2024 Report on Enforcement

A Staff Report to the Commission

Docket No. AD07-13-018
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FEDERAL ENERGY REGULATORY COMMISSION
Office of Enforcement

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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 2024 (FY2024),[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 FY2024. However, not all of Enforcement's activities result in public actions by the Commission. Like reports in previous years, the FY2024 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 their 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. FY2024, the subject of this report, began on October 1, 2023, and ended on September 30, 2024.

[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*. at 22.

rates, terms, and conditions; (2) promote safe, reliable, and secure infrastructure consistent with the public interest; and (3) support the mission through organizational excellence.[5] 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 FY2024, 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 also 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 FY2024, Enforcement staff opened 30 new investigations, while bringing 10 pending investigations to closure without further action. During the fiscal year, Enforcement staff negotiated 12 settlements that were approved by the Commission, 11 of which resolved investigations for a total of approximately $78.58 million ($16.68 million in civil penalties and

[5] *Id.* at 7-9.

$61.9 million in disgorgement).[6] The remaining Commission-approved settlement resolved one district court litigation matter for $2.3 million in civil penalties.

In FY2024, DAA completed 10 audits of public utility, natural gas, and oil companies covering a wide array of topics. The audits resulted in 55 findings of noncompliance and 240 recommendations for corrective action, the majority of which were implemented within six months, and directed approximately $46 million in refunds and other recoveries. Additionally, during the fiscal year, DAA acted through the Chief Accountant's delegated authority or advised on 371 proceedings, including acting on 134 accounting filings requesting approval of a proposed accounting treatment or financial reporting matter and assisting with 237 rate, pipeline certificate, merger and acquisition, and debt and security issuance proceedings before the Commission. Also, in FY2024, the Commission received Electric Quarterly Report (EQR) submittals from nearly 3,500 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 FY2024, the Commission received approximately 2,549 such financial form submittals.

In FY2024, 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. During the fiscal year, natural gas surveillance screens produced approximately 16,426 screen trips, which resulted in 16 natural gas surveillance inquiries but no referrals to DOI for investigation. In total, DAS closed 19 natural gas surveillance inquiries and, as of the end of the fiscal year, continued its analytic work on two. Electric surveillance screens produced approximately 619,416 screen trips, which resulted in 47 electric surveillance inquiries and seven referrals to DOI for investigation. In total, DAS closed 30 electric surveillance inquiries with no referral and, as of the end of the fiscal year, continued its analytic work on 10. DAS also worked and provided analytical support on approximately 65 investigations with DOI and 10 other matters involving inquiries or litigation. During FY2024, 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.

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 and the 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

[6] A table of FY2024 Civil Penalty Enforcement Actions is attached as Appendix B to this report.

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.[7]

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.[8] Most of DOI staff's investigations are closed without further action.[9] On the other hand, if DOI staff finds that a violation occurred that warrants sanctions, it provides the subject with its preliminary findings 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 it gathered during the investigation.

If, after reviewing the subject's response to the preliminary findings and conducting any supplemental fact-finding, DOI staff continues to conclude that violations occurred and that the violations warrant sanctions, it consults with Enforcement management and seeks authority from the Director of Enforcement to enter into settlement negotiations with the subject.[10] If the Director

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

[8] The 10 investigations DOI closed with no action in FY2024 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.

[9] 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.

[10] The Commission revised its settlement authority process in February 2024 to grant the Director of Enforcement this authority. *See Enforcement of Statutes, Orders, Rules, and Regulations*, 186 FERC ¶ 61,109 (2024) (Policy Statement on Process for Resolving Investigations by Settlement). While the timeline of each investigation is different, the new process has resulted in greater

of Enforcement grants settlement authority, DOI staff seeks a negotiated resolution within the authorized settlement authority range and terms. Settlements are sought with terms designed to clearly inform the regulated industry about what conduct constitutes the violation. If Enforcement staff and the subject agree on a settlement offer, DOI staff will submit the offer to the Commission for approval, along with any information that may aid the Commission's determination as to whether to accept the settlement offer, such as details about the alleged violation(s), investigative facts, relevant law, and, if available, the subject's response to preliminary findings issued by DOI staff. The settlement offer will be executed by the subject and will remain non-public unless and until it is approved by the Commission. If the Commission approves the settlement offer, it issues a public order that states why the settlement serves the public interest and attaches the executed settlement agreement.

In FY2024, Enforcement resolved 11 investigations (including two identical matters that are listed in a single entry below) via settlements approved by the Commission. These settlements involved:

(1) a company violating the CAISO Tariff by submitting inaccurate physical maximum values for eight of its electric generating resources;

(2) a company violating section 205 of the Federal Power Act and Part 35 of the Commission's regulations by submitting more than 100 late filings to the Commission;

(3) two companies failing to comply with the MISO Tariff provision requiring market participants to follow MISO directives to change their output;

(4) a company violating the NYISO Tariff by failing to timely report to the NYISO Corporate Credit Division two proceedings before state utility commissions;

(5) a company violating the Commission's Duty of Candor Rule, 18 C.F.R. § 35.41(b), by falsely submitting attestations to the ISO New England Internal Market Monitor;

(6) a company violating the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2, by repeatedly engaging in prohibited wash trades;

(7) two companies violating 18 C.F.R. § 35.41(b) and the NYISO Tariff by failing to timely inform NYISO of the existence of ongoing investigations by the New York Public Service Commission; [11]

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efficiencies for Enforcement and investigative subjects. For example, since issuance of the new policy, one investigation settled within a year of its commencement, and another settled within 13 months of its commencement. Investigative subjects are free to raise and explore potential resolution of an investigation, including through settlement, at any time during an investigation. Often investigative subjects choose to explore settlement possibilities early in an investigation and, to facilitate such discussions, will waive preliminary findings, or delay responding to them.

[11] These two companies entered into two separate settlement agreements.

(8) several companies violating the CAISO Tariff by deviating from CAISO's dispatch instructions when providing ancillary services;

(9) a company violating the Commission's Anti-Manipulation Rule by, among other things, submitting a false forced outage to avoid capacity market penalties; and

(10) a company violating the CAISO Tariff by submitting bids to CAISO when it was not reasonably expected to be capable of performing at the levels specified in the bids.[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, when applicable, 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. The Commisssion's current processes are described below, but the Commission is examining these procedures in light of the Supreme Court's recent decision in *SEC v. Jarkesy*, 144 S. Ct. 2117 (2024). That opinion found that the SEC's use of Administrative Law Judges (ALJs) to adjudicate securities fraud cases violated the Seventh Amendment's right to a jury trial.

Traditionally, under the NGA, the Commission can either rule on the pleadings or set the matter for hearing before an 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. In Federal Power Act (FPA) matters, the default is the same ALJ process described

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

[13] *See* 18 C.F.R. §§ 385.2201, 385.2202 (2024) (outlining the Commission's rules governing off-the-record communications and separation of functions). *See also* 5 U.S.C. § 554(d) (2014).

above. However, in an FPA proceeding, within 30 days following issuance of the OSC, a subject may elect an alternative process: a 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 FY2024, Enforcement staff was litigating one district court action in U.S. bankruptcy court—seeking to enforce the Commission's combined assessment of more than $20.25 million in penalties and disgorgement. Enforcement staff also fully resolved one district court action through settlement during FY2024. As of the end of the fiscal year, there were two enforcement-related NGA trial-type ALJ proceedings pending before the Commission, both of which are currently stayed. Further, during FY2024, there was one FPA-related OSC proceeding and one NGA-related OSC proceeding pending before the Commission. These litigation matters are described more fully below in DOI section B.

B. Significant Pending Matters

During 2024, DOI staff prepared briefs, reports, and other public filings related to litigation in federal courts and administrative proceedings before the Commission. During FY2024, DOI represented the Commission in two 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 proceedings before an ALJ, both of which are stayed. During FY2024, there were two other OSC proceedings pending before the Commission (one FPA-related and one NGA-related).

As of the end of FY2024, a total of approximately $16.8 million in civil penalties and $3.4 million in disgorgement of unjust profits, plus interest, remained pending in the federal court matters.

1. District Court Litigation

Since 2013, Enforcement has filed 10 enforcement actions in district courts across the country, including the *Powhatan* action that was still pending at the end of FY2024. 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 FY2024, 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.

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[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).

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 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 that "[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] While most enforcement actions conclude in settlements, 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 Powhatan Bankruptcy Court proceeding, including filing in August 2022 a proof of claim 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. The Commission concluded that the Vitol Defendants did so 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. The Vitol 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

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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.

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 to stay the litigation. The Vitol Defendants filed their answers on March 25, 2022. Discovery commenced on April 8, 2022.

The Vitol Defendants filed an interlocutory appeal with the United States Court of Appeals for the Ninth Circuit, and 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]

The parties executed a settlement agreement on December 13, 2023. The Commission approved the settlement agreement on January 4, 2024. Under the terms of the settlement, Vitol paid $2,225,000 and Corteggiano paid $75,000 in civil penalties for a total civil penalty payment of $2,300,000. The Commission dismissed the litigation with prejudice. The dismissal was entered by the court on January 23, 2024.[18]

2. Administrative Proceedings at the Commission

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

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

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

[18] A summary regarding the Vitol settlement can be found in DOI section C.

(jointly and severally with TGPNA, Total, and TGPL), and a $2,000,000 civil penalty against Tran (jointly and severally with TGPNA, Total, and TGPL).

In advance of the OSC, on January 27, 2016, Respondents filed a lawsuit in the United States District Court for the Western District of Texas, challenging (among other things) the Commission's authority to assess penalties for violations of the NGA.[19] After the case was transferred to the United States District Court for the Southern District of Texas, that court rejected Respondents' challenge on multiple grounds. Respondents appealed that dismissal to the United States Court of Appeals for the Fifth Circuit on September 26, 2016, which on June 8, 2017 affirmed the dismissal. Respondents subsequently sought rehearing in the Fifth Circuit *en banc*, 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 and then conducted discovery later that year. 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*, 52 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 March 10, 2023, the district court stayed both the district court and Commission proceedings pending the United States 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. The order further directed that the 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 18, 2023, the Chief Administrative Law Judge reassigned the proceeding to Judge Patricia M. French. The Commission proceeding otherwise remained stayed.

On June 27, 2024, the Supreme Court issued its decision in *SEC v. Jarkesy*, 144 S. Ct. 2117 (2024). On September 19, 2024, the Commission, citing *Jarkesy*, issued an order terminating the ALJ hearing procedures at the Commission (pending permission from the district court to do so in light of the district court's ongoing stay). The Commission stated that no trial-type proceeding

[19] 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 (2018), https://www.ferc.gov/legal/staff-reports/2018/11-15-18-enforcement.pdf.

would be conducted by a Commission ALJ in Docket No. IN12-17-000, nor would any subsequent initial decision, findings, or determinations be made in this proceeding by a Commission ALJ. The Commission stated that it was examining *Jarkesy*'s impact and expected to issue a further order about the status of this proceeding.

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 Carmen 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. 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 district court 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 remained stayed pending resolution of *Jarkesy* and is administratively closed without prejudice to it being reopened upon a motion by any party or to enter a judgement. The Commission proceeding also remains stayed. On July 12, 2024, attorneys for Rover Pipeline, LLC and Energy Transfer, LP filed a notice of decision, informing the U.S. District Court for the Northern District of Texas that the United States Supreme Court issued its decision in *Jarkesy*. The court has not taken any action since this filing.

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. This matter is pending before the Commission.

d) *Ketchup Caddy, LLC and Philip Mango, Docket No. IN23-14-000*

On February 21, 2024, the Commission issued an OSC directing Ketchup Caddy, LLC (Ketchup Caddy) and Philip Mango (Mango) to show cause why they should not be found to have violated section 222 of the FPA, 16 U.S.C. § 824v, along with section 1c.2 of the Commission's regulations, 18 C.F.R. § 1c.2, by engaging in a manipulative scheme to register demand response resources with the MISO without those resources' knowledge or consent, and why Ketchup Caddy should not be found to have violated sections 69A.3.5 and 69A.7.1 of the MISO Tariff by offering uncontracted resources into the annual planning resource auctions that MISO uses to procure capacity necessary to maintain the reliability of the MISO grid. The OSC proposes civil penalties and disgorgement as follows: $25,000,000 civil penalty against Ketchup Caddy; $1.5 million civil penalty against Mango; and $506,502 in disgorgement, plus interest, by Mango. On April 20, 2024, Enforcement staff filed a motion for summary disposition with the Commission. On July 26, 2024, the Commission issued an order directing the Secretary of the Commission to serve the OSC on Ketchup Caddy and Mango and amending their time to answer to 30 days after the date on which the Secretary serves the OSC. On September 4, 2024, the Secretary of the Commission filed a notice stating that the OSC had been served on Ketchup Caddy and Mango on July 26, 2024. Neither Ketchup Caddy nor Mango filed an answer to the OSC, and the matter is pending before the Commission.

3. Joint Reliability Inquiries and Reviews

During FY2024, Enforcement staff participated on a joint inquiry and joint review of the bulk power system performance during winter storms.

First, Enforcement staff co-led a joint inquiry, with NERC and regional entities, into Winter Storm Elliott. During this storm, which lasted from December 21 to 26, 2022, 1,702 individual generating units in the Eastern Interconnection experienced 3,565 unplanned outages, derates, or failures to start. 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 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.

The joint inquiry 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.

Second, during the Winter and Spring of 2024, Enforcement staff participated on a joint review, with NERC and the regional entities, of the performance of the natural gas and electric industries during Winter Storms Gerri and Heather, which brought arctic air across much of North America from January 10 to 16, 2024. The joint team's review compared these industries' performance to their actions during prior Winter Storms Uri and Elliott in 2021 and 2022 and found that they made progress. Specifically, the team found no operator-initiated load shed during Winter Storms Gerri and Heather, unlike the previous storms. The team found further that the natural gas and electric industries improved their communication and coordination in advance of Winter Storms Gerri and Heather. Better preparedness, proactive commitments, and the use of alternative fuels led to stronger generator performance. Overall, the team found that the improved performance of the natural gas and electric industries reflected the benefits of prior inquiries' recommendations and the need for these industries to remain persistent in continuing to implement the recommendations. The team presented these findings at the Commission's April 25, 2024 open meeting.

C. Settlements

In FY2024, the Commission approved 12 settlement agreements to resolve pending enforcement matters, including 11 investigations and one federal district court matter. The settlements totaled approximately $18.98 million in civil penalties and disgorgement of $61.9 million. Since 2007, Enforcement has negotiated settlements totaling approximately $876.96 million in civil penalties[20] and approximately $645.44 million in disgorgement.[21]

In 2010, the Commission issued revised Penalty Guidelines, which apply to organizations.[22] Under the Penalty Guidelines, an organization's civil penalty can vary significantly depending on the amount of market harm caused by the violation, the amount of unjust profits, an organization's efforts to remedy the violation, and other culpability factors, such as senior-level personnel involvement, prior history of violations, compliance programs, self-reporting of the violation, acceptance of responsibility, and cooperation with Enforcement's investigation. For example, under the Penalty Guidelines, an organization's culpability score can be reduced to zero through favorable culpability factors, lowering the base penalty by as much as 95 percent.[23]

In FY2024, 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 205 of the FPA; and ISO/RTO tariffs.

The charts below illustrate the types of violations settled in the last five fiscal years, Fiscal Years 2020-2024. Some settlements resolved multiple types of violations.

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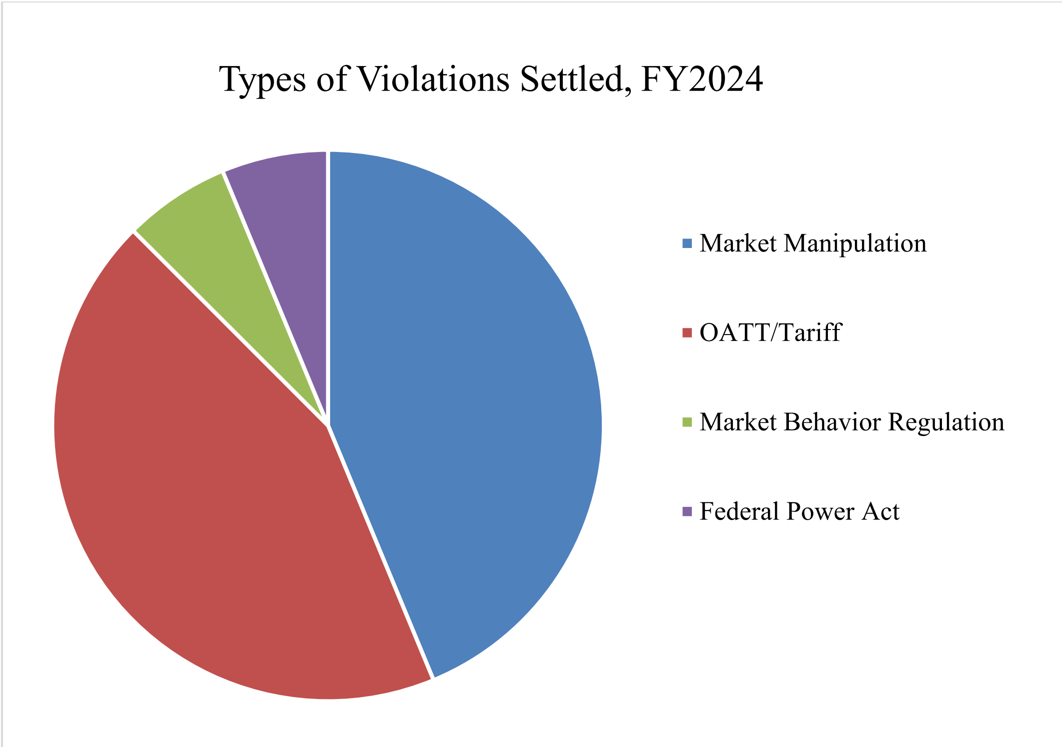
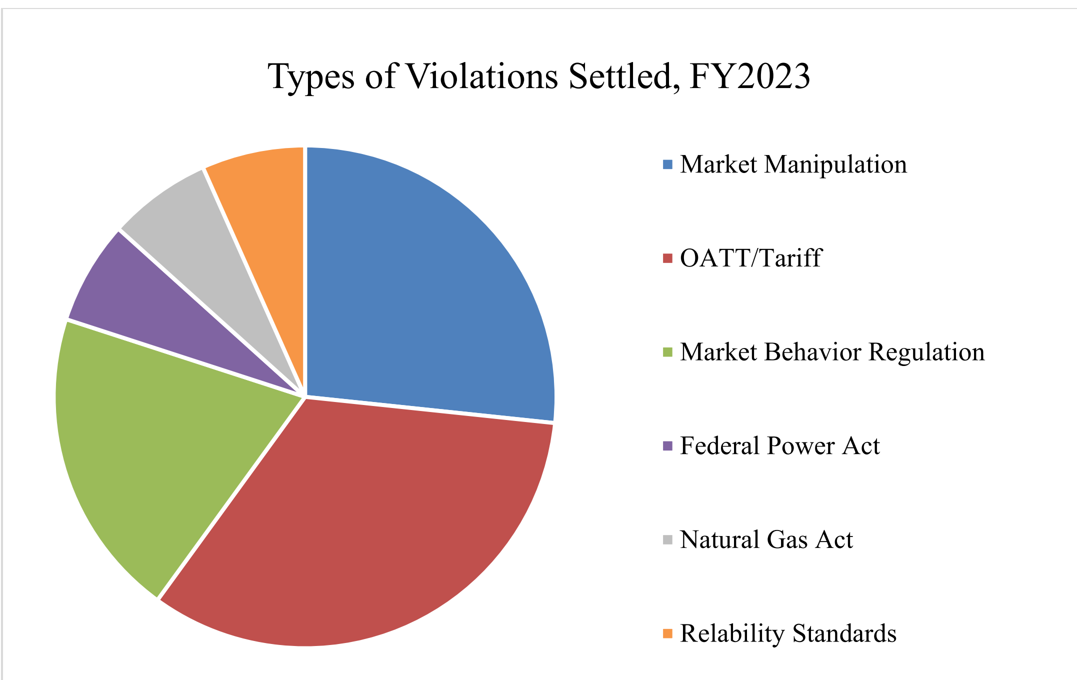
[20] Total civil penalties do not include the $30,000,000 assessed in *Hunter* and overturned on jurisdictional grounds by the U.S. Court of Appeals for the District of Columbia Circuit. It also does not include penalties proposed or assessed in the following currently pending matters: $213,600,000 civil 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.*; $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); $40,000,000 civil penalty proposed against Rover Pipeline Company, LLC and Energy Transfer Partners, L.P. (Docket No. IN17-4-000); $600,000 civil penalty assessed against Ampersand Cranberry Lake Hydro, LLC; $25,000,0000 civil penalty against Ketchup Caddy and $1,500,000 civil penalty against Philip Mango (Docket No. IN23-14-000); or $16,800,000 civil penalty assessed against Powhatan being pursued in bankruptcy.

