

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



2018 REPORT ON ENFORCEMENT

Docket No. AD07-13-012

Prepared by Staff of the

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

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

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INTRODUCTION

The staff of the Office of Enforcement (Enforcement) 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 2018 (FY2018),² including an overview of, and statistics reflecting, the activities of the four divisions within Enforcement: Division of Investigations (DOI), Division of Audits and Accounting (DAA), Division of Energy Market Oversight (Market Oversight) and Division of Analytics and Surveillance (DAS).

Enforcement recognizes the importance of informing the public of the activities of its staff, and prepares this report with that objective in mind. Most of the information the public receives about investigations comes from public Commission orders approving settlements, orders to show cause, publicly released staff reports, and audit reports. This report summarizes the status and resolution of various matters that were public in FY2018. However, not all of Enforcement's activities result in public actions by the Commission. Like reports in previous years, the FY2018 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, monitoring market trends and market competitiveness, and performing surveillance and analysis of conduct in wholesale natural gas and electric markets. In addition, DAA points out a number of areas to help companies enhance compliance programs.

¹ *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156 at P 12 (2008) (Revised Policy Statement). 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. FY2018, the subject of this report, began on October 1, 2017 and ended on September 30, 2018.

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 increased availability of domestic natural gas and the emergence and growth of new energy technologies. As the Strategic Plan notes, both the nation's energy infrastructure and energy markets must adapt to these changes to ensure that consumers have access to economically efficient, safe, reliable, and secure energy at a reasonable cost.³ The Strategic Plan identifies three primary goals to fulfill this mission: (1) ensure just and reasonable rates, terms, and conditions; (2) promote safe, reliable, and secure infrastructure; and (3) support the mission through organizational excellence. To further those goals and assist the Commission in its obligation to oversee regulated markets, Enforcement's four divisions gather information about market rules, market participants, and market behavior. 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 FY2018, Enforcement's priorities continued to focus on matters involving:

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

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

The Reliability Standards established by the Electric Reliability Organization (ERO), and approved by the Commission, protect the public interest by ensuring a reliable and secure bulk power system. Enforcement ensures compliance with these standards and focuses primarily on violations resulting in actual harm, through the loss of load or other means. Enforcement also

³ The Federal Energy Regulatory Commission, Strategic Plan FY2018-2022 (Oct. 2018), available at www.ferc.gov (Office of External Affairs).

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

In FY2018, DOI staff opened 24 new investigations, while bringing 23 pending investigations to closure with no action. Additionally, during the fiscal year, staff negotiated six settlements of more than \$149 million, which included \$83 million in civil penalties and disgorgement of over \$66 million in unjust profits.⁴ These Commission-approved settlements also included provisions requiring the subjects to enhance their compliance programs and periodically report back to Enforcement regarding the results of those compliance enhancements.

In FY2018, DAS surveillance reviewed numerous instances of potential misconduct, sometimes resulting in referrals to DOI. Natural gas surveillance screens produced approximately 7,719 alerts. Each month DAS also ran and reviewed 84 electric surveillance screens, hourly and intra-hour sub-screens, and reports for over 36,000 hub and pricing nodes within the six ISO/RTOs. DAS also worked and provided analytical support on approximately 50 investigations with DOI.

In FY2018, DAA completed 14 audits of oil pipeline, public utility, and natural gas companies covering a wide array of topics. The audits resulted in 209 recommendations for corrective action and directed \$185.1 million in refunds and recoveries.

Market Oversight continued its analysis of market fundamentals (including significant trends and developments) and enhancement of its analytical capabilities related to identifying anticompetitive outcomes and anomalies that may indicate an exercise of market power. As in prior years, Market Oversight presented its annual State of the Markets Report assessing significant events of the previous year, as well as its Winter and Summer Energy Market and Reliability Assessments. Additionally, Market Oversight held two EQR user group meetings in FY2018 to conduct outreach with the filing community and to discuss potential system improvements and enhancements.

⁴ A table of FY2018 Civil Penalty Enforcement Actions is attached to this report as Appendix B.

DIVISION OF INVESTIGATIONS

A. Overview

DOI conducts investigations of potential violations of the statutes, regulations, rules, orders, and tariffs administered by the Commission. These investigations may begin from referrals from other program offices within the Commission, referrals from organized markets or their monitoring units, other divisions within Enforcement, other agencies, self-reports, calls to the Enforcement Hotline, or as a result of other investigations. DOI staff works closely, as appropriate, with other Enforcement divisions and other Commission offices. If staff finds violations occurred, it informs the subject of the investigation and provides an opportunity for it to respond. Then, if staff continues to conclude that violations occurred and that the violations warrant sanctions, it reports its findings to the Commission and attempts to settle investigations for appropriate sanctions and remedial measures, which may include a civil penalty, disgorgement, improvements to the subject's compliance processes, and submission of compliance-related reports. Where settlement efforts fail, DOI may seek additional evidence, recommend that the Commission initiate a public show cause proceeding, or both.⁵

If a settlement cannot be reached, the Commission may issue an order to show cause (OSC) in a public docket, directing the subject to explain why it did not commit a violation and why penalties and disgorgement are not warranted. The subject has a full opportunity to respond to the OSC, and Enforcement staff may reply to the subject's response. After considering the factual record and legal arguments submitted by the subject and Enforcement staff, if the Commission concludes that the subject committed a violation and that the violation warrants penalties and/or disgorgement, the Commission will state those conclusions in a subsequent order. In matters arising under the Federal Power Act (FPA), that subsequent order is called an Order Assessing Civil Penalties. In cases arising under the Natural Gas Act (NGA), assuming genuine material issues of material fact exist, the matter generally proceeds to a hearing before an Administrative Law Judge (ALJ) for an initial decision, which is followed by a final Commission decision. The Commission issued one OSC but did not issue any Orders Assessing Civil Penalties or final decisions in FY2018.

If the company or individual against which the Commission assessed a civil penalty pursuant to the FPA does not pay the penalty in a timely fashion, DOI staff seeks to affirm and enforce that assessment in federal court on behalf of the Commission. As of the end of FY2018, including actions filed in previous years, staff was litigating three such actions in federal court, seeking to enforce the Commission's combined assessment of more than \$98.6 million in penalties and disgorgement. Staff also settled two FPA matters during FY2018 that had been pending in federal court at the beginning of the fiscal year. One NGA related proceeding is pending on rehearing before the Commission as of the end of the fiscal year.

⁵ For a discussion of the processes by which Enforcement staff conducts and concludes investigations, see Revised Policy Statement, *supra* note 1, at PP 23-40.

Most DOI investigations do not result in contested litigation, but are either closed without further action or settled. In all cases where staff finds a violation warranting sanction, staff attempts to settle matters when it is in the public interest to do so. In FY2018, Enforcement staff settled two federal district court matters, one with a large financial institution and several of its traders for conduct that violated the Commission's Anti-Manipulation Rule, and another with a small trading company and its owner/head trader. Enforcement staff also resolved several matters via settlements approved by the Commission, including: (1) an energy company's violation of the Commission's Market Behavior Rule, 18 C.F.R. § 35.41(b); (2) a trading company and its primary trader for violating the Commission's Anti-Manipulation Rule; (3) an energy company's violation of the ISO/RTO tariff and the Commission's Market Behavior Rule, 18 C.F.R. § 35.41(a); and (4) a power marketing company's violation of an ISO/RTO tariff ("Energy Market Offer Requirements" and "Day Ahead Energy Market Scheduling") and the Commission's Market Behavior Rule, 18 C.F.R. §§ 35.41(a) and (b).

Although the settlements, OSCs, and orders assessing penalties often receive the most public attention, DOI closes most of its investigations with no further action and without the investigations becoming public. During the course of an investigation, if DOI concludes that there is insufficient evidence to establish a violation or otherwise concludes that further proceedings are not warranted, it will close the matter promptly. DOI closed 22 investigations in FY2018 either because staff found no violation or because there was not enough evidence to conclude that a violation had occurred. In another case, DOI found a violation but closed the investigation. Adding those to the six investigations that DOI closed through settlement brings the total investigations closed in FY2018 to 29.

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

B. Orders to Show Cause and Related Proceedings

DOI staff spent substantial time in FY2018 preparing reports, briefs, and other public filings related to litigation in federal courts. During FY2018, staff requested that the Commission issue one new Order to Show Cause.

Enforcement staff continues to represent the Commission in three litigation matters in United States District Courts and settled two litigation matters that had been pending in United States District Courts at the beginning of the fiscal year. Staff also awaits the Commission's decision on one FPA Order to Show Cause (OSC) proceeding and two NGA proceedings in which the respondent's motion for rehearing is under consideration.

As of the end of FY2018, staff is seeking to recover a total of approximately \$317 million in civil penalties and \$20 million in unjust profits in its pending federal court matters and two proceedings before the Commission.

1. District Court Litigation

Over the past five years, the Office of Enforcement has filed seven enforcement actions in district courts across the country, including three that are still pending. In those proceedings, district courts have issued rulings to address a variety of procedural and substantive legal issues, including: (1) whether the Commission's cases should follow the Federal Rules of Civil Procedure; (2) the sufficiency of FERC's notice of fraud and deceptive conduct pleadings; (3) what constitutes individual culpability under the FPA; (4) particular activity that establishes manipulation; and (5) what evidence satisfies the scienter requirement under Section 222 of the FPA.

In FY2018, excluding matters that settled, Enforcement staff litigated three matters in United States District Courts to enforce the Commission's penalty assessments under the FPA and NGA. Those District Court litigation matters were:

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

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

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

On January 26, 2017, after briefing and oral argument, the District Court granted the respondents' motion to treat the proceeding as an ordinary civil action subject to the Federal Rules of Civil Procedure. The parties participated in mediation before Magistrate Judge John H. Rich III in Portland, Maine on March 31, 2017, and were unable to reach an agreement on resolution. Fact discovery then commenced and was completed on November 30, 2017. Expert discovery was completed on April 30, 2018.

On January 29, 2018, upon agreement of the parties, the court ordered summary judgment briefing on the applicability of the statute of limitations. Briefing on the cross-motions for

summary judgment was completed on April 20, 2018. Oral argument has not been scheduled. The court has not yet issued an order on the cross-motions for summary judgment.

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

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

On July 31, 2015, Enforcement staff filed a petition in the United States District Court for the Eastern District of Virginia to enforce the Commission’s Order. Following briefing requested by the Court on the de novo review procedures required by section 31(d)(3) of the FPA, the Court directed FERC to re-file its petition or file an amended complaint. The Commission filed an amended complaint on January 29, 2018, and Defendants moved to dismiss in part on February 28, 2018, based on statute of limitations grounds. On September 24, 2018, the Court found that the Commission had met the statute of limitations, 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 order, and the Commission did not oppose the appeal. The District Court case has been stayed pending resolution of the appeal.

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

On May 27, 2016, in Docket No. IN16-4-000, the Commission issued an order assessing civil penalties against Coaltrain Energy, L.P. (Coaltrain), its owners, Peter Jones and Shawn Sheehan, and Robert Jones, Jeff Miller, and Jack Wells, who developed and implemented the relevant trading strategy. The Commission found that the respondents violated the Commission’s Anti-Manipulation Rule by engaging in fraudulent UTC trades in the PJM market during the summer of 2010. In so doing, it determined that respondents’ “over-collected loss” or “OCL” trading strategy, which sought to capture payments by placing large volumes of UTC trades between trading points with negligible price separation, was fraudulent and manipulative. The Commission found that the respondents’ OCL trading strategy involved three types of trades to improperly collect MLSA payments: (1) trading between export and import points (SOUTHIMP and SOUTHEXP) that had identical prices, (2) trading between export and import points (NCMPAIMP and NCMPAEXP) that had *de minimis* price differences, and (3) trading along various other paths and combinations of paths with minimal price differences. In each type of trade, the purpose was not to profit from spread changes, but instead to increase transmission volumes in order to collect MLSA payments.

The Commission also found that the respondents violated section 35.41(b) of the Commission's regulations by making false and misleading statements and material omissions in Coaltrain's communications with Enforcement staff during the investigation in order to conceal the existence of relevant documents. The Commission ordered Coaltrain, jointly and severally with its co-owners Peter Jones and Shawn Sheehan, to disgorge \$4,121,894 in unjust profits, plus interest. It also imposed civil penalties of \$38 million on Coaltrain, \$5 million each on Peter Jones and Shawn Sheehan, \$1 million on Robert Jones, and \$500,000 each on Jeff Miller and Jack Wells.

On July 27, 2016, Enforcement staff filed a petition in the United States District Court for the Southern District of Ohio to enforce the Commission's Order. The Defendants filed motions to dismiss or transfer, which were denied by order of the Court on March 30, 2018. Discovery commenced shortly thereafter, and is currently scheduled to run through June 2019.

2. Other District Court Matters

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

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

The court subsequently transferred the matter to the United States District Court for the Southern District of Texas, which dismissed the plaintiffs' complaint on July 15, 2016. The court held that: (1) the complaint was non-justiciable because the relief sought would not completely resolve the parties' dispute, and the plaintiffs' claims are hypothetical and not ripe, (2) the Commission does, as a matter of law, have jurisdiction to adjudicate NGA violations, and (3) the discretionary factors considered by courts in evaluating whether to exercise jurisdiction in such declaratory judgment matters favor dismissal. The discretionary factors cited by the court included its determination that the lawsuit was premature, inequitable, a waste of resources and that the plaintiffs were engaged in impermissible forum-shopping. Plaintiffs appealed that dismissal to the U.S. Court of Appeals for the Fifth Circuit on September 26, 2016, which on June 8, 2017 affirmed the dismissal. The Plaintiffs subsequently sought rehearing in the Fifth Circuit *en banc*, which was denied on August 8, 2017. The Plaintiffs then petitioned the United States Supreme Court for certiorari, which the Court denied on June 18, 2018. The Commission is now reviewing the responses to the OSC.

3. Administrative Hearings

a) Footprint Power LLC, Footprint Power Salem Harbor Operations LLC, Docket No. IN18-7-000

On June 18, 2018, the Commission issued an OSC directing Footprint Power LLC and Footprint Power Salem Harbor Operations to show cause why they should not be found to have violated the Transmission, Markets and Services Tariff (Tariff) of ISO-NE, Market Rule 1, §§ III.1.7.20(b) and (f), III.1.10.1A(d), and III.13.6.1.1.2 and section 35.41 of the Commission's regulations. Enforcement Staff alleged violations by Respondents for: (1) submitting false and misleading supply offers for Footprint's capacity resource — Unit 4 of Footprint's multi-unit Salem Harbor Power Plant in Salem, Massachusetts, (2) failing to report the fuel status and related operational status of the capacity resource to ISO-NE in June and July of 2013, (3) submitting false and misleading supply offers in violation of a Commission-approved Tariff, and (4) submitting false or misleading information and/or omitting material information regarding Salem Harbor and Unit 4 in its communications with ISO-NE. Additionally, the OSC directed Respondents to show cause why disgorgement and civil penalties should not be assessed in the following amounts: disgorgement of \$2,049,571, which reflected the capacity payments received during the relevant period, and a civil penalty of \$4,200,000. The Commission is now reviewing the responses to the OSC.

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

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

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

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

merits to the Fifth Circuit will follow if the Commission denies BP’s motion for rehearing of the July 11, 2016 decision.

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

C. Settlements

In FY2018, the Commission approved six settlement agreements between Enforcement and subjects to resolve pending matters. The settlements totaled approximately \$83 million in civil penalties and disgorgement of just over \$66 million. Since 2007, Enforcement has negotiated settlements totaling approximately \$776 million in civil penalties and approximately \$511 million in disgorgements.

