describes the types of conduct MMUs monitor and refer to Enforcement, and provides illustrative examples of MMU referrals that Enforcement closed in FY2023 as initial inquiries without conversion to an investigation.

By regulation, MMUs are required "to make a non-public referral to the Commission in all instances where the [MMU] has reason to believe that a Market Violation has occurred."[34] This referral requirement applies to potential "misconduct by the ISO or RTO, as well as by a market participant."[35] The Commission has not prescribed a specific level of detail or length for referrals. However, they must be: (1) non-public, (2) in writing, and (3) addressed to the head of Enforcement with copies to the heads of OEMR and OGC.[36] In addition, they must include: (1) "sufficient credible information to warrant further investigation by the Commission;" (2) the names and contact information for suspected violators; (3) the dates of the alleged violations and whether the behavior is ongoing; (4) the rule, regulation, or tariff provisions allegedly violated; (5) the specific conduct that allegedly constitutes the violation; (6) the consequences to the market; (7) if the referral includes allegations of manipulation, a description of the alleged manipulative effect; and (8) any other information the MMU wishes to include.[37] There is also a continuing obligation to update referrals with any information the MMU learns that is "related to the referral."[38] After receiving a referral, Enforcement conducts an inquiry into the alleged conduct and determines whether to open a full investigation.

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

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

[34] 18 C.F.R. § 35.28(g)(3)(iv)(A) (2023). A Market Violation is a violation of a tariff, Commission order, rule or regulation, market manipulation, or inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies. *Id.* § 35.28(b)(8).

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

[36] 18 C.F.R. §§ 35.28(g)(3)(iv)(B)-(C) (2023).

[37] *Id.* § 35.28(g)(3)(iv)(D).

[38] *Id.* § 35.28(g)(3)(iv)(E). Separate and apart from this referral requirement, MMUs also must "[i]dentify and notify [Enforcement] of instances in which a market participant's or [ISO's/RTO's] behavior may require investigation, including, but not limited to, suspected Market Violations." 18 C.F.R. § 35.28(g)(3)(ii)(C) (2021). These notifications are more informal, can be made orally or in writing, and do not require the documentation involved in a referral.

tariff related to CPower's alleged failure to offer the MWs required by ISO-NE's tariff provisions governing its participation in the ISO-NE energy market;[39] (2) referral of Constellation New England (CNE) for potential violations of the Commission's market behavior regulations and CAISO's tariff related to CNE's alleged failure to purchase capacity in support of its RA-related imports;[40] and (3) referral of ISO-NE and Footprint related to capacity payments Footprint improperly received for the New Salem Harbor Generating Station.[41]

1. Statistics on MMU Referrals

In FY2023, Enforcement staff received 23 new MMU referrals. Of these referrals (some of which involved more than one type of violation or multiple subjects), at least 13 involved potential market manipulation, at least 11 involved potential tariff violations, and at least four involved potential misrepresentations prohibited by the Commission's Duty of Candor rule. Eleven of these MMU referrals were the sources for investigations opened this fiscal year.[42] Of the MMU referrals received in FY2023, nine remained pending at the end of the fiscal year.

Enforcement staff elected not to open full investigations of seven MMU referrals in FY2023, five of which were carried over from the prior fiscal years. These referrals were analyzed and closed as inquiries. Six of the referrals, which involve potential tariff violations, were closed without further action because Enforcement staff concluded that there was insufficient evidence of a violation. One referral was merged into an already-existing investigation and, thus, was not treated as a separate matter.

2. Illustrative MMU Referrals Closed with No Action

Enforcement presents the following illustrative summaries of MMU referral inquiries that Enforcement staff closed in FY2023 without conversion to an investigation. In determining whether to open an investigation based on an MMU referral, Enforcement staff considers the factors set forth in the Commission's Revised Policy Statement on Enforcement.[43] The illustrative summaries below are intended to provide guidance to the public and to regulated entities as to why Enforcement staff chose not to pursue an investigation or enforcement action, while preserving the non-public nature of the MMU referral.

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

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

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

[42] One MMU referral was combined with a referral from a prior fiscal year.

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

Potential Tariff Violation. Following a referral from an ISO's MMU for an alleged violation of 18 C.F.R. § 35.41(b), the market behavior rule regarding communications, staff analyzed whether a generator made false and misleading statements in connection with its required minimum generation operating level. Following the referral, Enforcement staff conducted an inquiry, reviewing the extensive supporting materials provided in the referral and speaking with MMU and ISO staff. Enforcement staff determined that the information available demonstrated that either: (1) the generator's position regarding its minimum generation operating level was accurate; or (2) that the generator exercised due diligence in developing the minimum generation operating level. Thus, Enforcement staff closed this referral without further action.

Potential Tariff and 18 C.F.R. § 35.41(a) Violation. Following a referral from an MMU, Enforcement staff analyzed whether, in the summer of 2022, a generator incorrectly placed itself in "maximum emergency" status when the required conditions for that operating status may not have been met. Following the referral, Enforcement staff gathered information from the MMU and RTO and analyzed the applicable tariff and manual provisions. Enforcement staff determined that an investigation was not necessary because the generator's energy offers were likely made in accordance with the RTO's then-controlling "maximum emergency" criteria. Therefore, Enforcement staff closed this referral without further action.

Potential Tariff Violation. Following a referral from an MMU, Enforcement staff analyzed whether three battery storage resources (BSRs) violated the ISO's tariff by failing to turn on the automatic generation control mode when they received regulation service awards. Regulation service awards are an ancillary service used to enhance reliability. A resource that has an award must respond to changes in grid activity every four seconds, which necessitates that the resource's unit be switched from the automated dispatching system (ADS) mode to the automatic generation control (AGC) mode so that it can receive and respond to the four second instructions from the ISO. The BSRs are older units that required the switching to AGC mode be done manually. Although the switching from ADS to AGC mode was in the process of being automated, it was not then complete. Accordingly, the ISO's operators had to repeatedly contact the BSRs to remind them to turn on their automatic generation control mode. Enforcement staff contacted the BSRs and determined that: (1) the automation of the switch from ADS to AGC mode had been completed for the BSRs; and (2) the BSRs had also put in place computer alerts to let the operators know if there is an issue that needs to be manually adjusted. Enforcement staff also confirmed with the ISO that its operators were currently satisfied with the performance of the BSRs and had no further concerns, including related to market harm. For these reasons, Enforcement staff closed this referral without further action.

G. Enforcement Hotline

DOI staff fields phone calls and other inquiries made to the Enforcement Hotline (Hotline).[44] 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 Enforcement staff receives information concerning possible violations, such as allegations of market manipulation, abuse of an affiliate relationship, or violation of a tariff or order,

[44] *See* 18 C.F.R. § 1b.21 (2023).

Enforcement 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 the opening of investigations by DOI.

In FY2023, Enforcement received 241 Hotline calls and inquiries, 230 of which promptly were resolved within the fiscal year either through advice provided by Enforcement staff, or because the caller stopped responding to Enforcement staff's communications, or because the matter was already pending before the Commission and so Enforcement staff could not discuss it with the caller. Enforcement staff also closed 15 Hotline matters that had been pending from the previous year. Of the Hotline calls received in FY2023, 11 remained pending at the end of the fiscal year.

Every year, a significant percentage of the Hotline calls and inquiries relate to subjects outside of the Commission's jurisdiction. Enforcement staff resolves these matters by advising the callers where they may find the information they need. Enforcement also receives a number of Hotline calls regarding contested matters pending before the Commission, which Enforcement staff resolves by directing them to the docketed proceeding.

H. Other Matters

In addition to its investigative work, DOI staff worked on other important matters in FY2023, including:

Collaboration with Other Commission Offices. DOI staff regularly coordinates with other Commission program offices regarding potential enforcement matters or enforcement-related policies and procedures. This includes working closely with the Office of Energy Projects (OEP) and OGC on pipeline certificate and hydroelectric licensing matters to ensure compliance with statutory and regulatory obligations, as well as the terms and conditions of pipeline certificates and hydroelectric licenses and exemptions. In addition, DOI staff works closely with OGC, OEMR, and the Office of Energy Policy and Innovation (OEPI) regarding late filings submitted under sections 203 or 205 of the FPA. Staff also works closely with OGC and OEMR on evaluating refund reports related to the late filings. OGC and OEMR regularly consult with DOI staff when a qualifying facility submits a request for a declaratory order and/or a request for waivers of various provisions of Part 292 of the Commission's regulations related to small power production and cogeneration under the Public Utility Regulatory Policies Act. Regulated entities can submit questions to the Compliance Help Desk to reduce their risk of subsequent findings of noncompliance and potential enforcement actions. Finally, OGC and OEMR confer with DOI staff for prefiling meetings and/or regarding requests involving the Standards of Conduct under Order No. 717 or Affiliate Restrictions under Order No. 697.

Hydropower Compliance. OEP's Division of Hydropower Administration and Compliance (DHAC) has authority over hydropower compliance matters until such matters are referred to Enforcement. DOI staff discussed potential dam safety and other violations with DHAC during FY2023.

No-Action Letters. Enforcement is one of several offices within the Commission that is jointly responsible for processing requests seeking a determination whether staff would recommend enforcement action against the requestor if it pursued particular transactions or practices. The

"No-Action Letter" can be a useful tool for entities subject to the Commission's authority to reduce the risk of failing to comply with the statutes the Commission administers, the orders, rules or regulations thereunder, or Commission-approved tariffs.[45] Commission staff is generally available to confer on a pre-filing basis for possible "No-Action Letter" requests.

Reliability Coordinator. As part of its cooperation with other program offices, Enforcement has a designated Reliability Coordinator who was a member of DOI staff at the beginning of the fiscal year but now reports directly to the Director of Enforcement. In addition to serving a leadership role in inquiries or investigations involving reliability of the Bulk-Power System, the Reliability Coordinator serves as a team member on reliability-related matters including NERC and Regional Reliability Entity filings (e.g., Notices of Penalty, changes to NERC Rules, amending or retiring Reliability Standards, NERC Five-Year Assessments, and similar periodic filings). Enforcement's Reliability Coordinator also makes presentations to NERC and at Regional Entity meetings, such as those of the Member Representative, Operating, and Planning Committees.

DIVISION OF AUDITS AND ACCOUNTING

A. Overview

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

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

DAA's accounting program is a vital component of achieving the Commission's strategic goal of establishing just and reasonable cost of service rates, terms, and conditions by: (1) overseeing the accounting and reporting of financial information affecting cost of service rates; (2) acting as

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

the focal point for interpretive guidance concerning the Commission's financial accounting and reporting rules, orders, regulations, and statutes; and (3) advising the Commission and industry on accounting and other financial issues. The accounting program facilitates the consistent reporting of financial information and ensures that a regulated entity's operations are reported in a manner that most appropriately supports ratemaking analysis. DAA's accounting program also provides accounting expertise to the Commission's other program offices and assists in the development of Commission policies and proposed rulemakings to ensure these initiatives properly consider and evaluate the related accounting and financial issues.

DAA's forms administration and compliance program supports the Commission's responsibility to ensure just and reasonable rates, terms, and conditions for consumers. DAA administers, analyzes, and ensures compliance with the filing requirements of Electric Quarterly Reports (EQRs) and various Commission forms. The EQRs and Commission forms provide valuable information to the public, external shareholders, and the Commission and support the development of regulatory strategies that focus on the competitiveness and efficiency of wholesale energy markets. DAA conducts outreach to and communication with the public regarding these compliance programs, with the goal of ensuring that all parties comply with the Commission's filing requirements.

B. Outreach and Guidance

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

DAA also continues to provide formal accounting guidance in response to accounting requests filed with the Commission. Informal accounting guidance may be requested and obtained from DAA via email (accountinginquiries@ferc.gov) and phone ((202) 502-8877). Informal guidance on issues related to the FERC financial forms may be obtained from DAA via email: Form1@ferc.gov (Forms 1, 1-F, and 3-Q (electric)); Form2@ferc.gov (Forms 2, 2A, and 3-Q (gas)); Form6@ferc.gov (Forms 6 and 6-Q (oil)); and Form60@ferc.gov (Form 60 (service companies)). Informal guidance on issues related to the EQR may be obtained from DAA via email (eqr@ferc.gov) and phone ((202)-502-8076). Informal guidance on all other compliance matters may be obtained through the Compliance Help Desk.[46]

C. Compliance

1. Compliance Programs

It is imperative that companies establish and maintain effective compliance programs. Such programs should foster a culture of compliance that begins at the executive level and permeates throughout the organization. Effective compliance programs increase the likelihood that jurisdictional companies will understand and follow the Commission's rules, regulations, and orders, as well as their own tariff provisions, both in letter and spirit. However, since each company is unique in terms of size, region, organizational structure, and other relevant characteristics, no two compliance programs are alike. Each company must tailor its program to the specific challenges it faces. Notwithstanding these differences, DAA has found that the strongest compliance programs include:

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

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

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

2. Timely Remedy of Noncompliance

Equally important to a robust compliance program is the timely remedy of noncompliance. Although an effective compliance program will often prevent noncompliance with Commission rules, regulations, and orders, any instances of noncompliance should be addressed immediately. Timely implementation of audit recommendations helps maximize their impact, demonstrates commitment to compliance, and supports fair, competitive markets. DAA tracks every audit recommendation it makes and works with each company until all recommendations have been fully implemented. The completion of this implementation phase is communicated by the Chief Accountant to the regulated entity in each audit. Further, the Commission's FY2022-2026 Strategic Plan encourages strong compliance programs and places emphasis on timely implementation of corrective actions within six months of audit completion.[47] In FY2023, 99 percent of DAA's audit recommendations were implemented within six months.

3. Compliance Alerts

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

ELECTRIC INDUSTRY

Allocated Labor. Companies have charged labor and labor-related costs to construction projects without using an appropriate cost allocation method or time tracking process to ensure capitalized labor costs have a definite relation to construction. Specifically, DAA has observed that allocation methods were not properly designed, nor were the allocation results sufficiently monitored, to ensure that costs charged were appropriately allocated to capital projects when employees: (1) performed activities that only supported the operations of the existing infrastructure; (2) spent a portion of their time performing construction-related activities and a portion on other jurisdictional activities; or (3) performed activities supporting both jurisdictional and non-jurisdictional activities (FA22-3-000, FA21-5-000, FA20-9-000, FA20-6-000, FA19-3-000, FA19-1-000).

Allowance for Funds Used During Construction (AFUDC). DAA audit activities continue to identify deficiencies in how jurisdictional entities have calculated AFUDC, resulting in excessive accruals on the entities' financial reports filed with the Commission. Short-term debt is regarded as the first source of funding construction activities in the AFUDC calculation, and the short-term debt rate is derived using an estimate of the cost of short-term debt for the current year. DAA has found instances where a company used commitment fees associated with lines of credit in the

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

calculation of the short-term or the long-term debt rate. Under Order No. 561, Commission approval is required to include such fees as part of the AFUDC short-term or long-term debt rate. Moreover, when a credit facility is established to create liquidity for the company's general purpose needs, the associated commitment fees resemble a banking charge to support a company's utility operations as a whole, and the commitment fees should be excluded when calculating AFUDC (FA22-5-000, FA20-7-000, FA19-3-000, PA18-2-000).