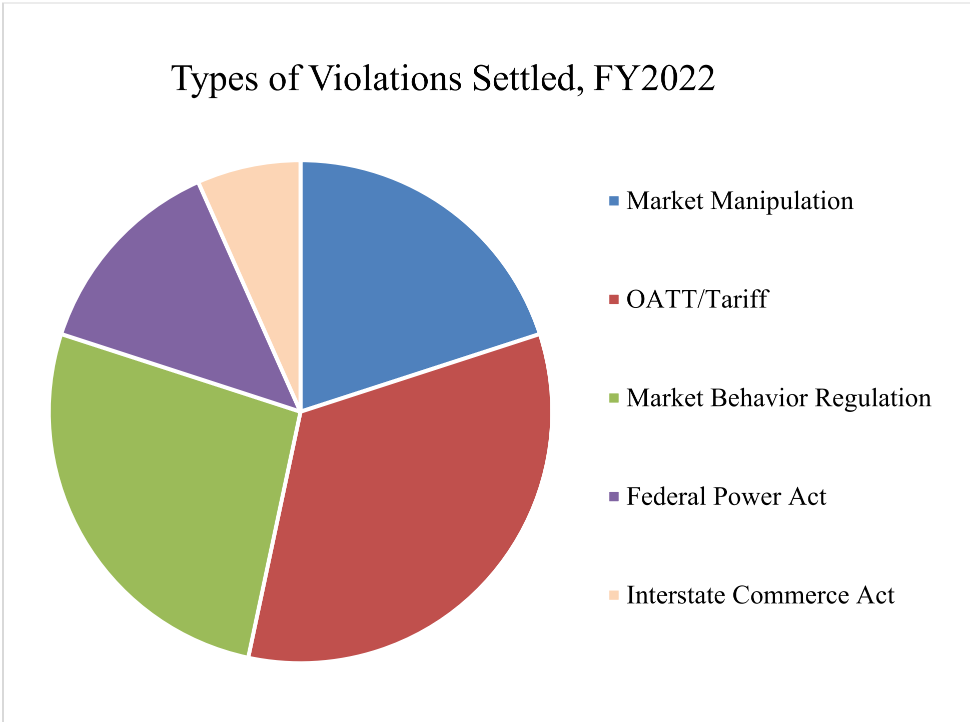
[21] Total disgorgement does not include amounts proposed or ordered in the following currently pending matters: $9,180,000 proposed in *Total Gas & Power*; $506,502 proposed in *Ketchup Caddy*; and approximately $3.4 million ordered in *Powhatan*.

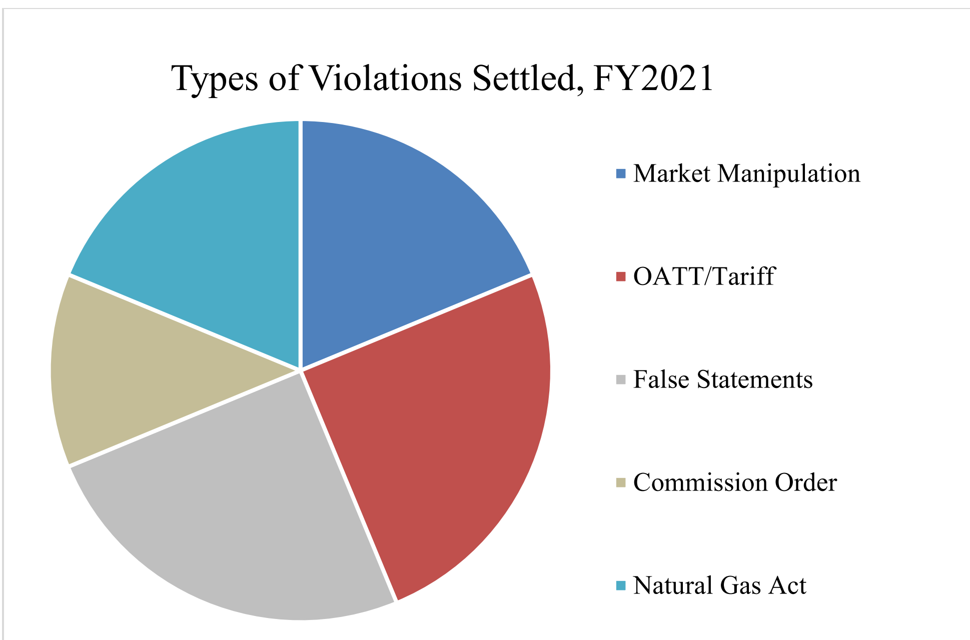
[22] *Enforcement of Statutes, Orders, Rules, and Regulations*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines), https://www.ferc.gov/whats-new/comm-meet/2010/091610/M-1.pdf.

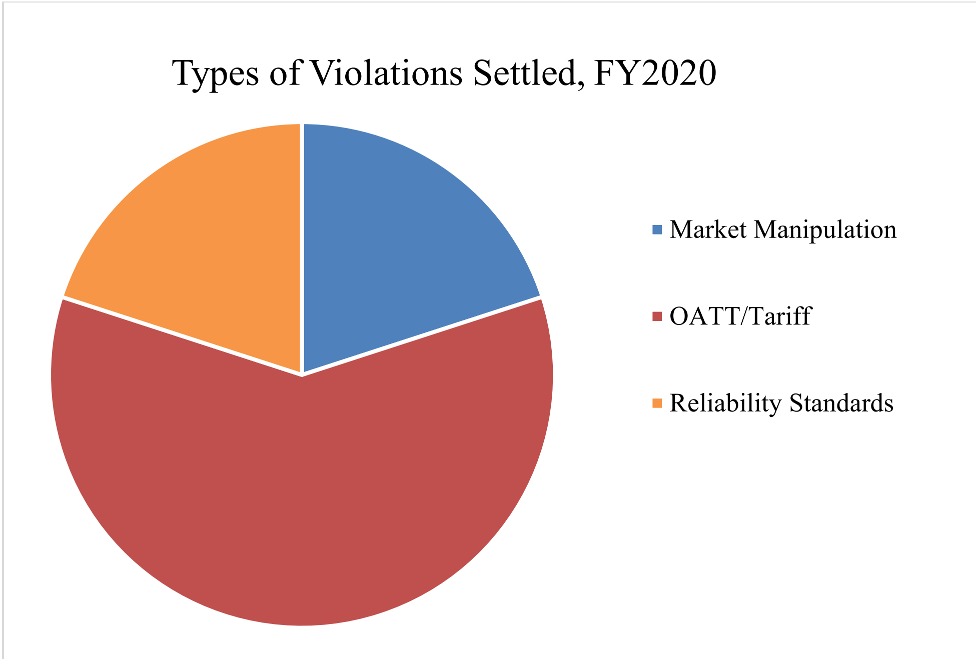
[23] *Id.* P 109.


Types of Violations Settled, FY2024
Market Manipulation
OATT/Tariff
Market Behavior Regulation
Federal Power Act


Types of Violations Settled, FY2023
Market Manipulation
OATT/Tariff
Market Behavior Regulation
Federal Power Act
Natural Gas Act
Relability Standards


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


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



The Commission approved the following settlement agreements resolving investigations in FY2024:

a) *AES Alemitos, LLC and Redondo Beach, LLC, Docket No. IN23-15-000*

On October 24, 2023, the Commission issued an order approving the settlement of Enforcement staff's investigation of AES Alamitos, LLC and Redondo Beach, LLC (AES). Enforcement staff determined that AES violated CAISO Tariff sections 4.6.4 and 37.3.1.1, and 18 C.F.R. §§ 35.41(a) and (b) by submitting inaccurate physical maximum values for eight of its electric generating resources (the Resources), which resulted in the Resources being compensated for resource adequacy capacity that they could not reasonably provide. Under the terms of the settlement, AES neither admitted nor denied the violations, but agreed to pay $2.97 million in disgorgement to CAISO and a civil penalty of $3.03 million and to undertake compliance monitoring for two years with an option for Enforcement staff to extend it an additional year.

b) *Black Hills Corporation, Docket No. IN23-10-000*

On December 5, 2023, the Commission issued an order approving the settlement of Enforcement staff's investigation of 103 late filings submitted by Black Hills Corporation (BHC). In the settlement, BHC admits to having violated both section 205 of the FPA and Part 35 of the Commission's regulations. Because the Commission had not accepted or otherwise finally disposed of a significant portion of the 103 late filings when the settlement was signed, Black Hills agreed to provide semi-annual status reports detailing the filing status of each of the 103 late filings. These filings will continue until the Commission accepts or otherwise finally disposes of all of the agreements or for two years, whichever comes first. Six months after the Commission accepts of or otherwise finally disposes of all of the agreements, Black Hills will file the first of two compliance monitoring reports, with the second due a year later. In June 2024, Black Hills filed its first status report.

c) Linde, Inc., and Northern Indiana Public Service Co., Docket No. IN24-3-000

On January 4, 2024, the Commission issued an order approving the settlement of Enforcement staff's investigation of Linde, Inc. (Linde) and Northern Indiana Public Service Co. (NIPSCO) regarding Linde's participation, through NIPSCO as its sponsoring utility, in a MISO demand response program. Linde operates a large industrial facility in northern Indiana, which uses as much as 370 MW to extract oxygen, nitrogen, argon, and other gases from the atmosphere. During the period in question (2015-2022), Linde ran its facility at high levels for a short period (usually seven days) to establish a high baseline, and then, by plan, operated at a lower level for approximately 38 days. Doing so enabled Linde to collect demand response payments for the difference between its baseline and its lower load levels on the roughly 38 days. Starting in 2020, Linde "enhanced" its demand response program by operating additional equipment during the seven-day period for the sole purpose of using electricity, while venting to the atmosphere the gases it produced by using that equipment. Through the period in question, NIPSCO took a share of the demand response payments from MISO, although it had no role in Linde's decisions about how to participate in the MISO program.

Enforcement staff determined that the conduct at issue violated a MISO Tariff provision requiring market participants to comply with MISO directives to change their output levels by reducing their load to what it otherwise would have been. Linde and NIPSCO agreed to disgorge all the money they were paid by MISO based on Linde's participation in the demand response program: $48.5 million from Linde and $7.7 million from NIPSCO, for a total of $56.2 million. Linde agreed to pay a civil penalty of $10.5 million. NIPSCO agreed to make filings with its Indiana regulator designed to ensure that its ratepayers get the full benefit of the disgorged funds that were paid by NIPSCO. In addition, Linde agreed to stringent compliance measures in the event it later participates in a MISO demand response program.

d) Smart One Energy, LLC, Docket No. IN23-13-000

On March 12, 2024, the Commission issued an order approving the settlement of Enforcement staff's investigation of Smart One Energy, LLC (Smart One) regarding its failure to timely report to the NYISO's Corporate Credit Division proceedings before two state utility commissions (the Maryland Public Service Commission and Virginia State Corporation Council) in violation of section 26.2.1.4 of the NYISO Tariff. That provision provides: "A Customer shall inform the ISO of any material change in its financial status within five (5) business days, including but not limited to: . . . (e) initiation of a lawsuit that could materially and adversely impact current or future financial performance[.]" Enforcement staff found that Smart One violated section 26.2.1.4 of the NYISO Tariff by failing to timely report these proceedings, which resulted in a significant decline in its net revenue following the imposition of sanctions by the two state commissions. As set out in the terms of the settlement, Smart One neither admitted nor denied the violation, but stipulated to the facts contained therein. Smart One also agreed to pay a civil penalty of $5,000. The settlement does not require that Smart One submit to compliance monitoring because in August 2021, Smart One ceased all marketing of electricity in New York and all other states in which it operates.

e) ENGIE Energy Marketing NA, Inc., Docket No. IN24-6-000

On May 20, 2024, the Commission issued an order approving the settlement of Enforcement staff's investigation of ENGIE Energy Marketing NA, Inc. (ENGIE). In the settlement agreement, Enforcement staff concluded that ENGIE submitted attestations to the ISO-NE internal market monitor that falsely represented that generator assets it managed were eligible to seek an exemption from energy market mitigation between July 2021 and September 2022. Enforcement staff identified no evidence indicating that ENGIE's misrepresentations were made knowingly or with the intent to defraud, but staff concluded that ENGIE violated the Commission's Duty of Candor Rule. As set out in the terms of the settlement agreement, ENGIE neither admitted nor denied the violation but stipulated to the facts contained therein. ENGIE agreed to: (a) pay a civil penalty of $48,000 to the United States Treasury and (b) be subject to compliance monitoring as provided in the settlement agreement.

f) Galt Power, Inc, Docket No., IN20-5-000

On June 28, 2024, the Commission issued an order approving the settlement of Enforcement staff's investigation of Galt Power, Inc. (Galt), a privately held Delaware corporation and wholesale power marketer, into whether Galt violated the Commission's Anti-Manipulation Rule and section 222 of the FPA by engaging in prohibited wash trades between the NYISO and ISO-NE markets between July 8, 2016, and April 23, 2019. Galt repeatedly executed offsetting import-export trades, sending energy from NYISO to ISO-NE, to obtain Class I Renewable Energy Certificates (RECs) while sending the same quantity of energy back from ISO-NE to NYISO in the same hour in order to eliminate the price risk of the NYISO to ISO-NE transactions. Under the settlement agreement, Galt agreed to pay a civil penalty of $1,500,000 to the United States Treasury, pay disgorgement and interest totaling $372,297.85 to the Commonwealth of Massachusetts, and be subject to compliance monitoring for at least two years.

g) Josco Energy Corp. and SunSea Energy, LLC, Docket Nos. IN24-7-000 and. IN24-8-000[24]

On June 28, 2024, the Commission issued orders approving the settlements of Enforcement staff's investigations of Josco Energy Corp. (Josco) and SunSea Energy, LLC (SunSea). Enforcement staff determined that Josco and SunSea each violated the NYISO Tariff and the Commission's Duty of Candor Rule by failing to timely inform NYISO of the existence of their respective ongoing investigations by the New York Public Service Commission that could have a material impact on their financial conditions. Under the terms of each settlement, Josco and SunSea neither admitted nor denied the violations but stipulated to the facts and agreed to pay a civil penalty of $5,000.

h) Vista Energy Storage, LLC, Docket No. IN24-11-000

On August 6, 2024, the Commission issued an order approving the settlement of Enforcement staff's investigation of Vista Energy Storage, LLC (Vista). Enforcement investigated whether

[24] While Josco and SunSea were two separate dockets and orders, they are being combined in one entry because the issues were the same.

Vista violated the CAISO Tariff or Commission regulations by submitting bids to CAISO when Vista's battery resource was not reasonably expected to be capable of performing at the levels specified in the bids during the summer of 2022. Enforcement concluded that on 33 days, Vista violated section 37.3.1.1 of the CAISO Tariff when it submitted inaccurate initial state of charge values from a resource that was not reasonably expected to be available and capable of performing at the levels specified in its bids. Under the terms of the settlement, Vista stipulated to the facts, but neither admitted nor denied the violations. Vista agreed to: (a) pay a $1,000,000 civil penalty to the United States Treasury, (b) disgorge $1,670,000 to CAISO, and (c) submit an annual compliance monitoring report to Enforcement for one year with a second year at Enforcement's sole discretion.

i) Arlington Energy Center III, LLC; Blythe Solar 110, LLC; Blythe Solar III, LLC; Blythe Solar IV, LLC; Desert Sunlight 250, LLC; Sunlight Storage, LLC; and McCoy Solar, LLC, Docket No. IN24-10-000

On August 8, 2024, the Commission issued an order approving the settlement of Enforcement staff's investigation of Arlington Energy Center III, LLC; Blythe Solar 110, LLC; Blythe Solar III, LLC; Blythe Solar IV, LLC; Desert Sunlight 250, LLC; Sunlight Storage, LLC; and McCoy Solar, LLC (the Companies), which are indirect subsidiaries of NextEra Energy Resources, LLC and/or NextEra Energy Partners, LP. Each subsidiary operates a co-located battery energy storage system and solar generation facility. Enforcement staff determined that the Companies violated CAISO's Tariff by deviating from CAISO's dispatch instructions when providing ancillary services to CAISO during the period January 1, 2022, through September 1, 2023. Under the terms of the settlement, the Companies stipulated to the facts, admitted to the violations, and agreed to: (a) pay a $105,000 civil penalty to the United States Treasury, (b) disgorge $381,724 to CAISO, and (c) submit an annual compliance monitoring report to Enforcement for one year with a second year at Enforcement staff's discretion.

j) Big Rivers Electric Corporation, Docket No. IN24-9-000

On September 5, 2024, the Commission issued an order approving the settlement of Enforcement staff's investigation of Big Rivers Electric Corporation (BREC), a Kentucky wholesale generation and transmission cooperative. Enforcement staff determined that BREC violated the Commission's Anti-Manipulation Rule through the following conduct: (a) submitting a false forced outage to avoid capacity market penalties, (b) submitting offers to MISO for one of its units at full availability when BREC knew or was reckless in not knowing that the plant could not run at full availability, and (c) submitting false and misleading information to the MISO IMM about its actions during the relevant period. In the settlement, BREC stipulated to the facts, neither admitted nor denied the violations, and agreed to disgorge $308,341 and pay a civil penalty of $336,870. BREC also agreed to review its compliance procedures for potential improvements, provide compliance training to its personnel, and be subject to compliance monitoring.

The Commission also approved the settlement of the *FERC v. Vitol* litigation in the United States District Court for the Eastern District of California, as more fully described above in DOI section B(1).

D. Self-Reports

Over the previous five fiscal years (Fiscal Years 2020-2024), Enforcement staff received approximately 703 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

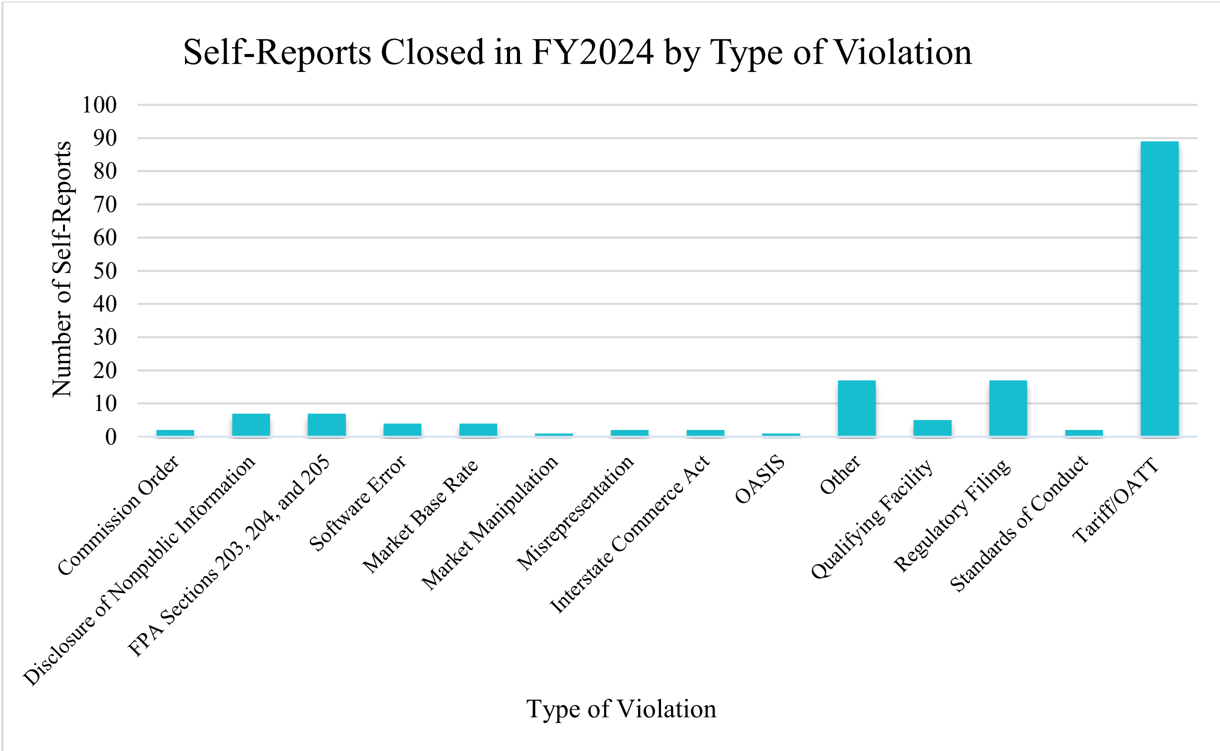
In FY2024, Enforcement staff received 159 new self-reports from a variety of market participants, including public utilities, natural gas companies, generators, and ISOs/RTOs. Many of these self-reports (96) were from ISOs/RTOs and involved relatively minor violations of tariff provisions. Enforcement staff closed 158 self-reports in FY2024, 32 of which were carried over from previous fiscal years. Of the self-reports received in FY2024, 36 remained pending at the end of the fiscal year.