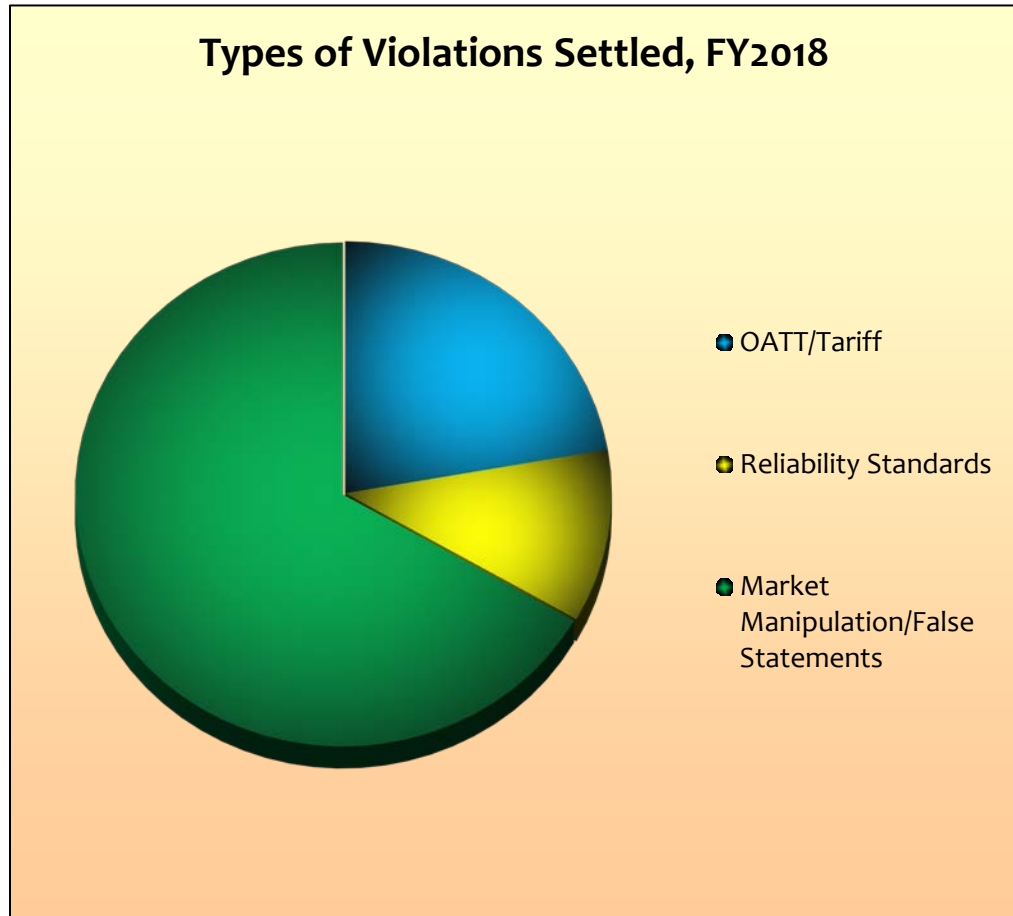
Since issuance of the 2010 Revised Penalty Guidelines,⁶ most Commission-approved settlements subject to the Penalty Guidelines have fallen within the established applicable range. An organization’s civil penalty can vary significantly depending on the amount of market harm caused by the violation, the amount of unjust profits, an organization’s efforts to remedy the violation, and other culpability factors, such as senior-level involvement, prior history of violations, compliance programs, self-reporting of the violation, and cooperation with Enforcement’s investigation. For example, under the Penalty Guidelines, an organization’s culpability score can be reduced through favorable culpability factors to zero, lowering the base penalty by as much as 95 percent.⁷

In FY2018, the Commission approved settlement agreements that resolved investigations concerning violations of the Commission’s market behavior, anti-manipulation, and reliability rules in addition to specific ISO/RTO tariff provisions. Some settlements concerned multiple types of violations.

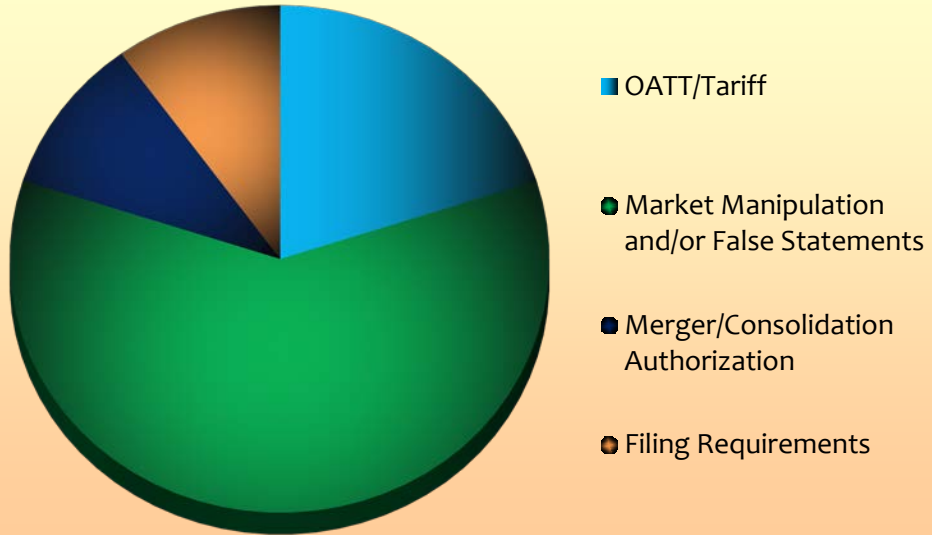
⁶ *Revised Policy Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines).

⁷ *Revised Penalty Guidelines*, 132 FERC ¶ 61,216 at P 109.

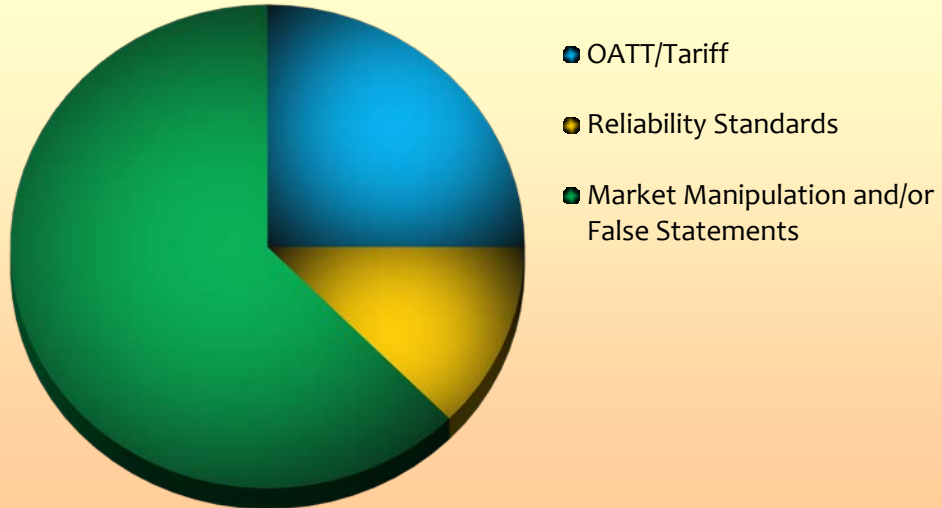
The charts below illustrate the types of violations settled in the last five fiscal years, Fiscal Years 2014-2018.



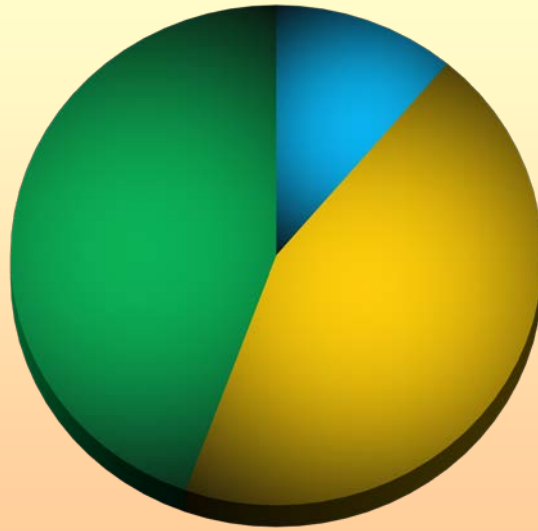
Types of Violations Settled, FY2017



Types of Violations Settled, FY2016

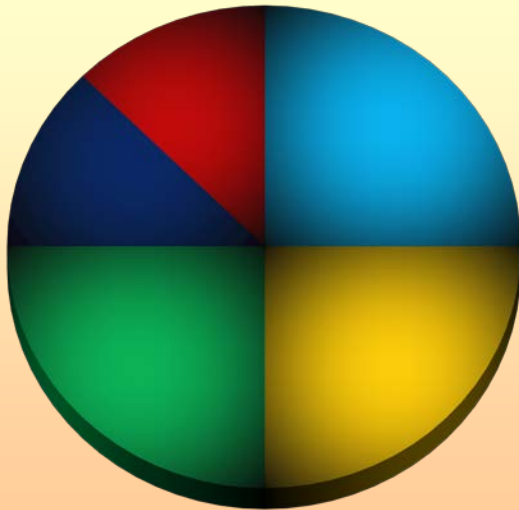


Types of Violations Settled, FY2015



- OATT/Tariff
- Reliability Standards
- Market Manipulation and/or False Statements

Types of Violations Settled, FY2014



- OATT/Tariff
- Reliability Standards
- Market Manipulation and/or False Statements
- Merger/Consolidation Authorization
- Hydro

The Commission approved the following settlement agreements in FY2018:

FERC v. Barclays Bank PLC, No. 2:13-cv-2093 (E.D. Cal.).

On November 7, 2017, the Commission issued an order approving the settlement of an investigation of Barclays Bank, PLC (Barclays) and several of its traders. The proceeding was based on an Order Assessing Civil Penalties that the Commission had issued in July 2013, in which it determined that Defendants had violated the Commission's Anti-Manipulation Rule by engaging in loss-generating trading of next-day, fixed-price physical electricity with the intent to benefit financial swap positions in the western United States. In October 2013, the Commission filed suit in federal district court in the Eastern District of California to enforce that order. Under the agreement, Barclays stipulated to the facts but neither admitted nor denied the violations. Barclays agreed to pay a civil penalty of \$70 million to the United States Treasury and disgorged \$35 million in unjust profits.

Duke Energy Corporation, Docket No. IN15-6-000.

On June 8, 2018, the Commission issued an order approving the settlement of an investigation of Duke Energy Corporation and its public utility operating subsidiaries relating to whether they failed to fully and accurately communicate information to the Commission concerning certain transmission studies submitted in support of the application for approval of Duke's merger with Progress Energy, Inc. Under the terms of the settlement, Duke stipulated to the facts, but neither admitted nor denied the alleged violations of 18 C.F.R. § 35.41(b). Duke agreed to pay a penalty of \$3.5 million and to submit annual compliance monitoring reports for two years.

PSEG Energy Resources & Trade, LLC (PSEG), Docket No. IN18-4-000.

On April 25, 2018, the Commission issued an order approving the settlement of an investigation relating to whether PSEG violated sections 1.2 and 6.4.2(a)(ii) of Schedule 1 of the PJM Operating Agreement and Attachment K – Appendix of the PJM Tariff – and the Market Behavior Rule, 18 C.F.R. § 35.41(a), when it submitted incorrect cost-based offers into the PJM energy market between 2005 and 2014. Under the terms of the settlement, PSEG stipulated to the facts but neither admitted nor denied the violations. PSEG agreed to pay a civil penalty of \$8,000,000, disgorgement of \$26,905,736 (plus \$4,494,264 interest), and to submit annual reports for at least two years.

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

On April 10, 2018, the Commission issued an order approving the settlement of an investigation of ETRACOM LLC (ETRACOM) and Michael Rosenberg (its majority owner and primary trader). The proceeding was based on an Order Assessing Civil Penalties that the Commission had issued in June 2016, in which it determined that ETRACOM and Rosenberg violated the Commission's Anti-Manipulation Rule by submitting virtual supply transactions in order to affect power prices and economically benefit ETRACOM's congestion positions. In August 2016, the Commission filed suit in the United States District Court for the Eastern District of California to enforce the penalty order. Under the agreement, ETRACOM stipulated to the facts but neither admitted nor denied the violations. ETRACOM agreed to pay disgorgement of

\$315,072 plus interest of \$84,419.72 to CAISO for distribution to market participants impacted by ETRACOM's trading and a civil penalty of \$1,500,508.28. ETRACOM also agreed to develop and implement a compliance program and to submit compliance reports to Enforcement for a period of two years.

Entergy Nuclear Power Marketing, L.L.C., Docket No. IN18-5-000.

On July 25, 2018, the Commission issued an order approving the settlement of an investigation into violations by Entergy Nuclear Power Marketing, L.L.C. (ENPM) of ISO-NE Tariff provisions related to the company's response to ISO-NE's dispatch instructions. Specifically, staff concluded that ENPM violated 18 C.F.R. §§ 35.41(a) and (b) and ISO-NE Tariff, Market Rule 1 § III.13.6.1.1.1 ("Energy Market Offer Requirements") and § III.1.10.1A(d) ("Day Ahead Energy Market Scheduling") when it: (1) failed to timely act in response to a natural gas pipeline notice restricting interruptible fuel transportation service, leading ENPM to have insufficient fuel to meet dispatch instructions at one gas-fired power plant, and (2) failed to timely update its open supply offer or otherwise notify ISO-NE of its potential inability to meet dispatch instructions after the notice was issued. Under the agreement, ENPM stipulated to the facts but neither admitted nor denied the violations. ENPM agreed to pay a civil penalty of \$115,000.

Wheelabrator Claremont Company, L.P., Docket No. IN18-10-000.

On September 28, 2018, the Commission issued an order approving the settlement of an investigation of Wheelabrator Technologies Inc. (WTI) and its subsidiary, Wheelabrator Claremont Company, L.P. (Claremont), relating to whether the collection of certain capacity payments by ISO-NE associated with Capacity Supply Obligations (CSO) held by Claremont violated the ISO-NE Tariff. Claremont admitted to the violations and agreed to pay a civil penalty of \$250,000 and disgorge to ISO-NE \$107,231.34 in capacity payments and interest.

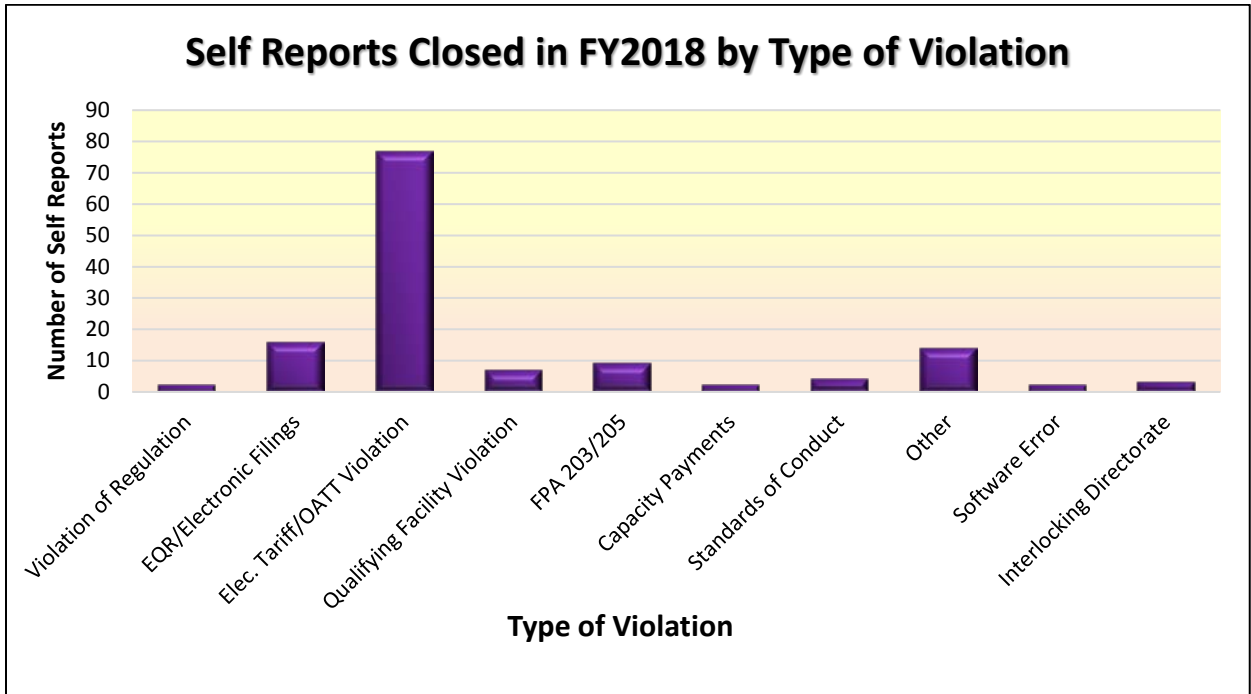
D. Self-Reports

Over the previous five fiscal years (Fiscal Years 2014-18), staff received approximately 498 self-reports. The vast majority of those self-reports were concluded without further enforcement action because there was no material harm (or the reporting companies already had agreed to remedy any harms) and the companies had taken appropriate corrective measures (including appropriate curative filings), both to remedy the violation and to avoid future violations through enhancements to their compliance programs.

In FY2018, staff received 137 new self-reports from a variety of market participants, including public utilities, natural gas companies, generators, and ISO/RTOs. The most significant number of these self-reports were from ISOs/RTOs and involved relatively minor violations of tariff provisions. Staff closed 136 self-reports in FY2018, fourteen of which were carried over from the previous fiscal year.