Other common findings related to AFUDC audits and decisions include:

- Improperly excluding certain short-term debt or long-term debt amounts from the AFUDC rate calculation (FA20-3-000, FA20-1-000);
- Computing AFUDC on contract retention and other noncash accruals (FA20-7-000, FA19-3-000);
- Improperly using monthly equity and long-term debt balances instead of prior-year-end balances in computing the AFUDC rate (FA21-5-000, FA21-4-000, FA20-7-000);
- Improperly using fiscal year-end book balances for long-term debt and common equity amounts when computing the AFUDC rate, rather than the calendar year-end balances reported in FERC Form No. 1 (FA20-3-000);
- Improperly including Account 216.1, Unappropriated Undistributed Subsidiary Earnings, and Account 219, Accumulated Other Comprehensive Income, balances as part of the equity component of the AFUDC formula (FA22-3-000, FA21-5-000, FA20-9-000, FA20-3-000, FA20-1-000, FA19-1-000);
- Improperly accruing AFUDC on inactive or suspended construction projects (FA21-4-000, FA20-1-000);
- Improperly including in the short-term debt rate of interest recorded on transmission and interconnection study advances received from customers (PA18-1-000);
- Improperly compounding AFUDC on a monthly basis rather than a semi-annual basis (FA21-4-000, FA20-7-000); and
- Improperly calculating AFUDC on projects already receiving incentive rate treatment permitting the projects' CWIP to be included in rate base (FA22-5-000).

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

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

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

- Excess Accumulated Deferred Income Taxes (ADIT) – To address the tax effects of the Tax Cuts and Jobs Act of 2017 (TCJA), public utilities were required to adjust ADIT balances to reflect the change in the effective corporate tax rate from 35 percent to 21 percent. Audit staff found instances where utilities did not properly record excess ADIT related to the TCJA. Additionally, under certain formula rate tariffs, public utilities were required to neutralize the rate base impacts of these TCJA adjustments to ADIT balances. Audit staff found instances where utilities removed balances from the ADIT accounts but did not make the necessary adjustments to keep rate base neutral. This led to rate base being overstated and wholesale transmission customers being overbilled. Further, audit staff found instances where utilities improperly netted the excess and deficient ADIT related to the TCJA and recorded the amount that resulted from the improper netting in Account 254, Other Regulatory Liabilities (FA21-5-000, FA20-9-000, FA20-3-000, FA18-3-000).

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

- Asset Retirement Obligations (ARO) – Public utilities included ARO amounts in formula rates without explicit Commission approval, including the asset component that increases rate base, the depreciation expense related to the asset, and the accretion expense related to the liability (FA22-5-000, FA21-5-000, FA21-3-000, PA18-2-000, PA18-1-000).

- Regulatory Assets – Public utilities included amortized regulatory assets in formula rate calculations without first obtaining the required Commission approval for recovery of the regulatory asset (FA22-5-000, PA20-2-000, PA18-3-000).

- Administrative and General (A&G) Expenses – Most audits find that public utilities recorded non-operating expenses and functional operating and maintenance expenses in A&G expense accounts, leading to inappropriate inclusion of such costs in revenue requirements produced by their formula rates. Examples of these costs include: employment discrimination settlement payments, lobbying expenses, charitable contributions, storm damage costs to distribution systems, distribution system maintenance expenses, generation function costs, costs of services provided to affiliates, and payments of penalties (FA22-5-000; FA22-3-000, FA21-6-000, FA21-5-000, FA21-4-000, FA21-3-000, FA20-7-000, FA20-6-000, FA19-8-000, FA19-1-000).

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

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

Open Access Transmission Tariffs. An essential goal of open access is to support efficient and competitive markets.[48] On recent OATT audits, DAA noted instances where company actions did not support this goal due to noncompliance with OATT terms and conditions. Specifically, DAA identified issues relating to transmission function employees procuring transmission service at the request of marketing function employees in violation of the independent functioning requirement[49] (PA18-1-000); improper use of network transmission service and secondary network transmission service (PA18-1-000, PA18-2-000); improper sales from designated network resources (PA19-3-000, PA17-7-000); inaccurate available transmission capacity or total transfer capability

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

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

data posted on OASIS (PA20-1-000, PA19-3-000, PA17-7-000); and improper posting of transmission service request study metrics reports (PA21-5-000).

NATURAL GAS INDUSTRY

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

Gas Tariff Provisions. Order No. 636 required that interstate natural gas pipelines maintain a tariff containing provisions regarding their services to effectively manage their systems. DAA's audits have identified issues relating to noncompliance with natural gas pipelines' FERC Gas Tariffs, including: (1) improper valuation of certain system gas activities at the wrong cash-out index price rather than the cash-out price prescribed in the valuation methodology in the tariff (FA19-6-000); (2) tariff language that is inconsistent with the Commission's requirement that all interconnecting pipelines enter into Operating Balancing Agreements (OBAs) and inconsistencies with the administration and management of imbalances in accordance with the terms of a pipeline's tariff and standard OBA (PA16-4-000); (3) tariffs that were not updated to fully incorporate the Commission's reservation charge crediting policy[50] for force majeure and non-force majeure events (FA19-9-000, FA18-2-000, PA16-4-000) or that erroneously calculated reservation charge credits (PA21-3-000); (4) penalty revenues that were collected from offending shippers and not properly refunded to non-offending shippers by the method prescribed in the tariff (FA19-9-000 (Other Matter), FA18-2-000, PA16-4-000); and (5) incomplete details in the tariff to explain a company's methodology used to adjust its company use gas percentage (FA21-1-000 (Other Matter)).

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

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

AFUDC and CWIP. As noted above in the Electric Industry compliance alerts, recent audit activity has shown deficiencies in how jurisdictional entities have calculated AFUDC, resulting in excessive AFUDC accruals above the maximum allowed by the Commission's regulations. Errors relating to natural gas pipelines' determinations of the short-term debt component and capital structure used in AFUDC calculations include:

- erroneously using the consolidated short-term debt and CWIP book balances of the pipeline's parent entity rather than the regulated pipeline's own book balances;
- only using a portion of the pipeline's short-term debt borrowed in the month such debt was incurred, rather than the total outstanding short-term debt amount;
- failing to include in short-term debt the borrowings from a corporate cash management program; and
- using a capital structure and resulting AFUDC rate that exceeded the pipeline's overall rate of return underlying its recourse rates (PA21-3-000, FA19-6-000, PA16-4-000).

Errors relating to the equity and long-term debt components include adding a pipeline's subsidiary's undistributed earnings and adding accumulated other comprehensive income (particularly unrealized gains and losses) to the equity component, which is contrary to Commission policy, and including unamortized discounts on long-term debt in the long-term debt component (FA18-2-000). Audits of natural gas pipelines also continue to find errors that directly impact, usually by inflating, the amount of CWIP, which causes excessive AFUDC as well as other negative effects.

Such errors involving CWIP have included:

- allocating overhead costs to construction projects (*i.e.*, CWIP) not based on actual time expended or on representative time studies;
- including unpaid contract retention accruals in CWIP balances despite that CWIP should include amounts actually paid by the pipeline, not amounts remaining unpaid; and
- recording as CWIP contributions in aid of construction (CIAC) received from third parties (FA19-9-000, FA17-6-000).

Affiliate Transactions. Accounting for an affiliate transaction, including a shared service provided by a parent company, is to be in the account that matches the nature of the specific transaction and its associated cost, as required by General Instruction No. 14 in the Uniform System of Accounts, Transactions with Associated Companies. Audits are identifying that some gas companies are recording *all* affiliate transaction costs to a single account (often Account 923 or 930.2), rather than dividing affiliate transaction costs among the appropriate nonoperating, operating and maintenance, or administrative and general accounts based on the differing natures of the affiliate transactions. Recording affiliate transaction costs in a single account results in incorrect accounting and can lead to recovering nonoperating expenses in cost of service; improper functionalization of operating and maintenance and administrative and general costs; improper rates for costs of service; and undermining the comparability of financial reporting results between one natural gas company and another (PA21-3-000, FA21-1-000, FA18-2-000).

General Accounting. Other common accounting findings include: (1) improperly classifying as operating expenses the non-operating expenses associated with employment discrimination settlements (FA15-16-000); donations, penalties/fines, and lobbying activities (PA21-3-000, FA21-1-000, FA19-9-000, FA19-6-000, FA17-6-000); and membership dues (FA19-6-000, FA18-2-000); (2) misclassification of costs within general and administrative expenses and operating expenses as general and administrative expenses (FA21-1-000, FA19-9-000, FA18-2-000, PA16-4-000, PA16-2-000); and (3) improperly accounting for replacement of minor items of property as capital expenses (FA18-2-000).

Reporting and Filing. Recent audits have found that some natural gas pipelines did not comply with the financial reporting requirements of the FERC Form No. 2. Reporting was inaccurate or incomplete (required information and footnote disclosures omitted) for various schedules supporting financial reporting (PA21-3-000, FA21-1-000, FA19-9-000, FA18-2-000, FA17-6-000, PA16-4-000, PA16-2-000). Other reporting matters pertained to: (1) unfiled nonconforming service agreements and cash management agreements (FA17-6-000); (2) inaccurate reporting of balances within fuel retainage quantity filings (FA19-9-000, PA16-4-000); (3) failing to file journal entries with the Commission for approval of the sale and purchase of an operating unit or system (FA15-16-000); and (4) failing to make required filings to show the inputs and calculations that support adjustments to company fuel use percentages (FA21-1-000).

OIL INDUSTRY

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

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

Commission's review of the five-year index.[51] Oil pipeline audits have identified noncompliance in the following areas:

Carrier and Noncarrier Property. Carrier property represents assets used to provide interstate and intrastate transportation of crude oil and other petroleum products. This includes property that is inactive or not in current use but held for future use within a reasonable time under a definite plan for pipeline operations. Property or assets that are not used in carrier operations or held for future use with a definite plan are considered noncarrier property and, as such, should be excluded from Page 700. Recent audits have found that oil pipelines have misclassified idled property that has no definite plan for future carrier use in Account 30, Carrier Property, rather than Account 34, Noncarrier Property. Related accrued depreciation should have been reclassified from Account 31, Accrued Depreciation-Carrier Property, to Account 35, Accrued Depreciation-Noncarrier Property. Oil pipelines also did not retire carrier and noncarrier property when it was no longer used and useful in carrier operations. These errors resulted in overstated carrier property and depreciation expense, which also overstated rate base and other inputs in the cost of service on Page 700 (PA21-4-000, FA20-5-000, FA19-10-000, FA19-4-000, FA18-1-000, FA16-7-000).

Depreciation Rates and Studies. Under 18 C.F.R. Part 352, General Instruction 1-8, oil pipelines are required to conduct their own depreciation studies and to request approval of new depreciation rates, or to change existing depreciation rates. In accordance with 18 C.F.R. Part 352, General Instruction 1-8(b), Depreciation Accounting – Carrier Property, companies are required to use the composite method of depreciation unless they receive specific approval from the Commission to use the component method. Recent audits have found that oil pipelines have not complied with these Commission regulations by: (1) using depreciation rates not approved by the Commission (PA21-4-000, FA20-5-000, FA20-4-000, FA19-5-000, FA18-1-000, FA16-6-000); (2) using the component method rather than composite method of depreciation without Commission approval or misapplying the component method of depreciation (FA20-5-000, FA19-10-000); and (3) using outdated and stale depreciation studies, leading to depreciation rates not aligning with the actual service lives of carrier property, and leaving certain asset groups with negative book values (FA19-5-000, FA16-5-000).

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

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

to the misclassification of: (1) charitable donations, fines/penalties, and lobbying activities as operating rather than non-operating expenses (PA21-4-000, FA20-5-000, FA19-10-000, FA19-5-000, FA19-4-000, FA16-7-000, FA16-6-000); (2) affiliate transaction mark-ups as operating rather than non-operating expenses (FA16-7-000, FA16-4-000); and (3) material and infrequent transactions and casualty and other losses involving oil spills as normal, rather than material and infrequent, operating expenses (FA16-6-000).

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

Pipeline Loss Allowance (PLA) and Gravity Shrinkage Deduction (GSD). Oil pipeline tariffs provide for the retainage of PLA and GSD from receipts of shippers' oil on pipeline systems. PLA is retained to cover oil lost during transportation due to evaporation, measurement inaccuracies, and other operational losses. GSD is retained to cover density differences in an individual shipper's oil compared to the density of the common stream of oil being transported in the pipeline. Oil pipelines incorrectly accounted for and reported activities associated with PLA and GSD, which resulted in omitting the interstate portion of the revenues and expenses associated with these activities from Page 700 (PA21-4-000, FA20-5-000, FA19-10-000, FA19-4-000), and a lack of transparency in reporting the sales of excess oil retainage in the FERC Form No. 6 (FA16-6-000).

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

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

Commission approval for a prior period adjustment to retained earnings. Recent audits have found that oil pipelines did not comply with these reporting and filing requirements: (1) FERC Form No. 6 reporting was inaccurate or incomplete (required information and footnote disclosures omitted) for various schedules (FA21-4-000, FA20-5-000, FA20-4-000, FA19-10-000, FA19-5-000, FA19-4-000); (2) oil pipelines inaccurately reported input balances or misapplied interstate allocation percentages on Page 700 (FA20-5-000, FA20-4-000, FA19-10-000, FA18-1-000, FA16-7-000); (3) oil pipelines failed to file cash management agreements (FA20-4-000); and (4) oil pipelines did not file journal entries with the Commission for approval for the purchase of distinct operating systems (FA19-10-000) or seek Commission approval to adjust retained earnings (FA16-7-000).

Oil Tariff Provisions. Oil pipelines did not comply with certain tariff rates and procedures; specifically, pipelines: (1) charged incorrect rates for transportation service using intermediate delivery points (FA15-4-000, FA14-1-000) and for other interstate movements on stated paths in the tariff (FA18-1-000, FA16-5-000, FA15-4-000); and (2) incorrectly applied prorationing procedures when allocating capacity among shippers (PA21-4-000, FA16-6-000, FA16-5-000).