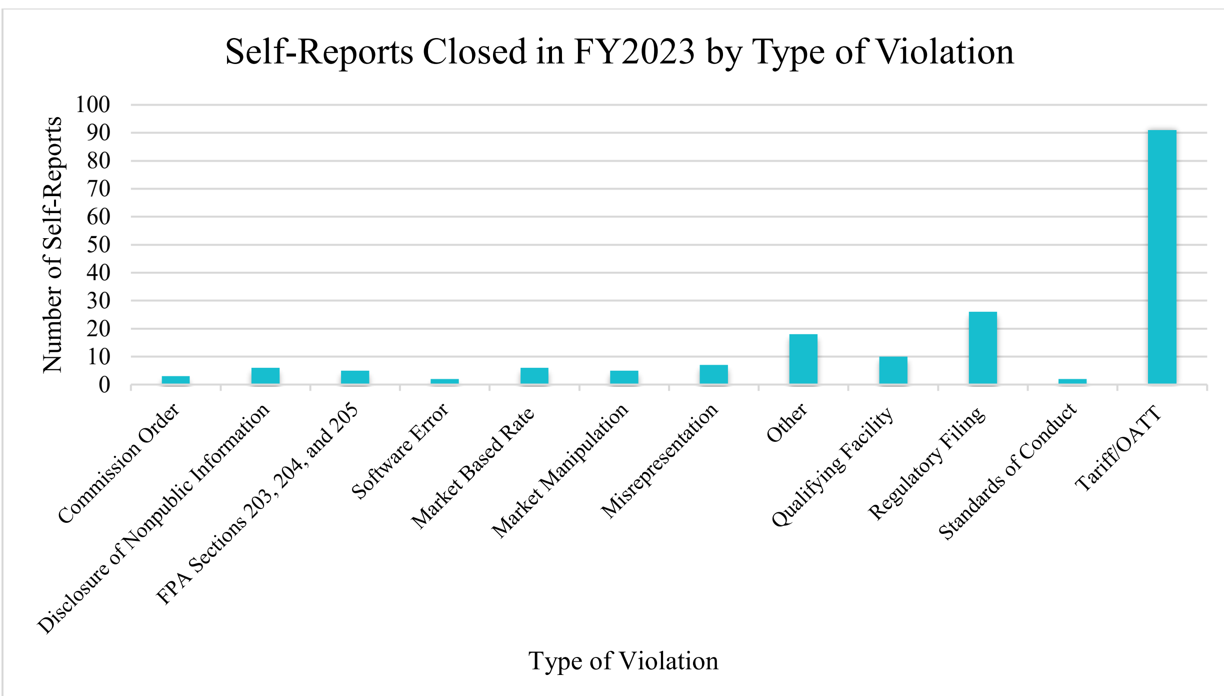
The Penalty Guidelines emphasize the importance of self-reporting by providing credit that can significantly mitigate penalties if a self-report is made.[25] Enforcement staff continues to encourage the submission of self-reports and views self-reports as showing a company's commitment to compliance. 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 2020 through 2024.[26] Some self-reports include more than one type of violation.

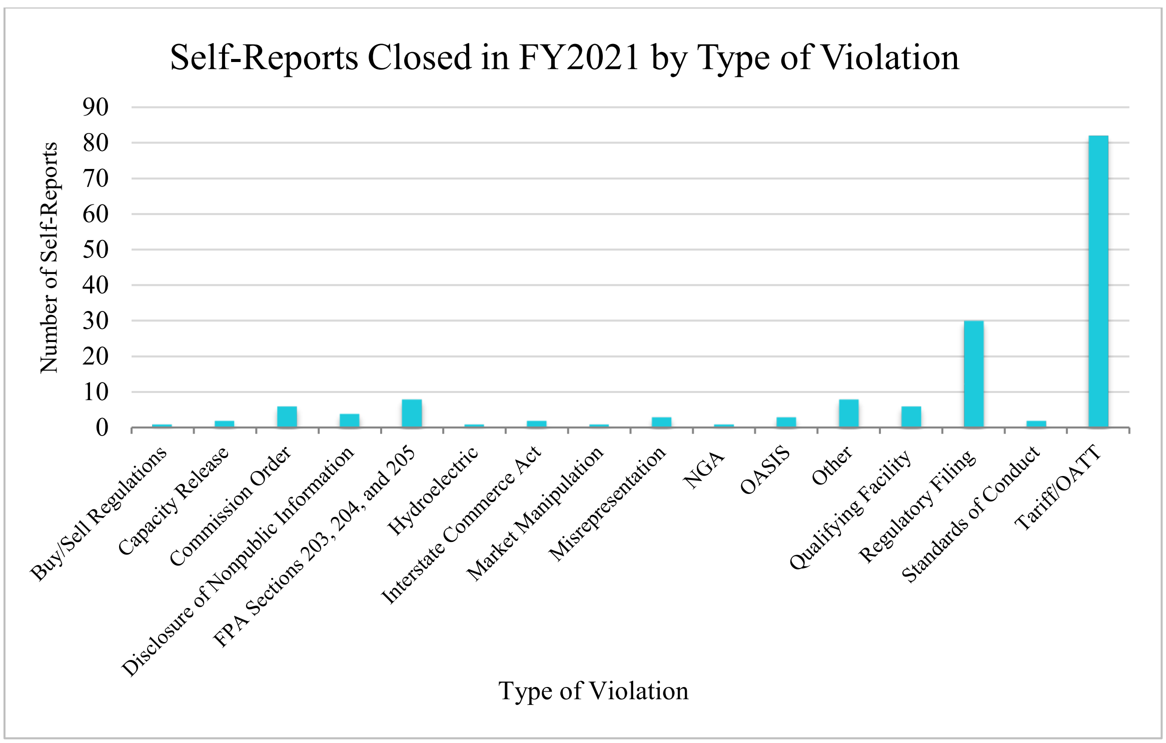
[25] *Revised Penalty Guidelines*, 132 FERC ¶ 61,216 at P 127.

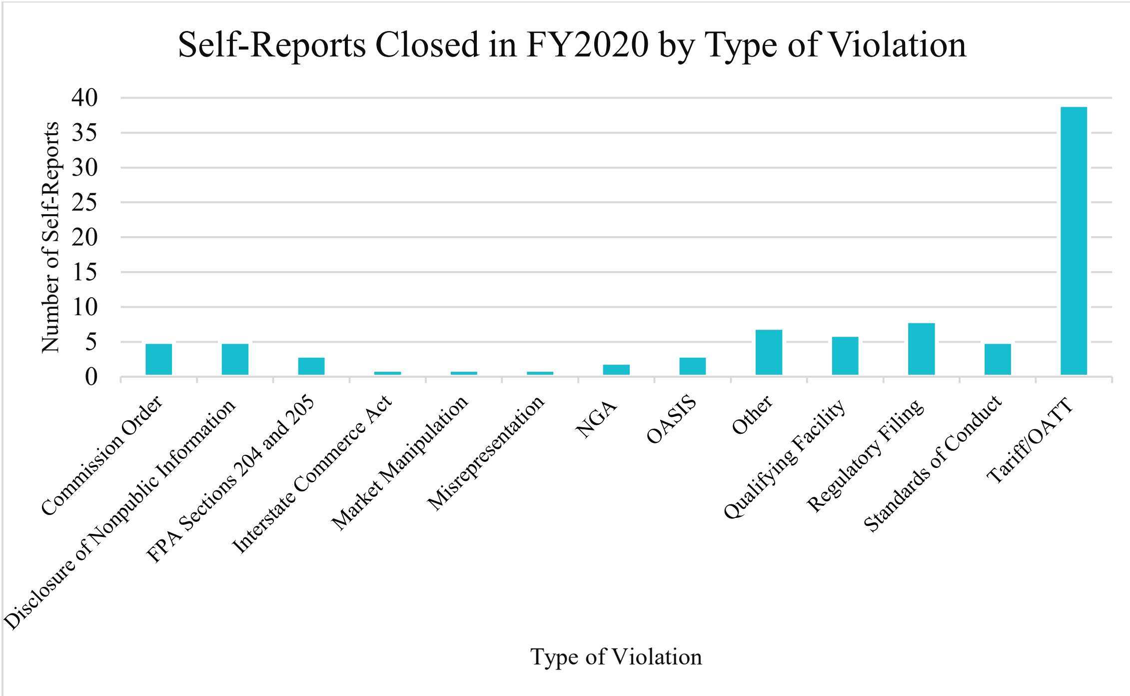
[26] Consistent with the Annual Reports for FY2020 through FY2023, the Self-Reports Closed chart in this FY2024 Annual Report includes the substantive violations reported by an ISO/RTO and replaces the "ISO/RTO" category used in previous years.


Self-Reports Closed in FY2024 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 Base Rate
Market Manipulation
Misrepresentation
Interstate Commerce Act
OASIS
Other
Qualifying Facility
Regulatory Filing
Standards of Conduct
Tariff/OATT
Type of Violation


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
0
10
20
30
40
50
60
Capacity Release
Commission Order
Disclosure of Nonpublic Information
FPA Sections 203, 204, and 205
Hydroelectric
Market Base 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
0
10
20
30
40
50
60
70
80
90
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



2. Illustrative Self-Reports Closed with No Action

As discussed in section D (1), the Penalty Guidelines emphasize the importance of self-reports. They also show a commitment to compliance and inform Enforcement of types of violations that are occurring. 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 FY2024 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.[27] As examples, in FY2024 several ISOs/RTOs and market participants reported violations of the FPA, 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 energy trading firm self-reported that two of its traders separately placed transactions that together, and unintentionally, amounted to an Ontario-MISO-PJM loop flow, in violation of an ISO's tariff. The accidental loop flow lasted for one hour before the firm realized what had happened and stopped it. The firm lost a small amount of money from the trades. Because the incident was inadvertent and quickly corrected, Enforcement staff closed the matter without further action.

Tariff/OATT Violation (Electric). An independent power producer self-reported that it inadvertently exceeded the aggregate capability constraint cap detailed in its large generator

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

interconnection agreement for one of its solar facilities. Given that there was no market harm and the power producer engaged a new vendor to coordinate its facilities and prevent future recurrence of the issue, Enforcement staff closed this self-report without further action.

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

Tariff/OATT Violation (Electric). A publicly held electric utility holding company self-reported that it failed to timely submit a project for tariff-mandated stakeholder review. The failure resulted from human error and once discovered, the company submitted the project, conducted a broad compliance review to determine whether additional errors may have occurred, and implemented measures to ensure future compliance. During the compliance review, the company identified additional projects that may not have fully complied with tariff requirements and included these projects in its self-report. These additional projects ultimately did not raise compliance concerns. Given that the violation was inadvertent and limited in nature and that the company self-reported the failure, undertook a thorough compliance review, and implemented safeguards, Enforcement staff closed this self-report without further action.

Tariff/OATT Violation (Electric). A demand response provider (DR Provider) submitted a self-report regarding its submission of erroneous default offer parameters, which led the ISO to clear several of its demand response resources in the spinning reserves market. As a result, the DR Provider received payments from the ISO that it should not have received. Upon discovery, the DR Provider took several actions to reduce the likelihood that the issue will recur and implemented controls enabling it to more quickly identify whether resources have unintentionally cleared to provide spinning reserves. The DR Provider also refunded to the ISO the erroneous payments it received. Enforcement staff closed this self-report without further action because the relevant conduct consisted of discrete, isolated, short-duration violations that the DR Provider quickly remedied, the violations are unlikely to recur, and the DR Provider refunded the payments it received in error.

Tariff/OATT Violation (Electric). A generation and transmission cooperative self-reported that its energy management company, while acting on the cooperative's behalf, had failed to activate a unit at one of the cooperative's generation facilities despite the RTO's instruction to do so. The management company misheard the RTO's telephonic instruction as to which units at the facility to activate. Within 20 minutes of discovering the error, the management company activated the unit. Because the error was inadvertent, did not appear to result in market harm, and was promptly remedied, and because the company subsequently instituted changes in internal communication processes to prevent a recurrence, Enforcement staff closed this self-report without further action.

Tariff/OATT Violation (Electric). A party to a power purchase agreement with a solar generating facility and co-located battery energy storage system self-reported that it had received unearned payments from an ISO/RTO in violation of the ISO/RTO tariff when its scheduling coordinator mistakenly submitted energy bids for the storage system that the system could not meet. The party returned the charges with interest and implemented a bid review process and override to prevent similar violations in the future. For these reasons, Enforcement staff closed this self-report without further action.

Tariff/OATT Violation (Electric). An independent owner/operator of a natural gas-fired, combined cycle generating facility self-reported that it erroneously had reduced its high operating limit (HOL) for several hours in violation of the tariff, which requires a resource with a capacity supply obligation (CSO) to offer into the day-ahead and real-time markets a minimum MW amount equal to the lesser of its CSO or its physically available capacity, as reflected in the HOL. Enforcement staff closed this self-report without further action because the violation had a short duration, was inadvertent, the company promptly reported the violation, the company did not profit from the reduction, and no market harm resulted from the violation.

Tariff Violation (Gas). A natural gas transmission company self-reported that it was providing service to three of its customers under a small customer rate schedule even though they did not meet the eligibility requirements for the schedule under the company's tariff. The three customers were large companies with daily gas intake exceeding the tariff limit for small customer service. The company determined that the three large customers had acquired small gas systems that were taking service under small customer contracts, and that the customer rate schedules had not been changed. Following its discovery, the company promptly reported the violation to Enforcement and converted the large customers' small customer contracts to the appropriate contracts and rate schedule. For these reasons, Enforcement staff closed this self-report without further action.

Tariff/OATT Violations (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: not timely posting masked bid data; not flagging conduct potentially subject to mitigation because of a software issue; overcharging a demand response market participant; inadvertently disclosing market participant information; improperly charging market participants in a black start program; failing to designate certain resources as eligible for a reserve designation; miscalculating mitigation and uplift levels; failing to post transmission performance metrics as required under Order No. 890; erring in how certain inactive nodes were modeled within the ISO's mapping processes; failing to follow certain congestion management procedures; using incorrect price parameters for certain wheeling-through transactions; incorrectly double-counting megawatts for different types of dispatch instructions; and inadvertently releasing CEII to a small number of unauthorized recipients. The ISOs/RTOs also reported certain other potential mistakes in implementing tariff provisions. In all such instances, the violations were inadvertent, resulted in minimal harm, and were promptly and effectively remedied to mitigate the harm and prevent future violations. Accordingly, staff closed these self-reports without further action.

Regulatory Violation (Electric). A transmission company self-reported that, after a corporate reorganization, it failed to timely update the job titles and job descriptions of its transmission function employees on its website within seven days as required by 18 C.F.R. §§ 358.7(f)(1) and (g)(1). The updates were made to the company's website three months later. Given that there appeared to be no market harm and the company updated its internal processes to reduce the likelihood of a reoccurrence, Enforcement staff closed this self-report without further action.

Regulatory Violation (Electric). A utility holding company self-reported the appointment of an executive to an interlocking directorate of two of its utilities without first having filed an informational report with the Commission, violating 18 C.F.R. § 45.9. Because the required filing was made upon discovery of the omission and corrective steps were taken to prevent the issue from recurring, Enforcement staff closed this self-report without further action.

Regulatory Violation (Electric). A generator self-reported that it had been accused of making misleading statements to an RTO in violation of 18 C.F.R. § 35.41(b). The RTO informed the generator that in several communications, the generator confirmed its ability and intention to provide collateral or pre-payment of non-performance obligations, neither of which the generator did. The generator provided evidence showing that it remained in regular communication with the RTO about the facts known to it at the time from the generator's management. When the generator conducted an economic analysis that determined it would not be able to pay the penalty and meet other obligations, it filed for bankruptcy and informed the RTO that it was withdrawing (which it then did). Given these facts, Enforcement staff closed this self-report without further action.

Regulatory Filing Violation (FPA Section 203). A physical and financial trading company self-reported that it violated the FPA by unknowingly acquiring an entity that has a subsidiary with market-based rate (MBR) authority without first getting permission from the Commission. Once the company discovered the subsidiary's MBR authority, it submitted curative filings with the Commission, and it does not appear that there was any material market harm. Enforcement staff closed this self-report without further action.

Regulatory Filing Violation (FERC Form 552). Two related local distribution companies self-reported identical errors in their Form 552 filings. Both entities had been overreporting the volume of certain transactions by inadvertently including ineligible transactions. The entities took steps to prevent future errors of this kind and agreed to correct their previous filings as needed. Given that the error was inadvertent and posed little risk of harm to market participants, Enforcement staff closed this self-report without further action.

Regulatory Filing Violation (Electric). A holding company self-reported two violations: (1) failure of certain subsidiaries with MBR authority to timely file a triennial market power update pursuant to 18 C.F.R. § 35.37; and (2) failure of a separate set of subsidiaries with MBR authority to timely file notices of change in status pursuant to 18 C.F.R. § 35.42 after certain indirect passive investments were made. The failures resulted from the lack of an effective reminder system and from not completely understanding the triggers for notices of change in status in connection with passive investments. Given that the violations were inadvertent, caused no apparent market harm, the necessary filings were promptly submitted, the violations promptly self-reported, and measures were implemented to prevent recurrence, Enforcement staff closed this self-report without further action.

Affiliate Restrictions Violation (Electric/Gas). An electricity/natural gas provider parent company self-reported on behalf of its two primary subsidiaries, one of which is a franchised public utility with captive customers, potential violations of the Commission's Affiliate Restrictions in 18 C.F.R. § 35.39. The parent reported that: (1) certain subsidiary employees had accessed the other public utility subsidiary's non-public documents; (2) a report from the public utility subsidiary erroneously was distributed to 17 employees of the other subsidiary; and (3) there was a potentially improper communication among the two subsidiaries' officers. Following the parent company's completion of several specific remedial steps outlined in its self-report designed to minimize future such disclosures, including creating separate IT platforms for the two subsidiaries and placing the employees of the two subsidiaries in two different office locations so they would be separated, Enforcement staff closed the self-report without further action.

Regulatory Violation (Gas). A jurisdictional pipeline self-reported that one of its contractors contacted two landowners about a planned project to add pressure controls at two exiting mainline valves and a compressor station prior to the issuance of the formal landowner notification in violation of its blanket certificate authority and the Commission's notification regulations (18 C.F.R. § 157.203(d)(1)). Upon discovery of the violation, the impacted landowners were issued the appropriate notifications. The pipeline addressed the issue with the contractor involved, added landowner notifications to its compliance matrix, and will provide employees annual notice of this obligation. As the violation was isolated, resulted in no harm, and the involved landowners were not negatively impacted, Enforcement staff closed this self-report without further action.

Reporting Violation (Market-Based Rate Authority). A non-profit energy company self-reported that two battery storage resources it owns had been engaged in jurisdictional sales without Commission authority. Their failure to obtain MBR authority or otherwise file a jurisdictional rate was based on inaccurate advice from a consultant. The company submitted MBR filings in December 2023, including a commitment to submit time-value refund reports. Enforcement staff consulted with other Commission offices regarding the filings and closed this self-report without further action because the violation was inadvertent and was detected through existing routine review processes, there was no market harm, and the relevant company self-reported the violation and agreed to submit time-value refund reports to the Office of Energy Market Regulation.

Reporting Violation (18 C.F.R. § 35.42). An owner of battery storage and gas-fired power plants self-reported that it had missed the deadline to file two change-in-status reports to the Commission's MBR database. The late filings were caused by the responsible employee having insufficient user access permissions in the MBR database. The errors were discovered the day after the deadline and the employee's manager (who had the access permission) submitted the filings the same day. The company implemented process changes to ensure future filers would have the necessary account permissions so that filings would be on time. Enforcement staff closed this self-report without further action because the violation was inadvertent, there was no market harm, and the company self-reported the violation and took prompt remedial action.

Reporting Violation (Electric). A power provider self-reported that it failed to properly report certain additions, deletions, or modifications to its service agreements in its quarterly filings to FERC. The power provider encounters a high volume of service requests each year that require revisions to its Interconnection Agreement or Service Agreement, and accordingly, it follows a quarterly filing process for submitting additions, deletions, and modifications to streamline the number of its filings with FERC. During a review of historical filings, the power provider determined that it violated the quarterly filing requirement in dozens of instances. Given that the power provider had refunded the customer the time value of the charges collected and implemented additional internal processes to ensure accurate quarterly filings going forward, Enforcement staff closed this self-report without further action.

Reporting Violation (Electric). A generation capacity owner self-reported that it failed to submit updated triennial market power analysis required by its MBR authority. Upon discovery, the entity filed the required analysis which showed it lacked market power during the relevant periods. The violation was inadvertent, and it caused no harm to the market or unjust benefit to the entity. The entity implemented steps to ensure all filing and reporting obligations are included on its compliance matrix and assigned to specific individuals. For these reasons, Enforcement staff closed this self-report without further action.

Reporting Violation (Electric). An electric generation and transmission cooperative self-reported non-compliance with SPP Market Protocol 100 – 4.1.2.3(C)(2) by failing to comply with a new process for forced outage tickets relating to three derates at a wind power generation facility. The cooperative and its agent responsible for forced outage tickets were not aware of a recent process change by SPP concerning forced outage tickets. Given that SPP was likely already aware of the derates, there was minimal or no market or reliability impact, the incidents were isolated and inadvertent, and procedures and training were updated to prevent similar occurrences in the future, Enforcement staff closed this self-report without further action.

Interstate Commerce Act Violation (Confidentiality). An oil pipeline company self-reported that it inadvertently sent an email containing protected shipper information to a third party in violation of section 15(13) of the Interstate Commerce Act. Because the pipeline self-reported this potential violation, the violation was inadvertent, the employee attempted to get the recipient to disregard the message within approximately one hour of sending the email, the pipeline has a compliance team in place that communicated to the employee the severity and repercussions of the mistake, and the pipeline's compliance team also sent a broader distribution to employees reminding them of their regulatory obligation, Enforcement staff closed this self-report without further action.

Standards of Conduct Violation (Training). A company self-reported that an employee was eleven days late in taking the required Standards of Conduct training. Because the violation was discovered and addressed through the company's own internal review and escalation procedures, it did not result in any harm or likely risk of harm, and the company committed to implement additional measures to prevent recurrence, Enforcement staff closed this self-report without further action.