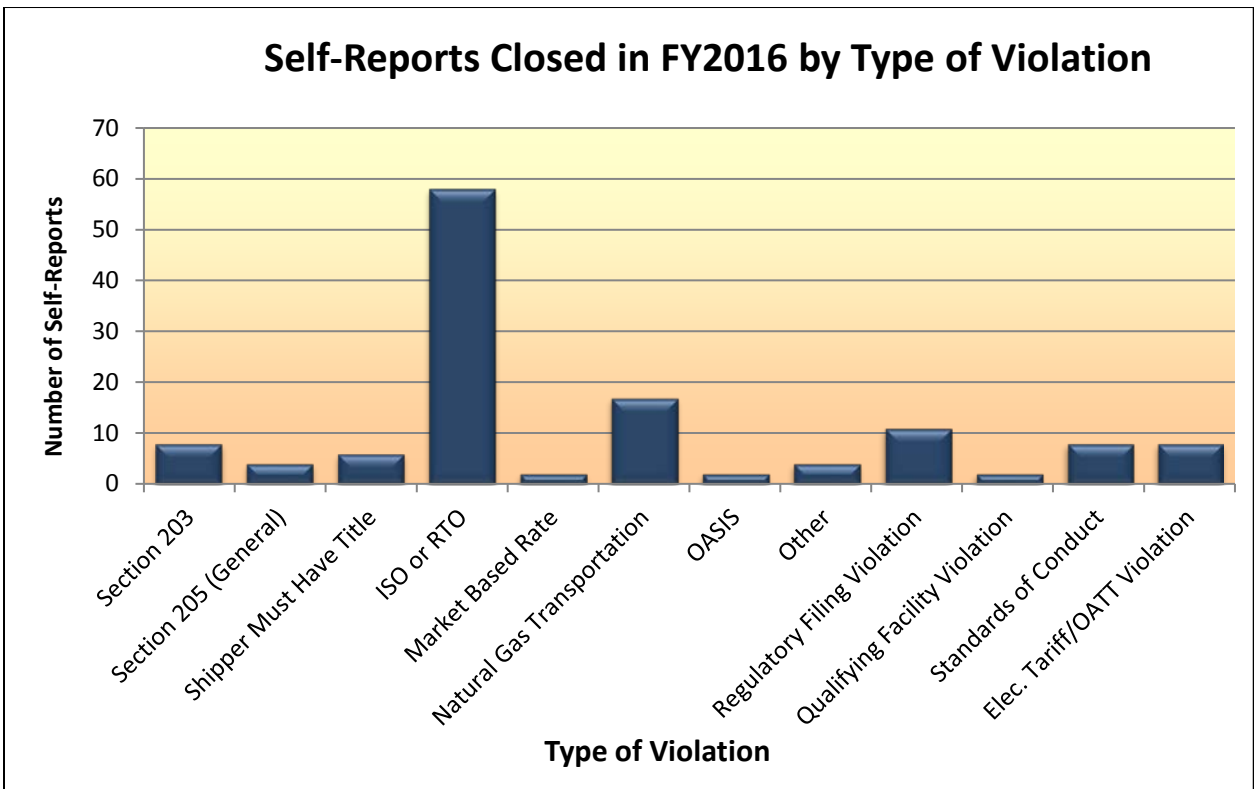
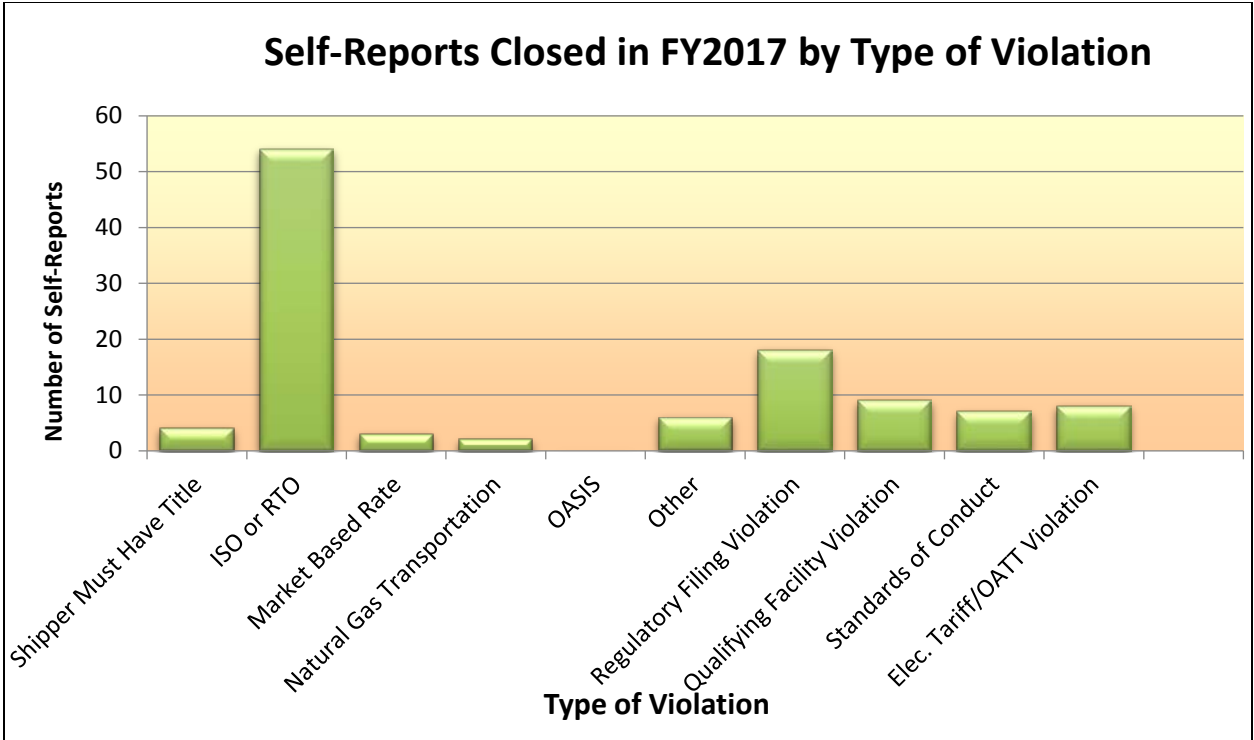
The Penalty Guidelines emphasize the importance of self-reporting by providing credit that can significantly mitigate penalties if a self-report is made.⁸ Staff continues to encourage the submission of self-reports and views self-reports as showing a company's commitment to compliance.

The following charts depict the types of violations for which staff received self-reports from Fiscal Years 2014 through 2018.⁹ Some self-reports include more than one type of violation.

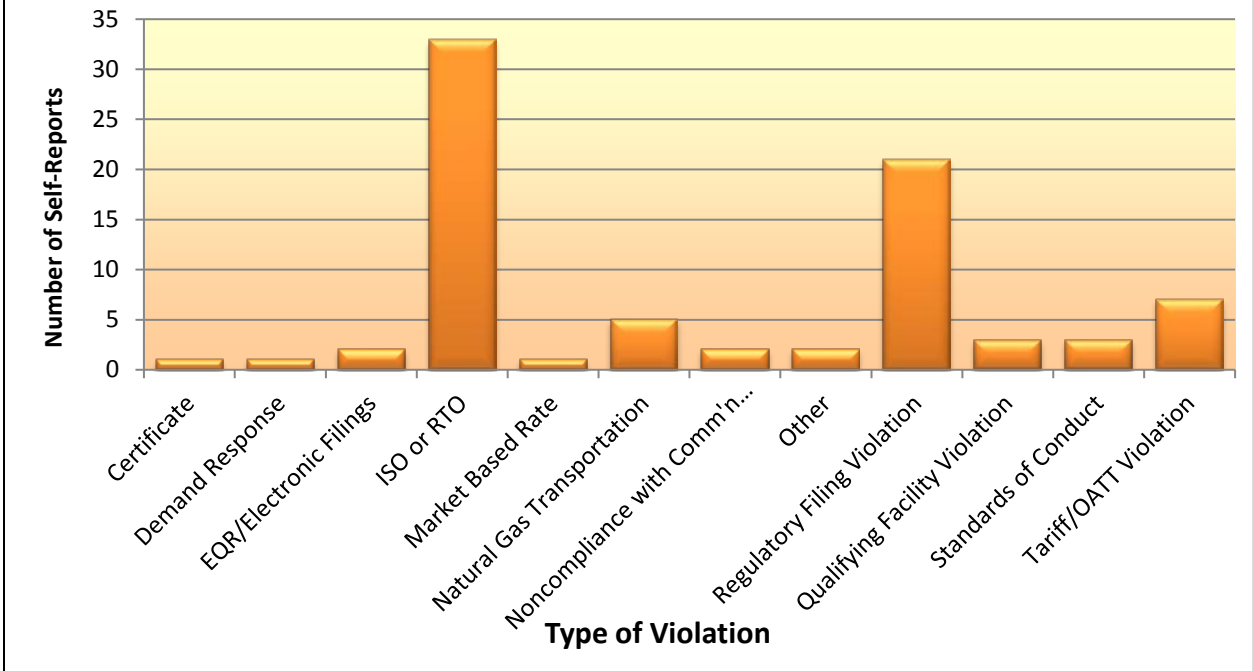


⁸ *Revised Penalty Guidelines*, 132 FERC ¶ 61,216 at P 127.

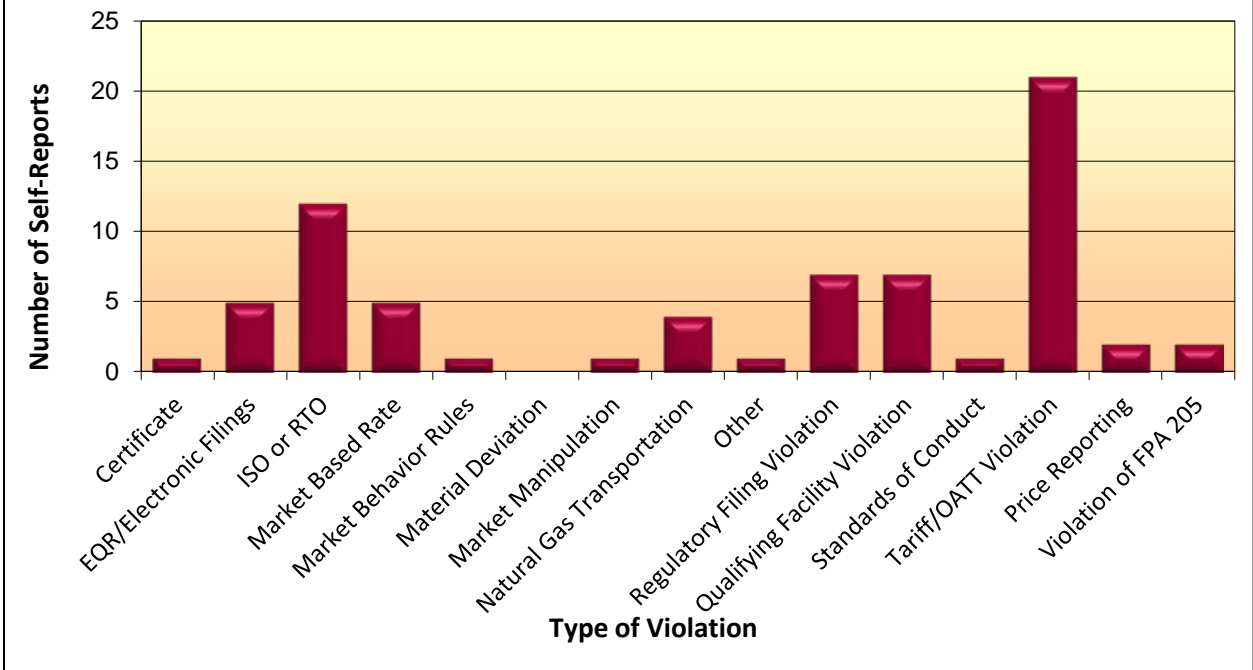
⁹ The FY2018 Self Reports Closed chart now includes the substantive violation reported from an ISO/RTO, and replaces the ISO/RTO category used in previous years.



Self-Reports Closed in FY2015 by Type of Violation



Self-Reports Closed in FY2014 by Type of Violation



Illustrative Self-Reports Closed with No Action

In a continuing effort to promote transparency while encouraging the compliance efforts of regulated entities, Enforcement presents the following illustrative examples of self-reports that DOI staff closed in FY2018 without conversion to an investigation. In determining whether to close a self-report or open an investigation, staff considers the factors set forth in the Commission's Revised Policy Statement on Enforcement.¹⁰ As examples, in FY2018 several ISOs/RTOs and market participants reported minor tariff and reporting violations, a public utility reported a standards of conduct violation, and several companies reported notice and record keeping violations resulting from expired licenses or changes in ownership. The illustrative summaries below are intended to provide guidance to the public and to regulated entities as to why staff chose not to pursue an investigation or enforcement action, while preserving the non-public nature of the self-reports.

Public Utility Electric Quarterly Reports Violation.

Under 18 CFR ¶ 35.10b, each public utility and non-public utility with more than a de minimis market presence must file an updated Electric Quarterly Report (EQR) covering jurisdictional services it provides. Reports are required to be filed within 30 days after the end of each quarter. A public utility self-reported that it had failed to file the required reports for six months related to a power purchase agreement, and for eight years related to capacity sales. The failure to file was an oversight after the utility acquired a generator that had not made required filings prior to purchase. Staff closed this report without further action when the utility worked diligently with staff to cure its reporting deficiencies, and implemented procedures and training within the company to limit the likelihood additional violations would occur.

ISO/RTO Reactive Power Payments Violation.

An ISO/RTO self-reported three instances of making incorrect payments for reactive power to transmission operators. In two instances, it had paid less than the Commission-authorized revenue requirement, and in one instance, it had paid more. In all instances, it made adjustments to the extent possible under its period for billing adjustments. The ISO/RTO surveyed all transmission operators to ensure that it was paying the Commission-authorized revenue requirement going forward, and verified that no other incorrect payments existed. Staff closed this self-report with no further action.

Multiple Generation Owner Tariff Violations.

Ten generation owners and/or operators self-reported that they had submitted price-based offers that exceeded their cost-based offers, in violation of an offer cap in an ISO/RTO's tariff provision. All of the bids occurred during a period of extreme cold, during which gas prices rose rapidly. It was the first time that the relatively new intraday market faced extreme conditions, leading to confusion and errors by market participants. Because the tariff violations were

¹⁰ *Revised Policy Statement on Enforcement*, 123 FERC ¶ 61,156 at P 25 (2008).

unintentional, very limited in time, caused no market harm, and were promptly corrected, and given the market participants' multiple corrective actions to prevent reoccurrence, these self-reports were closed with no further action.

ISO/RTO Software Error Issue.

An ISO/RTO self-reported that a software error caused it to change how it calculated a key measure for local market power before that change was supposed to occur. As a result, some market sellers may have passed or failed the test when, absent the software change, they might have had the opposite result. Staff closed this matter without further action because the error was not intentional, it was corrected promptly after discovery and reported, it did not affect reliability, and the ISO/RTO has taken steps to prevent reoccurrence.

ISO/RTO Tariff Provision Violation.

An ISO/RTO reported that it may have violated two tariff provisions when it repeatedly re-dispatched generation to reduce constraints on the other side of an inter-ISO/RTO tie line to preserve system reliability. The tariff only allowed such actions if the constraint was on its own system unless the constrained element was part of a coordinated flowgate under a joint agreement between the two ISO/RTOs. Staff agreed that the ISO/RTO's actions were taken to benefit the reliability of the bulk power system, and provided this reliability benefit at minimal market cost. Staff encouraged the two ISO/RTOs to cooperate to prevent continuing violations. Accordingly, the two have asked the Commission for a temporary waiver of the tariff provisions, and are working together to modify the joint agreement. Staff closed this self-report without further action because the ISO/RTO's actions benefitted the reliability of the bulk power system at minimal market cost and they are working together to prevent reoccurrence.

ISO/RTO Tariff Provision Violation.

An ISO/RTO's tariff prohibits it from disclosing a member's information designated as confidential to other members or third parties. This prohibition is enforced, in part, by requiring that market data be aggregated for no fewer than three members before it is disclosed. The ISO/RTO self-reported that it had inadvertently disclosed generation information using a different fuel type consumed by a single member rather than combining it with generation in a category labeled "other." It corrected the error immediately upon learning of its mistake. Staff closed this self-report without further action because the errant posting was public for only a short time, the ISO/RTO acted promptly, and there was no discernable harm resulting from the mistake.

Standards of Conduct Violation.

A public utility reported that it had violated 18 C.F.R. §358.2(c), which prohibits certain personnel from disclosing non-public transmission function information to the transmission provider's marketing function employees. Inadvertently, due to a software error, the utility had made certain transmission function information stored on intranet websites available to all of its employees. Upon learning of the situation, the company denied access to the intranet websites to all marketing function employees, and reviewed other document management systems at the company for similar problems. The company's investigation determined that the violations had

occurred for more than six years and that the harm was unknown. Staff closed the self-report because the company reported the violations promptly, investigated the matter thoroughly, took substantial steps to remedy the violation, and acted to ensure it would not recur.