D. Audit Matters

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

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

In FY2023, DAA completed 9 audits of public utility, natural gas, and oil companies covering a wide array of topics. The audits resulted in 68 findings of noncompliance and 332 recommendations for corrective action and directed an estimated $33,334,342 in refunds and other recoveries. Specifically, DAA directed $19,758,618 to be refunded to jurisdictional customers and prevented inappropriate costs estimated at $13,575,724 from being potentially collected through future customer rates. These refunds and other recoveries addressed DAA findings concerning, among other subjects, the improper application of merger-related costs; lobbying, charitable donation, membership dues, and employment discrimination settlement costs; improper labor overhead capitalization rates; accounting for production-related or distribution-related expenses as general or transmission-related expenses; pending income tax refunds being treated as prepayments; and compliance with the Commission's AFUDC regulations.

Besides these refunds and other recoveries, audit recommendations directed improvements to the audited companies' internal accounting processes and procedures, financial reporting for accuracy and transparency, web site postings, and efficiency of operations. Collectively, these refunds, other recoveries, and recommendations prevented unjust charges in jurisdictional rates and provided procedural and process enhancements that benefit ratepayers and market participants.

Feedback on Audit Process

Suggestions or comments related to DAA's audit process may be emailed to QualityAssuranceFeedback@ferc.gov. This mailbox is maintained by DAA's Quality Assurance group, and emails are treated confidentially.

The 9 audits summarized below were completed in FY2023 and provide a sample of the types of findings and results that DAA issues. Further samples are contained in prior years' enforcement reports. The complete audit reports are publicly available in the Commission's eLibrary system.[52] In addition, a directory with copies of recently issued audit reports, arranged by calendar year of issuance and industry, can be accessed at https://www.ferc.gov/audits.

1. Formula Rates

***Public Service Company of Colorado (PSCo),* Docket No. FA22-3-000.** At PSCo, DAA evaluated compliance with: (1) approved terms, rates, and conditions of PsCo's transmission formula rate; (2) accounting requirements of the Uniform System of Accounts (Public Utilities); (3) reporting requirements of the FERC Form No. 1; and (4) the requirements in Preservation of Records of Public Utilities and Licensees under 18 C.F.R. Part 125.[53] The audit identified six findings and 34 recommendations that required PSCo to take corrective action. The company did not contest the six findings and 34 recommendations.

The six findings covered the following areas: (1) capitalizing overhead costs to Account 107, Construction Work in Progress – Electric, using an allocation method that was not based on the actual time that employees were engaged in construction activities or on a study of the time actually engaged during a representative period, as required by General Instruction No. 9 and Electric Plant Instruction No. 4, resulting in charging costs to Account 107 that did not have a definite relation to construction; (2) improperly recording costs associated with the operation and maintenance of a jointly-owned generating station as general A&G expenses in Account 930.2, Miscellaneous General Expenses, rather than correctly classifying and recording the costs as generation function O&M expenses, resulting in overstating ATRR and overbilling transmission customers; (3) misclassifying various expenses, resulting in overstating ATRR and annual production revenue requirements (APRR) and overbilling customers, including: improperly recording lobbying expenses in Account 923, Outside Services, rather than in correct Account 426.4, Expenditures for Certain Civic, Political and Related Activities; improperly recording PSCo employees' labor and related costs spent supporting charitable activities in tax and A&G expense accounts rather than in correct Account 426.1, Donations; improperly recording the lobbying and charitable contribution portions of trade association membership dues in Account 930.2, Miscellaneous General Expenses, rather than in, respectively, correct Accounts 426.4 and 426.1; and improperly

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

[53] *Pub. Serv. Co. of Colo.*, Docket No. FA22-3-000 (June 21, 2023) (delegated letter order).

recording the costs of general advertising – here, a goodwill campaign – in Account 923, Outside Services Employed, rather than in correct Account 930.1, General Advertising Expenses; (4) improperly recording the revenues/reimbursements and expenses associated with providing mutual aid services to other utilities, resulting in overstating ATRR and APRR and overbilling customers; (5) improperly recording compromise settlement payments relating to claims of alleged employee discrimination in Account 920, Administrative and General Salaries, and in Account 925, Injuries and Damages, instead of in Account 426.5, Other Deductions, resulting in overstating ATRR and APRR and overbilling customers; and (6) improperly including Account 216.1, Unappropriated Undistributed Subsidiary Earnings, and Account 219, Accumulated Other Comprehensive Income, in determining the equity component of its AFUDC rate calculation, and improperly recording ADIT amounts related to equity AFUDC gross-up in Account 282, Accumulated Deferred Income Taxes – Other Property, instead of Account 283, Accumulated Deferred Income Taxes – Other.

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

***Oklahoma Gas and Electric Company (OG&E)*, Docket No. FA22-5-000.** At OG&E, DAA evaluated compliance with: (1) approved terms, rates, and conditions of OG&E's transmission formula rate; (2) requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Part 101; (3) reporting requirements of the FERC Form No. 1 under 18 C.F.R. § 141.1; and (4) the requirements in Preservation of Records of Public Utilities and Licensees under 18 C.F.R. Part 125.[54] The audit identified eight findings and 44 recommendations that required OG&E to take corrective action. The company did not contest the eight findings and 44 recommendations.

The eight findings covered the following areas: (1) improperly including the amortization of certain retail regulatory assets in its wholesale transmission formula rate inputs without obtaining Commission authorization, resulting in overstating OG&E's ATRR and overbilling transmission customers, which retail regulatory assets included distribution system storm damage expenses, Smart Grid Web Portal costs, Sooner Scrubber Project deferred costs, pension regulatory asset costs approved for deferral and recovery in retail rates by State regulators, and a regulatory asset approved by the Oklahoma Corporation Commission for inclusion in retail rates relating to an investment tax credit; (2) improperly including the amortization of AFUDC associated with transmission incentive projects as inputs to OG&E's transmission formula rate when the Commission had already authorized these projects for CWIP in rate base treatment, resulting in OG&E overstating its ATRR by approximately $1.8 million and overbilling transmission customers; (3) improperly removing accumulated depreciation amounts from Account 108, Accumulated Provision for Depreciation of Electric Utility Plant (Major Only), without Commission approval, and improperly including asset retirement costs (ARCs) recorded in Electric Plant in Service balances in the transmission formula rate base without Commission approval; (4) improperly calculating OG&E's AFUDC rate by incorrectly: (i) calculating its short-term debt cost rate; (ii) including Account 226, Unamortized Discount on Long-Term Debt, in long-term debt balances; and (iii) recording ADIT amounts related to equity AFUDC gross-up in Account 282, Accumulated Deferred Income Taxes – Other Property, instead of correct Account

[54] *Okla. Gas and Elec. Co.*, Docket No. FA22-5-000 (July 25, 2023) (delegated letter order).

283, Accumulated Deferred Income Taxes – Other, and as a result over accruing AFUDC and overbilling transmission customers; (5) misclassifying various expenses, resulting in overstating ATRR and overbilling customers, including: (i) improperly recording the lobbying portion of membership dues in Account 921, Office Supplies and Expenses, and Account 930.2, Miscellaneous General Expenses, rather than in correct Account 426.4; (ii) improperly recording consulting fees relating to a request for proposals to procure gas fuel for generation plants (a production or generation function cost) in Account 923, Outside Services Employed, rather than in the correct production/generation accounts; (iii) improperly including employee severance payment costs in Account 930.2, Miscellaneous General Expenses, rather than correctly allocating the costs among the specific functional accounts of the departments (i.e., generation, transmission, distribution, and general) to which the employees charged their labor; (iv) improperly recording the expenses of advertising directed at retail customers in Account 923, Outside Services Employed, an input to OG&E's ATRR, rather than in correct Account 913, Advertising Expenses, which was not included in OG&E's transmission formula rate; and (v) improperly recording a portion of premiums for workers' compensation insurance coverage to Account 926, Employee Pensions and Benefits, rather than correct Account 925, Injuries and Damages; (6) improperly recording compromise settlement payments paid to resolve claims of alleged employment discrimination in Account 925, rather than correct Account 426.5, Other Deductions, a below-the-line account, resulting in overstating ATRR and overbilling transmission customers; (7) improperly recording upfront fees associated with revolving credit facility agreements in Account 181, Unamortized Debt Expense, and improperly recording quarterly commitment fees in Account 431, Other Interest Expense, rather than in Accounts 186 and 930.2, and in addition, improperly including the amortization of the upfront and quarterly commitment fees associated with the revolving credit facility agreements in the calculation of short-term debt interest expense used to compute OG&E's AFUDC; and (8) not properly following the FERC Form No. 1 reporting instructions and, therefore, not accurately reporting all required information.

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

***Commonwealth Edison Company (ComEd)*, Docket No. FA21-5-000.** At ComEd, DAA evaluated compliance with: (1) approved terms, rates, and conditions of its transmission formula rate; (2) accounting requirements of the Uniform System of Accounts (Public Utilities) in 18 C.F.R. Part 101; (3) reporting requirements of the FERC Form No. 1 under 18 C.F.R. § 141.1; and (4) the requirements in Preservation of Records of Public Utilities and Licensees under 18 C.F.R. Part 125.[55] The audit identified 11 findings and 61 recommendations that required ComEd to take corrective action. ComEd is contesting three of the findings – findings 3, 4, and 7 (in part) – described in the next paragraph.

The eleven findings covered the following areas: (1) improperly recording in various A&G and O&M accounts the following: (i) approximately $6.1 million in costs relating to jobs, vendor subcontracts, and monetary payments associated with those jobs and subcontracts paid for purposes of influencing the Speaker of the Illinois House of Representatives rather than recording

[55] *Commonwealth Edison Co.*, Docket No. FA21-5-000 (July 27, 2023) (delegated letter order).

such expenditures in correct Account 426.4, (ii) approximately $231,000 associated with internal employee costs relating to preparing for and responding to DOJ, SEC, and Illinois Commerce Commission (ICC) investigations; and (iii) approximately $88,000 (of the approximate total $43 million) of outside consultant expenses relating to responding to the DOJ, SEC, and ICC investigations, thereby overstating ATRR and customer billing charges; (2) improperly recording in Account 186, Miscellaneous Deferred Debits, payments totaling $109 million made to the City of Chicago by ComEd under two settlement agreements, and improperly amortizing these payments to Account 930.2, rather than recording these payments in appropriate distribution O&M accounts or in Account 426.5, Other Deductions, resulting in overstating ComEd's ATRR by approximately $9.3 million from 2007 to 2020 and overbilling wholesale transmission customers; (3) applying improper accounting and transmission formula rate treatment of AROs and ARCs; specifically, (i) removing accumulated depreciation amounts from Account 108, Accumulated Provision for Depreciation of Electric Utility Plant, without Commission approval, and excluding some of the removed amounts from transmission formula rate calculations; (ii) including ARCs recorded in Electric Plant in Service balances in transmission formula rate base without Commission approval; and (iii) including depreciation and accretion, respectively, of the recorded ARC and ARO balances in its wholesale transmission formula rate calculations without Commission approval, resulting in ComEd overstating its annual transmission revenue requirements by approximately $14 million from 2007 to 2020 and overbilling wholesale transmission customers; (4) capitalizing overhead costs to Account 107, Construction Work in Progress – Electric, using an allocation method that was not based on the actual time that employees were engaged in construction activities or on a study of the time actually engaged during a representative period, as required by General Instruction No. 9 and Electric Plant Instruction No. 4, resulting in charging costs to Account 107 that may not have had a definite relation to construction; (5) charging the cost of materials and supplies that ComEd determined to be in excess, no longer usable, or obsolete for its business operations to Account 930.2, Miscellaneous General Expenses, while continuing to retain most of these same materials and supplies in its inventory; (6) improperly recording penalties paid for violations of city codes and ordinances in various O&M and A&G accounts, rather than in correct Account 426.3, Penalties, resulting in overstating ATRR and overbilling wholesale transmission customers; (7) making the following accounting misclassifications, the first three of which caused ATRR and customer billings to be overstated: (i) improperly recording charitable contributions in Account 921, Office Supplies and Expenses, rather than in correct Account 426.1, Donations; (ii) improperly recording costs of a retail customer service platform known as Smart Energy Services in Account 921, Office Supplies and Expenses, rather than in correct Account 908, Customer Assistance Expenses (Major Only; (iii) improperly recording in Account 930.2, Miscellaneous General Expenses, which is used in part as an input to ComEd's transmission formula rate and computation of its ATRR, distribution-related costs associated with implementation of the following initiatives: Advanced Metering Infrastructure (AMI), including the Smart Meter Mesh Network; the Residential Time of Use (TOU) project; the State of Illinois energy efficiency program; and manufactured gas plant (MGP) remediation costs; (iv) improperly recording in Account 930.2 expenses for environmental stewardship efforts to transform spaces under ComEd's transmission lines into open habitats, which should have been recorded in the transmission O&M accounts; and (v) allocating expenses relating to the prevention and mitigation of environmental hazards between transmission and distribution operations using a 35% to 65% division but lacking documentation to support this allocation, contrary to General Instruction No. 2's requirement that each entry recorded in the accounts shall be supported by such detailed information as will permit ready identification, analysis, and verification; (8) improperly recording approximately $180,000 of compromise settlement payments relating to claims of alleged employment discrimination in Account 925, Injuries and Damages, instead of correct Account 426.5, Other Deductions, resulting in overstating ATRR and customer billings; (9) when calculating AFUDC, improperly including Account 216.1, Unappropriated Undistributed Subsidiary Earnings, in the equity balances, improperly using quarter-end book balances for long-term debt and common equity rather than correctly using calendar year-end balances, and improperly recording amounts relating to equity AFUDC ADIT in Account 254, Other Regulatory Liabilities, and Account 190, Accumulated Deferred Income Taxes, instead of in correct Accounts 182.3, Other Regulatory Assets, 282, Accumulated Deferred Income Taxes – Other Property, and 283, Accumulated Deferred Income Taxes –Other; (10) improperly netting the excess and the deficient ADIT related to the corporate tax rate change and associated adjustments required due to the Tax Cuts and Jobs Act of 2017 and recording the amount that resulted from this improper netting in Account 254, Other Regulatory Liabilities, thereby affecting the transparency and accuracy of the excess and the deficient ADIT amounts reported in ComEd's FERC Form No. 1 filings; and (11) not properly following the FERC Form No. 1 instructions and, therefore, not reporting all required information, thereby affecting the transparency, accuracy, and usefulness of certain pages of the FERC Form No.1 reports.

As a result of the audit, ComEd is making refunds to transmission customers and revising accounting and reporting policies and procedures in the identified areas of noncompliance, except for the findings which ComEd is contesting, which are findings 3, 4, and the portion of finding 7 relating to MGP remediation expenses.

2. Gas Tariff & Accounting

***Gulf South Pipeline Company, LLC (Gulf South)*, Docket No. PA21-3-000.** At Gulf South, DAA evaluated compliance with: (1) Gulf South's FERC Natural Gas Act (NGA) Tariff, including the rate schedules, terms and conditions, and service agreements; (2) the accounting requirements of the Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the NGA, under 18 C.F.R. Part 201; and (3) the reporting requirements of the FERC Form No. 2 under 18 C.F.R. § 260.1. The audit identified 12 findings and 52 recommendations that require Gulf South to take corrective action, and two other matters.[56] The company did not contest the 12 findings and 52 recommendations.