E. Investigations

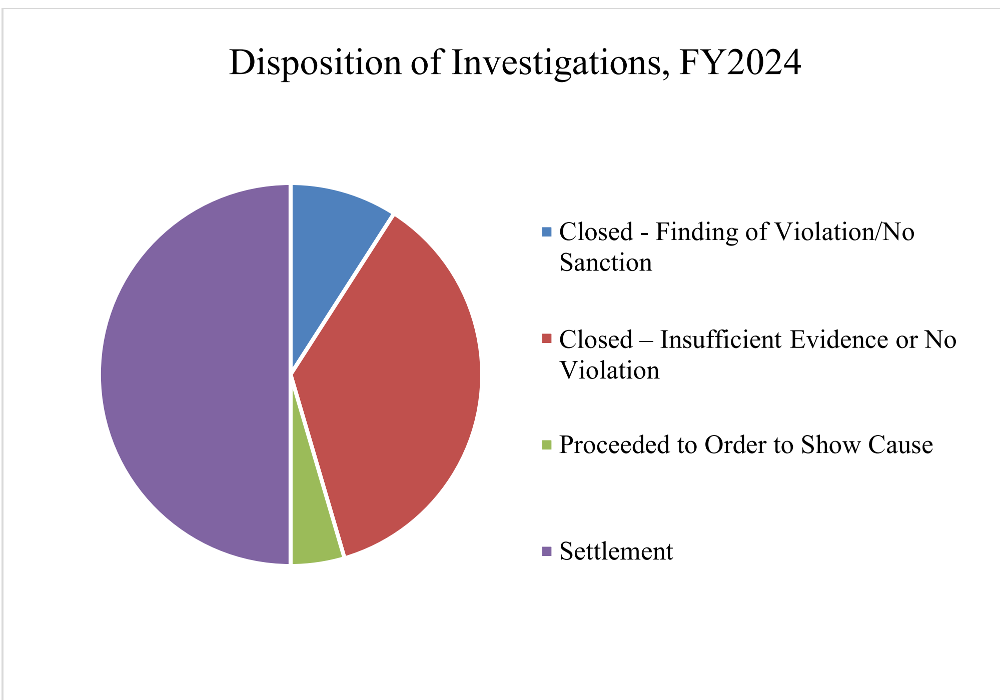
In FY2024, Enforcement staff opened 30 new investigations, as compared with 19 investigations opened in FY2023 and 21 investigations opened in FY2022. These investigations arose from several sources, including referrals by ISO/RTO market monitors and Enforcement's other divisions. In addition to cases closed through settlement, Enforcement staff closed 10 investigations without further action in FY2024, as compared to nine closed without further action in FY2023. In addition to closing these investigations during the fiscal year, Enforcement staff closed seven Market Monitoring Unit (Market Monitor) referrals following inquiries into and analyses of the referred conduct and alleged violations. These Market Monitor referrals, discussed in DOI section F below, were closed without being converted into investigations.

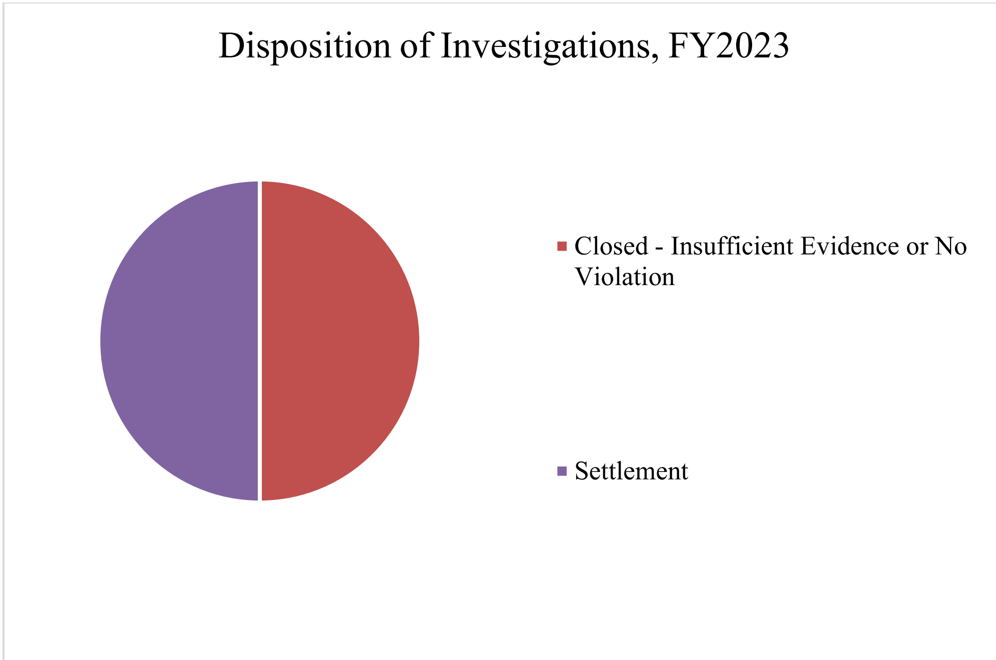
1. Statistics on Investigations

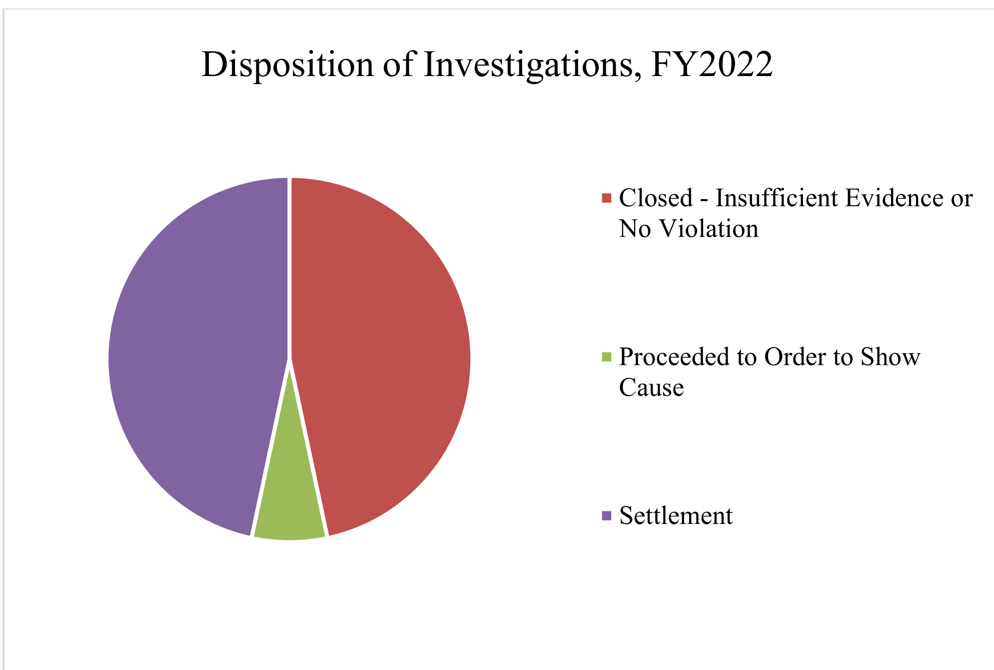
Of the 30 investigations Enforcement staff opened this fiscal year (some of which involved more than one type of potential violation or multiple subjects), at least 17 involved potential market manipulation, 16 involved potential tariff violations, and 13 involved potential misrepresentations prohibited by the Commission's Duty of Candor Rule. The 30 investigations also involved a wide range of additional issues, including ISO/RTO must-offer requirements, trading on nonpublic information, NERC reliability standards, and hydroelectric licensing requirements.

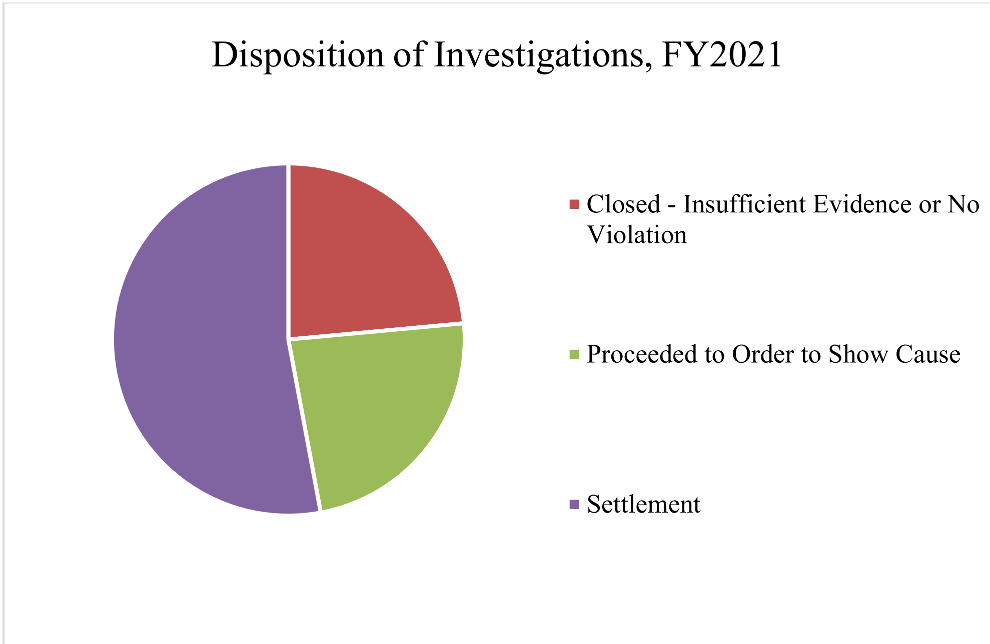
In each of the 10 investigations DOI closed with no action in FY2024, Enforcement staff found that there was either no violation, insufficient evidence to conclude that a violation had occurred, or that a violation existed but should not be subject to sanctions. The 10 closings were in addition to the 11 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.

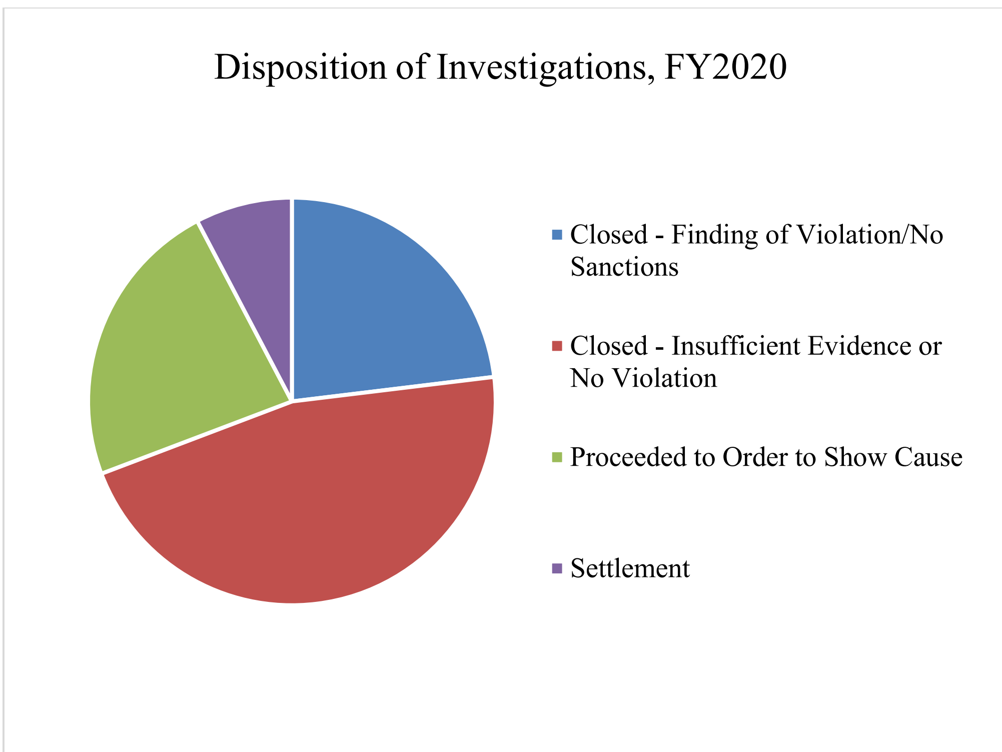
The following charts show the year-by-year disposition of investigations that closed over the past five years (FY2020-2024) and the aggregate disposition of investigations that closed from Fiscal Years 2014 through 2024.

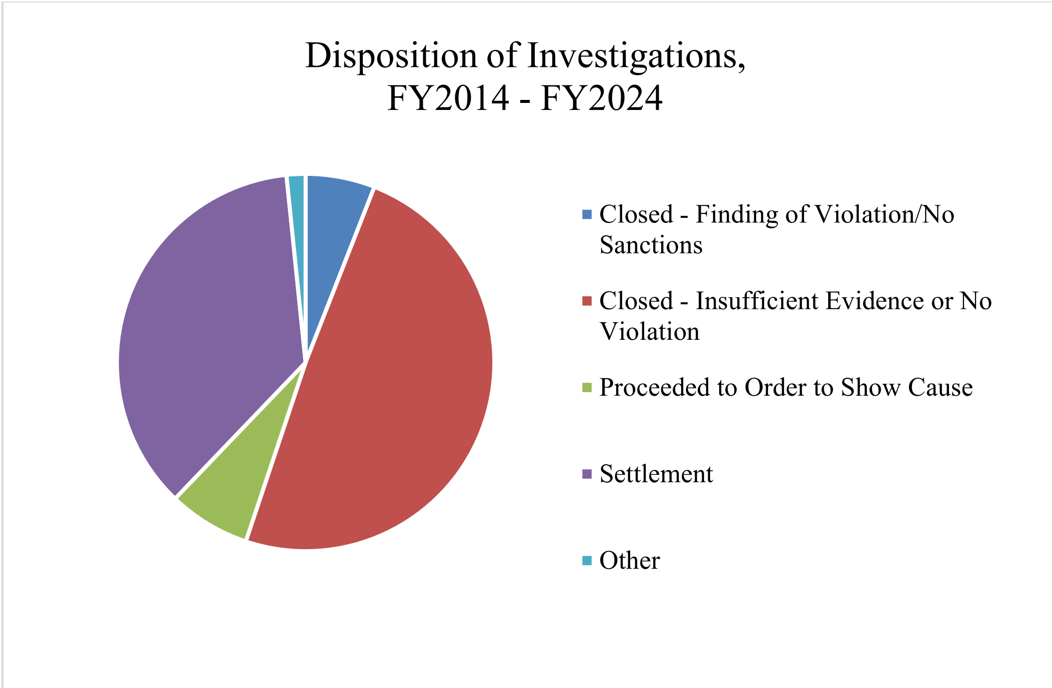



Disposition of Investigations, FY2023
Closed - Insufficient Evidence or No Violation
Settlement

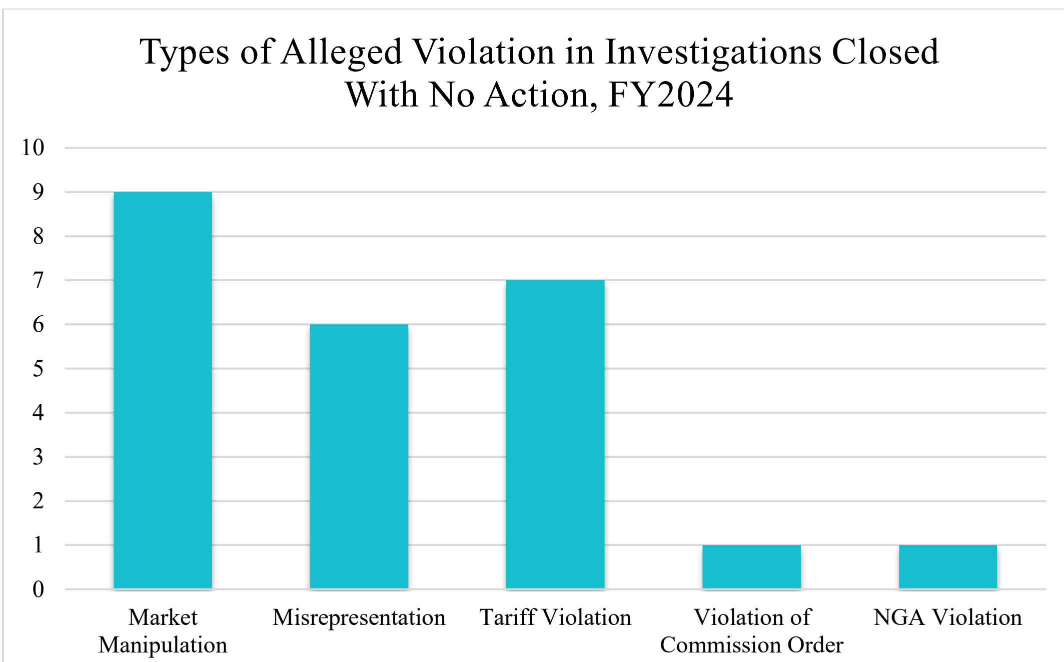

Disposition of Investigations, FY2022
Closed - Insufficient Evidence or No Violation
Proceeded to Order to Show Cause
Settlement

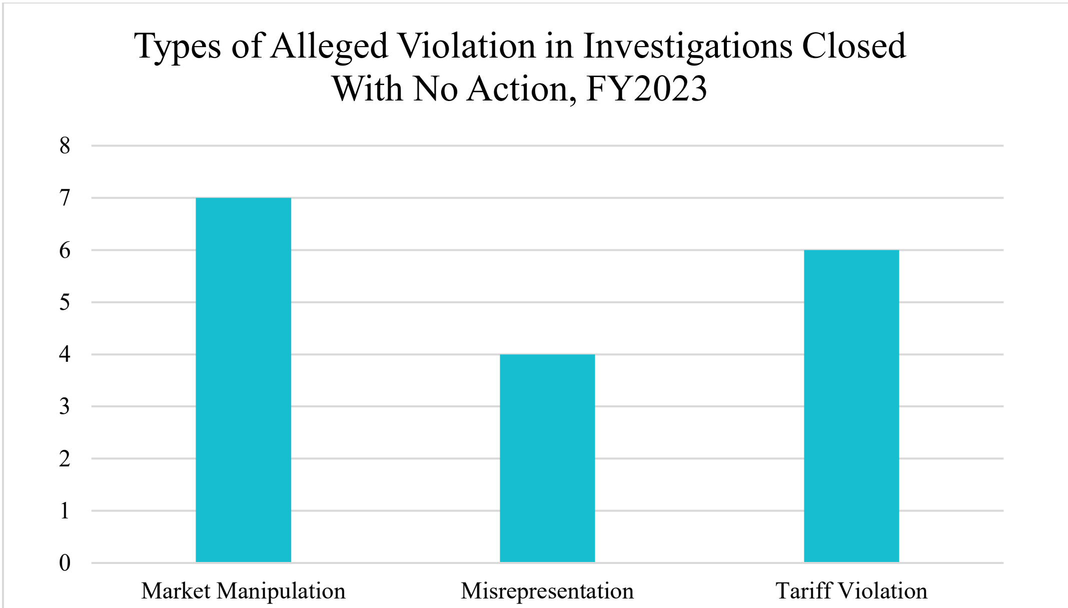

Disposition of Investigations, FY2021
Closed - Insufficient Evidence or No Violation
Proceeded to Order to Show Cause
Settlement

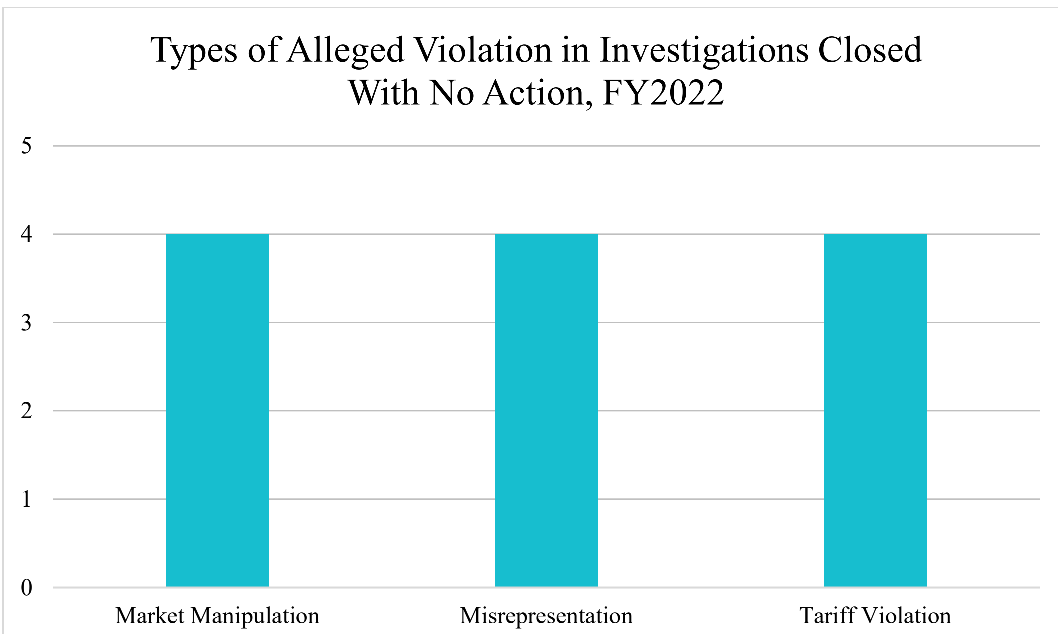

Disposition of Investigations, FY2020
Closed - Finding of Violation/No Sanctions
Closed - Insufficient Evidence or No Violation
Proceeded to Order to Show Cause
Settlement