ISO/RTO OATT Violation.

An ISO/RTO reported it had failed to properly calculate, report, and provide market flow relief during level 3(b) NERC Transmission Loading Relief (TLR) events, a violation of both its OATT and a joint agreement with an adjoining ISO/RTO. The error occurred over the course of eight months before it was notified of its error. Staff closed the self-report with no action because the ISO/RTO quickly fixed the error once it became aware of the problem, the violation did not cause known harm to any market participant, and there appeared to be no violation of NERC Reliability Standards.

Regulatory Filing Violation.

An energy company self-reported that for several years one of its subsidiaries failed to reflect on its FERC Form 552 (Annual Report of Natural Gas Transactions) that it had reported natural gas trades to index publishers. After discovering the error, the company hired a third party auditor to verify the accuracy of the trades the subsidiary reported to index publishers to determine whether the subsidiary had complied with 18 C.F.R. § 284.403, which requires filers of Form 552 to certify that they provided accurate information to index publishers. Ultimately, the company had no reason to believe that the subsidiary had inaccurately reported its trades. Staff found no evidence to the contrary. Staff took no further action because the company re-filed its Form 552s for the relevant period, the company put in place procedures to prevent future Form 552 violations, the violation was inadvertent, and the harm was minimal.

Shipper Must Have Title Violations.

An oil and gas exploration and production (E&P) company self-reported that it had violated the Commission's shipper-must-have-title policy by transporting natural gas owned by certain of its affiliates on interstate pipelines using capacity reserved by the E&P Company. After discovering the issue, the E&P company retained outside counsel to conduct an investigation of any other potential violations. The company subsequently reported a limited number of additional violations. The company took prompt corrective actions to end the violations and prevent any recurrence, including preparing a regulatory compliance manual and providing compliance training to employees. Staff closed the matter with no further action based on these prompt mitigation measures and because the violations were inadvertent, limited in extent and duration, and caused no harm.

Natural Gas Transportation Postings Violation.

An oil pipeline carrier self-reported an inadvertent disclosure of confidential shipper information potentially in violation of the Interstate Commerce Act. The carrier utilizes a proprietary electronic database through which customers may manage inventory, product services, invoices, and reporting. Customers should not have access to other customers' information; however, due to a security misconfiguration, customers had access to certain information for other

customers and, in some instances, accessed it. Staff closed the matter with no further action because the company acted promptly to prevent further disclosures, conducted a full investigation, implemented additional safeguards to prevent further disclosures, and promptly self-reported. The disclosures do not appear to have resulted in harm to any of the shippers whose information was disclosed or benefited the shippers who accessed the information.

Public Utility Bid Curve Error.

A public utility self-reported a violation of the Commission's order authorizing its participation in an energy imbalance market. Specifically, the entity reported that it submitted bids that exceeded the default energy bid curve when FERC required it to bid at or below the curve. The violations were discovered during a time of price volatility and were attributed to a combination of software and human error. Staff closed the matter with no further action because the error was inadvertent, promptly corrected, and caused no measurable market harm.

Solar Company QF Violation.

A solar company self-reported that it had failed to self-certify as a qualifying facility (QF) prior to commencing jurisdictional sales for 12 photovoltaic projects. The company had remedied the error and sought a declaratory order waiving its time value refund obligations. The Commission denied the request and required the company to make time value refunds, which the company did. The company also informed staff that it had updated its internal project timelines and compliance policies to reflect that self-certification is required before a QF sells any power. In light of that representation and the refunds having been made, staff closed this self-report without further action.

Improper Sale of Operational Gas.

A pipeline self-reported that it accidentally failed to follow its tariff with respect to a single sale of gas. The pipeline had excess gas originally purchased for operational purposes that it properly posted publically for resale and sold to the highest bidder. After a competing bidder questioned why it did not receive a pro rata share of the gas, mistakenly believing it had the winning bid when it had bid the maximum rate but not the maximum volume, the pipeline failed to explain the bidder's mistake and instead sold additional operational gas to the competing bidder without posting it as required by its tariff. Neither bidder was an affiliate of the pipeline. The pipeline identified the error within 24 hours and promptly brought it to the attention of both the person who made the improper sale and the pipeline's chief of compliance. The pipeline conducted an internal investigation, met with the employee, provided additional training to the employee, notified and educated other employees, determined there was no market harm, and audited gas sales for the prior 12 months and found no others that were improper. In light of these circumstances, Staff closed this self-report.

MBR and EQR Violations.

A QF self-reported two issues. First, it explained that its waste-to-energy facility made sales of power for about eight months without market-based rate (MBR) authority. This happened because the entity was a qualifying facility (QF) that had been making sales under a long-term

Commission-approved PURPA power purchase agreement (PPA), and had never obtained MBR authority. It then had failed to obtain MBR authority when its PPA expired even as it continued its sales. After filing the self-report, the company filed for and received MBR authority, made an appropriate time value refund with respect to the prior unauthorized sales and changed its FERC compliance manual to attempt to reduce the likelihood of a similar mistake in the future. Second, the company found multiple errors in EQRs it had filed for multiple entities it owns. These errors dated back several years. After hiring a consultant, the company improved its filings, updated its manual to ensure future filings would be correct, and has been working with Market Oversight to correct the prior three years of filings. In light of the steps the company took to address these issues, including the changes to its manual, OE closed this self-report with no action.

E. Investigations

In FY2018, DOI staff opened 24 new investigations, as compared with 27 investigations opened in FY2017. The majority of these new investigations arose from referrals by ISO/RTO market monitors. In addition to cases closed through settlement, staff closed 23 investigations in FY2018 without further action, as compared to 16 investigations closed without further action in FY2017.

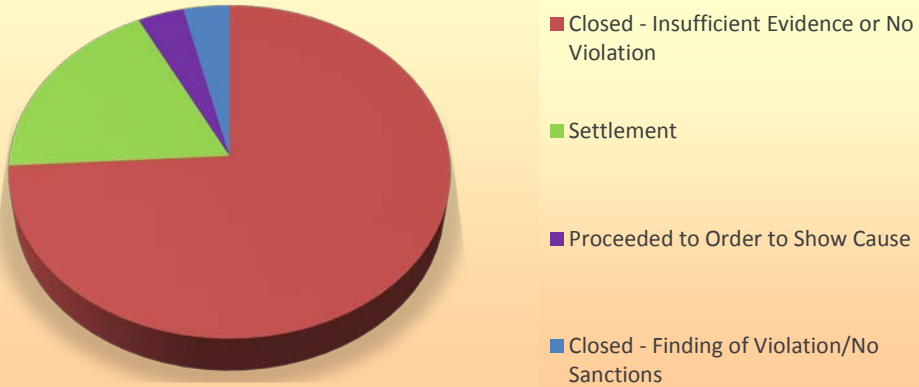
1. Statistics on Investigations

Of the 24 investigations staff opened this fiscal year (some of which involved more than one type of potential violation or multiple subjects), 16 involved potential market manipulation, 13 involved potential tariff violations, five involved market behavior rule issues, two involved hydro-facility noncompliance, and two involved potential violation of a Commission order.

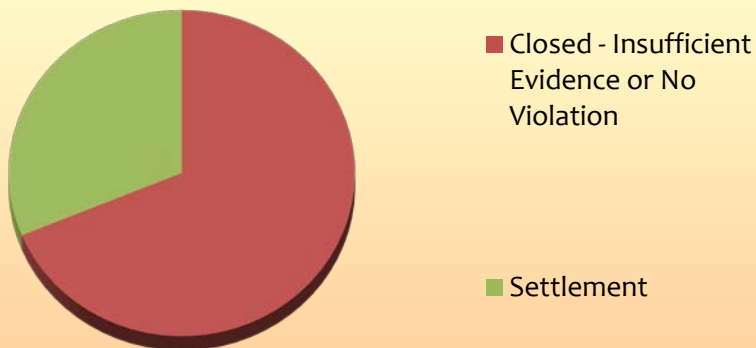
DOI staff closed 23 investigations in FY2018. Of the closed investigations, 22 were closed without further action because staff concluded that the evidence did not support finding a violation. In one instance, a violation was found but staff did not pursue a sanction. These closings were in addition to six cases closed pursuant to settlements that staff reached with the subjects. The Commission-approved settlements of investigations are summarized above in section C and listed in Appendix B. Illustrative examples of 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 (FY2014-2018) and the aggregate disposition of investigations that closed over the previous decade from fiscal years 2007 through 2017.

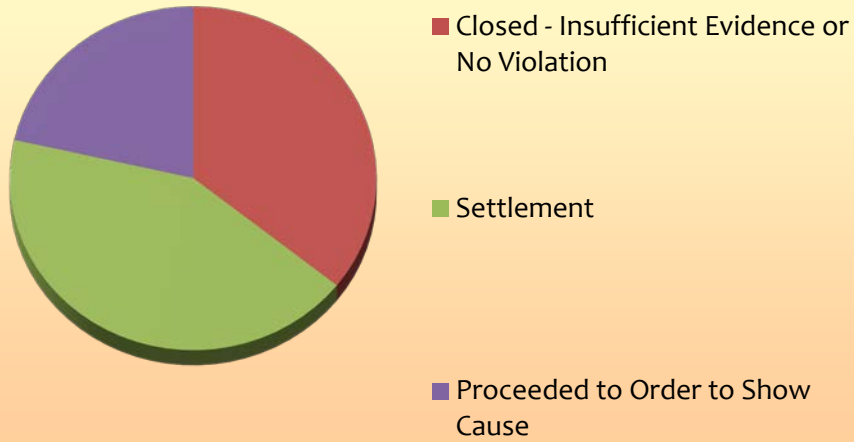
Disposition of Investigations, FY2018



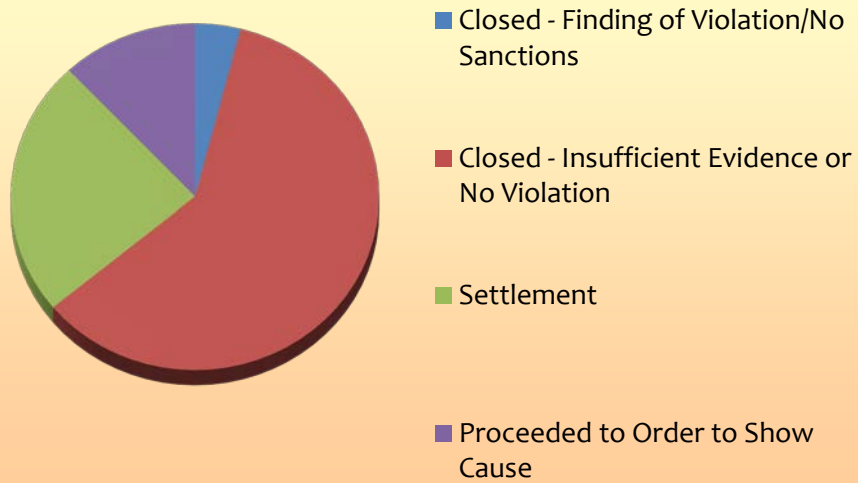
Disposition of Investigations, FY2017

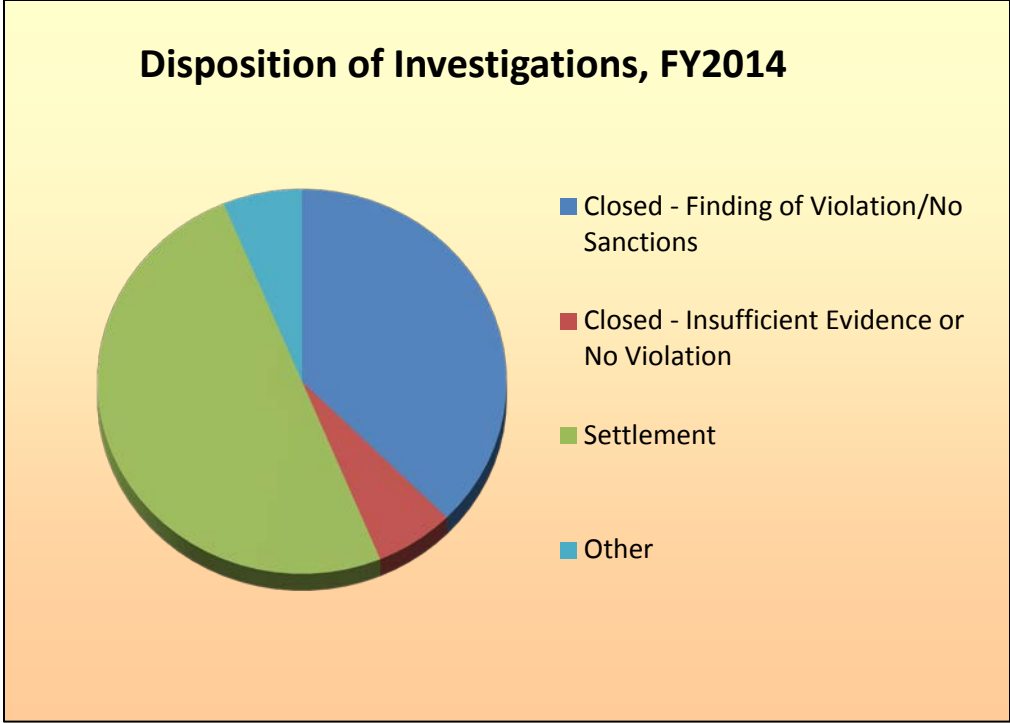


Disposition of Investigations, FY2016

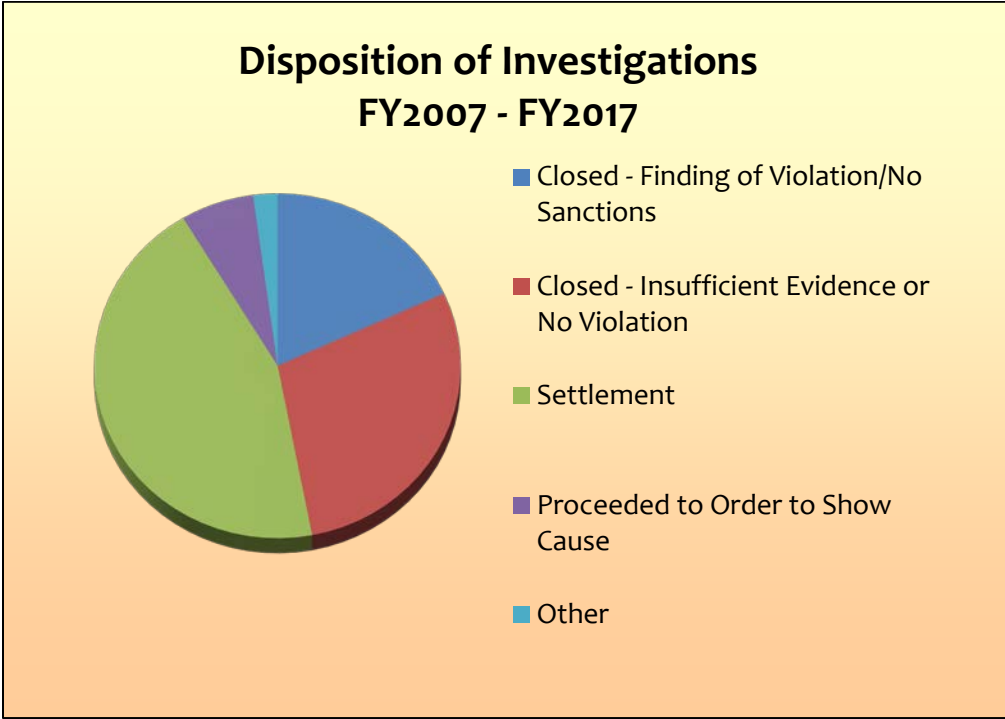


Disposition of Investigations, FY2015



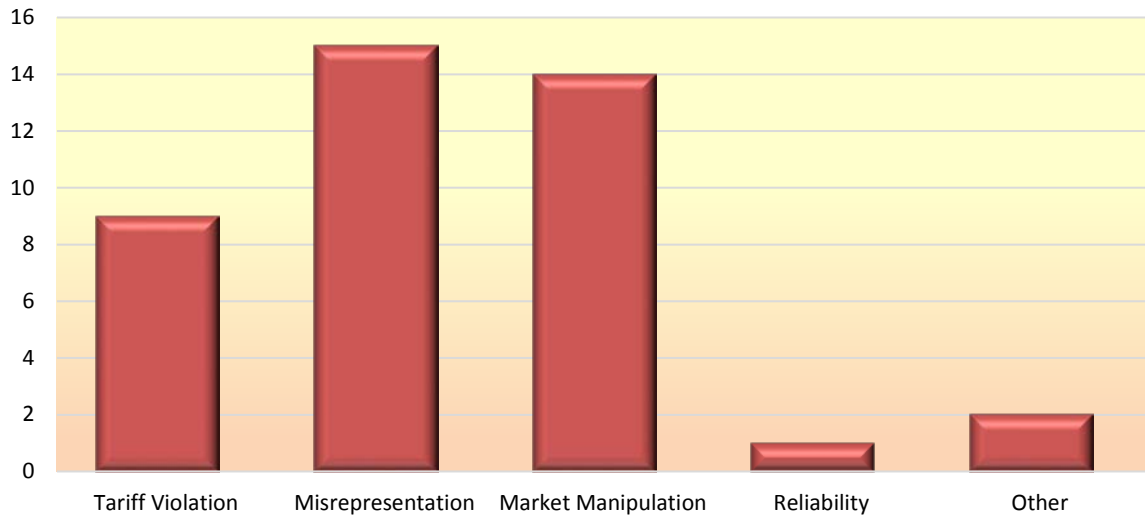


The chart below illustrates investigative dispositions over the past decade prior to FY2018.