The 12 findings covered the following areas: (1) incorrectly calculating reservation charge credits for six out of eleven non-*force majeure* maintenance events declared during the audit period, resulting in overpayments and underpayments in reservation charge credits to the impacted customers; (2) not including the cost rates and balances associated with short-term debt borrowings from its cash management program in the computation of its maximum AFUDC rate, resulting in applying AFUDC rates that exceeded the Commission's maximum allowable rate by approximately 7.43 percent and 9.25 percent in 2019 and 2020, respectively, and over accruing the AFUDC on capital projects by approximately $12.4 million in these two years; (3) improperly recording preliminary survey and investigation expenses (PS&I) as an operating expense in each accounting period these costs were incurred, rather than recording these costs in Account 183.2,

[56] *Gulf S. Pipeline Co., LLC*, Docket No. PA21-3-000 (Sept. 18, 2023) (delegated letter order).

Other Preliminary Survey and Investigation Charges, resulting in misclassifying and overstating monthly operating expenses and reducing the transparency and comparability of PS&I data reported in Gulf South's FERC Form No. 2 reports and potentially impacting the accuracy of Gulf South's future cost-of-service rates; (4) improperly classifying certain costs allocated from its parent companies in the form of a management fee in Account 923, Outside Services, rather than recording these costs in the appropriate operating, nonoperating, and A&G expense accounts based on the nature of each cost, and not keeping adequate records and documentation to support the allocation percentage used by its parent company for certain labor charges allocated to Gulf South assertedly based on a time study; (5) certain industry and trade association membership dues were incorrectly allocated in full by a parent entity to Gulf South, resulting in Gulf South incorrectly recording on its books the shares of such dues related to other affiliated companies, and Gulf South misclassified both the lobbying and non-lobbying portions of some industry and trade association membership dues in incorrect operating expense Account 923, Outside Services Employed, and Account 850, Operation Supervision and Engineering, instead of correct Account 930.2, Miscellaneous General Expenses, for the nonlobbying portion and Account 426.4, Expenditures for Certain Civic, Political and Related Activities, for the lobbying portion; (6) improperly accounting for certain political and lobbying expenses in operating expense accounts, rather than nonoperating expense accounts, and using incorrect allocation percentages in assigning outside service costs under the Modified Massachusetts Formula (MMF); (7) improperly accounting for various charitable contributions as construction costs in Account 107, Construction Work in Progress—Gas, rather than in correct Account 426.1, Donations; (8) improperly accounting for various promotional and informational expenses in Account 921, Office Supplies and Expenses, and in various 800 series accounts (Accounts 814, 850, 853, and 856) rather than correct Accounts 909, Informational and Instructional Advertising Expenses, and 930.1, General Advertising Expenses; (9) with respect to operating leases that contained rent abatement or other changes in the rental rate during the lease term, improperly recognizing the lease expense using a straight-line method over the lease term rather than correctly recognizing the lease expense based on actual lease payments, and also not recording equal offsetting amounts for the principal portion of the lease payments to reduce right of use (ROU) assets and related lease liabilities, as required by General Instruction No. 20 and Docket No. AI19-1-000 guidance; (10) not consistently applying Gulf South's property units listing for the replacement of a retirement unit, and instead applying the company's capitalization policy, which contradicted the property units listing, resulting in treating the replacement of a retirement unit as a replacement of a minor unit of property and expensing, rather than capitalizing, the costs associated with the retirement unit replaced; (11) not timely ceasing depreciation of and removing the costs from its books of compressor stations declared as either abandoned, idled, or in a reserve status and continuing to classify these compressor stations as gas plant in service for several years, rather than transferring them to future use property or nonutility property, resulting in overstating gas plant in service and impacting the accuracy of other account balances; and (12) not reporting complete and accurate information on certain supporting schedules of the FERC Form No. 2, thereby reducing the overall accuracy and usefulness of the information in the FERC Form No. 2 submissions.

The two other matters related to the following: (1) during the audit period, Gulf South made three abandonment filings, one filing prompted by the merger of two existing affiliated natural gas pipelines, and the other two filings prompted by an acquisition and a sale of an operating unit or system. For each abandonment proceeding, Gulf South subsequently filed the required accounting entries reflecting the transaction within six months of approval of the transaction, but filed them in the original certificate proceeding (CP) docket rather than in a new accounting (AC) docket as directed by the Commission. Prospectively, Gulf South should file such accounting entries in an AC docketed proceeding; and (2) during the audit period, some customers took gas off Gulf South's pipeline system without making a nomination or providing any other notification to Gulf South. This occurred on multiple occasions with customers that contracted for firm and interruptible transportation service for gas used at their LNG and power generating plants. As provided in Gulf South's tariff, these customers could have contracted for NNS and NNS-A, as these transportation services do not require a nomination. However, Gulf South indicated that these customers did not contract for NNS or NNS-A. Accordingly, Gulf South should consider modifying its tariff to incorporate procedures that clarify this operational practice, offer additional transportation services, or require customers to contract for existing tariff services. Effectuating one or more of these options will provide the same flexibility to all similarly situated customers to meet their operational needs.

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

3. Oil Tariff & Accounting

***Sunoco Pipeline L.P. (Sunoco),* Docket No. PA21-4-000.** At Sunoco, DAA evaluated compliance with: (1) Sunoco's FERC oil tariffs, including the rate schedules and rules and regulations governing the transportation of oil and any other interstate operations and charges; (2) the reporting requirements of the FERC Form No. 6, in 18 C.F.R. § 357.2, including Page 700, Annual Cost of Service Based Analysis Schedule; and (3) the accounting requirements of the Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act, in 18 C.F.R. Part 352. The audit identified 10 findings and 37 recommendations that require Sunoco to take corrective action.[57] The company did not contest the 10 findings and 37 recommendations.

The 10 findings covered the following areas: (1) incorrectly calculating shippers' historical shipments (shipper history) and improperly classifying new shippers as regular shippers, resulting in incorrect allocation percentages that overallocated capacity to some shippers and underallocated capacity to other shippers when prorating pipeline capacity; (2) not properly filing all tariff records in the Commission's electronic eTariff database (eTariff) and not properly coding and numbering several filings in eTariff, impacting shippers' and other interested parties' ability to access and review the tariffs through eTariff; (3) improperly accounting for certain noncarrier property as carrier property, which affected the accuracy of several account balances reported in the FERC Form No. 6, including several line inputs used to derive cost of service on Page 700, resulting in Sunoco overstating total cost of service by $104,113 (2018), $1,432,068 (2019), and $3,289,888 (2020); (4) improperly recording in operating expense and carrier property accounts certain non-operating and unrelated costs – namely: costs for penalties and settlements resulting from violations of laws and regulations, donations and sponsorships, amortization of acquisition premiums, and services performed for an affiliate that were unrelated to Sunoco's business,

[57] *Sunoco Pipeline, LP*, Docket No. PA21-4-000 (Sept. 29, 2023) (delegated letter order).

resulting in overstating total cost of service on Page 700 of FERC Form No. 6, ranging between $562,806 to $1,828,678 per year during the audit period; (5) not using Commission-approved depreciation rates, not depreciating one of the carrier's primary property accounts, and not updating depreciation rates despite significant changes in the carrier's pipeline system causing Sunoco's depreciation study and rates to become outdated and no longer relevant; (6) incorrectly omitting pipeline loss allowance (PLA) revenues recorded in Account 230, Allowance Oil Revenues, from Page 700, Line 10, Interstate Operating Revenues, resulting in understating annual interstate operating revenues reported on Page 700 of FERC Form No. 6 by approximately $5,509,857 (2018), $4,662,188 (2019), and $3,054,798 (2020); (7) including capitalized interest twice by including both interest during construction (IDC) and AFUDC in the determination of cost of service on Page 700 of FERC Form No. 6 filings, resulting in overstating total cost of service on Page 700 by $1,706,995 and $1,986,041 in 2019 and 2020, respectively, and compounding this overstatement by calculating AFUDC on the IDC amounts; (8) improperly including Asset Retirement Costs in rate base on Page 700 of FERC Form No. 6 filings, resulting in overstating cost of service on Page 700 by $2.9 million to $4.4 million annually during the audit period; (9) making errors and departing from Opinion No. 154-B and other Commission guidance that affected the accuracy of most inputs and balances on Page 700, including incorrectly including certain amortization in Line 1, Operating and Maintenance Expenses, rather than Line 2, Depreciation Expense, and including working capital items (oil inventory, materials and supplies, and prepayments) in rate base using end of year amounts, rather than a 13-month average in accordance with Commission general policy resulting in overstating cost of service by approximately $424,000 (2018), $371,000 (2019), and $131,000 (2020); and (10) not reporting complete information in certain supporting schedules of the FERC Form No. 6 and not accurately accounting for certain activities that, while not impacting the determination of cost of service on Page 700, did reduce the accuracy and usefulness of the information reported elsewhere in Sunoco's FERC Form No. 6 filings.

As a result of the audit, Sunoco restated and footnoted certain balances in its FERC Form No. 6 filings; conducted and submitted to the Commission a depreciation study; performed analyses to determine the full scale of impacts to Page 700 and various accounts caused by certain errors; reclassified idled pipeline segments and submitted proposed accounting entries supporting adjustments; submitted journal entries supporting the reclassification of expenses; and strengthened ECPL's accounting and reporting procedures relating to the identified findings, particularly relating to Page 700 of its FERC Form No. 6 filings, thereby improving shippers', the Commission's, and other parties' use of Page 700.

4. Electric Tariff & Accounting

***Tucson Electric Power Company (TEP)*, Docket No. FA21-3-000.** At TEP, DAA evaluated compliance with: (1) the accounting requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Part 101 and (2) the reporting requirements of the FERC Form No. 1 under 18 C.F.R. § 141.1. The audit identified 11 findings and 54 recommendations that required TEP to take corrective action.[58] The company did not contest the 11 findings and 54 recommendations.

[58] *Tucson Elec. Power Co.*, Docket No. FA21-3-000 (Nov. 4, 2022) (delegated letter order).

The 11 findings covered the following areas: (1) inappropriately accounting for electric distribution maintenance expenses in Account 570, an account for transmission expenses and used as an input to TEP's transmission formula rate, instead of in Account 592, resulting in overstating ATRRs during the audit period by approximately $3.66 million; (2) improperly accounting for research, development, and demonstration (RD&D) expenses in Account 909, Informational and Instructional Advertising Expenses (Major Only), and Account 923, Outside Services Employed, instead of in Account 549, Miscellaneous Other Power Generation Expenses (Major Only), resulting in overstating ATRRs during the audit period by approximately $55,000; (3) improperly accounting for and reporting in plant accounts capital costs of generating facilities that TEP had retired, prior to the end of their useful life, rather than recording the unrecovered plant balance in Account 182.2, Unrecovered Plant and Regulatory Study Costs, and without seeking authorization from the Commission for proposed accounting entries for this early retirement of the generating assets, resulting in overstating ATRRs during the audit period by approximately $11,500; (4) misclassifying expenditures relating to a compromise settlement agreement regarding claims of alleged employment discrimination in various administrative and general (A&G) expense accounts rather than (below the line) in Account 426.5, Other Deductions, resulting in overstating TEP's ATRR by approximately $39,300; (5) improperly accounting for and reporting in A&G and operational and maintenance (O&M) expense accounts $211,000 in costs that should have been allocated to one or more of TEP's affiliates, thereby subsidizing non-regulated operations and overstating ATRRs during the audit period by approximately $19,300; (6) misclassifying costs associated with lobbying, advertising expenses, and corporate memberships as recoverable A&G expenses, thereby overstating ATRRs during the audit period by approximately $26,500, and misclassifying other A&G expenses between A&G accounts with disparate formula rate treatments resulting in instances of over- and understating ATRRs; (7) improperly recording O&M expenses relating to power generation activity in transmission function Accounts 921, Office Supplies and Expenses, and 931, Rents, rather than in the proper power generation O&M Accounts 502, Steam Expenses; 506, Miscellaneous Steam Power Expenses; and 514, Maintenance of Miscellaneous Steam Plant, and improperly recording miscellaneous transmission and distribution O&M charges in Accounts 903, Customer Account Expense, 921, and 931, rather than in correct Accounts 566, Miscellaneous Transmission Expenses (Major Only), and 588, Miscellaneous Distribution Expenses, for transmission and distribution, respectively, resulting in overstating ATRRs during the audit period by approximately $58,800; (8) failing to use Commission-approved depreciation rates to calculate depreciation expense for plant balances in Account 397, Communication Equipment; (9) improperly accounting for and reporting the accretion and depreciation expense associated with asset retirement obligations (AROs) in Account 108, Accumulated Provision for Depreciation of Electric Utility Plant (Major Only), instead of correctly recording such expenses in Account 182.3, Other Regulatory Assets; (10) improperly accounting for and reporting vendor discounts for early payment of various invoices in Account 921, Office Supplies and Expenses, resulting in understating various A&G expense account balances and overstating various O&M expense and electric plant in service account balances; and (11) not reporting complete and accurate information as required in certain supporting schedules in TEP's FERC Form No. 1 reports.

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

***WEC Business Services LLC (WEC) and Affiliates*, Docket No. FA21-2-000.** At WEC, DAA evaluated compliance with: (1) cross-subsidization restrictions on affiliate transactions under 18 C.F.R. §§ 35.43 and 35.44; (2) service company accounting, recordkeeping, and FERC Form No. 60 reporting requirements under 18 C.F.R. Parts 366, 367, and 369; (3) the accounting requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Parts 101 and 141; and (4) preservation of records requirements for holding companies and service companies under 18 C.F.R. Part 368.[59] The audit identified eight findings and 46 recommendations that required WEC to take corrective action. The company did not contest the eight findings and 46 recommendations.