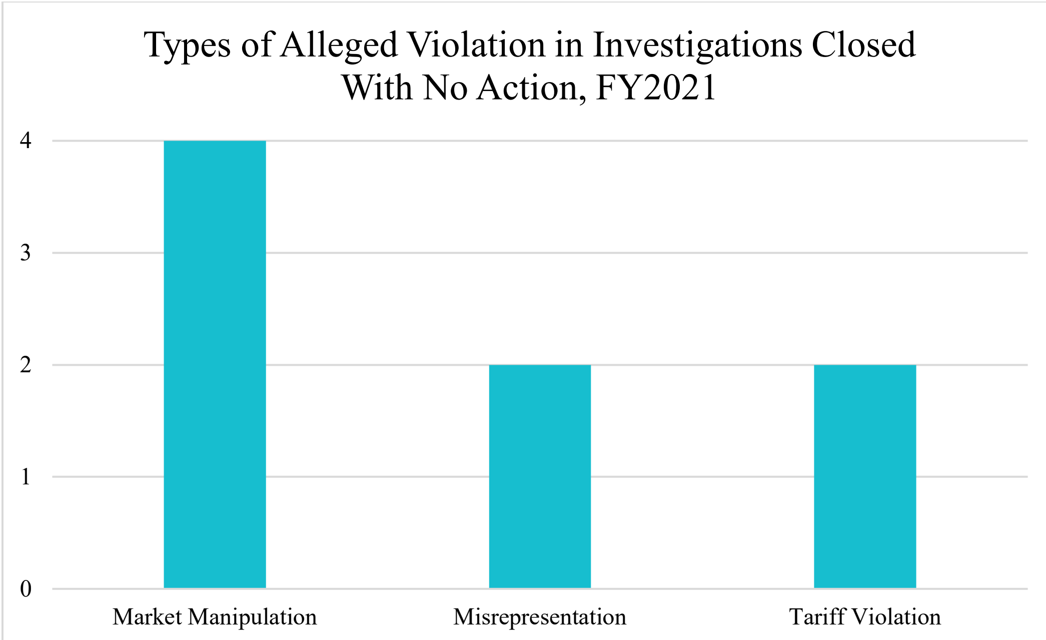


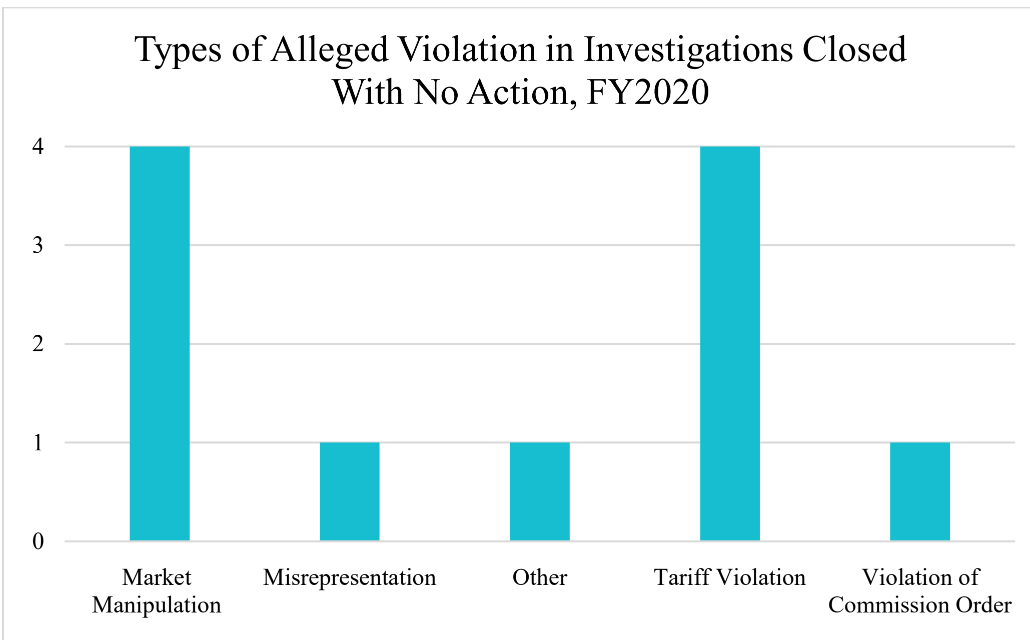
The following charts summarize the nature of the conduct at issue for those investigations that were closed without further action in Fiscal Years 2020-2024.




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





2. Illustrative Investigations Closed with No Action

The following summaries of investigations that Enforcement closed without action in FY2024 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 an ISO market monitor, Enforcement staff opened an investigation into whether a company violated the ISO's tariff, the Commission's Anti-Manipulation Rule, or the Commission's Duty of Candor Rule by failing to update accurately the availability of a generator following a catastrophic fire at the facility. Enforcement staff found that the information provided by the market participant to the ISO was accurate. Enforcement staff also found insufficient evidence that the market participant violated the relevant tariff provisions, or the Commission's Anti-Manipulation Rule. For these reasons, Enforcement staff closed the investigation without further action.

Market Manipulation and Tariff Violation (Electric). Following a referral from a market monitor, Enforcement staff opened an investigation into whether an electric utility and its registered market participant violated the Commission's Anti-Manipulation Rule or the ISO tariff by allegedly failing to convert a wind farm to be dispatchable, as required by the ISO tariff. The referral further alleged that the utility and market participant had set low ramp rates for the wind farm, in a possible effort to avoid the tariff's conversion requirement. After reviewing documents produced by the companies and taking sworn testimony from company employees, Enforcement staff determined that the resource had been converted to be dispatchable by the ISO, although the conversion was achieved largely through administrative changes and involved only a minor physical upgrade. Enforcement staff did not find evidence that the wind farm's low ramp rate violated the tariff or constituted market manipulation. Based on these findings, 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 into whether a company violated an ISO's tariff, the Commission's Anti-Manipulation Rule, and the Commission's Duty of Candor Rule by failing to follow the ISO's economic dispatch signals and receiving uplift payments in connection with those missed dispatch signals. Enforcement staff determined that the company lacked the technical ability to receive electronic economic dispatch signals over the relevant period. The ISO was aware of that inability, so the ISO and the company had a manual dispatch arrangement, which the company followed when it received manual dispatch instructions from the ISO. Staff also determined that the company subsequently implemented technology to allow it to follow electronic economic dispatch signals from the ISO. Considering the manual dispatch arrangement, Enforcement staff determined that there was insufficient evidence of market manipulation and Duty of Candor violations. For these reasons, Enforcement staff closed the investigation without further action.

Market Manipulation, Tariff Violation, and Misrepresentations Prohibited by Duty of Candor (Electric). Based on allegations from a third party, Enforcement staff opened an investigation into whether a firm manipulated the CAISO market, violated the CAISO Tariff, or violated the Commission's Duty of Candor Rule during Winter Storm Uri in February 2021 and at other times since 2021. Specifically, Enforcement staff investigated whether the firm withheld physical energy to drive up CAISO prices and thereby induce utilities to enter long-term contracts with the firm. Enforcement staff did not find sufficient evidence that the firm had engaged in these practices and therefore closed the investigation without further action.

Market Manipulation (Gas). Following a referral from DAS, Enforcement staff opened an investigation into whether a company violated the Commission's Anti-Manipulation Rule by contacting a price index reporter about the continued inclusion of a lower-priced point in one of the reporter's price indices when the timing of that request (during Winter Strom Uri) would have a significant positive financial effect on that company (and others). Enforcement staff determined that the price index reporter had made a reasonable determination to remove the lower-priced point from the index and that there was insufficient evidence that the company and other market participants had improperly pressured the price index reporter or colluded regarding the information despite the timing of the request. Accordingly, Enforcement staff closed the investigation without further action.

F. Market Monitor Referrals

ISO and RTO Market Monitors 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 [Market Monitors], ISOs, RTOs, and [Enforcement]."[28] 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 Market Monitors, this section highlights the Market Monitors' functions, describes the types of conduct Market Monitors review and refer to Enforcement, and provides illustrative examples of Market Monitor referrals that Enforcement closed in FY2024 as initial inquiries without conversion to an investigation.

By regulation, Market Monitors are required "to make a non-public referral to the Commission in all instances where the [Market Monitor] has reason to believe that a Market Violation has occurred."[29] This referral requirement applies to potential "misconduct by the ISO or RTO, as well as by a market participant."[30] 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.[31] 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 Market Monitor wishes to include.[32] There is also a continuing obligation to update referrals with any information the Market Monitor learns that is

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

[29] 18 C.F.R. § 35.28(g)(3)(iv)(A). 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).

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

[31] 18 C.F.R. §§ 35.28(g)(3)(iv)(B)-(C).

[32] *Id.* § 35.28(g)(3)(iv)(D).

"related to the referral."[33] 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 Market Monitors for each ISO or RTO as well as with the ISO and RTO itself. Market Monitors 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 Smart One Energy, LLC for potential violation of NYISO's Tariff for failing to timely report to NYISO's Corporate Credit Division proceedings before two state utility commissions;[34] (2) referral of Vista Energy Storage, LLC for potential violation of CAISO's Tariff for submitting bids to CAISO when the Vista battery unit was not reasonably expected to be capable of performing at the levels specified in the bids during the summer of 2022;[35] (3) referral of ENGIE Energy Marketing NA, Inc. for potential violations of the Commission's Duty of Candor Rule for submitting false attestations to the ISO-NE Internal Market Monitor;[36] and (4) referral of Josco Energy Corp. for potential violations of NYISO's Tariff and the Commission's Duty of Candor Rule for failing to timely inform NYISO of the existence of ongoing investigations by the New York Public Service Commission.[37]

1. Statistics on Market Monitor Referrals

In FY2024, Enforcement staff received 18 new Market Monitor referrals. Of these referrals (some of which involved more than one type of violation or multiple subjects), at least eight involved potential market manipulation, at least nine involved potential tariff violations, and at least four involved potential misrepresentations prohibited by the Commission's Duty of Candor Rule. Fifteen of these Market Monitor referrals became the sources for investigations opened this fiscal year.

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

[34] *Smart One Energy, LLC*, 186 FERC ¶ 61,181 (2024) (approving settlement agreement that included a $5,000 civil penalty in which the company stipulated to the facts, but neither admitted nor denied the violations).

[35] *Vista Energy Storage, LLC*, 188 FERC ¶ 61,112 (2024) (approving settlement agreement that included a $1,000,000 civil penalty and $1,670,000 in disgorgement in which the company stipulated to the facts, but neither admitted nor denied the violations).

[36] *ENGIE Energy Marketing NA, Inc.*, 187 FERC ¶ 61,084 (2024) (approving settlement agreement that includes a $48,000 penalty in which the company stipulated to the facts, but neither admitted nor denied the violations).

[37] *Josco Energy Corp.*, 187 FERC ¶ 61,221 (2024) (approving settlement agreement that included a $5,000 civil penalty in which the company stipulated to the facts, but neither admitted nor denied the violations).

Enforcement staff elected not to open full investigations of seven Market Monitor referrals in FY2024, six of which were carried over from prior fiscal years. These referrals were analyzed and closed as inquiries. Five of the referrals were closed without further action because Enforcement staff concluded that there was no violation or insufficient evidence of a violation. Two referrals were closed for other reasons, including that the generators in both instances had been deactivated since the referral.

2. Illustrative Market Monitor Referrals Closed with No Action

Enforcement presents the following illustrative summaries of Market Monitor referral inquiries that Enforcement staff closed in FY2024 without conversion to an investigation. In determining whether to open an investigation based on a Market Monitor referral, Enforcement staff considers the factors set forth in the Commission's Revised Policy Statement on Enforcement.[38] 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 Market Monitor referral.

Potential Violation of 18 C.F.R. § 35.41(a) and Market Manipulation. Following a referral from a Market Monitor, Enforcement staff analyzed whether the owner/operator of a generation facility inaccurately reported the plant's operational conditions and outage status, as well as delayed officially notifying the RTO of the plant's proposed retirement, to collect undue capacity revenues and avoid applicable capacity deficiency charges. Enforcement staff examined: (1) numerous emails and letters between the owner/operator, Market Monitor, and RTO regarding the plant's retirement; (2) engineering, environmental, and reliability studies for the plant; (3) a proposed state regulation and its effect on the plant's operations; and (4) a consultant's cost-benefit assessment of the viability of the plant. Enforcement staff determined that the owner/operator did not have market-based rate authority and was not a Seller subject to 18 C.F.R. § 35.41(a) and that the evidence did not support a finding of manipulative intent. Furthermore, the alleged conduct did not appear to result in harm to the market or third parties and the proposed retirement of the plant did not present reliability or market power issues. For these reasons, Enforcement staff closed this referral without further action.

Potential Tariff Violation. Following a referral from a Market Monitor, Enforcement staff analyzed whether a company violated the ISO's tariff by: (i) abandoning its generator without communicating to the ISO its intention to exit the market and (ii) failing to comply with the procedures outlined in the tariff for gaining approval to deactivate. The ISO's generator deactivation procedures help to ensure that the ISO can address any resulting reliability needs that could arise. The company received no unjust payments because of its withdrawal from the market, there was no impact to the market as a result of the withdrawal, the company was a single generator with no affiliated generators that benefitted from its withdrawal, and the company is now defunct. For these reasons, Enforcement staff closed this referral without further action.

Potential Tariff Violation. Following a referral from a Market Monitor, Enforcement staff evaluated whether a natural gas-fired generator violated the Commission's market behavior rule and ISO manual by offering its unit at a price that the Market Monitor alleged to be based on

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

penalty gas because the intraday offer was at a level that exceeded the expected cost per the fuel cost policy and the spot market data available. Enforcement staff primarily considered the ISO's fuel cost policy, which stated that if the unit had been called on, the last gas nomination deadline for intraday gas had elapsed, and the unit was expected to exceed the volume of gas nominated, then the natural gas cost would be updated intraday to include the applicable maximum daily excess balance charge per the tariff. Enforcement staff found that the ISO and the Market Monitor approved the fuel cost policy which the company relied on to make its offer, and thus would not be considered penalty gas. In addition, the nature of the conduct was limited and there was ambiguity in the fuel cost policy. For these reasons, Enforcement staff closed this referral without further action.

Potential Tariff Violation and Market Manipulation. Following a referral from a Market Monitor for an alleged violation of the ISO's tariff and for potential market manipulation, staff analyzed whether a power plant's repeated lowering and raising of its mitigated offers after the day-ahead market closed was due to "unforeseen operating conditions" or for other improper purposes. Following the referral, Enforcement staff conducted an inquiry, reviewing the supporting materials provided in the referral, speaking with Market Monitor and ISO staff, speaking with power plant staff, reviewing fuel quality and weather reports, and analyzing the plant's fuel cost policy (FCP) and major maintenance history, as well as performing an analysis of the plant behavior using Order No. 760 data. Enforcement staff determined that an investigation was not necessary because: (1) the intraday offer changes appeared tied to the plant's unpredictable fuel quality, which could reasonably be considered by the plant's real-time operators as "unforeseen operating conditions" and thus not run afoul of the ISO tariff; (2) the plant's intraday changes amounted to a nominal monetary gain to the plant; and (3) the plant subsequently amended its FCP to disallow changes to mitigated offers after the ISO's deadline to address the Market Monitor's ongoing concerns regarding the effect intraday changes potentially had on the larger market. Therefore, Enforcement staff closed this referral without further action.

Potential Tariff, Market Manipulation, and NERC Standards Violation. Following a referral from an RTO's Market Monitor, staff analyzed whether a demand response resource submitted a forced outage to bypass an out-of-merit-energy instruction to curtail load and prevent future dispatches. Following the referral, Enforcement staff gathered information from the Market Monitor and RTO and analyzed the applicable NERC standards, tariff, and manual provisions. Enforcement staff determined that an investigation was not necessary because the RTO and the resource were having productive ongoing discussions about out-of-merit-energy instructions and the resources' real-time offer parameters, and the RTO did not have concerns about the resource's compliance with its dispatch obligations.

G. Enforcement Hotline

DOI staff fields phone calls and other inquiries made to the Enforcement Hotline (Hotline).[39] 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

[39] *See* 18 C.F.R. § 1b.21.

market manipulation, abuse of an affiliate relationship, or violation of a tariff or order, 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 FY2024, Enforcement received 247 Hotline calls and inquiries, 241 of which promptly were resolved within the fiscal year either through advice provided by Enforcement staff, 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 eight Hotline matters that had been pending from prior years. Of the Hotline calls received in FY2024, six 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 FY2024, 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 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. In addition, 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 FY2024.

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. Among the various approaches for submitting a request, 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.[40] Commission staff is generally available to confer on a pre-filing basis for possible "No-Action Letter" requests.

Paper Hearing Proceeding Related to 2015/16 MISO Auction Results. On June 16, 2022, the Commission issued an order on remand[41] establishing paper hearing procedures in response to a 2021 decision by the United States Court of Appeals for the District of Columbia Circuit in *Public Citizen, Inc. v. FERC.*[42] That decision remanded two Commission orders that had ruled on three complaints from May 2015 regarding the results of MISO's 2015/16 Planning Resource Auction (PRA) for Local Resource Zone (Zone) 4. In the remand order, the Commission established paper hearing procedures to address the issues raised by the D.C. Circuit's opinion. Specifically, and as part of the procedures, the Commission directed Enforcement staff to provide an assessment of a market participant's—Dynegy Marketing and Trade, LLC (Dynegy)—conduct during MISO's 2015/16 PRA, including whether Dynegy's conduct constituted an exercise of market power and/or market manipulation. Under the procedural schedule established by the Commission, Enforcement staff submitted a Remand Report on September 14, 2022. Between August and October 2023, Enforcement staff and the other parties to the proceeding made various filings, including answers, with the Commission. On June 6, 2024, the Commission issued an order establishing hearing and settlement judge procedures and consolidating the proceedings. On October 7, 2024, Dynegy filed a petition for review of the Commission's June 6, 2024 order with the United States Court of Appeals for the Fifth Circuit.

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,

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

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

[42] *Pub. Citizen, Inc. v. FERC,* 7 F.4th 1177 (D.C. Cir. 2021).

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 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 of FERC Form Nos. 1, 1-F, 2, 2-A, 3-Q (gas and electric); 6, 6-Q, 60; and FERC-61. The EQRs and Commission forms provide valuable information to the public, jurisdictional entities, 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.[43]

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.

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

- The active involvement of internal audit and monitoring functions to routinely assess compliance with tariff provisions and Commission rules, orders, and regulations, to foster a strong and sustainable culture of commitment to compliance on an enterprise-wide basis.

- A policy and culture of seeking guidance from the Commission as necessary to ensure compliance, including an effective process to self-report noncompliance identified through internal oversight activities.

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

2. Timely Remedy of Noncompliance

Equally important to a robust compliance program is the timely correction 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.[44] In FY2024, 100 percent of DAA's audit recommendations were either fully implemented within six months, or for particularly complex recommendations, active and continuous steps had been taken to implement the recommendations at 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 in recent 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

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

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. Under Order No. 561, 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.

Common findings related to AFUDC include:

- Improperly using commitment fees associated with lines of credit in the calculation of the short-term or the long-term debt rate without Commission approval (FA22-5-000, FA19-3-000);

- 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 determining the equity and long-term debt balances used in computing the AFUDC rate by (i) using monthly equity and long-term debt balances instead of prior-year-end balances (FA21-5-000, FA21-4-000, FA20-7-000); (ii) using GAAP amounts for the prior-year-end long-term debt and equity balances instead of FERC Form No. 1 balances (FA23-4-000); or (iii) using fiscal year-end balances 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 the 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);

- Incorrectly calculating and reporting Accumulated Deferred Income Tax on equity AFUDC (FA23-4-000); 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 (FA23-3-000, FA20-9-000, FA20-3-000);

- 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 (FA23-3-000, 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 (FA23-4-000, FA23-3-000, FA21-5-000, FA20-9-000, FA20-3-000);

- Internal Merger Costs – Public utilities have incorrectly included merger-related costs in wholesale transmission formula rates, resulting in the recovery of merger-related transaction and transition costs, including internal labor costs, from wholesale transmission customers. 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 (FA23-4-000, PA23-2-000, FA22-4-000, FA21-6-000, PA20-2-000, FA19-8-000);

- 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, FA22-1-000, PA20-2-000);

- 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 (FA23-4-000, FA23-3-000, PA23-2-000, FA22-5-000; FA22-4-000, FA22-3-000, FA21-6-000, FA21-5-000, FA21-4-000, FA21-3-000, FA20-7-000, FA20-6-000FA19-8-000, FA19-1-000);

- Fuel Adjustment Clauses – Prior to receiving Commission approval, public utilities improperly included costs in fuel adjustment clauses, such as non-energy costs and the amortization of regulatory assets (FA22-1-000); and

- Electric Vehicle (EV) Charging Stations – Public utilities included EV charging station costs in the wholesale revenue requirements produced by their formula rates, even though the EV charging stations serve their 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. Audit staff found that projects that did not qualify for the transmission incentive rate treatment were improperly included as part of the approved projects for the purposes of calculating the wholesale revenue requirement and resulting billings to customers. 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.[45] On recent OATT audits, DAA noted instances where company actions did not support this goal due to noncompliance with OATT terms and conditions and Commission regulations. 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[46] (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); incomplete or inaccurate available transmission capacity or total transfer capability data posted on OASIS (PA23-3-000, PA20-1-000, PA19-3-000, PA17-7-000); failure to post on OASIS load forecasts (PA23-3-000), reasons for curtailments, and transmission service discounts (PA22-6-000); and improper posting of transmission service request study metrics reports (PA21-5-000) and quarterly transmission service metrics reports (PA22-6-000).