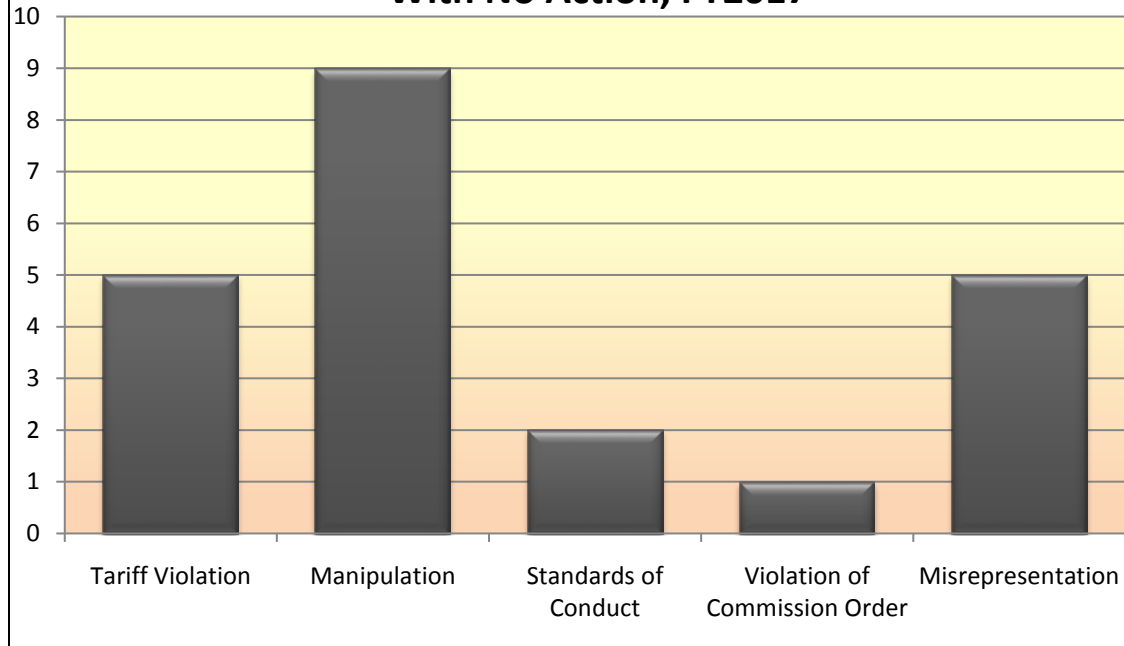


The following charts summarize the nature of the conduct at issue for those investigations that were closed without action in Fiscal Years 2014-2018.

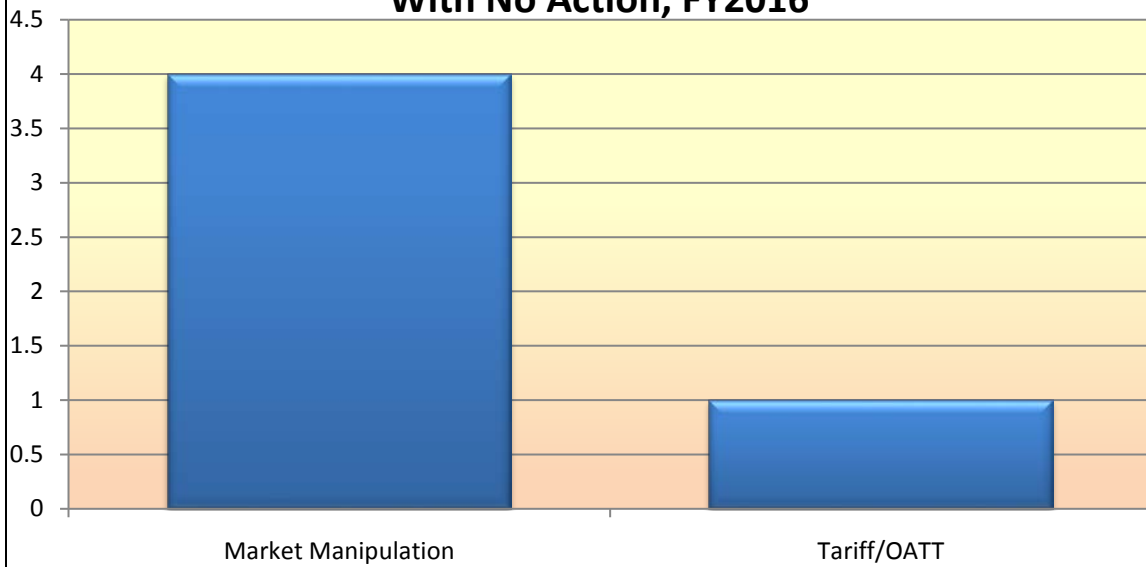
Types of Alleged Violation in Investigations Closed With No Action, FY2018



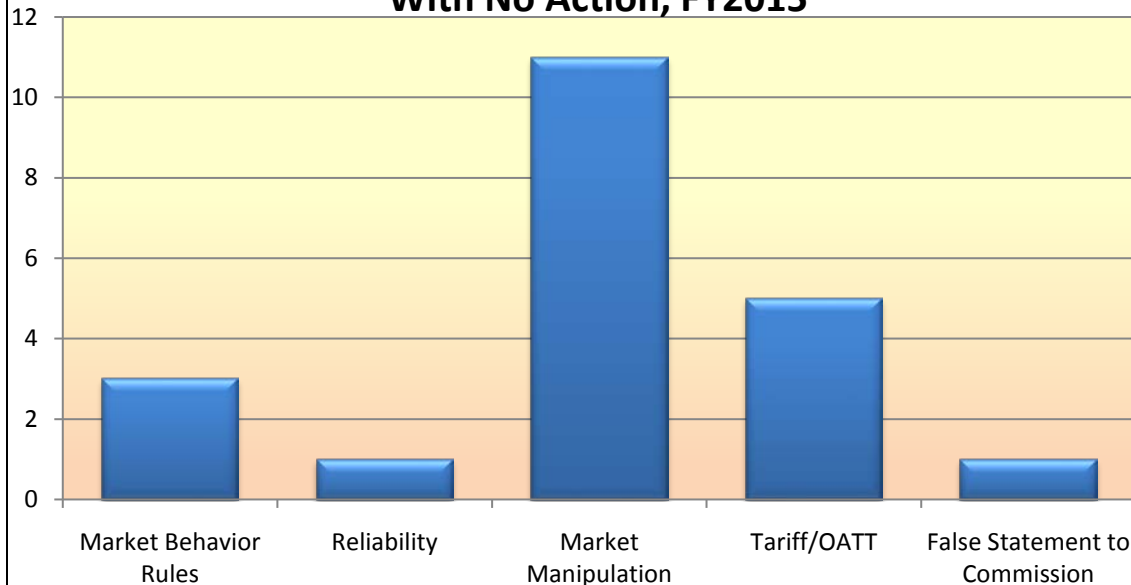
Types of Alleged Violation in Investigations Closed With No Action, FY2017

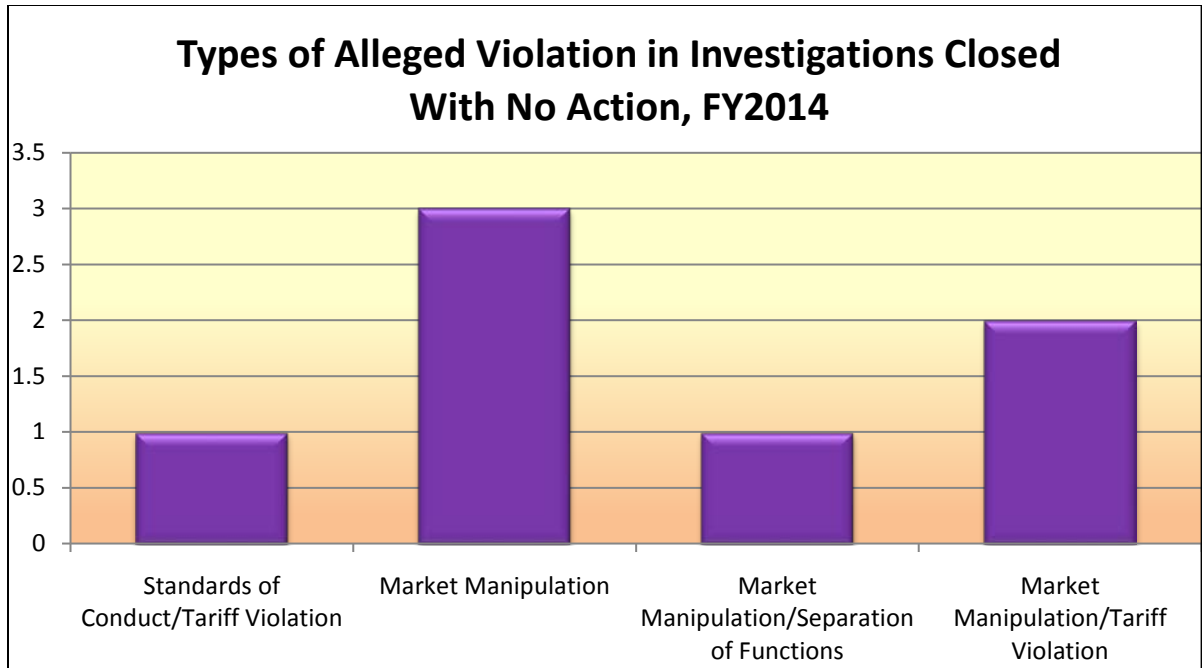


**Types of Alleged Violation in Investigations Closed
With No Action, FY2016**



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





2. Illustrative Investigations Closed with No Action

The following summaries of investigations that Enforcement closed without action in FY2018 are intended to provide guidance to the public while preserving the non-public nature of DOI's investigations.

Market Manipulation (Electric–Demand Response).

Following a referral from an ISO/RTO market monitor, staff investigated whether a demand response Curtailment Service Provider (CSP) engaged in market manipulation in the form of fraudulent “capacity market arbitrage,” *i.e.*, offering capacity in a base auction with the intent to buy back this obligation at much lower incremental auction prices, rather than contract with new demand response customers and deliver these megawatts as required by the tariff. The referral was triggered by a detailed letter from an anonymous whistleblower to the market monitor. Staff confirmed the letter’s claim that the CSP had greatly increased its capacity sales in a particular base auction and then reaped a substantial windfall through buy-back bids in an incremental auction. But the company and many of its former employees consistently provided reasonable, specific, and verifiable explanations of the business expansion plan underlying the CSP’s increased capacity sales in this base auction. Staff further determined that the anonymous letter contained significant misunderstandings and errors, undermining the credibility of the allegations, and the CSP credibly asserted that it had a good faith intention at the time of the auction to procure the requisite demand response resources. The CSP’s large buy-back appeared to have been legitimately motivated by a rapid change in its expectations for expanding its customer base. Accordingly, the investigation was closed without further enforcement action.

Market Manipulation, Misrepresentation, Tariff Violation (Electric).

In response to a referral from a U.S. Attorney's Office, staff opened an investigation to determine: (1) whether a utility improperly allocated certain expenses to transmission customers in violation of its ISO/RTO Tariff, and (2) whether the FERC Form No. 60 allocation methodologies used by the utility's service company to calculate these transmission expenses, as well as the allocation system from which these methodologies were derived, were consistent with terms the Commission previously found just and reasonable under FPA Section 205(a). As to the first issue, staff concluded that ambiguity in the ISO/RTO Tariff made it difficult to articulate a violation because certain Commission precedent supported the utility's interpretation of the tariff language at issue and there was no evidence that the utility attempted to mislead the Commission or its customers about its cost-allocation methodology or the role of this methodology in calculating its rates. As to the second issue, staff concluded that the service company's allocation system complied with Commission precedent, functioned appropriately and contained satisfactory safeguards to ensure the accuracy of the cost allocations it made, there were no material violations of the Commission's accounting regulations, and certain defenses presented by the utility cut against finding a violation of FPA Section 205(a). For these reasons, staff closed the investigation with no further action.

Hydropower Licensing.

Acting on a referral from the Office of Energy Projects, staff opened an investigation into the longstanding operation of a hydropower project without a license or an exemption, as required by the FPA. When staff contacted the project owner about the violation, he stated that he would no longer generate without a license. He then sold the unit to a third party that committed not to generate electricity unless and until it is licensed. In the meantime, the project has been disconnected from the grid and its power purchase agreement with the local utility has been terminated. Because the entity that engaged in the unlicensed generation no longer owns the project and the project is not currently generating, staff closed the investigation.

Reliability and Market Manipulation (Electric-Demand Response).

Enforcement staff received a referral from an ISO/RTO market monitor regarding bids that a private natural gas-based electric power generating company placed for certain units during high-load periods in 2016. The referral stated that the company potentially violated the ISO/RTO's rules governing the obligations of installed capacity suppliers when it failed to comply with its capacity resource obligations on three separate dates and may have failed to provide complete and accurate information to the ISO/RTO with respect to its ability to meet its capacity supply obligations. Staff closed the investigation upon finding no evidence to indicate that the company was engaged in manipulative conduct or otherwise violated the capacity rules. With the exception of only a few hours, staff concluded that actions taken by the company were the result of fuel limitations not in the company's direct control. Staff found no evidence that the company failed to provide the full capacity of its generating units for economic reasons, and concluded that the company otherwise attempted to meet its reliability and notification obligations during the periods of time in question.

Failure to Respond to Dispatch (Electric).

Following a referral from a market monitor, staff investigated whether a natural gas generator committed a tariff violation, or any related violations, when it failed to come online in response to a manual dispatch instruction from the ISO. The company contacted the ISO immediately upon receipt of the instruction. It indicated a willingness and ability to come online at that time. But it noted if it were dispatched then, possible fuel procurement problems related to a recent outage at the facility could impair the unit's ability to dispatch over the next few days when demand would likely be higher. In response, the ISO cancelled the dispatch and brought a different generator online. Staff investigated the events surrounding the company's claims regarding potential fuel procurement problems, and found no evidence indicating the company intended to mislead or defraud the ISO. In light of the lack of market harm and the lack of evidence indicating ill intent, staff closed the investigation without further action.

Misrepresentations to the Commission (Natural Gas).

Following a referral by the Commission, staff commenced an investigation to determine whether a natural gas pipeline made misrepresentations to the Commission in filings related to the company's request to abandon certain portions of a pipeline. Shippers who utilized the pipeline had alleged in the abandonment proceeding that the pipeline had misrepresented its ability to continue to accommodate the shippers' needs when it abandoned the facilities earlier than represented. Staff's investigation concluded that the shippers had misunderstood the pipeline's notice, and no misrepresentation had occurred. As a result, staff closed the investigation without further action.

Reactive Power Generator Multi-Owner Investigation (Electricity).

Enforcement staff closed without further action ten investigations opened to determine whether the public utility-owners of certain generators improperly received reactive power revenues in violation of the Federal Power Act, Commission regulations or applicable tariffs. Eight of the investigations resulted from Commission referrals. Staff opened two more on its own initiative. Staff found that the ISO/RTOs were paying utilities based on their Commission-approved reactive power revenue requirement tariffs, many of which were established with fleets of generators (fleet-based). When those fleet-based rates were approved, the tariffs did not require the generator owners to update them if changes occurred in the composition of the fleets. Nor did the ISO/RTO tariffs require the utilities to update their reactive power revenue requirement tariffs. In some instances, companies had retired generators and added new generators without filing to adjust the reactive power revenue requirement tariffs. At the time of the referrals, the Commission also initiated FPA section 206 proceedings requiring the utilities to demonstrate that the fleet-based reactive power rates were just and reasonable. As a result, many of the current Commission-approved reactive power tariffs for utilities with fleets of generators now specify the allocation of reactive power to each generator. In addition, the Commission also initiated FPA section 206 proceedings on two ISO/RTOs regarding the reactive power payments for retired generators, which resulted in revisions to the tariffs require informational filings when generators are retired. During the investigations, DOI staff found no evidence of fraud,

manipulation or tariff violations. Those few entities that did not have a fleet rate filed to reduce or cancel their reactive power rates.