The eight findings covered the following areas: (1) improperly accounting for merger-related capital costs in operating capital expenditure accounts, and improperly accounting for the related, resulting depreciation in operating expense accounts, rather than accounting for these merger-related costs in non-operating Account 426.5, Other Deductions, resulting in the inappropriate recovery of approximately $1.42 million of merger-related costs from wholesale customers during the 2015-2020 hold harmless period; (2) improperly accounting for expenses relating to a reserve for charitable contributions to be made upon a director's death as directors' fees and recording same in Account 930.2, Miscellaneous Expenses, rather than in the account for voluntary charitable contributions, Account 426.1, resulting in overcharging wholesale customers by approximately $22,000 from 2018 to 2020; (3) misclassifying various G&A expenses and nonoperating expenses at the service company level, thereby causing them to be misclassified on the books of affiliated operating utilities and, in some cases, erroneously charged to wholesale customers, including: improperly accounting for lobbying expenses in operating expense Account 921; improperly accounting for general advertising expenses in Accounts 921, 923, 928, and 930.2 rather than in correct Accounts 909 and 930.1; improperly recording trade association membership dues in Accounts 921 and 928, rather than correct Account 930.2; improperly recording expenses relating to formal regulatory commission proceedings in Account 923 rather than correct Account 928, and improperly including in Account 928 expenses unrelated to any formal commission regulatory proceedings; and improperly recording as a debt expense in Account 431 the cost of recurring fees paid to rating services for ongoing credit analysis for short-term debt that should have been recorded in Account 930.2; (4) improperly allocating costs associated with non-regulated affiliates to the WEC electric utilities, resulting in the electric utilities overstating their wholesale cost-based revenue requirements and overcharging wholesale customers; (5) improperly recording annual payments under a settlement agreement, which payments permitted the relicensing and ongoing operation of a steam-generation plant, in Account 930.2, which is a residual account for the costs of utility general management functions, rather than in correct Account 506, Miscellaneous Steam Power Expenses (Major Only), which although still a residual account, provides an accounting location for miscellaneous steam power expenditures, resulting in understating steam power generation expenses and overstating A&G expenses as reported in FERC Form No. 1 and the service company's FERC Form No. 60; (6) improperly accounting for certain lease costs in the current period instead of amortizing those costs over the lease term, and misclassifying certain leasehold expenses resulting in overstating ATRR and overcharging wholesale customers; (7) improperly accounting for vendor early payment discounts and for corporate credit card rebates as credits to Account 431, Other Interest Expense, and Account 921,

[59] *WEC Bus. Servs., LLC*, Docket No. FA21-2-000 (Feb. 10, 2023) (delegated letter order).

Office Supplies and Expenses, rather than recording these credits in the accounts in which the costs were originally recorded, and not maintaining sufficient records to demonstrate the distribution of discounts and rebates to A&G, O&M, and capital cost accounts; and (8) inaccurately reporting information on Schedule V – Accounts Receivable from Associate Companies and omitting information from Schedule XVIII – Analysis of Billing – Non-Associate Companies in FERC Form No. 60 filings.

As a result of the audit, WEC and certain affiliates made refunds to wholesale transmission customers and revised accounting policies and procedures in the identified areas of noncompliance.

***Puget Sound Energy, Inc. (PSE)*, Docket No. PA21-5-000.** At PSE, DAA evaluated compliance with: (1) the terms and conditions of PSE's Open Access Transmission Tariff; and (2) the regulations regarding Open Access Same-time Information Systems prescribed in 18 C.F.R. Part 37. The audit identified two findings and four recommendations that required PSE to take corrective action.[60] The company did not contest the two findings and eight recommendations.

The two findings covered the following areas: (1) not filing four non-conforming transmission service agreements with the Commission within 30 days after electric service had commenced, as required by 18 C.F.R. §§ 35.1(g) and 35.3(a)(2); and (2) not timely posting several quarterly transmission service study metrics reports on OASIS during the audit period, as required by 18 C.F.R. § 37.6(h)(2).

As a result of the audit, PSE revised policies and procedures in the identified areas of noncompliance.

5. Audits with No Findings of Noncompliance

***PacifiCorp*, Docket No. PA22-2-000.** At PacifiCorp, DAA evaluated compliance with conditions established in the May 31, 2019, delegated order authorizing PacifiCorp's acquisition from Cedar Springs Transmission LLC of the Cedar Springs II wind generating facility. The audit also evaluated PacifiCorp's compliance with: (1) the tariff requirements governing its FERC jurisdictional rates; (2) accounting regulations in the Uniform System of Accounts (public utilities) in 18 C.F.R. Part 101; and (3) financial reporting regulations in 18 C.F.R. Part 141, focusing primarily on the transactions and costs associated with the acquisition transaction.[61] The audit did not identify any findings of noncompliance that required PacifiCorp to take corrective action.

E. Accounting Matters

DAA administers the Commission's accounting programs established for the electric, natural gas, and oil industries as vital components of the Commission's strategy of setting just and

[60] *Puget Sound Energy, Inc.*, Docket No. PA21-5-000 (Aug. 18, 2023) (delegated letter order).

[61] *PacifiCorp*, Docket No. PA22-2-000 (June 29, 2023) (delegated letter order).

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

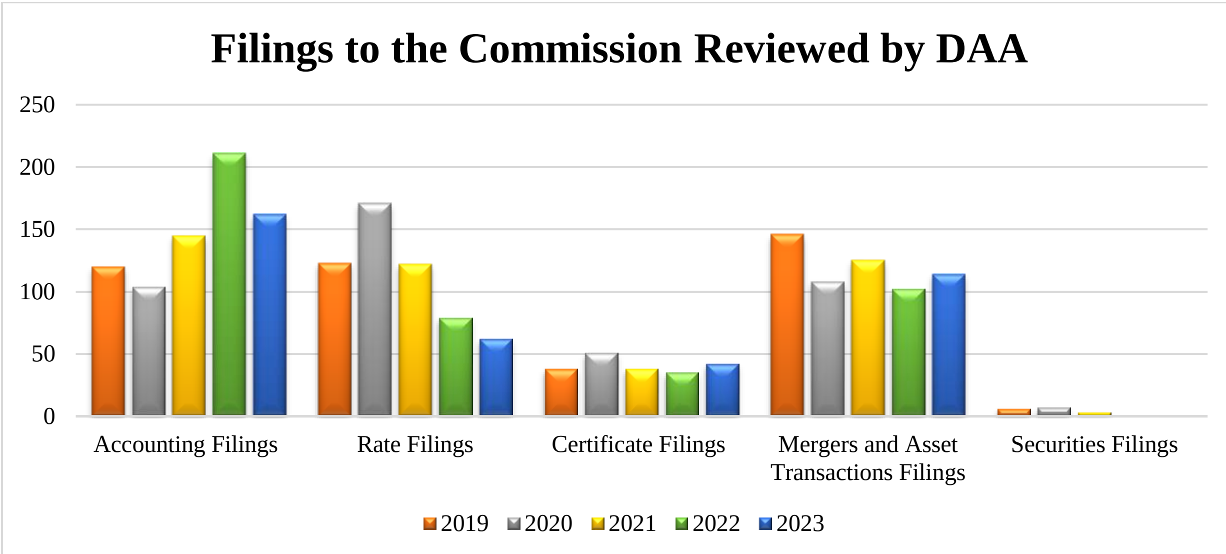
A substantial part of DAA's accounting workload involves coordination across various Commission program offices to provide regulatory accounting input and analysis on various types of filings made by jurisdictional entities. In addition, DAA provides accounting expertise to Commission program offices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

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

1. Overview of FY2023 Filings Reviewed by DAA

In FY2023, DAA advised and acted on 380 proceedings at the Commission covering various accounting matters with cost-of-service rate implications, such as accounting for mergers and divestitures, asset transactions, early plant retirements, AFUDC, pensions and other post-retirement benefits, asset retirement obligations, and income taxes. These proceedings included requests for declaratory orders, natural gas certificate applications, merger and acquisition applications, electric and natural gas rate filings, and requests for accounting approval, guidance, and interpretation. In many of these cases, DAA served in an advisory role to other program offices in identifying and analyzing the accounting implications of those requests.

Additionally, in FY2023, DAA participated with the Commission's program offices in several rulemaking proceedings.[62] Over the past five years, DAA has reviewed approximately 2,100 Commission proceedings to ensure proper accounting is followed and to advise the Commission of potential rate impacts.

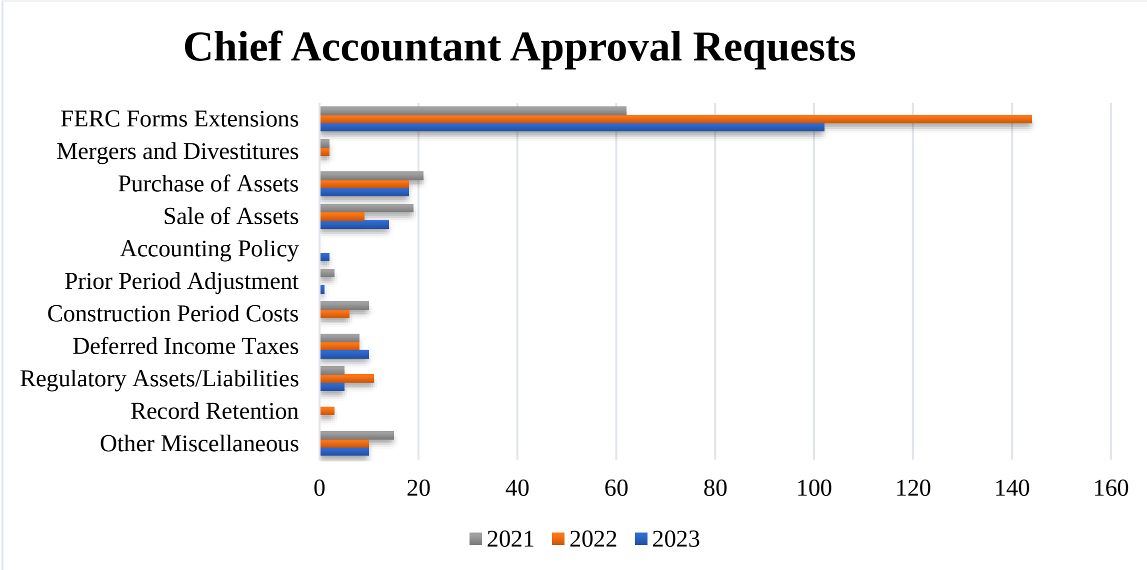


2. Requests for Approval of the Chief Accountant

In FY2023, DAA acted through the Chief Accountant's delegated authority on 162 accounting or reporting filings requesting approval (or authorization, acceptance, acknowledgement, confirmation, or interpretation) of a proposed accounting treatment or financial reporting matter.[63] The topics covered in these filings addressed various issues within the Commission's accounting and financial reporting requirements for electric, natural gas, and oil pipeline entities. Of note in FY2023, there was a continued high volume of accounting filings related to asset sales and acquisitions, similar to FY2022. These accounting requests also related to adjustments of ADIT balances; acquisition and sale of facilities; adjustment to plant balances; changes in corporate ownership; early/premature retirement of plant assets; cancelled/abandoned projects; deferral in regulatory asset and liability accounts; accounting for unusual or infrequent items; acquisition of carrier and noncarrier assets; reclassification of certain plant assets between functions; impairment of carrier and noncarrier property; impairment of goodwill; asset retirement obligations; certain significant prior period adjustments; and waiver requests related to the calculation of AFUDC.

[62] These proceedings include a Final Rule in Order No. 898 related to the accounting and reporting treatment of certain renewable energy assets (via a NOPR under Docket No. RM21-11-000), which is discussed in more detail later in this report, an NOI seeking comment on the rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses (Docket No. RM22-5-000), and a Final Rule in Order No. 893 related to incentives for advanced cybersecurity investment (Docket No. RM22-19-000).

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



3. Rate Proceedings

In FY2023, DAA participated in 62 rate proceedings that continued to predominately involve electric formula rate proceedings, but also included natural gas and oil rate proceedings. DAA worked with other Commission program offices to discuss various accounting and financial issues and their effects on rates. Because many electric and natural gas rates are derived from accounting information in the FERC Form Nos. 1 and 2, DAA sought to ensure that accounting information in the rate proceedings was presented consistently with the Commission's requirements. DAA also worked with other program offices to enhance the transparency of financial information affecting formula rates so that all stakeholders had an opportunity to review the costs included in rates. Recurring areas of emphasis in DAA's review of rate filings during FY2023 included stranded costs associated with early plant retirements; asset retirement obligations; pensions and postretirement benefits other than pensions; taxes and tax credits; depreciation; leases; sale-leasebacks; prepayments; capitalization of costs; capital structure and cost of service considerations; and allocation of expenses to production, transmission, and distribution.

4. Certificate Proceedings

In FY2023, DAA reviewed 42 natural gas pipeline certificate applications seeking various Commission authorizations, including to: construct, own, and operate new pipeline facilities; acquire pipeline facilities; abandon pipeline facilities in place, by removal, or by sale; and authorization to operate natural gas facilities. DAA continued to work with other Commission program offices to assist in the development of just and reasonable rates by reviewing construction costs and other items used to determine initial recourse rates, including operation and maintenance expenses, depreciation, taxes, and overall rate of return. In reviewing such information during FY2023, DAA's focus continued to be whether applicants followed Commission accounting requirements related to asset abandonment, construction, AFUDC, contributions in aid of construction (CIAC), regulatory assets and liabilities, leases, and asset retirement obligations.

5. Merger and Acquisition Proceedings

In FY2023, DAA reviewed 114 applications from public utilities under Section 203 of the FPA consisting of a combination of merger and divestiture transactions, and asset acquisition and sales transactions. The accounting review for merger transactions entails examining proposed accounting for costs to execute the transaction, costs to achieve integration and synergies, purchase accounting adjustments to assets and liabilities, and goodwill. DAA examines whether the accounting is consistent with any hold-harmless or other rate requirements discussed in a merger order. DAA also reviews accounting entries to determine that they provide enough transparency to the Commission and all interested parties for evaluating the impact on rates. For asset acquisition and sales transactions, staff conducts accounting reviews to examine whether applicants properly accounted for the purchase and sale of plant assets consistent with Commission regulations. The review focuses on whether jurisdictional entities maintain the appropriate original cost and historical accumulated depreciation of acquired utility plant and properly record acquisition premiums or discounts and gains or losses. DAA also consistently reminded jurisdictional entities to file accounting entries timely, within six months of a finalized merger or asset transaction, in accordance with Electric Plant Instruction No. 5 and the requirements of Account No. 102, Electric Plant Purchased or Sold.

6. Accounting Inquiries

In FY2023, DAA responded to 191 accounting inquiries from jurisdictional entities, industry trade associations, legal and consulting firms, other regulators, academia, other Commission program offices, and other stakeholders on various accounting and financial topics. Accounting inquiries are made through the Compliance Help Desk, the Accounting Inquiries phone line and email, or directly to DAA staff. Many accounting inquiries during FY2023 sought accounting and financial reporting direction on classification of certain costs, capital versus expense treatment of certain costs, functional classifications of plant, asset retirement obligations, leases, sale-leasebacks, depreciation, plant retirements, impairments, record retention, and operating unit or system accounting treatment. DAA responds to these accounting inquiries by providing informal accounting and financial reporting guidance based on Commission precedent and regulations, in addition to instructing individuals how to find documents and regulations using the Commission's eLibrary system[64] and Title 18 of the Code of Federal Regulations.[65] Such informal accounting and reporting guidance is not binding on the Commission and cannot grant waiver of a Commission regulation or order.