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[47] for force majeure and

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[45] *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).

[46] *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).

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

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.

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, 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).

Intrastate Pipelines Providing NGPA Section 311 Service. DAA incorporated audits of intrastate natural gas pipelines providing NGPA section 311 service into its annual audit plan beginning in Fiscal Year 2023. Among other things, DAA audits NGPA section 311 pipelines for practices not authorized by the pipelines' Statements of Operating Conditions (SOCs), such as unauthorized rates, blending fees, gas retainage practices, nominating cycles and deadlines, and

OFO penalty calculations not authorized by, or that conflict with, such pipelines' SOCs, as well as not timely filing, or reporting complete information in, FERC Form No. 549D, or providing service to a shipper without a service agreement (PA23-1-000).

OIL INDUSTRY

DAA incorporated oil pipeline audits into its 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.[48] 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 (FA22-2-000, PA21-4-000, FA20-5-000, FA19-10-000, FA19-4-000, FA18-1-000, FA16-7-000). In other instances, an oil pipeline understated carrier property and noncarrier

[48] 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.

property as a result of erroneously recording certain assets on the books of a nonregulated affiliate, and overstated carrier property and understated carrier expenses by treating the replacement of minor items of property as a capital investment instead of maintenance expense (FA22-2-000).

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 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 FERC Form No. 6 contains comprehensive financial statements and supporting schedules. Page 700 of the FERC Form No. 6 requires oil pipelines to report only interstate costs, revenues, and volumes. 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; General Instruction 1-6(g) requires Commission approval for a prior period adjustment to retained earnings; and General Instruction 1-3 requires oil pipelines to keep books on a monthly basis for all transactions. 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 (FA22-2-000, 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); (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); and (5) an oil pipeline did not keep books on a monthly basis for affiliate transactions (FA22-2-000).

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); (2) incorrectly applied prorationing procedures when allocating capacity among shippers (PA21-4-000, FA16-6-000, FA16-5-000); and (3) accepted nominations not in the required written form (FA22-2-000).

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 FY2024, DAA completed 10 audits of public utility, natural gas, and oil companies covering a wide array of topics. The audits resulted in 55 findings of noncompliance and 240 recommendations for corrective action and directed an estimated $45,644,036 in refunds and other recoveries. Specifically, DAA directed $10,644,036 to be refunded to jurisdictional customers and prevented inappropriate costs estimated at $35,000,000 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 the jurisdictional entity, ratepayers and market participants. The 10 audits summarized below were completed in FY2024 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

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.

system.[49] 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

***Northwestern Wisconsin Electric Company* (*NWECo*), Docket No. FA23-3-000.** At NWECo, DAA evaluated compliance with: (1) approved terms, rates, and conditions of NWECo'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. The audit identified six findings and made 23 recommendations that required NWECo to take corrective action.[50] The company did not contest the six findings and 23 recommendations.

The six findings covered the following areas: (1) improperly excluding certain transmission-related revenues – namely, rental revenue from third parties' rental of a transmission substation and office space – from NWECo's transmission formula rate's Annual Transmission Revenue Requirement (ATRR) computation, leading to an overstatement of NWECo's ATRR and of billings to transmission customers; (2) improperly recording income tax receivable amounts as prepayments in Account 165, Prepayments, leading to overstatement of the company's ATRR and of billings to transmission customers; (3) misclassifying A&G and O&M expenses in a manner that overstated ATRR and charges to transmission customers, including misrecording donations to employees in Account 926, Employee Pensions and Benefits, rather than in Account 426.1, Donations, and misrecording certain distribution-related maintenance costs in Account 925, Injuries and Damages, a portion of which is included in transmission customer charges; (4) using depreciation rates for ratemaking purposes that were not filed with, and approved by, the Commission; (5) improperly recording the excess Accumulated Deferred Income Taxes (ADIT) related to the corporate tax rate change and adjustments associated with the TCJA in Account 282, Accumulated Deferred Income Taxes – Other Property, instead of Account 254, Other Regulatory Liabilities, affecting the transparency and accuracy of the excess ADIT amounts reported in NWECo's FERC Form No. 1 and 3-Q report filings; and (6) not properly following the FERC Form No. 1 reporting instructions and, therefore, not accurately reporting all required information.

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

***Southern Indiana Gas and Electric Company* (*SIGECO*), Docket No. FA23-4-000.** At SIGECO, DAA evaluated compliance with: (1) approved terms, rates, and conditions of SIGECO'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. The audit identified seven findings of noncompliance and made 39

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

[50] *Northwestern Wisconsin Elec. Co.*, Docket No. FA23-3-000 (Jan. 26, 2024) (delegated letter order).

recommendations that required SIGECO to take corrective action.[51] The company did not contest the seven findings and 39 recommendations.

The seven findings covered the following areas: (1) incorrectly including merger costs – such as severance costs, costs related to system harmonization and end-of-life replacement, and rebranding costs – in wholesale transmission formula rates, contrary to the hold harmless commitment, resulting in overstating SIGECO's transmission revenue requirement and customer charges; (2) improperly calculating the AFUDC rate by incorrectly calculating the long-term debt cost rate, using Generally Accepted Accounting Principles (GAAP) amounts for the prior year long-term debt and equity balances instead of FERC Form No. 1 balances, not properly updating SIGECO's short-term debt and CWIP prior year-end balances used in the AFUDC calculation, incorrectly calculating and reporting SIGECO's Accumulated Deferred Income Tax on equity AFUDC, and recording a portion of equity AFUDC in Account 419 (Interest and Dividend Income) instead of in Account 419.1 (Allowance for Other Funds used During Construction), all of which resulted in over-accrued AFUDC included in utility plant accounts and overbilling of its transmission customers; (3) improperly recording approximately $4.4 million relating to specific operating functions in various A&G expense accounts contrary to the Commission's accounting regulations, including costs relating to: software that supported SIGECO's distribution operations through its smart metering program; security services and environmental expenditures at specific locations such as production plants; and consulting services related to gas operations, resulting in SIGECO overstating its ATRR by approximately $440,000 and overbilling its wholesale transmission customers; (4) recording various non-operating expenses relating to lobbying, donations, and penalties in a manner contrary to the Commission's accounting regulations, which resulted in overstating SIGECO's ATRR and overbilling its wholesale transmission customers; (5) improperly reporting construction-related materials and supplies on FERC Form No. 1, resulting in overstating SIGECO's ATRR and overbilling its wholesale transmission customers; (6) improperly netting the excess and deficient ADIT related to the corporate tax rate change and associated adjustments required due to the TCJA 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 deficient ADIT amounts reported in SIGECO's FERC Form No. 1 filings; and (7) not following certain FERC Form No. 1 instructions, resulting in not accurately reporting all required information in SIGECO's FERC Form No. 1 filings.

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

2. Gas Tariff & Accounting

***NET Mexico Pipeline Partners, LLC (NET Mexico*), Docket No. PA23-1-000.** At NET Mexico, DAA evaluated compliance with: (1) NET Mexico's rates and charges and non-rate terms and conditions in its Statement of Operating Conditions Applicable to Natural Gas Policy Act (NGPA) section 311 Transportation Service (SOC); (2) the non-discriminatory access requirement that service must be made without undue discrimination or preference of any kind, under 18 C.F.R. § 284.7(b)(1); (3) the terms of service included in transportation and storage contracts for natural

[51] *Southern Indiana Gas and Electric Co.*, Docket No. FA23-4-000 (Sept. 27, 2024) (delegated letter order).

gas under 18 C.F.R. § 284.124; (4) the requirements for sales of natural gas under 18 C.F.R. § 284.142; and (5) the reporting requirements of the FERC Form No. 549D, Quarterly Transportation and Storage Report of Intrastate Natural Gas and Hinshaw Pipelines, under 18 C.F.R. § 284.126. The audit identified nine findings of noncompliance and made 27 recommendations that required NET Mexico to take corrective action.[52] The company did not contest the nine findings and 27 recommendations.

The nine findings covered the following areas: (1) charging a shipper a blending fee associated with gas quality specification requirements, without this fee being in NET Mexico's Commission-approved SOC or otherwise authorized by the Commission; (2) improperly charging two shippers rates that exceeded the maximum allowable rate for interruptible transportation service prescribed in NET Mexico's SOC; (3) entering into two commodity only firm transportation service (COFTS) agreements, contrary to the terms of NET Mexico's SOC, which did not provide for COFTS; further, these service agreements did not include a reservation rate for firm service, and the firm usage (i.e., commodity) rate was higher than the maximum allowed firm usage rate stated in the SOC; (4) not retaining natural gas, from quantities received from shippers, with which to operate compressor stations on its system, as prescribed by its SOC, but instead charging shippers in dollars a pro-rata share of the fuel costs incurred to operate its natural gas compressor stations; (5) using nomination cycles and deadlines that, although they followed NAESB standards, did not align with the provisions of NET Mexico's SOC; (6) using a procedure for calculating OFO penalties that did not align with the provisions of its SOC; (7) providing section 311 interruptible transportation service to one of NET Mexico's shippers, absent having a readily available service agreement with such shipper; (8) not reporting complete and accurate information in its FERC Form No. 549D filings, thereby reducing the completeness, accuracy, and usefulness of the filings; and (9) not submitting certain FERC Form No. 549D filings within 60 days after each respective quarter as required by Commission regulations.

As a result of the audit, NET Mexico made refunds to certain transmission customers and revised some of its practices to ensure that pipeline operations and the terms of its SOC conformed with each other, and reporting policies and procedures resulted in timely filings, and accurate and complete information in the identified areas of noncompliance.

3. Oil Tariff & Accounting

***Enlink NGL Pipeline, LP* (*EnLink NGL*), Docket No. FA22-2-000.** At EnLink NGL, DAA evaluated compliance with: (1) EnLink NGL's FERC oil tariffs, including the rate schedules and rules and regulations governing the transportation of natural gas liquids and any other interstate operations and charges; (2) the reporting requirements of the FERC Form No. 6, under 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 six findings of noncompliance and made 20 recommendations that required

[52] *NET Mexico Pipeline Partners*, *LLC*, Docket No. PA23-1-000 (Mar. 7, 2024) (delegated letter order).

EnLink NGL to take corrective action.[53] The company did not contest the six findings and 20 recommendations.

The six findings covered the following areas: (1) failing to record on EnLink NGL's books and records the cost of two mainline pipeline segments that it had used in carrier service since 2014 and instead erroneously recording their cost in an affiliated company's books and records, resulting in understating carrier property and accrued depreciation–carrier property and understating depreciation expense and associated operating and maintenance expenses, since 2014, and impacting EnLink NGL's Income Statement and Balance Sheet, along with supporting schedules, and Page 700 of the FERC Form No. 6; (2) failing to record on EnLink NGL's books and records certain property that it owned but which was used by an affiliated company for the affiliate's business and which therefore should have been recorded as noncarrier property, and any related expenses recorded as noncarrier expenses, on EnLink NGL's books and record; (3) improperly classifying certain intrastate movements of liquids as interstate movements, resulting in overstating the cost of service and the interstate barrel-miles reported on Page 700 of the FERC Form No. 6, as this schedule should only include interstate data; (4) accounting for replacement of minor items of property as a capital investment rather than as a maintenance expense, which was inconsistent with the Commission's accounting rules and regulations under 18 C.F.R. Part 352, and resulted in understating maintenance expenses and overstating carrier property; (5) preparing books and records for affiliate transactions on a quarterly basis, rather than on a monthly basis as required by the Commission's regulations, resulting in the books and records not accurately reflecting all the costs incurred at the end of each month; and (6) improperly accepting nominations for the transportation that were not submitted in the written form as required by Enlink NGL's FERC tariff.

As a result of the audit, EnLink NGL restated and footnoted certain balances in its FERC Form No. 6 filings; performed analyses to determine the impacts to Page 700 and various accounts caused by certain errors; submitted journal entries supporting the reclassification of expenses; and strengthened EnLink NGL'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

***Appalachian Power Company (APCo),* Docket No. FA22-1-000.** At APCo, DAA evaluated compliance with: (1) APCo's Commission-approved fuel adjustment clauses (FAC) and formula rate or tariff recovery mechanisms used to recover fuel and purchased-power costs, and (2) accounting regulations in the Uniform System of Accounts (Public Utilities) related to fuel and purchased-power costs. The audit identified four findings of noncompliance and made 18 recommendations that required APCo to take corrective action.[54] The company did not contest the four findings and 18 recommendations.

The four findings covered the following areas: (1) improperly including the amortization of

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[53] *EnLink NGL Pipeline, LP,* Docket No. FA22-2-000 (Aug. 14, 2024) (delegated letter order).

[54] *Appalachian Power Co*., Docket No. FA22-1-000 (Mar. 15, 2024) (delegated letter order).

certain regulatory assets arising from state-jurisdictional rate adjustment clauses in Account 501, Fuel Expense, as an input to the Company's cost-based formula rates without Commission approval; (2) improperly including approximately $7,606,000 of non-energy costs in the purchased power component of FAC calculations from 2019 to 2021, in which only energy-related economic purchases should have been included, resulting in certain FERC jurisdictional wholesale customers being overcharged by approximately $490,000; (3) not excluding the expenses that APCo incurred, in connection with fly ash sales to third parties for beneficial reuse, from APCo's wholesale cost-based fuel recovery formulas, as required by its wholesale Requirements Service formulas, thereby overstating its revenue requirement and charges to jurisdictional customers; and (4) not following certain instructions of the FERC Form No. 580 and, therefore, not accurately reporting all required information.

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

Dominion Energy Services, Inc. (DES), Dominion Energy Southeast Services, Inc. (DESS), and their holding company and associated companies (collectively Dominion), **Docket No. FA22-4-000.** At Dominion, DAA evaluated compliance with: (1) cross-subsidization restrictions on affiliate transactions under 18 C.F.R. Part 35; (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) and FERC Form No. 1 reporting requirements, focusing primarily on accounting and reporting for transactions with associated companies; and (4) preservation of records requirements for holding companies and service companies under 18 C.F.R. Part 368. The audit identified 12 findings of noncompliance and made 73 recommendations that required Dominion to take corrective action.[55] The company did not contest the 12 findings and 73 recommendations.

The 12 findings covered the following areas: (1) failing to classify as merger-related various voluntary retirement program costs, which were then allocated to affiliates and partially recovered through Commission-jurisdictional rates without Commission approval and contrary to the hold-harmless commitments made in a related merger application and accepted by the Commission; (2) failing to track as merger-related various merger labor and labor-related costs, such as incentive compensation and the cost of pre-merger-announcement tasks like negotiations and conducting due diligence, resulting in these costs being included in various Commission-jurisdictional revenue requirements without Commission approval and contrary to merger applicants' hold-harmless commitments; (3) DES misconfiguring certain merger-related billing Work Breakdown Structure (WBS) elements within its cost accumulation system, causing it to inadvertently bill approximately $4,599,000 of merger costs to its affiliates VEPCO and DESC, resulting in a portion of these merger costs being included in Commission-jurisdictional revenue requirements without the Commission's approval and contrary to the hold-harmless commitments; (4) failing to accurately and completely track the costs of various merger-related integration projects, resulting in these merger-related costs being included in utility plant and operating expense accounts and passed through to Commission-jurisdictional customers contrary to merger applicants' hold harmless

[55] *Dominion Energy Services, Inc.,* Docket No. FA22-4-000 (Aug. 12, 2024) (delegated letter order).

commitments; (5) failing to exclude merger-related refinancing costs of $2,552,000 from Commission-jurisdictional revenue requirements; (6) improperly configuring certain DES allocation factors, resulting in allocating charges to incorrect affiliates; using incorrect allocation methods that did not allocate costs to the affiliates that benefited from them; and failing to adequately disclose allocation methods in DES's FERC Form No. 60 disclosures; (7) improperly recording consultant fees related to directing and supervising customer accounts in Account 923, Outside Services Employed, and Account 905, Miscellaneous Customer Accounts Expenses (Major Only), rather than in the correct account, Account 901, Supervision (Major Only), resulting in a portion of such consultant fees improperly being included in Commission-jurisdictional revenue requirements and charged to Commission-jurisdictional customers; (8) improperly accounting for administrative and general expenses, specifically: erroneously recording chamber of commerce membership dues in Account 921, Office Supplies and Expenses, instead of Account 930.2, Miscellaneous General Expenses; erroneously recording charitable donations in Account 921, Office Supplies and Expenses, rather than in Account 426.1, Donations; and erroneously recording expenses relating to a backup site for customer remittance processing in the event of a disaster in Account 923, Outside Services Employed, rather than in Account 903, Customer Records and Collection Expenses; (9) erroneously recording Edison Electric Institute (EEI) membership dues designated as being for lobbying in Account 930.2, Miscellaneous General Expenses, instead of correct Account 426.4, Expenditures for Certain Civic, Political and Related Activities, resulting in overstating Commission-jurisdictional revenue requirements and customer charges; (10) erroneously recording the costs of various service company assets in Account 398, Miscellaneous Equipment, rather than in other service company property accounts, impacting the accuracy of FERC Form No. 60 reports; (11) reclassifying certain prepaid expense balances from Account 165, Prepayments, to Account 930.2, Miscellaneous General Expenses, because the company lacked supporting documentation for the balances, resulting in unsupported amounts being included in an operating expense account, in conflict with the Commission's accounting regulations, and thereby overstating Commission-jurisdictional revenue requirements and customer charges; and (12) not accurately disclosing in FERC Forms No. 60 the functional classification of expenses between capital, utility O&M, customer accounts expense, and A&G accounts in 2019 and 2020, causing those FERC Forms No. 60 to overstate various A&G and capital accounts and understate various O&M, customer accounts expense, and non-operating accounts on the FERC Form No. 60.

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

***NextEra Energy Transmission*, LLC (*NEET*) *and its subsidiaries* (*collectively the Companies*), Docket No. PA23-2-000.** At NEET, DAA evaluated NEET's compliance with the conditions established in three Commission orders authorizing the acquisition and/or disposition of jurisdictional assets and, focusing on transactions and costs associated with the acquisitions and dispositions, the Companies' compliance with: (1) tariff requirements governing their FERC jurisdictional rates; (2) the accounting requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Part 101; and (3) the reporting requirements of the FERC Form No. 1 under 18 C.F.R. § 141.1. The audit identified five findings of noncompliance, one other matter, and made 22 recommendations that required the Companies to take corrective action.[56] The Companies did not contest the five findings and 22 recommendations.

The five findings covered the following areas: (1) allocating acquisition-related costs to Commission-jurisdictional subsidiaries, which then recovered these costs through FERC-jurisdictional rates, without Commission approval and contrary to their hold harmless commitments; (2) improperly recording $139,385 of lobbying expenses on the books of jurisdictional subsidiaries in Account 561.5, Reliability, Planning, and Standards Development, a transmission function account, instead of in Account 426.4, Expenditures for Certain Civic, Political, and Related Activities, resulting in FERC-jurisdictional customers being improperly billed for these lobbying expenses; (3) improperly classifying and recording in Account 920, Administrative and General Salaries, the following: transmission planning and analysis software expense that should have been recorded in Account 569.2, Maintenance of Computer Software; trade association membership costs that should have been recorded in Account 930.2, Miscellaneous General Expenses; travel-lodging expenses that should have been recorded in Account 921, Office Supplies and Expenses; and general business software expenses that should also have been recorded in Account 921; (4) NEET's subsidiary, Trans Bay Cable, LLC, did not use Account 922, Administrative Expenses Transferred – Credit, to record administrative expenses from Accounts 920 and 921 that were transferred to construction projects or to nonutility accounts, reducing the transparency of Trans Bay's capitalization activities and the ability to compare those activities and their costs to those of others in the industry; and (5) reporting transactions with affiliated companies in FERC Form No. 1 submissions in a manner that lacked transparency and was inconsistent with Commission reporting requirements. The audit also identified one other matter: the acquisition of Trans Bay Cable was approved by the Commission without any hold harmless commitment in light of representations that Trans Bay Cable had no captive customers and provided transmission service at stated rates. Nonetheless, based on NEET's own accounting policies, $257,000 of employee retention expenses related to the Trans Bay Cable acquisition but paid after closing of the transaction should have been tracked as acquisition-related.

As a result of the audit, the Companies made refunds to Commission-jurisdictional customers and revised accounting and reporting policies and procedures in the identified areas of noncompliance.

***Tri-State Generation and Transmission Association, Inc.* (*Tri-State*), Docket No. PA22-6-000.** At Tri-State, DAA evaluated compliance with: (1) the terms and conditions of Tri-State's OATT; and (2) the regulations regarding OASIS prescribed in 18 C.F.R. Part 37. The audit identified three findings of noncompliance and made eight recommendations that required Tri-State to take corrective action.[57] Tri-State did not contest the three findings and eight recommendations.

The three findings covered the following areas: (1) not posting quarterly transmission service metrics on Tri-State's OASIS website within 15 calendar days of the end of the calendar quarter,

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[56] *NextEra Energy Transmission, LLC*., Docket No. PA23-2-000 (Aug. 21, 2024) (delegated letter order).

[57] *Tri-State Generation and Transmission Assoc*., *Inc*., Docket No. PA22-6-000 (Aug. 15, 2024) (delegated letter order).

as required by 18 C.F.R. § 37.6(h)(2), including information summarizing the time to complete transmission service request studies; (2) not posting transmission service discount information on Tri-State's OASIS website, as required by Tri-State's OATT Schedule 7 and 18 C.F.R. § 37.6(c)(3); and (3) not stating reasons for all curtailments posted on OASIS, as required by 18 C.F.R. § 37.6(e)(3)(i).