F. Enforcement Hotline

DOI staff fields calls and other inquiries made to the Enforcement Hotline (Hotline).¹¹ The Hotline is a means for people, anonymously if preferred, to inform Enforcement staff of potential violations of statutes, Commission rules, orders, regulations, and tariff provisions. When staff receives information concerning possible violations, such as allegations of market manipulation, abuse of an affiliate relationship, or violation of a tariff or order, staff researches the issue presented and often consults other members of the Commission's staff with expertise in the subject matter of the inquiry. In some cases, Hotline calls lead to investigations by DOI.

In FY2018, Enforcement received 171 Hotline calls and inquiries, 167 of which were promptly resolved within the fiscal year through advice provided by staff or otherwise. Staff also closed several Hotline matters that had been pending from the previous year. Every year, a significant percentage of the calls received relate to subjects outside of the Commission's jurisdiction or contested matters pending before the Commission. DOI staff resolves these matters by advising the callers where they may find the information they need, or directing them to the appropriate Commission office or docketed proceeding.

G. Other Matters

In addition to its investigative work, DOI staff worked on other important matters in FY2018, including:

Hydropower Compliance. Following a referral from the Office of Energy Projects, staff opened an investigation into Boyce Hydro Power LLC's significant violations of the FPA, Commission regulations, and license terms and conditions at the Edenville Hydroelectric Project. Of particular concern was Boyce's failure to comply with the Commission's dam safety requirements, making the dam potentially vulnerable to failure during a flood. After lengthy proceedings, including issuance of a compliance order and a cease generation order, the Commission issued an order revoking Boyce's license on September 10, 2018.

Collaboration with Other Commission Offices. DOI staff regularly coordinates with other Commission program offices regarding potential enforcement matters. This includes working closely with the Office of Energy Projects and the Office of General Counsel (OGC) on pipeline certificate and hydroelectric licensing matters to ensure compliance with statutory, regulatory obligations and the terms and conditions of pipeline certificates and hydroelectric licenses and exemptions. In addition, DOI staff works closely with OGC and the Office of Energy Market Regulation (OEMR) regarding late filings submitted under sections 203 or 205 of the FPA. There were more than 100 such late filings during FY2018. Regulated entities can submit questions to

¹¹ See 18 C.F.R. § 1b.21 (2018).

the Compliance Help Desk to reduce their risk of subsequent findings of noncompliance and potential enforcement actions. DOI staff assisted in three Compliance Help Desk inquiries in FY2018. Finally, OGC and OEMR confer with DOI staff for pre-filing meetings and/or requests involving the Standards of Conduct under Order No. 717 or Affiliate Restrictions under Order No. 697. During FY2018, DOI staff was involved in 13 such matters.

Revision of Maximum Civil Penalties. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires all Federal agencies to make annual inflation adjustments to the maximum civil penalties that may be assessed under the laws administered by those agencies.¹² Pursuant to that statutory obligation, DOI proposed for Commission approval an instant final rule increasing the civil penalties that the Commission may assess under the FPA, the NGA, the Natural Gas Policy Act of 1978, and/or the Interstate Commerce Act.¹³ The Commission adopted that rule on January 8, 2018, and the revised maximum penalties took effect on January 12, 2018.

¹² See Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, § 701, 129 Stat. 584, 599 (2015).

¹³ See Civil Monetary Penalty Inflation Adjustments, Order No. 839, Docket No. RM18-4-000, 162 FERC ¶ 61,010 (2018), 83 Fed. Reg. 1,550 (Jan. 12, 2018).

DIVISION OF AUDITS AND ACCOUNTING

A. Overview

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

DAA's audit program supports the Commission's strategic objectives through public risk-based audits. DAA performs various types of audits that respond to the needs of the Commission, public, and industry, as well as advises the Commission on 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, 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 audit staff to evaluate and improve their overall compliance, and to identify potential areas of noncompliance before they escalate. For the Commission's regulated industries, the publicly issued commencement letters and audit reports provide insight into areas of emphasis and concern, giving the industries and other stakeholders a valuable source of guidance.

DAA's accounting program is a vital component of the Commission's 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; (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 accounting presents an entity's operations in a manner that supports ratemaking analysis. DAA's accounting program also provides accounting expertise to the Commission's program offices to assist in the development of Commission policies and proposed rulemakings to ensure these initiatives properly consider and evaluate the related accounting and financial issues.

DAA's programs, through their outreach and guidance, inform the industry, the public, and others about what constitutes effective compliance, accountability, and transparency. DAA actively engages in industry outreach through interactions with trade associations, such as the Interstate Natural Gas Association of America, Edison Electric Institute, Association of Oil Pipe Lines, and Natural Gas Supply Association, and encourages interested parties to contact DAA with any inquiries or concerns. DAA also engages with state regulators and the public accounting firms that audit and certify jurisdictional entities' financial reports. DAA 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 all other compliance matters may be obtained through the Compliance Help Desk (www.ferc.gov/contact-

us/compliance-help-desk.asp). The goal of DAA’s outreach is to provide jurisdictional entities with ample opportunity to achieve compliance and avoid noncompliance that may result in harm to jurisdictional customers and energy markets.

B. Compliance

1. Compliance 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 know 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 faced. 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 to detect issues in a timely manner to correct or prevent noncompliance;
 - Provides effective lines of communication and notifies staff of standards through well-publicized policies and procedures;
 - 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 provide a tangible demonstration of “tone-from-the-top” as well as the allocation of funds necessary for such programs.
- A designated compliance officer and compliance committee, charged with development and oversight of compliance activities and metrics that assess program effectiveness.
- The active involvement of internal audit and monitoring functions to routinely assess compliance with tariff provisions and Commission rules, orders, and regulations, to foster a strong and sustainable culture of commitment to compliance on an enterprise-wide basis.

Audit Completion Notifications

In FY2018, DAA began a new process of notifying each company when DAA completes its review of that company’s implementation of audit recommendations. Based on feedback from outreach meetings, companies expressed a need for a more formalized signal from DAA that it had concluded its review of a company’s implementation plan, indicating the completion of the audit. Under the new process, the Director of DAA will provide an email to the company indicating that DAA’s review is complete and that no further submissions are necessary. This action will relieve concerns of company executives, independent auditors, and others over what may otherwise appear to be an ongoing audit and the inherent risks associated with it.

DAA appreciates the time, effort, and cooperation that each company puts forth during the course of an audit. A company's willingness to proactively assist DAA not only demonstrates its commitment to compliance, but also can have a positive impact on the timeliness of the audit itself.

2. Timely Remedy of Noncompliance

Equally important to a robust compliance program is the timely remedy of noncompliance. Although an effective compliance program will often prevent noncompliance with Commission rules, regulations, and orders, any instances of noncompliance should be addressed immediately. Timely implementation of audit recommendations helps maximize their impact, demonstrates commitment to compliance, and supports fair, competitive markets. DAA tracks every audit recommendation it makes and works with each company until all recommendations have been fully implemented. As further emphasis, the Federal Energy Regulatory Commission Strategic Plan, FY2018-2022, encourages strong compliance programs and places emphasis on timely implementation of corrective actions within six months of audit completion. In FY2018, DAA achieved a 98 percent success rate of audit recommendations implemented within six months.

3. Compliance Alerts

DAA continues to observe certain areas in which compliance has been problematic for some entities. DAA believes that highlighting these areas for jurisdictional entities and their corporate officials will increase awareness of these concerns and facilitate compliance efforts. The topics presented below represent areas where DAA has found consistent compliance concerns or noncompliance of significant impact. DAA believes that greater attention in these areas will enable jurisdictional entities to prevent noncompliance, avoiding enforcement actions.

Transmission Rate Incentives. The Commission has granted many public utilities transmission incentive rate treatments as a means of promoting and developing a more efficient and robust transmission system. Recent audit activity has found that effective procedures and controls were lacking to ensure full compliance with the conditions of Commission orders approving transmission incentive rate treatments. In particular, projects that did not qualify for the transmission incentive to include construction work in progress in rate base were inappropriately included in rate base. DAA believes more robust procedures and controls to ensure compliance with the application of transmission incentive rate treatments could have avoided noncompliance with this incentive rate treatment.

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 observed that allocation methods were not properly designed nor were the allocation results sufficiently monitored to ensure that costs charged were appropriately allocated to capital projects when employees: (1) performed activities that only supported the operations of the existing infrastructure; (2) spent a portion of their time performing construction-related activities and a portion on other jurisdictional activities; and (3) performed activities supporting both jurisdictional and non-jurisdictional activities.

Allowance for Funds Used During Construction (AFUDC). Recent audit activity has shown deficiencies in how jurisdictional entities have calculated AFUDC, resulting in excessive accruals. Short-term debt is regarded as the first source of funding construction activities in the AFUDC calculation, and the short-term debt rate is derived using an estimate of the cost of short-term debt for the current year. DAA has found instances where a company used commitment fees associated with lines of credit in the calculation of the short-term debt rate. Commission approval is required to include such fees as part of the short-term rate derivation. Other common findings during audits include: failure to exclude goodwill-related equity from the equity component of the AFUDC rate, absent Commission approval; failure to include short-term debt in computing the AFUDC rate; computing AFUDC on contract retention and other noncash accruals; compounding AFUDC more frequently than semi-annually; inclusion of unrealized gains and losses from other comprehensive income; and use of an AFUDC methodology not prescribed by the Commission in Order No. 561.

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

- **Income Tax Overpayments** – Public utilities have incorrectly recorded income tax overpayments for which they elect to receive a refund and not apply to a future tax year's obligation as a prepayment in Account 165, Prepayments. This has led to excess recoveries through formula rate billings. These costs are properly recorded in Account 146, Accounts Receivable from Associated Companies, or Account 143, Other Accounts Receivable, as appropriate.
- **Storm Damages** – Public utilities have collected excess amounts for storm damages from wholesale customers by either recovering estimates that do not reflect actual experience or recovering both estimated and actual storm damage expenses.
- **Investment Tax Credits (ITCs)** – Public utilities have improperly accounted for ITCs associated with utility plant as income tax prepayments in Account 165. ITCs are generated as a result of investments made in utility plant. DAA found instances in which tax credits were used to reduce taxable income, but not all of the ITCs were used at once and resulted in an ITC carry-forward. DAA found the ITC carry-forwards were recorded in an incorrect account and factored into formula rate billings, leading to customer overbillings.
- **Internal Merger Costs** – Public utilities have included merger-related transaction and transition costs in operating expense accounts. However, inclusion of transaction costs in operating expense accounts is contrary to the directives of the Merger Order and long-standing Commission policy that such costs be recorded in non-operating expense accounts. This accounting resulted in companies misrepresenting utility operating income and expenses reported in their FERC Form No. 1, Annual Reports (Form No. 1). In these cases, utilities were subject to hold-harmless commitments to exclude merger-related transaction and transition costs from rates unless the Commission approves recovery of

such costs and were required to have appropriate controls and procedures to ensure that the costs are tracked and excluded from formula rates.

- Asset Retirement Obligation (ARO) – Public utilities have included ARO amounts in formula rates without explicit Commission approval, including the asset component that increases rate base, the depreciation expense related to the asset, and the accretion expense related to the liability.
- Commitment Fees – Public utilities improperly accounted for commitment fees associated with lines of credit in Account 165, Prepayments, which led to excess recoveries through formula rate billings.
- Formula Rate Errors – Public utilities’ transmission formula rates contained errors, omissions, and miscalculations related to various accounts. Some accounts that should have been added were incorrectly subtracted. In other instances, the formula pulled information from the wrong Form No. 1 line. Finally, there were instances where items specifically excluded by formula rate protocols were included in the formula rate.
- Merger Goodwill – Public utilities have included goodwill in the equity component of the capital structure, absent Commission approval. It is the Commission’s long-standing policy that goodwill should be excluded from rates.
- Administrative and General (A&G) Expenses – Public utilities have recorded non-operating expenses and functional operating and maintenance expenses in A&G expense accounts, leading to inappropriate inclusion of such costs in the formula rates.
- Unused Inventory and Equipment – Public utilities have included the cost of materials, supplies, and equipment purchased for a construction project without removing the cost of items unused in whole or in part from the cost of a project.

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

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

- Gas Tariff – Natural gas pipelines did not comply with FERC gas tariff procedures, specifically with regard to: using the method specified in the tariff for valuing system gas activities; enforcing stipulations in operational balancing agreements to manage and

monitor gas imbalance activities between interstate and intrastate pipelines; updating reservation credit procedures for force majeure and non-force majeure events to be consistent with Docket No. RP11-1538-000; and reporting operational available capacity data consistent with North American Energy Standards Board requirements.

- Accounting and Reporting – Natural gas pipelines did not comply with Commission accounting requirements, specifically with regard to: penalty revenues assessed to noncompliant shippers; transmission mains and compression station expenses; line pack inventory changes; shipper imbalances and cash-outs; lost and unaccounted-for gas; and fuel used in compressor stations. Other common areas of noncompliance included: derivation of the AFUDC rate; accrual of AFUDC beyond constructed plant's in service date; classification of non-operating expenses associated with donations, fines, employment discrimination and compromise settlements, penalties and lobbying activities; and capital project reimbursements and advances from customers. Regarding FERC Form No. 2 reporting, there was inaccurate or incomplete information for affiliate transactions and other subsidiary investment activities. There were also omissions and incomplete information from various schedules supporting the financial statements.
- Pipeline Integrity Management Costs – Certain natural gas pipelines have misclassified integrity management costs that should be recorded as maintenance expenses. Commission accounting requirements, including the accounting guidance in Docket No. AI05-1-000, provide that costs to develop integrity management programs, prepare pipelines for inspection, conduct pipeline assessments, and make repairs are to be charged to maintenance expense in the period the costs are incurred.
- Capacity Transparency and Allocation – Interstate natural gas pipelines are required to post available pipeline capacity on their web sites. These postings promote transparency of available pipeline capacity and enable more competitive and efficient use of such capacity. Recent audits identified deficiencies in reporting available pipeline capacity because quantities were omitted or incorrectly reported. This means some shippers may not have been aware or able to avail themselves of operational opportunities for use of available pipeline capacity.

Oil Pipelines (Page 700). An essential part of oil pipeline audits is an examination of the accounting and operating data included on page 700 of the FERC Form No. 6, Annual Cost of Service-Based Analysis Schedule.¹⁴ The information reported on page 700 is sometimes used by the Commission and interested parties to evaluate interstate pipeline rates. Recent oil pipeline audits have identified accounting errors that impact the accuracy of amounts reported on page 700, including incorrectly designating intrastate amounts as interstate, and misclassification of carrier

¹⁴ The schedule requires each oil pipeline company to report its total annual cost of service (as calculated under the Order No. 154-B methodology), operating revenues, and throughput in barrels and barrel-miles for the current and previous reporting year. The amounts reflected on page 700 represent interstate service (i.e., FERC-jurisdictional) amounts, while the rest of the FERC Form No. 6 includes both interstate and intrastate amounts.

property, charitable donations, fines/penalties, and lobbying activities. DAA also found that some companies are not conducting depreciation studies as required, leading to depreciation rates not aligning with the actual service lives of the plants, and ultimately to plants with negative book balances.

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

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

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

C. Audit Matters

DAA's audits are public, risk-based, and cover a variety of audit scope areas. They are typically commenced without allegation of wrongdoing. DAA consults with other divisions within OE and other program offices to inform DAA's risk-based methodology in the selection of audit scope areas and audit candidates. DAA also works with the other program offices to support Commission actions addressing rates, tariffs, financial and operational transparency, policy initiatives, law, reliability, and other areas in the electric, natural gas, and oil industries. DAA is not limited in the types of audits it conducts; rather, it responds to the needs of the Commission and the industry. Individual audits often contain multiple and different scope areas, but every audit generally includes a review of the internal compliance program.

DAA's public audit reports provide great detail on the audit scope, methodology, and findings of noncompliance, with the expectation that all jurisdictional entities will use this information to be better informed, avoid noncompliance, and improve operational performance. Although not all audits result in findings, when they do DAA expects timely implementation of the recommendations, which demonstrates an entity's commitment to improve compliance with FERC rules and precedents and reduces the risk of future noncompliance.