7. Renewable Energy Assets Final Rulemaking in Order No. 898

On June 29, 2023, the Commission issued a Final Rulemaking in Docket No. RM21-11-000, *Accounting and Reporting Treatment of Certain Renewable Energy Assets*, that modified the Commission's Uniform System of Accounts by creating new accounts for wind, solar, and other non-hydro renewable assets, establishing a new functional class for energy storage accounts, codifying the accounting treatment for renewable energy credits, and creating new accounts for

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

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

computer hardware, software, and communication equipment.[66] The Final Rule intends to increase transparency and improve the Commission's ratemaking processes, and the creation of these discrete accounts provides for more accurate information to be reported to the Commission and the public during the ratemaking process by enabling more reasonable estimates for the lifetimes of various types of plant in service and their recorded depreciation. The Final Rule has an effective date of January 1, 2025.

8. Commission Order No. 864 Compliance

On November 21, 2019, the Commission issued Order No. 864,[67] a final rule which requires public utility transmission providers with transmission formula rates under an OATT, a transmission owner tariff, or a rate schedule to revise those transmission formula rates to account for any changes caused by the Tax Cuts and Jobs Act of 2017. The Tax Cuts and Jobs Act, among other things, reduced the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018. This tax rate reduction resulted in a reduction in ADIT assets and liabilities on the books of most public utilities. Accordingly, public utilities are required to adjust their ADIT assets and ADIT liabilities to reflect the effect of the change in tax rates in the period that the change is enacted.[68] Furthermore, as a result of the federal income tax rate reduction, a portion of an ADIT liability that was previously collected from customers will no longer be due from public utilities to the IRS and is considered excess ADIT. Conversely, for public utilities that have an ADIT asset, the federal income tax rate reduction will result in a reduction to the ADIT asset, or deficient ADIT.

To adequately evaluate adjustments made to ADIT, Order No. 864 requires public utilities with transmission formula rates to make a filing demonstrating compliance with the final rule. A public utility can demonstrate that its formula rate already meets the requirements specified in the final rule, or it can make revisions to its formula rate to include: a mechanism to deduct any excess ADIT from or add any deficient ADIT to rate base; incorporate a mechanism to decrease or increase the income tax allowance by any amortized excess or deficient ADIT, respectively; and incorporate a new permanent worksheet that will annually track the information related to excess or deficient ADIT. Since issuance of the final rule, the Commission has received over 215 compliance filings to date, including approximately 40 in FY2023. DAA has actively supported the other program offices in the overall review and assessment of each compliance filing. DAA has provided its expertise to ensure, among other things, that public utilities properly

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[66] *See Acct. and Reporting Treatment of Certain Renewable Energy Assets*, Order No. 898, 183 FERC ¶ 61,205 (2023).

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

[68] *See* 18 C.F.R. §§ 35.24 and 154.305 (2022); *see also Regul. Implementing Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes*, Order No. 144, FERC Stats. & Regs. ¶ 30,254 (1981) (cross-referenced at 18 FERC ¶ 61,163), *order on reh'g*, Order No. 144-A, *FERC Stats. & Regs.* ¶ 30,340 (1982) (cross referenced at 15 FERC ¶ 61,142).

remeasure ADIT accounts to establish the excess or deficient ADIT, record a regulatory asset (Account 182.3) associated with deficient ADIT or a regulatory liability (Account 254) associated with excess ADIT,[69] properly account for the amortization of excess or deficient ADIT, and support adequate amortization periods for the return or recovery of excess or deficient ADIT, respectively.

F. Forms Administration and Compliance

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

1. Electric Quarterly Reports

Section 205 of the FPA, 16 U.S.C. § 824d (2018), and Part 35 of the Commission's regulations, 18 C.F.R. Part 35 (2023), 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.[70] The Commission extended the EQR filing requirement to apply to certain non-public utilities in Order No. 768.[71]

In FY2023, the Commission received EQR submittals from over 3,000 entities each quarter. DAA assesses whether sellers have timely complied with the requirements set forth in the multiple orders regarding EQR filings and, through automated validations, whether the data is accurate. DAA also reviews EQR issues that arise during audits and self-reports and submits candidate entities that do not timely file their EQRs to OEMR for possible revocation of MBR authority. In FY2023, DAA continued to work with information gathered during the public outreach sessions

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

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

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

related to the EQR Reassessment Project begun in 2020, which aims to review the current EQR reporting requirements and improve both the data being collected and the method of collection. During FY2023, staff also updated the EQR webpage and provided filing assistance to filers.

2. Financial Forms

DAA administers and oversees compliance with FERC Form Nos. 1, 1-F, 2, 2-A, 3-Q (gas and electric), 6, 6-Q, 60, and FERC-61. On June 20, 2019, the Commission issued a final rule adopting XBRL as the standard for filing FERC Form Nos. 1, 1-F, 3-Q (electric), 2, 2-A, 3-Q (natural gas), 6, 6-Q (oil), 60, and 714 (collectively, Commission Forms).[72] On July 17, 2020, the Commission issued an order adopting the final XBRL taxonomy, protocols, implementation guide, and other supporting documents and establishing an implementation schedule for filing the Commission Forms using the XBRL process. On October 1, 2021, the XBRL system went live, allowing filers to submit their 2021 third quarter filings using the XBRL process and to resubmit in XBRL any filing from Q3 2011 to the present. Since that time, filers have successfully submitted 2021 third and fourth quarter filings, all 2022 filings, and 2023 first and second quarter filings using the XBRL process.

During FY2023, the Commission received an estimated 2,582 financial forms submittals. As discussed above, on June 29, 2023, the Commission issued Order No. 898,[73] a final rule that amended the Uniform System of Accounts for public utilities and licensees to create new accounts for wind, solar, and other renewable generating assets; create a new functional class for energy storage accounts; codify the accounting treatment of environmental credits; and create new accounts within existing functions for computer hardware, software, and communication equipment. The Commission also amended the relevant FERC forms to accommodate these changes and required that public utilities use the accounting treatment codified in Order No. 898 in all applicable filings starting with the first quarter of 2025.

DIVISION OF ANALYTICS AND SURVEILLANCE

A. Overview

The Division of Analytics and Surveillance (DAS) develops surveillance tools, conducts surveillance, and analyzes transactional and market data to detect potential manipulation, anticompetitive behavior, and other anomalous activities in the energy markets. DAS focuses on: (1) natural gas surveillance; (2) electric surveillance; and (3) analytics for reviewing market participant behavior. The analysts, data scientists, and economists in DAS identify market participants whose conduct may potentially call for investigation or further Commission action. They do this not only by conducting surveillance and inquiries of the natural gas and electric markets, but also by reviewing market monitor referrals[74] and Hotline complaints against the non-

[72] *Revisions to the Filing Process for Comm'n Forms*, Order No. 859, 167 FERC ¶ 61,241 (2019).

[73] *Acct. and Reporting Treatment of Certain Renewable Energy Assets*, Order No. 898, 183 FERC ¶ 61,205 (2023).

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

public data available to the Commission. This internal review process reduces burden on the industry by resolving some matters without the need for investigation. When an investigation is opened, DAS staff participates in investigations with attorneys from DOI, providing detailed transactional analyses, market event analyses, and subject matter expertise.

To perform these functions, access to high quality, relevant, and timely data is essential. Since the creation of DAS in 2012, the Commission has been enhancing its data collection through orders, agreements, and subscription services in a manner designed to minimize burden on market participants. In Order No. 760, the Commission directed the ISOs/RTOs to provide, on an ongoing basis and in a format consistent with how the data is collected in each market, critical information on market bids, offers, and market outcomes.[75] On average, the Commission receives, on a non-public basis, approximately 26 gigabytes of data in more than 1,534 tables each day from the six organized markets combined. Each ISO/RTO database is different, and DAS is responsible for understanding the nuances of each database and preparing them for use in surveillance screens and analyses.

Similarly, pursuant to Order No. 771,[76] the Commission gained access to the electronic tags (eTags) used to schedule the transmission of electric power interchange transactions in jurisdictional wholesale markets by requiring that each covered eTag identify the Commission as a party authorized to review its contents. The Commission has access to approximately 16 million eTags and gains access to approximately 4,100 new eTags each day. The Commission also routinely receives non-public physical electric and natural gas market data from the Intercontinental Exchange (ICE) and a subset of the Large Trader Report from the Commodity Futures Trading Commission (CFTC) through a Memorandum of Understanding. DAS staff continue to use these data sources, EQR data, and data from a variety of subscription-based services, extensively.

B. Surveillance

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

[75] *Enhancement of Elec. Mkt. Surveillance and Analysis through Ongoing Elec. Delivery of Data from Reg'l Transmission Org. and Indep. Sys. Operators*, Order No. 760, 139 FERC ¶ 61,053 (2012).

[76] *Availability of E-Tag Info. to Comm'n Staff*, Order No. 771, 141 FERC ¶ 61,235 (2012).

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

1. Enhanced Surveillance Matters

In addition to these ongoing surveillance efforts, DAS also closely follows market conditions so that when there are disruptive events, such as periods of unusually high prices in the wholesale natural gas or electricity markets or dramatic weather events that impact those markets, DAS is prepared to conduct enhanced surveillance surrounding the events. This enhanced surveillance may involve DAS: (1) seeking additional data from ICE and/or market participants to augment its normal data feeds; (2) conducting outreach to market participants, other federal agencies, or state regulators; and/or (3) developing new screening methods that utilize additional data or account for the changes in the markets caused by the ongoing event. Depending on the events under review, this enhanced surveillance may involve coordinated efforts by both the natural gas and electric surveillance teams. In FY2023, DAS pursued two enhanced surveillance matters, one related to Winter Storm Elliot and one related to a period of high energy prices in the west during the winter of 2022-2023.

a. Winter Storm Elliott

DAS has been conducting enhanced surveillance to determine whether any market participants engaged in behavior that may constitute a violation, including market manipulation, during Winter Storm Elliott in December 2022. As part of this examination, DAS electric and natural gas surveillance staff worked together to analyze public and non-public data sources to evaluate market participant behavior. In addition, DAS staff coordinated closely with PJM and the Independent Market Monitor to obtain additional market information necessary for its analysis.

While staff ran and analyzed all surveillance screens for the storm period, staff scrutinized approximately six screens particularly closely. Among these screen metrics are indicators of avoided non-performance penalties, large uplift payments, economic minimum vs. emergency maximum parameters, and positions that benefited from increased congestion. In addition, staff analyzed registration-level behavior for demand response resources in PJM, focusing on the largest market participants that account for 75% of all cleared demand response capacity in the 2022/23 Delivery Year. In total, staff analyzed 57 screen trips related to the Winter Storm Elliott period. DAS staff also identified 37 units that did not receive non-performance penalties due to planned or maintenance outages and scrutinized the specifics of those outages.

DAS opened six inquiries stemming from its enhanced surveillance related to Winter Storm Elliot. These inquiries included outreach and data requests to plant personnel, marketers, and pipelines. As of the end of FY2023, DAS referred two matters to DOI for investigation as a result of these inquiries. Staff continues to analyze the data and information it has gathered as part of its inquiries. If, after completing its analysis, DAS determines that any additional market participants may have engaged in market manipulation or other violations, it will refer those matters to DOI for non-public investigations.

b. Winter 2022/2023 Western Energy Price Spike

DAS has been conducting an examination of western wholesale natural gas and electricity market activity starting in December 2022 during a period of natural gas and electricity price spikes to determine if any market participants engaged in market manipulation or other violations. DAS examined physical wholesale natural gas trade data and western non-RTO power market data from ICE, financial natural gas and electric positions from the Large Trader Report, and day-ahead electricity awards in CAISO using Order No. 760 data. In addition, DAS evaluated tips received through the Commission's Enforcement Hotline regarding potentially improper market participant behavior in the West. DAS also met with industry participants and public interest groups to discuss their concerns and coordinated with state and other federal agencies as appropriate.

During this volatile period, there was a significant increase in the total number of natural gas screen trips and surveillance alerts. For December 2022 alone, DAS staff examined 3,473 next-day natural gas market screen trips,[77] which resulted in 93 total natural gas market surveillance alerts that warranted a more thorough review to determine if a surveillance inquiry was necessary. As a result of DAS surveillance screening and examination of public and non-public information, DAS conducted ten inquiries into natural gas market participant behavior during the relevant period.

DAS also opened two inquiries in the western power markets, one focused on behavior within CAISO and one focused on behavior in the non-RTO west. In addition to reviewing existing screens with a focus on behavioral shifts during the relevant period, DAS staff also examined larger market-wide trends, including in demand, outages, hydro conditions, and imports/exports across the footprint, and regularly communicated with the CAISO Department of Market Monitoring. DAS staff also developed and utilized multiple new tools that focused on interactions between physical and financial power indices and physical Locational Marginal Prices (LMPs), as well as between physical power and natural gas spot and future pricing. Staff paid particular attention to changes in physical imports into CAISO, as well as changes in market heat rates between power and natural gas pricing. DAS staff from the natural gas and electric surveillance teams worked closely together on examining both market dynamics and specific market participant behavior, with a particular focus on integrating tools and expertise across both markets. These analyses were conducted to better examine whether any behavior in power or gas markets manipulated or caused undue harm.

As of the end of FY2023, DAS had referred one market participant to DOI for investigation. DAS staff continues to analyze the information gathered during these natural gas and electric market inquires to determine if other referrals are necessary.

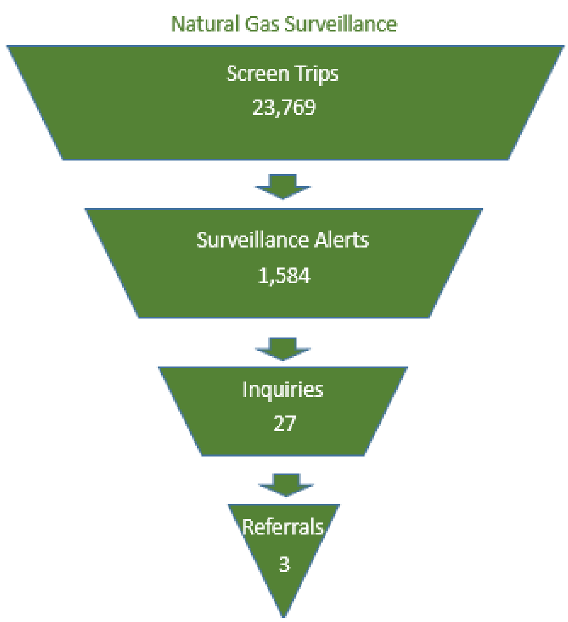
2. Natural Gas

DAS conducts surveillance and analysis of the physical natural gas markets to detect potential manipulation and anti-competitive behavior. Automated natural gas screens cover the majority of physical and financial trading hubs in the United States, monitoring daily and monthly markets. These screens and data feeds alert staff to anomalous market conditions and market participant

[77] These trips constituted 17.8% of the next-day screen trips for the fiscal year.

actions based on a review of supply, demand, pipeline utilization, operational notices, and physical and financial trading. Asset-based screens evaluate natural gas trading around infrastructure, including natural gas storage, pipeline capacity, and electric generation. In addition, DAS uses Large Trader Report data from the CFTC to weigh potential financial incentives that might encourage a market participant to engage in a manipulative scheme.