As a result of the audit, Tri-State developed and implemented procedures, training, and controls to address the audit findings, including procedures, training, and controls intended to ensure that required transmission service metrics are posted within 15 days of the end of each calendar quarter, all discount rates are posted on OASIS within the time frames set forth in Tri-State's OATT and the Commission's regulations and are made available to all transmission service customers, and all curtailment postings include a reason why the transaction could not be continued or completed.

***Black Hills Corporation's three public utility subsidiaries* (*collectively, Black Hills Electric Utilities*), Docket No. PA23-3-000.** At the Black Hills Electric Utilities, DAA evaluated compliance with: (1) the regulations regarding OASIS prescribed in 18 C.F.R. Part 37; (2) Standards for Public Utility Business Operations and Communications under 18 C.F.R. Part 38; (3) the Transparency Rule under 18 C.F.R. § 358.7; and (4) information posting requirements contained within all OATTs. The audit identified three findings of noncompliance and made ten recommendations that required Black Hills to take corrective action.[58] The companies did not contest the three findings and ten recommendations.

The three findings covered the following areas: (1) not posting load forecasts on a daily basis, including underlying assumptions and daily peak load for the prior day, as required by 18 C.F.R. § 37.6(b)(3)(iv), resulting in a lack of transparency and information on transmission system conditions, which may have impacted transmission customers and their transmission activities; (2) not posting narrative explanations of the reasons for the unavailability of available transfer capability (ATC) when the monthly and yearly capability remained unchanged at a value of zero for a period of six months or longer for several transmission paths, as required by 18 C.F.R. § 37.6(b)(3)(i)(C)(*4*), resulting in a lack of transparency and information available to transmission customers regarding ATC availability and potential transmission services across certain paths, which may have impacted transmission customers and their transmission activities; and (3) not making publicly available the postings for monthly and yearly capability, along with a narrative explanation, for instances in which total transmission capability (TTC) changed by more than 10 percent, as required by 18 C.F.R. § 37.6(b)(3)(i)(C)(*1*)-(*3*), resulting in a lack of transparency and information available to transmission customers regarding TTC and potential transmission services across certain paths, which may have impacted transmission customers and their transmission activities.

As a result of the audit, the Black Hills Electric Utilities developed and implemented procedures and controls intended to ensure that they were timely posting all required information to OASIS, including: load forecast data, with underlying assumptions and daily peak loads; a narrative explanation of the reasons for the unavailability of ATC when monthly and yearly ATC will remain unchanged at a value of zero for a period of six months for a given path; and settings

[58] *Black Hills Corp*., Docket No. PA23-3-000 (Aug. 22, 2024) (delegated letter order).

that provide required access for public users to information specified in the Commission's regulations.

5. Audits with No Findings of Noncompliance

***DTE Energy Company and subsidiaries* (*DTE Energy*), Docket No. PA20-7-000.** At DTE Energy, DAA evaluated the company's and its subsidiaries' jurisdictional wholesale electric market activity, including compliance with tariffs of ISOs/RTOs and transmission owners in the electricity markets in which DTE Energy participated and with the requirements of DTE Energy's market-based rate (MBR) authorizations, including the Commission's MBR regulations under 18 C.F.R. Part 35, Subpart H and Electric Quarterly Report filing regulations under 18 C.F.R. § 35.10b.[59] The audit did not identify any findings of noncompliance that required DTE Energy to take corrective action. However, the audit did identify one other matter related to DTE Energy's submission of planned and forced outage tickets for economic derates to MISO.

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

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

[59] *DTE Energy Company*, Docket No. PA20-7-000 (Nov. 21, 2023) (delegated letter order).

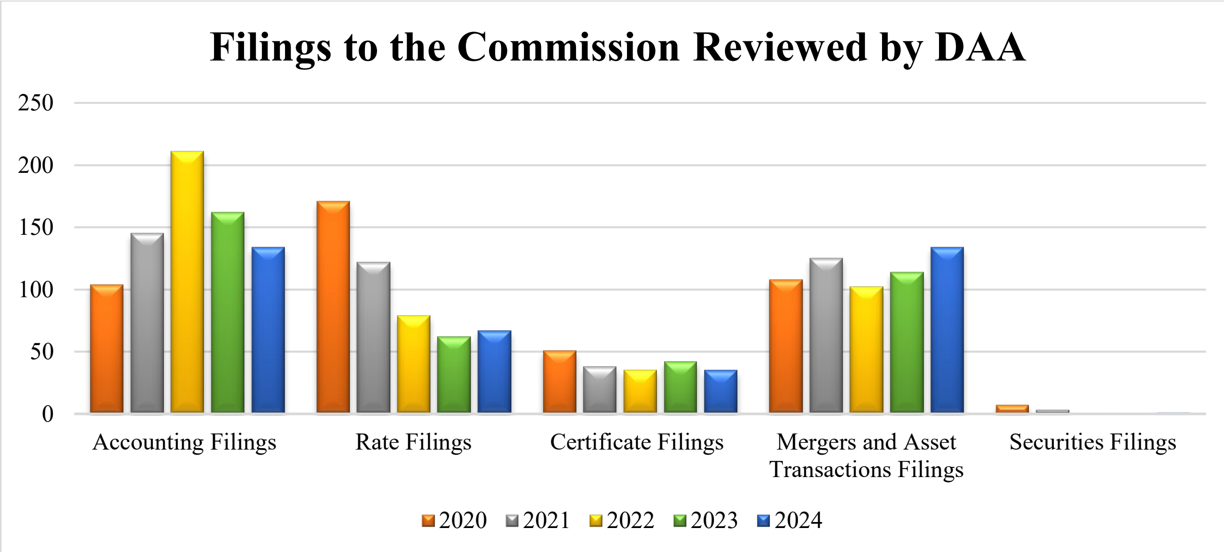
DAA also receives accounting inquiries and provides informal feedback on the Commission's accounting and financial reporting regulations. These inquiries come directly from jurisdictional entities, industry trade groups, legal and consulting firms, and other industry stakeholders, as well as through 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.

Accounting Questions and Answers

To provide industry and the public with an additional tool in the form of informal staff guidance, DAA has included on FERC.gov a new section titled *Accounting Questions and Answers* under *Accounting Matters*. DAA intends to continuously update this section with Q&As.

1. Overview of FY2024 Filings Reviewed by DAA

In FY2024, DAA advised and acted on 371 proceedings at the Commission covering various accounting matters with cost-of-service rate implications, such as accounting for mergers and divestitures, leases, asset transactions, early plant retirements, AFUDC, pensions and other postretirement benefits, asset retirement obligations, regulatory assets and liabilities, and income tax matters, among others. These proceedings included requests for declaratory orders, natural gas certificate applications, merger and acquisition applications, electric and natural gas rate filings, applications for issuance of securities, and requests for accounting approval, waiver, guidance, and interpretation. In many of these cases, DAA served in an advisory role to other program offices in analyzing and identifying accounting and rate implications of those requests. Additionally, in FY2024, DAA advised the Commission's program offices on a rulemaking proceeding related to a NOPR under Docket No. RM22-2-000 related to reactive power capability compensation and market design. Also, DAA continued efforts in advising the industry on accounting implementation matters resulting from the issuance of Order No. 898, which related to the accounting and reporting treatment of certain renewable energy assets. Over the past five years, DAA has reviewed 2,052 Commission proceedings to ensure proper accounting is followed and to advise the Commission of potential rate impacts.



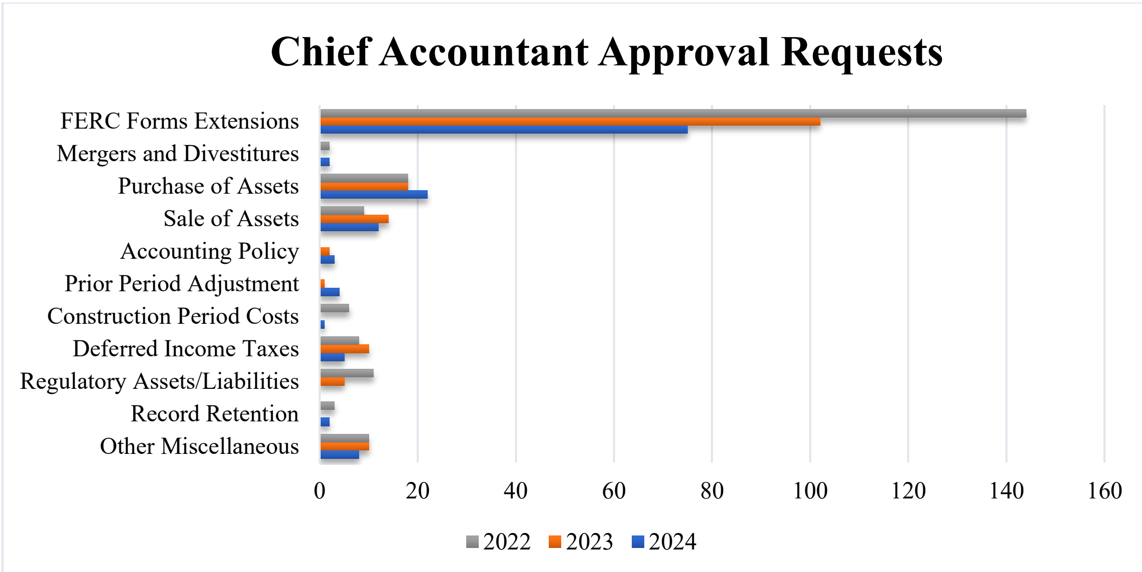
2. Requests for Approval of the Chief Accountant and Accounting Interpretations

In FY2024, DAA acted through the Chief Accountant's delegated authority on 134 accounting or reporting filings requesting approval (or authorization, acceptance, acknowledgement, confirmation, or interpretation) of a proposed accounting treatment or financial reporting matter.[60] 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 FY2024, there was a continued high volume of accounting filings related to asset sales and acquisitions, similar to FY2023. These accounting requests also related to adjustments of accumulated deferred income tax balances, acquisition and sale of facilities, changes in corporate ownership, accounting for unusual or infrequent items, acquisition of carrier and noncarrier assets, impairment of carrier and noncarrier property, certain significant prior period adjustments, sale of land, transfer of newly constructed interconnection facilities, plant assets capitalization matters, premature destruction or loss of records, testing periods for construction projects that took longer than anticipated, rent abatement provisions, lease transactions, procedure for separate calculation of weighted average cost of gas related to distinct agreements, and waiver requests related to capitalization of transfer costs that are otherwise expensed under a certain program.

On September 12, 2024, the Chief Accountant issued a Notice of Proposed Accounting Release in Docket No. AI24-1-000 that may result in guidance on the accounting for the transferability of income tax credits related to certain energy projects due to the Inflation Reduction Act of 2022, which allows entities to monetize such credits via transfers to third parties. This proposed

[60] 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).

accounting release is intended to help ensure consistency and transparency in accounting for such transactions and help resolve diversity in practice.



3. Rate Proceedings

In FY2024, DAA participated in 67 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 FY2024 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 FY2024, DAA reviewed 35 natural gas pipeline certificate applications seeking various Commission authorizations, including to: construct, own, and operate new pipeline facilities; acquire pipeline facilities; abandon pipeline facilities in place, by removal, or by sale; and authorization to operate natural gas facilities. DAA continued to work with other Commission program offices to assist in the development of just and reasonable rates by reviewing construction costs and other items used to determine initial recourse rates, including operation and maintenance expenses, depreciation, taxes, and overall rate of return. In reviewing such information during FY2024, 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 FY2024, DAA reviewed 134 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. Debt and Securities Issuance Proceedings

In FY2024, DAA reviewed one public utility security issuance application. Section 204(a) of the FPA requires jurisdictional entities to receive Commission authorization before issuing securities or assuming liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person. In reviewing filings under section 204, the Commission evaluates an applicant's viability based on a review of financial statements submitted with the application, the applicant's interest coverage ratio, debt maturities, and cash-flow projections. DAA's review of debt and security applications provides critical analysis that helps prevent public utilities from borrowing excessive amounts of money and inappropriately using the proceeds to finance nonutility businesses without demonstration of the ability for repayment. This also ensures that future issuances of debt are consistent with the public interest.

7. Accounting Inquiries

In FY2024, DAA responded to 180 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 FY2024 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, construction work in progress, accumulated deferred income taxes, CIAC, adjustments to retained earnings, regulatory assets and liabilities, waiver of the Commission's accounting and reporting regulations related to a solar project, penalties, impairment, depreciation, among other topics. DAA responded to these accounting inquiries by providing informal accounting and financial reporting guidance based on Commission precedent and regulations, in addition to providing guidance to individuals on how to find documents and regulations using the Commission's eLibrary system[61] and Title 18 of the Code of Federal Regulations.[62] Such informal accounting and reporting guidance is not binding on the Commission and cannot grant waiver of a Commission regulation or order.

8. Continued Involvement with Industry on Accounting Implementation Matters Relating to Renewable Energy Assets as a Result of the Issuance of Order No. 898

Order No. 898, issued on June 29, 2023, 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 computer hardware, software, and communication equipment.[63] DAA continued efforts in advising industry on numerous and nuanced matters that utilities should consider in implementing the changes in the Commission's accounting and reporting requirements.

9. Commission Order No. 864 Compliance

On November 21, 2019, the Commission issued Order No. 864,[64] 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.[65] 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

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

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

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

[64] *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).

[65] *See* 18 C.F.R. §§ 35.24 and 154.305; *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).

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 222 compliance filings to date, including approximately 7 in FY2024. DAA has actively supported the other program offices in the overall review and assessment of each compliance filing. DAA has provided its expertise to ensure, among other things, that public utilities properly remeasure ADIT accounts to establish the excess or deficient ADIT, record a regulatory asset (Account 182.3) associated with deficient ADIT or a regulatory liability (Account 254) associated with excess ADIT,[66] 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, 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

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

during the most recent calendar quarter.[67] The Commission extended the EQR filing requirement to apply to certain non-public utilities in Order No. 768.[68]

In FY2024, the Commission received EQR submittals from nearly 3,500 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 reports jurisdictional entities that do not timely file their EQRs to OEMR for possible revocation of MBR authority. In FY2024, there were 59 companies that sought and were granted an extension of time to file their EQRs. Staff also assisted with about 200 unique EQR inquiries from multiple companies and data users. The Commission revoked MBR authority for two companies for failure to comply with EQR reporting requirements. Companies that identify errors or omissions in previously filed EQRs may elect to make a self-report. In FY 2024, there were two companies that made self-reports pertaining to previously filed EQRs.

In FY2024, DAA continued to work with information gathered during the public outreach sessions related to the EQR Reassessment and Modernization Project. On October 19, 2023, the Commission issued a Notice of Proposed Rulemaking (Docket No. RM23-9-000), which proposes to update and modernize the EQR data collection by revising the current EQR system design and filing requirements. During FY2024, staff also updated the EQR webpage to reflect a revised version of the EQR Filing Requirements Guide and a summary of the EQR Reassessment and Modernization Project NOPR.

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.[69]

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[67] *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).

[68] *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).

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

During FY2024, the Commission received an estimated 2,549 financial forms submittals. As discussed above, on June 29, 2023, the Commission issued Order No. 898,[70] 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[71] and Hotline complaints against the non-public data available to the Commission. This internal review process reduces burden on the industry by resolving some matters without the need for investigation. When an investigation is opened, DAS staff 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.[72] On average, the Commission receives, on a non-public basis, approximately 33 gigabytes of data in more than 1,582 tables each day from the six organized markets combined. Each ISO/RTO database is different, and DAS is responsible for

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

[71] Specific examples of this review of market monitor referrals are included in DOI section F(2) of this report under "Illustrative Market Monitor Referrals Closed with No Action."

[72] *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).

understanding the nuances of each database and preparing them for use in surveillance screens and analyses.

Similarly, pursuant to Order No. 771,[73] 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 18.5 million eTags and gains access to approximately 4,300 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 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 FY2024, DAS did not open any new enhanced surveillance matters. However, as mentioned in the FY2023 Annual Report, DAS continued its analyses related to

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

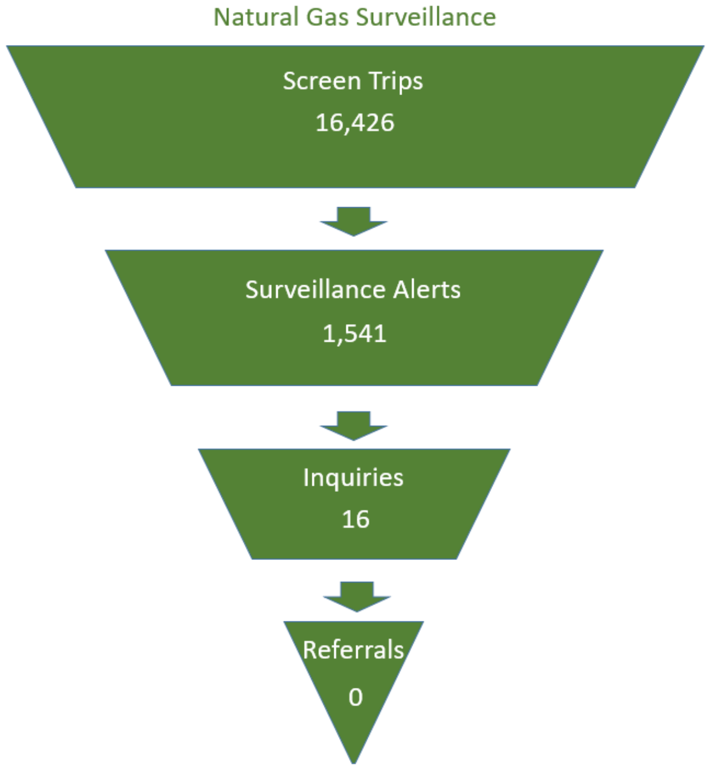
Winter Storm Elliott and the Winter 2022/2023 Western Energy Price Spike in FY2024.[74] DAS has now completed its analysis related to Winter Storm Elliot and referred four additional matters to DOI for non-public investigation. In addition, DAS completed its analysis related to the Winter 2022/2023 Western Energy Price Spike without any additional referrals.

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 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 FY2024, natural gas surveillance screens produced approximately 16,426 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 FY2024, 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 1,541 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 FY2024, DAS closed the five pending inquiries from FY2023 with no referral, opened 16 new natural gas surveillance inquiries, closed 14 of the FY2024 inquiries, and did not refer any to DOI for investigation. Two of these inquiries initiated in FY2024 remain open with DAS staff continuing its analytic work.

[74] 2023 Report on Enforcement, Docket No. AD07-13-017, at 79-80 (2023), https://www.ferc.gov/media/fy2023-report-enforcement.

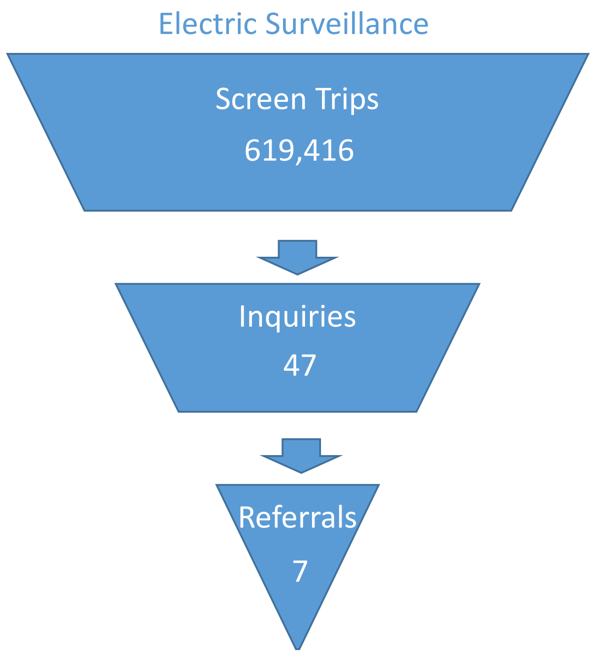


3. Electricity

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 FY2024, 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 FY2024, 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 FY2024, DAS ran and reviewed 101 electric surveillance screens; monthly, hourly, and intra-hour sub-screens; and reports for over 46,000 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 Market Monitors, DAS identified 47 instances of market behavior that required further analysis through a surveillance inquiry. Of the 47 electric surveillance inquiries, seven were referred to DOI for investigation, 30 were closed with no referral, and ten remain open with DAS staff continuing its analytic work.



4. Illustrative DAS Surveillance Inquiries Closed with No Referral

Market Manipulation (Gas). DAS flagged a company typically engaged in transporting gas from a production area to a demand center for both buying gas at the downstream delivery point and selling gas at the upstream receipt point. The company bought downstream at prices above other market participants and sold upstream at prices below other market participants, with high market concentrations during multiple bidweeks. The company also had significant firm transportation. In the months before the flagged activity, DAS observed the company normally purchasing in the production area and selling at the demand center. DAS was concerned about this change in trading strategy due to its potential to widen the transport spread, which could allow the company to obtain production gas at an artificially depressed index price while also selling demand center gas at an artificially increased index price. Upon further review of variable commodity and fuel charges, along with spread pricing during trading sessions, DAS observed that the spread between the production area and the demand center was too low to recover variable transport costs, concluded the strategy made sense compared to suboptimally flowing gas from the production area to the market center, and closed the inquiry.