In FY2018, DAA completed 14 audits of oil pipeline, public utility, and natural gas companies covering a wide array of topics. The audits resulted in 209 recommendations for corrective action and directed \$185.1 million in refunds and recoveries. Specifically, DAA directed \$35.2 million to be refunded to jurisdictional customers and prevented \$149.9 million from being inappropriately

amortized and collected through future wholesale formula rates. These refunds and other recoveries addressed improper application of incentive returns in rate base, lobbying costs, construction work in progress (CWIP), and natural gas losses. Audit recommendations also directed improvements to the audited companies' internal processes and procedures, financial reporting for accuracy and transparency, web site postings, and efficiency of operations. Collectively, these refunds and recommendations prevented unjust charges in jurisdictional rates, and provided procedural and process enhancements that benefit ratepayers and market participants. The audits below were completed in FY2018 and provide a sample of DAA findings and results.

1. Formula Rates

[American Transmission Company, LLC \(ATC\) – FA16-1-000](#). At ATC, DAA evaluated its compliance with: (1) approved terms, rates, and conditions of its transmission formula rate mechanism as provided in Attachment O of the Midcontinent Independent System Operator, Inc. Open Access Transmission and Energy Markets Tariff, and other jurisdictional rates on file with the Commission; (2) the accounting requirements of the Uniform System of Accounts Prescribed for Public Utilities and Licensees under 18 C.F.R. Part 101; (3) the reporting requirements of the FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others under 18 C.F.R. § 141.1 and Supplemental Form 3-Q: Quarterly Financial Report, under 18 C.F.R. § 141.1; and (4) preservation of records of Public Utilities and Licensees at 18 C.F.R. Part 125.¹⁵

The audit identified three findings and 12 recommendations that required ATC to take corrective action. The three findings covered the following areas: (1) improper application of incentives granted to include construction work in progress in rate base of its transmission formula rate; (2) accounting for lobbying costs; and (3) accounting and filings associated with electric plant sold. As a result of the audit, ATC refunded wholesale transmission customers approximately \$35 million. Nearly all of the refund pertained to ATC's misapplication of transmission incentives. ATC reflected this refund in its annual true-up filed with the Commission in June 2018. ATC also implemented procedural changes to ensure it applies transmission incentives only to projects authorized by the Commission.

[Entergy Gulf States Louisiana, LLC \(EGSL\) – FA15-10-000](#). At EGSL, DAA evaluated its compliance with: (1) its wholesale transmission cost-of-service formula rate schedules included as Attachment H to EGSL's Open Access Transmission Tariff, Attachment to the Midcontinent Independent System Operator OATT, and EGSL's Fuel Adjustment Clause to recover the cost of nuclear and fossil fuel; (2) the Uniform System of Accounts for public utilities under 18 C.F.R. Part 101; (3) FERC Form No. 1, Annual Report of Major Electric Utilities, requirements under 18 C.F.R. § 141.1; and (4) FERC Form No. 3-Q, Quarterly Financial Report of Electric Utilities, requirements under 18 C.F.R. § 141.400.¹⁶ The audit identified three findings and 15

¹⁵ *American Transmission Company, LLC*, Docket No. FA16-1-000 (Feb. 14, 2018) (delegated letter order).

¹⁶ *Entergy Gulf States Louisiana, LLC*, Docket No. FA15-10-000 (Feb. 21, 2018) (delegated letter order).

recommendations that required EGSL to take corrective action. The three findings covered the following areas: (1) recovery of costs to purchase and amortize dry cask storage containers used for the interim storage of spent nuclear fuel assemblies; (2) recording of legal, financing, and audit fees associated with nuclear fuel; and (3) recording of lobbying costs associated with industry association dues in an operating expense account. As a result of the audit, EGSL issued refunds to wholesale customers and updated its accounting policies in areas of non-compliance.

Entergy Arkansas, Inc. (EAI) – FA15-11-000. At EAI, DAA evaluated its compliance with: (1) its wholesale transmission cost-of-service formula rate schedules included as Attachment H to EAI’s Open Access Transmission Tariff, Attachment to the Midcontinent Independent System Operator OATT, and EAI’s Fuel Adjustment Clause to recover the total cost of purchased power; (2) the Uniform System of Accounts for public utilities under 18 C.F.R. Part 101; (3) FERC Form No. 1, Annual Report of Major Electric Utilities, requirements under 18 C.F.R. § 141.1; and (4) FERC Form No. 3-Q, Quarterly Financial Report of Electric Utilities, requirements under 18 C.F.R. § 141.400.¹⁷ The audit identified four findings and 15 recommendations that required EAI to take corrective action. The four findings covered the following areas: (1) recording of lobbying costs associated with industry association dues in an operating expense account; (2) recording of employee discrimination lawsuit expenses; (3) accounting for progress payment for dry cask storage containers used for the interim storage of spent nuclear fuel assemblies; and (4) recording of legal, financing, and audit fees associated with nuclear fuel. As a result of the audit, EAI issued refunds to wholesale customers and updated its accounting policies in areas of non-compliance.

2. Gas Tariff & Accounting

Dominion Energy Transmission, Inc. (DETI) – FA15-16-000. At DETI, DAA evaluated its compliance with: (1) its FERC Gas Tariff; (2) the accounting requirements of the Uniform System of Accounts Prescribed for Natural Gas Companies under 18 C.F.R. Part 201; and (3) the reporting requirements of the FERC Form No. 2, Annual Report, under 18 C.F.R. § 260.1.¹⁸ The audit identified six findings and 24 recommendations that required DETI to take corrective action. The six findings covered the following areas: (1) calculation of AFUDC rates and accrual; (2) allocation of overhead costs to CWIP; (3) accounting for the Greenlick storage fire gas loss regulatory asset; (4) accounting for employment discrimination settlements or judgments; (5) accounting for lobbying expenses; and (6) filing of proposed accounting for the sale of gas plant assets. On September 27, 2017, DETI notified DAA that it accepted findings 2-6 and intended to contest finding 1. As a result of the accepted findings, approximately \$149.9 million of costs incorrectly accounted for was reclassified from plant and other accounts that may be used in the development of future cost of service rates.

On December 8, 2017, DETI formally contested the Audit Report’s finding 1, which found that DETI did not use its own book balances and cost rates associated with its debt, equity, and CWIP

¹⁷ *Entergy Arkansas, Inc.*, Docket No. FA15-11-000 (Feb. 21, 2018) (delegated letter order).

¹⁸ *Dominion Energy Transmission, Inc.*, Docket No. FA15-16-000 (Nov. 8, 2017) (delegated letter order).

to compute its AFUDC rate as required by the Commission's accounting requirements. The matter is currently pending before the Commission.

Chevron U.S.A., Inc. (CUSA) – PA16-1-000. At CUSA, DAA evaluated its compliance with: (1) Code of conduct for persons holding blanket marketing certificates under 18 C.F.R. § 284.403; (2) Release of firm capacity on interstate pipelines under 18 C.F.R. § 284.8; and (3) FERC Form No. 552, Annual Report of Natural Gas Transactions under 18 C.F.R. § 260.401. The audit also focused on examining CUSA's natural gas wholesale market activities and compliance with the applicable Commission regulations.¹⁹ The audit identified two findings and eight recommendations that required CUSA to take corrective action. The two findings covered the following areas: (1) price index reporting and (2) Form 552 reporting. As a result of the audit, CUSA enhanced processes and procedures for its price index reporting and Form 552 reporting practices to ensure it accurately and completely reports all reportable transactions. CUSA also provided training to support the enhanced processes and procedures and developed a centralized system to track all reportable transactions.

CMS Energy Corporation (CMS Energy) and its subsidiaries – PA17-5-000. At CMS Energy, DAA evaluated the company and its subsidiaries, Consumers Energy Company (Consumers) and CMS Enterprises Company (CMS Enterprises)(collectively the Companies), compliance with: (1) Commission regulations governing market-based rate authorizations under 18 C.F.R. Part 35 Subpart H; (2) Electric Quarterly Report filing regulations under 18 C.F.R. § 35.10b; (3) Commission regulations governing natural gas transportation and sales under 18 C.F.R. Part 284; and (4) FERC Form No. 552, Annual Report of Natural Gas Transactions under 18 C.F.R. § 260.401.²⁰ The audit identified three findings and five recommendations that required the Companies to take corrective action. The noncompliance concerned non-price parameters the Companies included in generation resource offers into the Midcontinent Independent System Operator, Inc. (MISO) for certain coal units. Consumers and CMS Enterprises submitted generation resource offers into MISO with Hourly Economic Minimum Limits (Ecomin) that did not reflect the actual known physical capabilities and characteristics of the resources, as required. By preventing MISO from dispatching those resources below Ecomin, the Companies' offers denied MISO the flexibility to optimize dispatch to reflect the actual marginal cost of energy, and to manage transmission congestion. In addition, Consumers submitted generation resource offers into MISO with bi-directional ramp rates that did not reflect the actual known physical capabilities and characteristics of the resource. As a result of the audit, the Companies revised their supply offer procedures for generating resources designated as Capacity Resources by MISO to ensure non-price offer components reflect the actual known physical capabilities and characteristics of the resource. In addition, the Companies agreed to perform engineering studies to support the actual physical operating characteristics offered for all generating units designated as Capacity Resources by MISO.

¹⁹ *Chevron U.S.A., Inc.*, Docket No. PA16-1-000 (Nov. 9, 2017) (delegated letter order).

²⁰ *CMS Energy Corporation*, Docket No. PA17-5-000 (July 5, 2018) (delegated letter order).

3. ISO/RTO

California Independent System Operator Corporation (CAISO) – PA17-3-000. At CAISO, DAA evaluated compliance with: (1) its FERC Electric Tariff (OATT), business practices, corporate bylaws, policies, and codes of conduct related to its market-administration and transmission-provider obligations; (2) CAISO's governance structure and the independence of its operations from market participants; (3) the independence and effectiveness of its market monitoring and oversight activities under Appendices O and P of the OATT and FERC Order No. 719; (4) transmission planning under FERC Order No. 1000; (5) compliance with Commission accounting regulations under the Uniform System of Accounts in 18 C.F.R. Part 101; and (6) compliance with FERC financial reporting requirements under 18 C.F.R. Part 141.²¹ The audit identified five findings of noncompliance, one Other Matter, and 10 recommendations that required CAISO to take corrective action. As a result of the audit, CAISO made significant changes during the audit to enhance its independence and separation of functions between it and the internal market monitor. The CAISO Board also approved the formation of a new Oversight Committee to assume the management and administration of the internal market monitoring function. In addition, the market monitor began filing comments on all OATT changes it independently determines to have significant impacts on the operation of the markets or the ability of CAISO to properly operate those markets.

Midcontinent Independent System Operator, Inc. (MISO) – PA16-5-000. At MISO, DAA evaluated its compliance with: (1) the transmission provider obligations described in the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff; (2) Commission Order No. 1000 as it relates to transmission planning and expansion, and interregional coordination; (3) accounting requirements of the Uniform System of Accounts under 18 C.F.R. Part 101; (4) financial reporting requirements under 18 C.F.R. Part 141; and (5) record retention requirements under 18 C.F.R. Part 125.²² The audit identified one finding of noncompliance and two recommendations that required MISO to take corrective action. A notable area of concern included MISO's destruction of certain records during the audit contrary to the requirements of the Commissions regulations and direction. As a result of the audit, MISO was required to update its policies and procedures to properly retain and maintain records to meet Commission retention requirements and MISO's own internal retention preferences that exceed Commission requirements.

ISO New England, Inc. (ISO-NE) – PA16-6-000. At ISO-NE, DAA evaluated its compliance with: (1) the transmission provider obligations described in the ISO-NE Transmission, Markets and Services Tariff; (2) Order No. 1000 as it relates to transmission planning and expansion, and interregional coordination; (3) accounting requirements of the Uniform System of Accounts under 18 C.F.R. Part 101; (4) reporting requirements of the FERC Form No. 1, Annual Report, under 18

²¹ *California Independent System Operator Corporation*, Docket No. PA17-3-000 (Sept. 14, 2018) (delegated letter order).

²² *Midcontinent Independent System Operator, Inc.*, Docket No. PA16-5-000 (Apr. 18, 2018) (delegated letter order).

C.F.R. Part 141; and (5) record retention requirements under 18 C.F.R. Part 125.²³ The audit report did not identify any findings of noncompliance that required ISO-NE to take corrective action.

4. Oil Pipelines

Plains Pipeline, L.P. (Plains) – FA16-6-000. At Plains, DAA evaluated its compliance with Commission regulations for oil pipeline companies in Parts 340-357, including: (1) Uniform System of Accounts in 18 C.F.R. Part 352; (2) Preservation of Records requirements in 18 C.F.R. Part 356; (3) FERC Form No. 6 financial reporting requirements in 18 C.F.R. Part 357; and (4) select portions of Plains’ FERC oil tariff.²⁴ The audit identified 12 findings of noncompliance and made 28 recommendations that required Plains to take corrective action. The notable areas of concern included improper accounting for various items, including oil spills, subsidiary investments, gain or loss on sale of asset, and idle and inactive pipelines, and improper prorating of nominations. As a result of the audit, Plains revised or developed accounting policies and procedures to ensure proper accounting treatment for certain items and consistency with Commission accounting regulations. Plains also made several reclassifications or adjustments to ensure that it properly accounted for certain items going forward.

Marathon Pipe Line, LLC (Marathon) – FA16-7-000. At Marathon, DAA evaluated its compliance with Commission regulations for oil pipeline companies in Parts 340-357, including: (1) Uniform System of Accounts in 18 C.F.R. Part 352; (2) Preservation of Records requirements in 18 C.F.R. Part 356; (3) FERC Form No. 6 financial reporting requirements in 18 C.F.R. Part 357; and (4) select portions of Marathon’s FERC oil tariff.²⁵ The audit identified ten findings of noncompliance and made 25 recommendations that require Marathon to take corrective action. The notable areas of concern included improper accounting for various items, including reimbursable capital projects, third party expenses, affiliate transaction markups, non-operating expenses, and carrier property. As a result of the audit, Marathon revised or developed accounting policies and procedures to ensure proper accounting treatment for certain items and consistency with Commission accounting regulations. Marathon also made the necessary accounting entries to properly account for certain items going forward.

Explorer Pipeline Company (Explorer) – FA16-5-000. At Explorer, DAA evaluated its compliance with Commission regulations for oil pipeline companies in Parts 340-357, including: (1) Uniform System of Accounts in 18 C.F.R. Part 352; (2) Preservation of Records requirements in 18 C.F.R. Part 356; (3) FERC Form No. 6 (Form 6) financial reporting requirements in 18 C.F.R. Part 357; and (4) select portions of Explorer’s FERC oil tariffs.²⁶ The audit identified 13 findings of noncompliance and made 28 recommendations that required Explorer to take corrective action. The notable areas of concern included Explorer’s: (1) miscalculation of

²³ *ISO New England, Inc.*, Docket No. PA16-6-000 (Apr. 18, 2018) (delegated letter order).

²⁴ *Plains Pipeline, L.P.*, Docket No. FA16-6-000 (Jan. 12, 2018) (delegated letter order).

²⁵ *Marathon Pipe Line, LLC*, Docket No. FA16-7-000 (Jan. 12, 2018) (delegated letter order).

²⁶ *Explorer Pipeline Company*, Docket No. FA16-5-000 (Jan. 12, 2018) (delegated letter order).

shippers' historical capacity used to allocate capacity in times of prorationing; (2) improper consolidation of subsidiary investments; and (3) accounting for markups above costs for services provided by affiliates. Notable results of the audit included, Explorer: (1) increasing staffing and training for employees responsible for regulatory accounting and reporting; (2) transitioning to a third-party software program to calculate capacity allocations for prorationing; and (3) ceasing its recording of the mark-up on services provided by affiliates in expense accounts that are reflected in the costs of service schedule of Form 6. These mark-ups totaled \$10.8 million for 2012-2016.

5. Electric Tariff

Idaho Power Company (Idaho Power) – PA17-7-000. At Idaho Power, DAA evaluated its compliance with: (1) the regulations regarding Open Access Same-time Information Systems (OASIS) prescribed in 18 C.F.R. Part 37; (2) Business Practice Standards and Communication Protocols for Public Utilities under 18 C.F.R. Part 38; (3) the Transparency rule under 18 C.F.R. § 358.7; and (4) information posting requirements contained within Idaho Power's Open Access Transmission Tariff.²⁷ The audit identified ten findings of noncompliance and 26 recommendations that required Idaho Power to take corrective action. The areas of noncompliance included: (1) posting available transfer capability (ATC) offerings on seven interconnection paths; (2) identification of affiliates on OASIS; (3) timely processing of transmission service requests; (4) posting of ancillary service; (5) reporting of transmission study performance metrics; (6) generation interconnection queue; (7) annual reevaluation of capacity benefit margin needs; (8) transmission study list; (9) OASIS access control; and (10) use of designated network resource to make firm off-system sales. As a result of the audit, Idaho Power has developed or improved processes and procedures to comply with Commission regulations regarding OASIS.