In FY2023, natural gas surveillance screens produced approximately 23,769 screen trips. Staff reviewed these automated screen trips, compared the conduct that triggered the screen trips to conduct at other hubs, and evaluated whether a fundamentals or physical asset-based explanation existed for the activity. DAS also reviewed other observed anomalous market outcomes for potential concern. In FY2023, staff reviewed and dismissed most of the screen trips as consistent with concurrent conditions. Where concerns remained, staff classified specific screen trips and market activity as "surveillance alerts." Staff documented 1,584 surveillance alerts that ranged in severity from low to high concern. When concerns persisted through more thorough review, DAS opened a surveillance inquiry, a more in-depth staff review of the specific trading behavior, which in some cases involves contacting market participants for additional information or to discuss the conduct at issue. In FY2023, DAS closed the two pending inquiries from FY2022 with no referral, opened 27 new natural gas surveillance inquiries, closed 19 of the FY2023 inquiries, and referred three matters to DOI for investigation. Five of these inquiries initiated in FY2023 remain open with DAS staff continuing its analytic work.[78]



3. Electricity

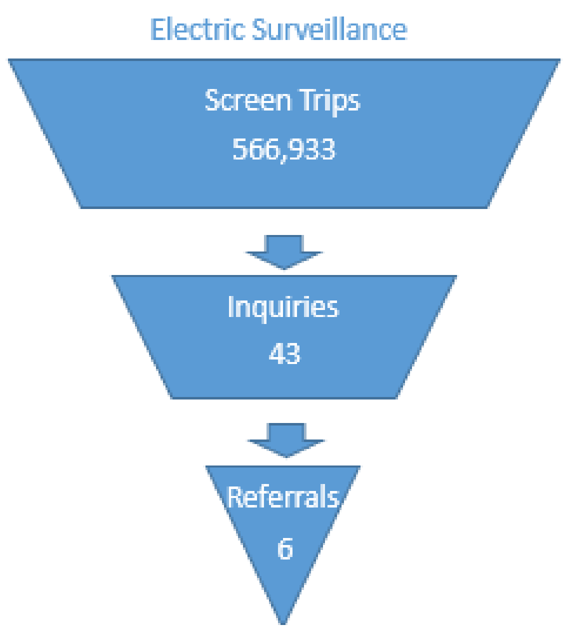
DAS accesses data from a variety of sources to screen for anomalies and potentially manipulative behavior in the ISO/RTO markets and bilateral wholesale electricity markets. During

[78] These totals include the Winter 2022/2023 Western Energy Price Spike Analysis related inquiries and referrals described above.

FY2023, staff ran monthly and weekly screens to identify patterns by monitoring the interactions between bids and cleared physical and financially settled electricity products. These screens identify financial transmission rights and swap-futures that settle against nodes that are affected by transmission constraints where market participants also trade virtuals, generate electricity, purchase electricity, or move power between Balancing Authorities.

During FY2023, staff continued to refine its processes for screening to detect: (1) uneconomic virtual transactions by node, zone, and constraint; (2) potential day-ahead and real-time market congestion manipulation that would benefit financial transmission rights in the ISO/RTO markets, synthetic real-time financial transmission rights, swap-futures positions for physical load, and generation portfolios; (3) anomalies in physical offer patterns, particularly in non-price based parameters; (4) abnormal out-of-market payments; (5) irregularities in capacity market sell offers; and (6) loss making physical fixed-price offer strategies in bilateral electricity markets. DAS also continued to bolster its tools to view patterns of behavior on a portfolio basis, across Balancing Authority borders and jurisdictional commodities.

Each month during FY2023, DAS ran and reviewed 107 electric surveillance screens; monthly, hourly, and intra-hour sub-screens; and reports for over 41,000 hub and pricing nodes within the six ISOs/RTOs. Additionally, DAS screened non-ISO/RTO markets and cross-ISO/RTO portfolio trades for potential manipulation. In reviewing screen trips and, in some cases, after communicating with the ISO/RTO MMUs, DAS identified 43 instances of market behavior that required further analysis through a surveillance inquiry. Of the 43 electric surveillance inquiries, six were referred to DOI for investigation, 25 were closed with no referral, and twelve remain open with DAS staff continuing its analytic work.



4. Illustrative DAS Surveillance Inquiries Closed with No Referral

Market Manipulation (Gas). Staff flagged a company's bidweek physical basis sales at Southeastern hubs, which crossed wide bid-ask spreads with large concentration and losses. The company held a short financial basis position entered into shortly before bidweek, complemented by the company's natural short from a facility consuming large amounts of gas, which served as incentives for lower prices. Staff spoke to the trader in those markets to understand the strategies behind the company's behavior and sourcing of gas supply. The trader explained that sales from gas storage inventory were hedged by its short basis futures position at one hub, and for the other hub, the trader pointed to a pipeline constraint separating its consuming facility from its supply, requiring sales of its supply upstream. DAS closed the inquiry based on these explanations.

Market Manipulation (Gas). DAS flagged a market participant selling gas in bidweek at a loss at a Midwest market hub while holding a significant short financial basis futures position, along with long physical gas priced at the first-of-month index. During outreach to the market participant, staff learned it had pipeline capacity that it sometimes flowed into the market area and that the long index risk of its physical index gas position was offset by swing futures sales that were not available in DAS's data feeds. After verifying and considering the additional information provided by the market participant, staff closed the matter.

Market Manipulation (Gas). Staff flagged a large buyer in the next-day markets at a Gulf hub for consistently buying at prices slightly above other market participants while holding leveraged index future length. Staff considered the participant's storage capacity and that the NYMEX futures market consistently showed prompt winter pricing far above current next-day and prompt-month pricing. However, after closer review, staff found the company lacked sufficient incentives in NYMEX-related futures and determined that the participant's purchases were likely used for economic storge injections. Therefore, DAS closed the inquiry.

Market Manipulation (Electric). While conducting routine surveillance screening of non-RTO physical power trading, DAS saw that one particular market participant had a very high and unprofitable buy-side concentration at Mid-C for multiple months, while holding a much larger benefitting financial long position. DAS was initially concerned that the market participant was attempting to drive up physical power pricing to benefit its larger financial positions. DAS made multiple phone calls to the market participant and requested trading data and financial models. DAS examined the trader's models and all inputs to the model and compared them to actual data, where available. The models' stark inaccuracy relative to the forward curve likely caused erroneous buy signals. Staff also talked with the both the physical and financial traders. For the main month of interest, the participant had a long-term sales contract which it needed to supply by purchasing in the physical markets. That, coupled with the short duration of suspect trading, led staff to close the inquiry.

Market Manipulation (Electric). DAS staff routinely screens for market participants potentially trading virtuals (and other physical products) to benefit larger FTR portfolios. While conducting routine screening, DAS noted that one market participant was trading virtual load in SPP at an interchange point with WECC while also having a larger FTR positions sinking at the same node. DAS staff further noted that all virtual trading in the relevant month was in the same direction and towards benefitting FTR positions. The market participant also traded physical interchange transactions at the node. The market participant consistently lost money trading virtuals over the course of the relevant month and its trading during this month was its largest virtual loss at a node where it had a leveraged financial position over the past twelve months. However, after additional analysis, staff determined that because there were no significant binding constraints in the area, the virtual volume was unlikely to have influenced LMPs. Therefore, DAS determined that manipulation was not likely to be the purpose of its behavior and ultimately closed the inquiry.

Market Manipulation (Electric). DAS staff regularly analyzes uplift credits paid to generators, demand response providers, and other resources, especially when uplift credits are relatively larger than those received by a similar peer group. In one example, a combined-cycle plant received almost three times as much day-ahead uplift as the next highest-paid generator. The generator received uplift because it did not recover its effective offer from the energy market during an operating day. Staff conducted further review of the plant's bidding behavior and found that its offers varied little over the month, both in absolute terms and relative to the price of gas, and its other parameters also varied little. Additionally, the offers were always below its reference levels. Therefore, staff decided to close the inquiry.

Market Manipulation (Electric). DAS Surveillance screens routinely examine border transactions that appear to be circular in nature and potentially entered into for the sole purpose of targeting various types of credits. One renewable energy company tripped the screen for several months at the PJM border. Staff ran an analysis on the market participant's interchange transactions, eTags, generation portfolio, and potentially benefiting positions and credits. During its research, staff determined that the company had two separate power purchase agreements that required it to export wind power from one of its projects while simultaneously importing hydro power from another of its projects. Therefore, staff closed the inquiry.

C. Analytics

During FY2023, DAS worked on approximately 60 investigations and 15 other matters involving inquiries or litigation. Some of these matters are discussed above in the DOI section. Many of the investigations in which DAS participated involved allegations of manipulation in the Commission-jurisdictional natural gas and electricity markets, or violations of tariff provisions that are intended to foster open, competitive markets. DAS staff's investigative activities generally include: (1) analyzing companies' portfolios, transactions, offer parameters, and other market actions; (2) identifying patterns of market activity that could indicate potential market manipulation or other violations and time periods in which they may have occurred; (3) assessing market conditions and other contextual information during periods of potential manipulation or other violations; (4) supporting DOI in taking investigative testimony; and (5) calculating the amount of unjust profits and market harm resulting from alleged violations to assist with determining appropriate disgorgement and a civil penalty recommendation under the Commission's Penalty Guidelines. Upon completion of the analytical process, DAS staff develops data-based explanations to inform the structure and substance of further investigation, settlement discussions, and recommended Commission actions. DAS staff also coordinates internally to refine and develop new screens to detect improper behavior discovered in prior investigations.

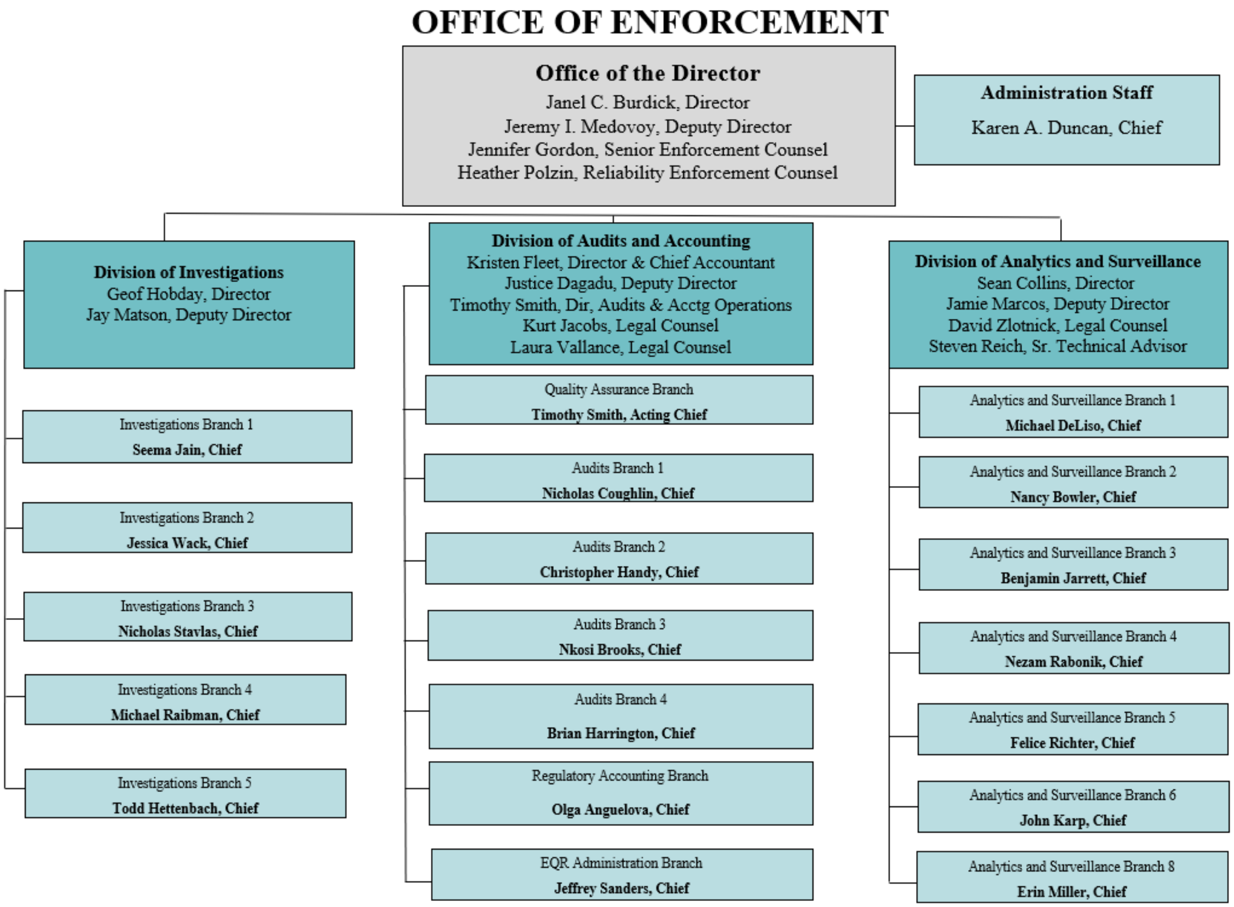
D. Market-Based Rate *Ex Post* Analysis

DAS conducts analytical reviews of wholesale electric MBR transactions to detect the potential exercise of market power. To accomplish this function in FY2023, DAS staff continued to develop, refine, and implement tools and algorithmic indicators to conduct ongoing analysis of transactional and other market data to ensure that jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential. This *ex post* analysis evaluated transactions against market fundamentals at the time of execution, with the primary goal of identifying outcomes that may be inconsistent with expectations of a competitive market, and thus an indication of a potential exercise of market power. Staff also analyzed transactions for compliance with market mitigation and rules such as the soft price cap in the Western Interconnection. Once such outcomes were identified, DAS coordinated with other Commission program offices to determine whether to recommend that the Commission take action to remedy market power or compliance concerns. DAS also used these tools to assist in analyzing applications and filings for MBRs, and other docketed proceedings. During FY2023, DAS staff reviewed over 2.6 million transactions filed through the Commission's EQRs by all market-based rate holders selling wholesale energy in the bilateral markets. DAS staff routinely analyzed the combined results of 30 statistical indicators to detect potential instances of the exercise of market power within 59 geographic regions or market hubs.