Market Manipulation (Gas). DAS screens flagged a company's bidweek physical basis purchases at a Midwest hub. The company made these purchases at prices above other market participants, while having a high market concentration and holding a long financial basis position. The company also increased its long financial basis position significantly in the days preceding bidweek. DAS opened an inquiry and sent the company a surveillance data request. In its response, the company provided DAS with data related to fixed price and physical basis forward sales at the hub prior to the bidweek, offsetting some of the basis risk length from the firm's basis futures. In addition, DAS discussed the company's trading strategies with the trader, who explained that the bidweek physical basis purchases were made to cover a portion of a substantial physical short position from pre-bidweek sales obligations. The trader discussed concerns about the size of the physical short position and the need to purchase gas to cover some of it. After confirming the trader's explanations through its own analysis, DAS closed the inquiry in light of the lower degree of speculative financial length and leverage and the company's restraint in its physical buying behavior.

Market Manipulation (Gas). DAS identified a company buying physical, fixed price gas in next day trading sessions at a Western hub. The company often lifted offers to pay wide bid/ask spreads, early in a trading session, in a manner that appeared to benefit the company's long swing futures position. In addition, at a separate Western hub, DAS flagged the same company (and trader) for bidweek sales with sizeable market concentration and losses compared to other market participants, while holding a short basis futures position. DAS opened an inquiry and sent a surveillance data request for transaction data, transport and storage contracts, and financial positions from the company. Through the data request response and a subsequent conversation with the trader, staff learned that the trader's activity was informed by long-term contracts held by the company and his awareness of planned and unplanned pipeline maintenance. After verifying the information provided by the company and talking to the company's compliance group, DAS closed the inquiry because the next day trading lacked consistency and the bidweek trading could be explained by shifting fundamentals.

Market Manipulation (Gas). DAS opened an inquiry to examine the circumstances surrounding high-priced physical basis trades at an Eastern hub during bidweek that were subsequently cancelled but caused a temporary spike in financial basis pricing. As part of the inquiry, DAS requested exchange data, examined trader communications, and interviewed the traders involved. The companies involved in the cancelled trades also had financial basis sales that benefitted from the temporary price spike. During the inquiry, the company that initiated the cancellation demonstrated that the physical trades were accidental and that the financial sales occurred on an independent desk. Its counterparty on the physical trade operated in good faith allowing the cancellation and sought to reduce its basis risk in both the physical and financial markets. DAS had discussions with compliance staff and closed the matter due to insufficient evidence of intent to manipulate.

Market Manipulation (Electric). While conducting screening of demand response offers in PJM's energy market, DAS noted that one particular demand response unit, a crypto mining facility, was offering to reduce demand, but appeared to not actually be following dispatch signals.

DAS was initially concerned that the unit could be artificially inflating its baseline during a high-priced period. After requesting data from the market monitor and examining the actual metered load of the facility, DAS determined that the unit typically followed dispatch instructions and therefore closed the inquiry.

Market Manipulation (Electric). DAS electric surveillance screens analyze trading which appears to be relieving, creating, or aggravating binding constraints in the day-ahead market. These screens automatically calculate shift-factor weighted effective positions that could benefit financially from such activity. In one case, a large market participant was flagged when its collective virtual positions at a corporate-parent level had an effective position that exceeded a screen threshold with respect to an Eastern constraint. Further analysis into the company's corporate structure revealed that some positions belonged to a different entity that shared the same corporate parent, but which traded independently of that market participant during the period in question. Once these positions were excluded from the analysis, the portfolio appeared to be appropriately balanced. As a result, the inquiry was closed with no referral to DOI.

C. Analytics

During FY2024, DAS worked on approximately 65 investigations with DOI and 10 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

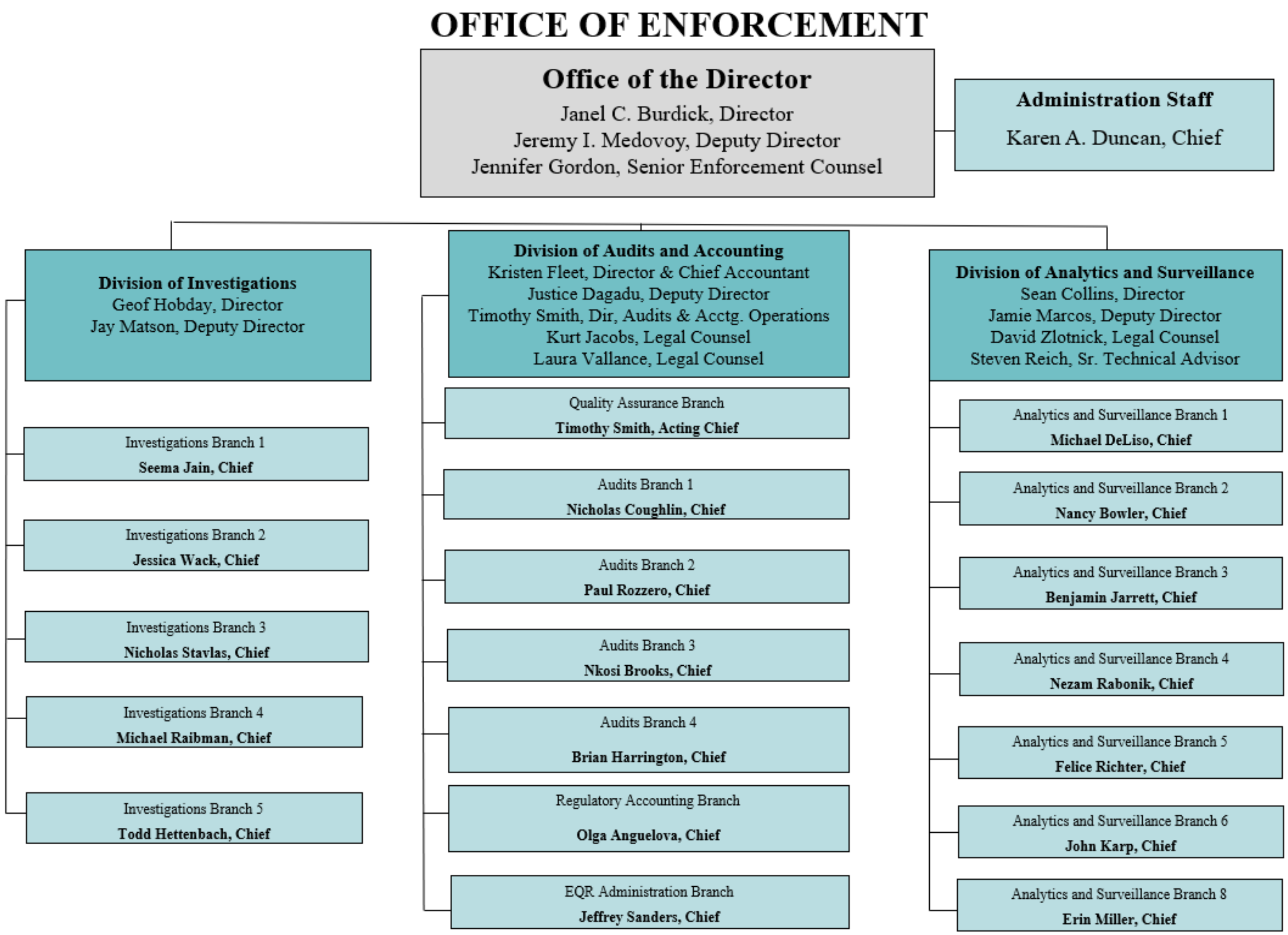
DAS conducts analytical reviews of wholesale electric MBR transactions to detect the potential exercise of market power. To accomplish this function in FY2024, DAS staff continued to develop, refine, and implement tools and algorithmic indicators to conduct ongoing analysis of transactional and other 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. DAS staff also analyzed transactions for compliance with market mitigation rules and 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 FY2024, 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 33 statistical indicators to detect potential instances of the exercise of market power within 59 geographic regions or market hubs.

E. Data Management

During FY2024, 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 use of Order No. 760 data. In FY2024, the data warehouse team worked with Electric Surveillance staff to migrate 10 of its end-of-month screening tools to the data warehouse. Second, DAS supported its counterparts in the FERC Office of the Chief Information Office (CIOO) to begin migrating Commission analytics into the cloud. In the new cloud environment, Commission analysts are building state-of-the-art analytics tools and powerful data platforms to analyze voluminous Commission data assets. This year, Gas Surveillance staff worked with CIOO staff and contractors to establish cloud-based access to key non-public and commercial data feeds, identify and begin working in appropriate environments for inquiry analysis, and prototype and test migrated versions of screens and dashboards. Similarly, DAS staff began to lay the groundwork to migrate the Order No. 760 data warehouse into the cloud in the coming fiscal year.

APPENDIX A: OFFICE OF ENFORCEMENT ORGANIZATION CHART (CURRENT)



APPENDIX B: FY2024 CIVIL PENALTY ENFORCEMENT ACTIONS

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
Big Rivers Electric Corporation, Docket No. IN24-9-000, Order Approving Stipulation and Consent Agreement, 188 FERC ¶ 61,155 (Sept. 5, 2024)	$336,870 civil penalty; $308,341 disgorgement	On September 5, 2024, the Commission issued an order approving the settlement of Enforcement staff's investigation of Big Rivers Electric Corporation (BREC), a Kentucky wholesale generation and transmission cooperative. Enforcement staff determined that BREC violated the Commission's Anti-Manipulation Rule through the following conduct: (a) submitting a false forced outage to avoid capacity market penalties, (b) submitting offers to MISO for one of its units at full availability when BREC knew or was reckless in not knowing that the plant could not run at full availability, and (c) submitting false and misleading information to the MISO IMM about its actions during the relevant period. In the settlement, BREC stipulated to the facts, neither admitted nor denied the violations, and also agreed to review its compliance procedures for potential improvements, provide compliance training to its personnel, and be subject to compliance monitoring.
Arlington Energy Center III, LLC; Blythe Solar 110, LLC; Blythe Solar III, LLC; Blythe Solar IV, LLC; Desert Sunlight 250, LLC; Sunlight Storage, LLC; and McCoy Solar, LLC, Order Approving Stipulation and Consent Agreement, 188 FERC ¶ 61,117 (Aug. 8, 2024)	$105,000 civil penalty; $381,724 disgorgement	On August 8, 2024, the Commission issued an order approving the settlement of Enforcement staff's investigation of Arlington Energy Center III, LLC; Blythe Solar 110, LLC; Blythe Solar III, LLC; Blythe Solar IV, LLC; Desert Sunlight 250, LLC; Sunlight Storage, LLC; and McCoy Solar, LLC (the Companies), which are indirect subsidiaries of NextEra Energy Resources, LLC and/or NextEra Energy Partners, LP. Each subsidiary operates a co-located battery energy storage system and solar generation facility. Enforcement staff determined that the Companies violated CAISO's Tariff by deviating from CAISO's dispatch instructions when providing ancillary services to CAISO during the period January 1, 2022, through September 1, 2023. Under the terms of the settlement, the Companies stipulated to the facts, admitted to the violations, and agreed to submit an annual compliance

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
		monitoring report to Enforcement for one year with a second year at Enforcement staff's discretion.
Vista Energy Storage, LLC, Docket No. IN24-11-000, Order Approving Stipulation and Consent Agreement, 188 FERC ¶ 61,112 (Aug. 6, 2024)	$1,000,000 civil penalty; $1,670,000 disgorgement	On August 6, 2024, the Commission issued an order approving the settlement of Enforcement staff's investigation of Vista Energy Storage, LLC (Vista). Enforcement investigated whether Vista violated the CAISO Tariff or Commission regulations by submitting bids to CAISO when Vista's battery resource was not reasonably expected to be capable of performing at the levels specified in the bids during the summer of 2022. Enforcement concluded that on 33 days, Vista violated section 37.3.1.1 of the CAISO Tariff when it submitted inaccurate initial state of charge values from a resource that was not reasonably expected to be available and capable of performing at the levels specified in its bids. Under the terms of the settlement, Vista stipulated to the facts, but neither admitted nor denied the violations. Vista also agreed to submit an annual compliance monitoring report to Enforcement for one year with a second year at Enforcement's sole discretion.
SunSea Energy, LLC, Docket No. IN24-8-000, Order Approving Stipulation and Consent Agreement, 187 FERC ¶ 61,225 (June 28, 2024)	$5,000 civil penalty	On June 28, 2024, the Commission issued an order approving the settlement of Enforcement staff's investigation of SunSea Energy, LLC (SunSea). Enforcement staff determined that SunSea violated the NYISO Tariff and the Commission's Duty of Candor Rule by failing to timely inform NYISO of the existence of ongoing investigations by the New York Public Service Commission that could have a material impact on the financial conditions of SunSea. Under the terms of the settlement, SunSea stipulated to the facts, but neither admitted nor denied the violation.
Josco Energy Corp., Docket No. IN24-7-000, Order Approving Stipulation and Consent	$5,000 civil penalty	On June 28, 2024, the Commission issued an order approving the settlement of Enforcement staff's investigation of Josco Energy Corp. (Josco). Enforcement staff determined that Josco violated the NYISO

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
Agreement, 187 FERC ¶ 61,221 (June 28, 2024)		Tariff and the Commission's Duty of Candor Rule by failing to timely inform NYISO of the existence of ongoing investigations by the New York Public Service Commission that could have a material impact on the financial conditions of Josco. Under the terms of the settlements, Josco stipulated to the facts, but neither admitted nor denied the violations.
Galt Power Inc., Docket No. IN20-5-000, Order Approving Stipulation and Consent Agreement, 187 FERC ¶ 61,224 (June 28, 2024)	$1,500,000 civil penalty; $372,297.85 disgorgement	On June 28, 2024, the Commission issued an order approving the settlement of Enforcement staff's investigation of Galt Power, Inc. (Galt), a privately held Delaware corporation and wholesale power marketer, into whether Galt violated the Commission's Anti-Manipulation Rule and section 222 of the FPA by engaging in prohibited wash trades between the NYISO and ISO-NE markets between July 8, 2016, and April 23, 2019. Galt repeatedly executed offsetting import-export trades, sending energy from NYISO to ISO-NE, to obtain Class I Renewable Energy Certificates (RECs) while sending the same quantity of energy back from ISO-NE to NYISO in the same hour in order to eliminate the price risk of the NYISO to ISO-NE transactions. Under the settlement agreement, Galt stipulated to the facts, neither admitted nor denied the violations, and agreed to be subject to compliance monitoring for at least two years.
ENGIE Energy Marketing NA, Inc., Docket No. IN24-6-000, Order Approving Stipulation and Consent Agreement, 187 FERC ¶ 61,084 (May 20, 2024)	$48,000 civil penalty	On May 20, 2024, the Commission issued an order approving the settlement of Enforcement staff's investigation of ENGIE Energy Marketing NA, Inc. (ENGIE). In the settlement agreement, Enforcement staff concluded that ENGIE submitted attestations to the ISO-NE internal market monitor that falsely represented that generator assets it managed were eligible to seek an exemption from energy market mitigation between July 2021 and September 2022. Enforcement staff identified no evidence indicating that ENGIE's misrepresentations were made knowingly or with the intent to defraud, but staff concluded that ENGIE violated the Commission's

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
		Duty of Candor Rule. As set out in the terms of the settlement agreement, ENGIE neither admitted nor denied the violation but stipulated to the facts contained therein. ENGIE agreed to be subject to compliance monitoring as provided in the settlement agreement.
Smart One Energy LLC, Docket No. IN23-13-000, Order Approving Stipulation and Consent Agreement, 186 FERC ¶ 61,181 (Mar. 12, 2024)	$5,000 civil penalty	On March 12, 2024, the Commission issued an order approving the settlement of Enforcement staff's investigation of Smart One Energy, LLC (Smart One) regarding its failure to timely report to the NYISO's Corporate Credit Division proceedings before two state utility commissions (the Maryland Public Service Commission and Virginia State Corporation Council) in violation of section 26.2.1.4 of the NYISO Tariff. That provision provides: "A Customer shall inform the ISO of any material change in its financial status within five (5) business days, including but not limited to: . . . (e) initiation of a lawsuit that could materially and adversely impact current or future financial performance[.]" Enforcement staff found that Smart One violated section 26.2.1.4 of the NYISO Tariff by failing to timely report these proceedings, which resulted in a significant decline in its net revenue following the imposition of sanctions by the two state commissions. As set out in the terms of the settlement, Smart One neither admitted nor denied the violation, but stipulated to the facts contained therein. The settlement does not require that Smart One submit to compliance monitoring because in August 2021, Smart One ceased all marketing of electricity in New York and all other states in which it operates.
Vitol Inc. and Federico Corteggiano, Docket No. IN14-4-000, Order Approving Stipulation and Consent Agreement, 186 FERC ¶ 61,008 (Jan. 4, 2024) and *FERC v. Vitol Inc. and Federico Corteggiano*,	$2,250,000 civil penalty by Vitol Inc. and $75,000 civil penalty by Federico Corteggiano	On October 25, 2019, the Commission issued an Order Assessing Civil Penalties finding that Vitol, Inc., and its individual trader, Federico Corteggiano, violated section 222 of the FPA and section 1c.2 of the Commission's regulations by selling physical power at a loss in October and November 2013 in CAISO's day-ahead market for the purpose of eliminating

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
Case No. 2:20-CV-00040-KJM-AC (E.D. Cal.)		congestion costs that they expected to cause losses on Vitol's congestion revenue rights. The Commission assessed civil penalties of $1,515,738 against Vitol and $1,000,000 against Corteggiano. The Commission also ordered Vitol to disgorge unjust profits of $1,227,143, plus interest. The Commission filed an action in federal district court to affirm the penalty order, and the district court reduced the assessed penalty against Corteggiano to $800,000 in a pretrial order. The parties executed a settlement agreement on December 13, 2023. The Commission approved the settlement agreement on January 4, 2024. The case was dismissed by the court on January 23, 2024.
Linde, Inc. and Northern Indiana Public Service Company, Docket No. IN24-3-000, Order Approving Stipulation and Consent Agreement, 186 FERC ¶ 61009 (Jan. 4, 2024)	$10,500,000 civil penalty by Linde, Inc.; $48,500,000 disgorgement by Linde, Inc. and $7,700,000 disgorgement by Northern Indiana Public Service Company	On January 4, 2024, the Commission issued an order approving the settlement of Enforcement staff's investigation of Linde, Inc. (Linde) and Northern Indiana Public Service Co. (NIPSCO) regarding Linde's participation, through NIPSCO as its sponsoring utility, in a MISO demand response program. Linde operates a large industrial facility in northern Indiana, which uses as much as 370 MW to extract oxygen, nitrogen, argon, and other gases from the atmosphere. During the period in question (2015-2022), Linde ran its facility at high levels for a short period (usually seven days) to establish a high baseline, and then, by plan, operated at a lower level for approximately 38 days. Doing so enabled Linde to collect demand response payments for the difference between its baseline and its lower load levels on the roughly 38 days. Starting in 2020, Linde "enhanced" its demand response program by operating additional equipment during the seven-day period for the sole purpose of using electricity, while venting to the atmosphere the gases it produced by using that equipment. Through the period in question, NIPSCO took a share of the demand response payments from MISO, although it had no role in Linde's decisions about how to participate in

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
		the MISO program. Linde and NIPSCO stipulated to the facts in the agreement but neither admitted nor denied the violation. In addition, Linde agreed to stringent compliance measures in the event it later participates in a MISO demand response program.
Black Hills Corporation, et al., Docket No. IN23-10-000, Order Approving Stipulation and Consent Agreement, 185 FERC ¶ 61,172 (Dec, 5, 2023)	$150,000 civil penalty	On December 5, 2023, the Commission issued an order approving the settlement of Enforcement staff's investigation of 103 late filings by Black Hills Corporation (BHC). In the settlement, BHC admits to having violated both section 205 of the FPA and Part 35 of the Commission's regulations. Because the Commission had not accepted or otherwise finally disposed of a significant portion of the 103 late filings when the settlement was signed, Black Hills agreed to provide semi-annual status reports detailing the filing status of each of the 103 late filings. These filings will continue until the Commission accepts or otherwise finally disposes of all of the agreements or for two years, whichever comes first. Six months after the Commission accepts or otherwise finally disposes of all of the agreements, Black Hills will file the first of two compliance monitoring reports, with the second due a year later. In June 2024, Black Hills filed its first status report.
AES Alamitos, LLC and AES Redondo Beach, LLC, Docket No. IN23-15-000, Order Approving Stipulation and Consent Agreement, 185 FERC ¶ 61,060 (Oct. 24, 2023)	$3,030,000 civil penalty; $2,970,000 disgorgement	On October 24, 2023, the Commission issued an order approving the settlement of Enforcement staff's investigation of AES Alamitos, LLC and Redondo Beach, LLC (AES). Enforcement staff determined that AES violated CAISO Tariff sections 4.6.4 and 37.3.1.1, and 18 C.F.R. §§ 35.41(a) and (b) by submitting inaccurate physical maximum values for eight of its electric generating resources (the Resources), which resulted in the Resources being compensated for resource adequacy capacity that they could not reasonably provide. Under the terms of the settlement, AES stipulated to the facts, neither admitted nor denied the violation, and agreed to undertake compliance monitoring for two years with an option for Enforcement staff to extend it an additional year.

FEDERAL ENERGY REGULATORY COMMISSION
Office of Enforcement