E. Data Management

During FY2023, DAS focused on two major data management and technology initiatives that began in FY2020. First, DAS continued to develop a data warehouse that simplifies Commission analyst use of Order No. 760 data. In FY2023, the data warehouse team completed development and validation on three additional data models and estimates completing 85% of the data warehouse in early FY2024. The team also focused on integrating the data warehouse into DAS's end-of-month power surveillance screening activities. Second, DAS supported its counterparts in the FERC Office of the Chief Information Office to migrate Commission analytics into the cloud. In the new cloud environment, Commission analysts will have state-of-the-art analytics tools and powerful data platforms to analyze voluminous Commission data assets. This year, DAS completed an inventory of its key data assets and its production screenings in preparation for the move.

APPENDIX A: OFFICE OF ENFORCEMENT ORGANIZATION CHART (CURRENT)



APPENDIX B: FY2023 CIVIL PENALTY ENFORCEMENT ACTIONS

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
Coaltrain Energy, L.P., Peter Jones, Shawn Sheehan, Robert Jones, Jeff Miller, Jack Wells, Docket No. IN16-4-000 and *FERC v. Coaltrain Energy, L.P. et al.*, Case No. 2:16-cv-732 (S.D. Ohio), Order Approving Stipulation and Consent Agreement, 181 FERC ¶ 61,031 (Oct. 11, 2022)	$4,000,000 disgorgement.	Following an Order to Show Cause proceeding, the Commission issued an Order Assessing Civil Penalties against Coaltrain Energy, L.P. (Coaltrain), Peter Jones, Shawn Sheehan, Robert Jones, Jeff Miller, Jack Wells. The order found that Coaltrain and the named individuals violated section 1c.2 of the Commission's regulations and section 222 of the Federal Power Act (FPA) by engaging in fraudulent Up To Congestion (UTC) transactions in PJM Interconnection L.L.C.'s energy markets. The Commission declined to find Adam Hughes to have individually violated section 1c.2. The order further found that Coaltrain Energy, L.P. violated 18 C.F.R. § 35.41(b) of the Commission's rules through false and misleading statements and material omissions relating to the existence of documents responsive to data requests and relating to the trading conduct at issue in the matter. Finally, the order assessed disgorgement and civil penalties as outlined for the violations. Coaltrain and the other named respondents elected the procedures of FPA section 31(d)(3), in which the Commission assesses a penalty and if the disgorgement and civil penalties are not paid within 60 days, the Commission institutes an action in federal district court to affirm the assessment. On October 11, 2022, the Commission issued an Order approving a settlement agreement between Enforcement and Coaltrain, finding that the Agreement resolves on fair and equitable terms the Commission's claims against Coaltrain and the named individuals for violations of section 222 of the FPA and the Commission's Anti-Manipulation Rule, and the Commission's Duty of Candor Rule, 18 C.F.R. § 35.41(b). Coaltrain neither admitted nor denied the alleged violations. The Agreement also resolves the Commission's lawsuit

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
		captioned *FERC v. Coaltrain Energy, L.P., et al.*, No. 2:16-cv-00732 (MHW) (S.D. Ohio).
Todd Meinershagen, Order Approving Stipulation and Consent Agreement, IN23-4-000, 181 FERC ¶ 61,251 (Dec. 21, 2022)	$525,451.93 disgorgement.	On December 21, 2022, the Commission issued an order approving the settlement of Enforcement staff's investigation of Todd Meinershagen, co-owner of a demand response aggregator (Company A), into whether Company A engaged in a fraudulent scheme to register demand response resources with MISO without those resources' knowledge or consent, and cleared Load Modifying Resource capacity that would not have performed if the resources were dispatched. Enforcement staff's investigation determined that Company A violated the Commission's Anti-Manipulation Rule and sections 69A.3.5 and 69A.7.1 of the MISO Tariff. Under the settlement agreement, Mr. Meinershagen stipulated to the facts and, based on the stipulated facts, as co-owner of Company A admitted to the violations by Company A described in the agreement.
FirstEnergy Corp., Docket No. IN23-2-000, Order Approving Stipulation and Consent Agreement, 181 FERC ¶ 61,277 (Dec. 30, 2022)	$3,860,000 civil penalty.	On December 30, 2022, the Commission issued an order approving the settlement of Enforcement staff's investigation of FirstEnergy Corp. (FirstEnergy). Enforcement investigated whether FirstEnergy omitted material information that was responsive to data requests issued by auditors from Enforcement's DAA during its audit of FirstEnergy and its affiliates and subsidiaries. Enforcement staff determined that FirstEnergy had omitted certain material information, which violated the Commission's Duty of Candor rule, 18 C.F.R. § 35.41(b), and the audit provisions of the Public Utility Holding Company Act of 2005, section 301 of the FPA, and the related provisions of Commission regulations at 18 C.F.R. § 366.2. Under the terms of the settlement, FirstEnergy stipulated to the facts and admitted to the violations.
PacifiCorp, Docket No. IN21-6-000, Order Approving Stipulation and	$4,400,000 civil penalty.	On December 30, 2022, the Commission approved a settlement agreement between Enforcement and PacifiCorp resolving Enforcement's investigation into PacifiCorp's lack of compliance with

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
Consent Agreement, 181 FERC ¶ 61,278 (Dec. 30, 2022)		the Reliability Standards that regulate transmission line clearances and the resulting Order to Show Cause proceeding. PacifiCorp stipulated to the facts in the Agreement and neither admitted nor denied Enforcement's determination that PacifiCorp violated Federal Power Act section 215(b)(1) and 18 C.F.R. § 39.2(b) (2022) between August 31, 2009 and August 2017 by failing to comply with FAC-009-1 R1, which requires a transmission owner, such as PacifiCorp, to establish and have facility ratings that are consistent with its Facilities Rating Methodology.
Leapfrog Power, Inc., Docket No. IN23-7-000, Order Approving Stipulation and Consent Agreement, 183 FERC ¶ 61,137 (May 22, 2023)	$73,880 civil penalty; $46,120 disgorgement.	On May 22, 2023, the Commission issued an order approving the settlement of Enforcement staff's investigation of Leapfrog Power, Inc. (LEAP). Enforcement staff investigated whether the company, a demand response aggregator, bid into CAISO's day ahead and real time markets in quantities of demand response that were not actually available, thereby violating CAISO's tariff. Enforcement concluded that a substantial majority of the bids LEAP made into CAISO's day ahead market from February through August 2019 respectively exceeded the registered metered load of LEAP's individual customers. Thus, Enforcement staff found that LEAP could not have reasonably expected to fulfill the bids in violation of CAISO tariff section 37.3.1.1. In the settlement, LEAP stipulated to the facts but neither admitted nor denied the alleged violation.

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
OhmConnect, Inc., Docket No. IN23-6-000, Order Approving Stipulation and Consent Agreement, 183 FERC ¶ 61,136 (May 22, 2023)	$141,094 civil penalty; $8,906 disgorgement.	On May 22, 2023, the Commission issued an order approving the settlement of Enforcement staff's investigation of OhmConnect, Inc. (Ohm). Enforcement staff investigated whether the company, a demand response aggregator, bid into CAISO's day ahead and real time markets in quantities of demand response that were not actually available, thereby violating CAISO's tariff. Enforcement concluded that a substantial majority of the bids Ohm made into CAISO's day ahead market from January through June 2018 exceeded the registered metered load of Ohm's individual customers. Thus, Enforcement staff found that Ohm could not have reasonably expected to fulfill the bids in violation of CAISO tariff section 37.3.1.1. In the settlement, Ohm stipulated to the facts but neither admitted nor denied the alleged violation.
Entergy Arkansas, LLC, Docket No. IN23-5-000, Order Approving Stipulation and Consent Agreement, 183 FERC ¶ 61,207 (June 22, 2023)	$52,000 civil penalty.	On June 22, 2022, the Commission issued an order approving the settlement of Enforcement staff's investigation of Entergy Arkansas, LLC (Entergy). Enforcement staff investigated whether Entergy submitted erroneous offers for its Hot Springs generation facility on April 21, July 14, and September 17 and 18, 2020. Enforcement staff determined that Entergy violated section 40.2.5e of the MISO Tariff and sections 35.41 (a) and 35.41(b) of the Commission's regulations by submitting Economic Minimum and Economic Maximum values that restricted MISO's ability to dispatch Hot Springs above or below a certain MW level, while indicating that Hot Springs was available for dispatch by MISO. Under the terms of the settlement, Entergy neither admitted nor denied the violations, but agreed to pay a civil penalty of $52,000 and undertake compliance monitoring for two years with the option of Enforcement to extend it an additional year.

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Pacific Summit Energy LLC (Pacific Summit), Docket No. IN23-9-000, Order Approving Stipulation and Consent Agreement, 183 FERC ¶ 61,236 (June 30, 2023)	$360,000 civil penalty; $154,623 disgorgement.	On June 30, 2023, the Commission issued an order approving the settlement of Enforcement staff's investigation of Pacific Summit Energy, LLC (Pacific Summit). Enforcement staff's investigation found that Pacific Summit engaged in a related-positions fraudulent scheme involving physical trading at Transco Zone 6 for the purpose of benefiting related financial positions during the October 2017 Bidweek (September 25-29, 2017), in violation of section 4A of the NGA, 15 U.S.C. § 717c-1, and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1. Under the terms of the settlement, Pacific Summit stipulated to the facts, but neither admitted nor denied the violations.
BP America Inc., BP Corporation North America Inc., BP America Production Company, BP Energy Company, Docket Nos. IN13-15-000, Order Approving Stipulation and Consent Agreement, 184 FERC ¶ 61,016 (July 7, 2023)	$10,750,000 civil penalty; $250,295 disgorgement.	On August 5, 2013, the Commission issued an OSC to several BP entities directing BP to show cause why the Commission should not: (1) find that BP violated the Commission's Anti Manipulation Rule and section 4A of the NGA by manipulating the next-day, fixed-price natural gas market at Houston Ship Channel from September 2008 to November 2008; (2) impose a civil penalty in the amount of $28,000,000; and (3) require BP to disgorge $800,000 of unjust profits. Following an OSC proceeding and a hearing before an ALJ, the Commission determined that BP engaged in market manipulation in violation of NGA section 4A and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1. Based on this determination and the findings in the ALJ hearing, the Commission ordered a civil penalty of $20,160,000 and disgorgement of $207,169. The Commission set forth these decisions in both its 2016 Order on Initial Decision and Rehearing and its 2020 Order Addressing Arguments Raised on Rehearing. BP appealed the Commission's 2020 Order to the United States Court of Appeals for the Fifth Circuit, which, in October 2022, affirmed the Commission's findings—including the finding of manipulation—with the exception of the Commission's jurisdictional rulings. On

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		jurisdiction, the Fifth Circuit held that the Commission could not base its market manipulation charges on BP's intrastate transactions, but that it properly asserted jurisdiction over 18 other transactions that were subject to NGA jurisdiction because they involved gas that had, at one time, been sold or transported interstate. The Fifth Circuit remanded the case to the Commission to calculate a civil penalty consistent with the Fifth Circuit's ruling on jurisdiction. Before the Commission took action with regard to the remand, BP and OE entered into a settlement. On July 7, 2023, the Commission approved a settlement resolving this matter. In the settlement, BP stipulates to the facts set forth in the settlement and acknowledges that an earlier Fifth Circuit opinion and order upheld the Commission's finding of manipulation as to 18 jurisdictional transactions.
NRG Energy, Inc., Docket No. IN23-3-000, Order Approving Stipulation and Consent Agreement, 184 FERC ¶ 61,026 (July 20, 2023)	$37,342 civil penalty; $32,658 disgorgement.	On July 20, 2023, the Commission issued an order approving the settlement with NRG Energy, Inc. (NRG). The order resolved Enforcement staff's investigation into whether NRG violated Attachment K-Appendix, section 6.6 of the PJM Tariff and 18 C.F.R. § 35.41(a) for failure to comply with Parameter Limited Schedule requirements in the operation of its combustion turbine units at its Fisk facility in Chicago, Illinois for the entirety of the delivery years beginning June 2018 and June 2019, and 10 months of the delivery year beginning June 2020 (the Delivery Years). Parameter limits establish operating standards for the non-dollar denominated portion of the offers for generation capacity resources such that the submitted offer parameters are at least as flexible as the parameter limits. These include, as applicable to Enforcement staff's investigation, a minimum notification time, which is the time needed by a generation resource from inception of the PJM dispatch notification to the initiation of the

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		start sequence for generation. PJM determined the minimum unit notification time for combustion turbine units to be 0.1 hours. Enforcement found that NRG did not comply with the 0.1-hour notification time required by PJM during the Delivery Years, and instead used a three-hour notification time. NRG stipulated to the facts but neither admitted nor denied the alleged violations.
Big River Steel LLC and Entergy Arkansas, LLC, Docket No. IN23-11-000, Order Approving Stipulation and Consent Agreement, 184 FERC ¶ 61,111 (Aug. 21, 2023)	$6,000,000 civil penalty; $15,940,399 disgorgement by Big River Steel. $5,033,780 disgorgement by Entergy.	On August 21, 2023, the Commission issued an Order approving the settlement resolving Enforcement staff's investigation of Big River Steel, LLC (Big River Steel) and Entergy Arkansas, LLC (Entergy) over Big River Steel's participation, through Entergy as its sponsoring utility, in a MISO demand response program. Big River Steel operates a large steel plant in Arkansas, which uses as much as 300 MW to run smelters and other equipment. During the period in question (2016-2022, with the exception of a few days in February 2021), Big River Steel took no steps to reduce its energy usage when it received demand response awards from MISO. But because its electricity use varied widely in the normal course of business, Big River Steel collected "demand response" payments when its load levels were lower than a baseline calculated according to a MISO formula. Enforcement staff determined that Big River Steel's failure to reduce its loads when it received demand response awards from MISO violated the ISO's tariff. Big River Streel and Entergy stipulated to the facts set forth in the settlement agreement but neither admitted nor denied a violation.

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Georgia-Pacific Crossett LLC, Docket No. IN23-12-000, Order Approving Stipulation and Consent Agreement, 184 FERC ¶ 61,151 (September 13, 2023)	$1,200,000 civil penalty.	On September 13, 2023, the Commission issued an order approving the settlement of Enforcement staff's investigation into whether Georgia-Pacific Crossett, LLC (Georgia-Pacific) violated any Commission statutes, rules, regulations, or orders, including but not limited to 18 C.F.R. section 157, in connection with the abandonment of the 19.5 mile, 8-inch diameter interstate pipeline at issue in Commission Docket No. CP22-16. Enforcement staff's investigation found that Georgia-Pacific (a) violated section 7(b) of the NGA, 15 U.S.C. § 717f(b), by abandoning the pipeline without Commission approval, and (b) violated section 157.5 of the Commission's regulations by failing to set forth all information necessary to fully advise the Commission concerning the company's request for approval to abandon the pipeline. In its abandonment application and in its later communications with the Commission in response to Commission information requests, Georgia-Pacific described abandonment activities that already occurred as if they would be occurring in the future. Under the terms of the settlement, Georgia-Pacific stipulated to the facts, but neither admitted nor denied the violations.