6. MBR & EQR

Kansas City Power & Light Company (KCP&L) – PA17-4-000. At KCP&L, DAA evaluated its compliance with applicable tariff provisions of markets in which KCP&L participates in wholesale trading. The audit also evaluated KCP&L's compliance with requirements of its market-based rate authorizations, including, but not limited to, the Commission's regulations under 18 C.F.R. Part 35 Subpart H, and Electric Quarterly Report (EQR) filing regulations under 18 C.F.R. § 35.10b.²⁸ The audit identified two findings of noncompliance and made six recommendations that required KCP&L to take corrective action. The two findings covered the following areas: (1) improper application of hedge accounting for certain derivative instrument transactions; and (2) errors in the EQR reporting of certain contract and transactional data. As a result of the audit, KCP&L revised procedures to ensure it properly accounted for hedge and non-hedge transactions, and reported transaction and contract data consistent with the Commission EQR requirements. KCP&L also refiled EQRs with the Commission for all affected quarters.

²⁷ *Idaho power Company*, Docket No. PA17-7-000 (June 11, 2018) (delegated letter order).

²⁸ *Kansas City Power & Light Company*, Docket No. PA17-4-000 (Aug. 24, 2018) (delegated letter order).

D. Accounting Matters

DAA administers the Commission's accounting programs established for the electric, natural gas, and oil industries as a vital component of the Commission's strategy of setting cost-of-service rates that are just and reasonable. The foundation of the Commission's accounting programs are the uniform systems of accounts codified in its regulations for 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 to be 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 environment, technological changes, and mandates from other regulatory bodies) that impact the industries under the Commission's jurisdiction.

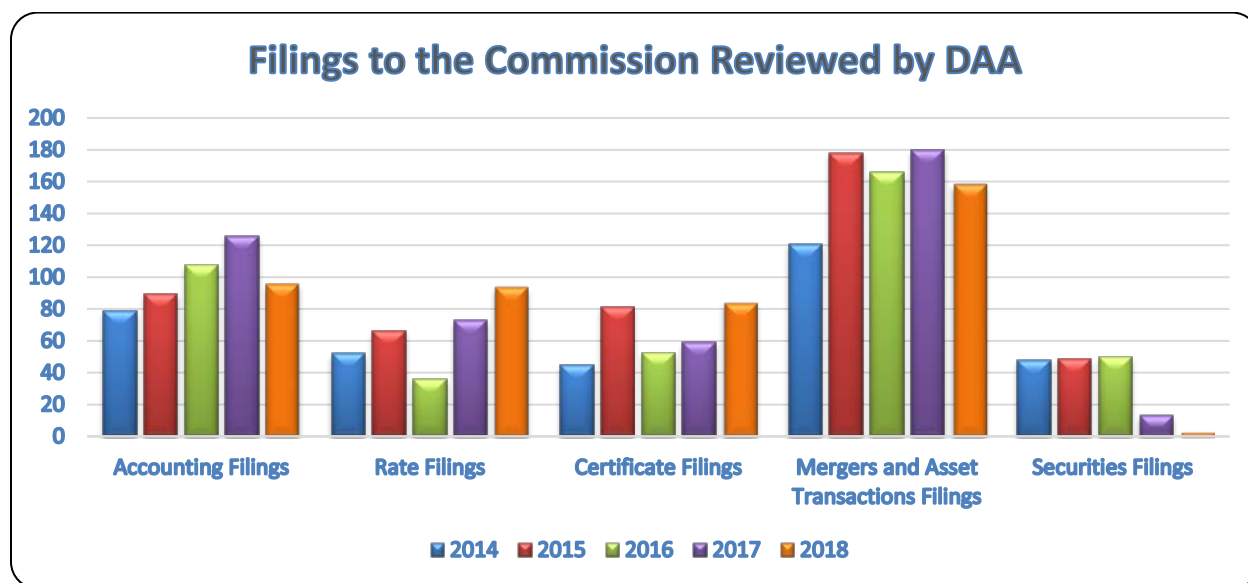
A substantial part of DAA's accounting workload involves coordination across various Commission program offices to provide regulatory accounting input and analysis on various types of filings made by jurisdictional entities. In addition, DAA provides accounting expertise to Commission program offices 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, Securities and Exchange Commission, and International Accounting Standards Board to address issues that may impact the Commission or its jurisdictional entities.

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

1. Filings Reviewed by DAA

In FY2018, DAA advised and acted on 435 proceedings at the Commission covering various accounting matters with cost-of-service rate implications, such as accounting for mergers and divestitures, asset acquisitions and dispositions, transmission incentives, depreciation, AFUDC, pensions and other post-retirement benefits, and income taxes. These proceedings include requests

for declaratory orders, natural gas certificate applications, merger and acquisition applications, electric and natural gas rate filings, applications for issuance of securities, and accounting requests for approval. In many of these cases, DAA served in an advisory role to other program offices in identifying and analyzing the accounting implications of those requests. Over the past five years, DAA has reviewed over 2,000 Commission proceedings to ensure proper accounting is followed and to advise the Commission of potential rate impacts.



2. Requests for Approval of the Chief Accountant

In FY2018, DAA, through the Chief Accountant’s delegated authority, acted on 96 accounting filings requesting approval of a proposed accounting treatment or financial reporting matter. 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 FY2018, there was a continued high volume of accounting filings related to asset acquisitions, similar to FY2017. There was also a large increase in filings during FY2018 requesting approval to record prior period adjustments.

The accounting and reporting of asset acquisitions for public utilities and licensees, centralized service companies, and natural gas companies continues to be an area of concern. Specifically, DAA is focused on ensuring that companies are properly recording acquired utility plant assets at the original cost of the assets at the time they were placed into service for public use. In cases where the original cost cannot be determined, such as acquisitions from entities that are not under the Commission’s jurisdiction for accounting purposes, the acquirer should estimate the original

cost.²⁹ Additionally, DAA is concerned with premiums paid in excess of the depreciated original cost to acquire utility plant assets. Public utilities and licensees, centralized service companies, and natural gas companies should record acquisition premiums to Account 114, Electric (Gas) Plant Acquisition Adjustment, and amortize the balances using Account 425, Miscellaneous Amortization, unless there has been approval from the regulator to recover those premiums in rates.

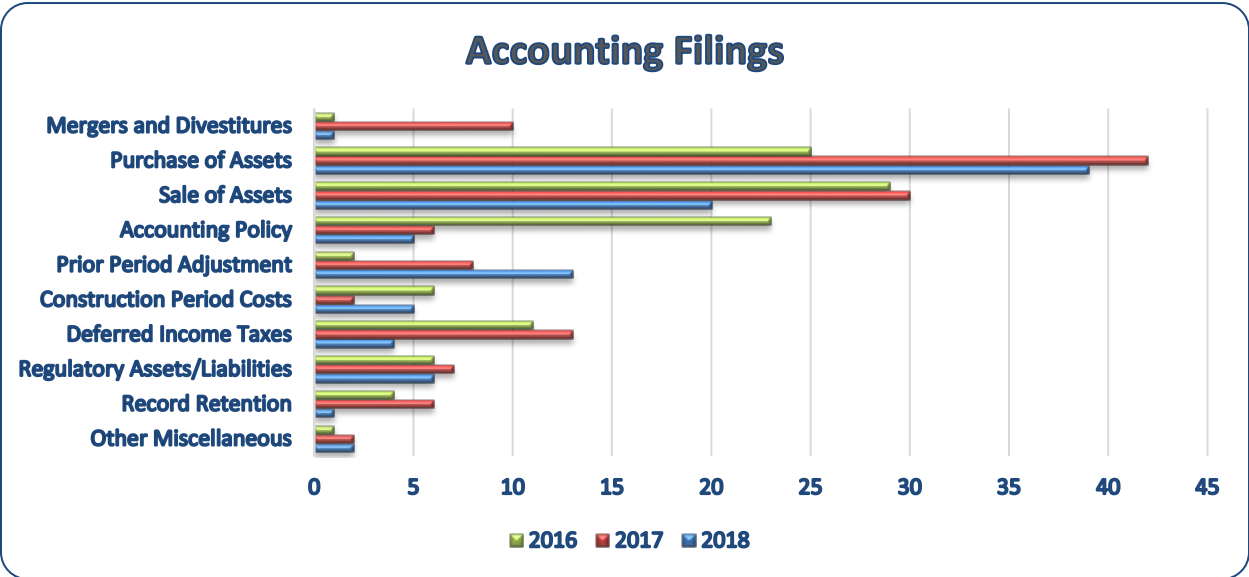
Letters to the Chief Accountant in FY2018 requesting approval to make prior period adjustments were in response to various accounting changes required by the Financial Accounting Standards Board (FASB). Some of the more common changes include the calculation of deferred taxes related to employee share-based payments (ASU 2016-09),³⁰ changes in fair value of equity instruments previously recorded in accumulated other comprehensive income (ASU 2016-01),³¹ and gains from intercompany transfers (ASU 2016-16).³² The Commission's accounting regulations require that jurisdictional entities file a request with the Commission and receive approval before making prior period adjustments and using Account 439, Adjustments to Retained Earnings, for public utilities and licensees, centralized service companies, and natural gas companies, and Account 705, Prior Period Adjustments to Beginning Retained Income Account, for oil pipeline companies. In reviewing these filings, DAA staff was concerned that increases in retained earnings from the prior period adjustments would be reflected on the capital structure in future rate proceedings in a manner that would be considered unjust or unreasonable. After careful consideration and review, the Chief Accountant concluded that the requests to make these prior period adjustments were adequately supported, and issued letters approving the requests. The accounting letter orders also noted that the approval is not intended to influence the outcome of any rate treatments established for the accounting adjustments. DAA encourages companies making similar filings to include all relevant historical evidence and analyses to support the adjustments.

²⁹ See *PacifiCorp et al.*, 124 FERC ¶ 61,046 (2008); *Missouri Interstate Gas, LLC*, 142 FERC ¶ 61,195 (2013).

³⁰ See FASB Accounting Standards Update No. 2016-19, Improvements to Employee Share-based Payment Accounting (March 2016).

³¹ See FASB Accounting Standards Update No. 2016-01, Recognition and Measurement of Financial Assets and Financial Liabilities (January 2016).

³² See FASB Accounting Standards Update No. 2016-16, Intra-Entity Transfers of Assets Other Than Inventory (October 2016).



3. Rate Proceedings

In FY2018, DAA participated in 94 rate proceedings that continued to predominately involve electric formula rate proceedings, but also included natural gas and oil rate proceedings. DAA worked with other program offices to discuss various accounting and financial issues and their effects on rates. Since many electric and natural gas rates are derived from accounting information in the FERC Form Nos. 1 and 2, DAA ensured that all proposed accounting in the rate proceedings was consistent 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. In FY2018, a recurring area of focus across a large number of rate proceedings involved the effects of the Tax Cuts and Jobs Act of 2017 on cost-of-service rates, particularly on the income tax allowance and the effects of deferred taxes on rate base. For those issues, DAA staff reviewed the filings and advised the Commission as to the transparency, validity, and appropriateness of how those amounts are included in cost-of-service rates. Other recurring areas of emphasis on DAA’s review of rate filings during FY2018 included merger transaction-related costs, asset retirement obligations, and assignment of operations and maintenance expenses to production, transmission, and distribution.

4. Certificate Proceeding

In FY2018, DAA reviewed 84 natural gas pipeline certificate application filings seeking various Commission authorizations: to construct, own, and operate new pipeline facilities; to acquire pipeline facilities; to abandon pipeline facilities in place, by removal, or by sale; and to establish rates for new pipeline service. DAA continues to work with other Commission program offices to assist in the development of just and reasonable rates by reviewing construction costs and other items used to determine initial rates, including operation and maintenance expenses, depreciation, taxes, and overall rate of return. Similar to DAA’s participation in rate proceedings during FY2018, a recurring area of emphasis during the review of certificate applications involved

analyzing the effects of the Tax Cuts and Jobs Act of 2017 on the proposed initial recourse rates. DAA also continues to ensure that applicants follow Commission accounting requirements related to asset abandonment, construction, AFUDC, contributions in aid of construction, regulatory assets and liabilities, leases, and system gas.

5. Merger and Acquisition Proceedings

In FY2018, DAA reviewed seven merger and divestiture applications and approximately 151 asset acquisition and sales applications from public utilities under section 203 of the Federal Power Act (FPA). The accounting review for merger transactions entails examining proposed accounting for costs to execute the transaction, costs to achieve integration and synergies, purchase accounting adjustments to assets and liabilities, and goodwill. DAA also ensures that the accounting is consistent with any hold-harmless or other rate requirements discussed in a merger order. In acquisition filings, staff conducts an accounting review to ensure applicants properly account for the purchase and sale of plant assets consistent with Commission regulations. It ensures that jurisdictional entities maintain the appropriate original cost and historical accumulated depreciation of acquired utility plant and properly recorded acquisition premiums or discounts. DAA also reviewed merger and acquisition accounting entries to ensure they provide enough transparency to the Commission and all interested parties for evaluating the impact on rates. 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 Security Issuance Proceedings

In FY2018, the Chief Accountant reviewed three public utility security issuance applications. Section 204(a) of the FPA requires jurisdictional entities to receive Commission authorization before issuing securities or assuming liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person. In reviewing filings under section 204, the Commission evaluates an applicant's viability based on a review of financial statements submitted with the application, interest coverage ratio, and debt maturities and cash-flow projections. DAA's review of debt and security applications provides critical analysis that helps prevent public utilities from borrowing substantial amounts of money and using the proceeds to finance nonutility businesses. This also ensures that future issuance of debt is consistent with public interest.

7. Accounting Inquiries

In FY2018, DAA responded to 103 accounting inquiries from jurisdictional entities 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 are sent directly to DAA staff. A large number of accounting inquiries during FY2018 sought accounting and financial reporting direction on whether and how to incorporate FASB updates into the Commission's requirements. Other topics included capitalization of various costs, deferred taxes, and plant classifications. DAA responds to these accounting inquiries by providing informal accounting and financial reporting guidance based on Commission precedent and regulations, in addition to instructing individuals how to find documents and regulations using the Commission

eLibrary system³³ and Title 18 of the Code of Federal Regulations.³⁴ Such informal accounting guidance is not binding to the Commission, and cannot grant waiver of a Commission regulation or order.

8. Accounting for Pensions and Other Post-retirement Benefits

On December 28, 2017, the Chief Accountant issued accounting guidance in Docket No. AI18-1-000 related to the accounting for pensions and other post-retirement benefits. The accounting guidance was in response to multiple inquiries from jurisdictional entities regarding clarification of whether and how to implement FASB's Accounting Standards Update (ASU) 2017-07, Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost, for accounting and financial reporting to the Commission. Prior to the ASU, net benefit cost was recognized on the income statement as one amount net of service and non-service cost components. The ASU now requires companies reporting under Generally Accepted Accounting Principles (GAAP) to separate net benefit cost into the service cost component and all other non-service cost components. The service cost component will be recognized as part of operating income or loss, while the other components will be recognized in the non-operating section. Also, only service cost will be eligible to be capitalized.

The Chief Accountant guidance letter clarified that under the Commission's accounting requirements, the net benefit cost should continue to be recognized entirely in operating income. Regarding capitalization, the guidance letter stated that companies may elect to continue capitalizing net benefit costs or capitalize only a portion of the service cost component of net benefit costs. The Chief Accountant explained that either approach would not conflict with the Commission's current accounting requirements provided the capitalize benefit costs are based on appropriate labor costs and have a definite relation to construction. However, whether companies elect to capitalize net benefit costs entirely or only the service cost component, they may not change their election once it has been made without prior approval from the Commission.

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

9. International Financial Reporting Standards

DAA continued its participation with the International Financial Reporting Standards (IFRS) Foundation, the International Accounting Standards Board (IASB), and their project on Rate-Regulated Activities (RRA) which remains of special interest to the Commission and its regulated entities. In FY2018, the Chief Accountant, a Consultative Group member for the RRA Project, participated in informal and formal meetings with U.S. regulated entities, state commissions, and

³³ The Commission's eLibrary system can be accessed at www.ferc.gov/docs-filing/elibrary.asp.

³⁴ The Commission's regulations in 18 C.F.R. can be found at www.ecfr.gov.

international regulators to inform the development of an IFRS accounting standard that provides for regulatory assets and liabilities in IFRS financial statements. During this period, the IASB continued its consideration of the prior comment letters and discussions with the Consultative Group but has yet to issue an accounting standard that provides for regulatory assets and liabilities in IFRS financial statements. In FY2019, the Chief Accountant stands ready to continue providing expert advice to IASB staff to develop permanent standards on rate-regulated activities.

DIVISION OF ENERGY MARKET OVERSIGHT

A. Overview

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

B. Market Monitoring

Market Oversight staff examines data from a variety of sources to review market fundamentals and emerging trends, and to examine the structure, operation, and interaction of natural gas and electric markets. As developments warrant, Market Oversight staff initiates projects designed to evaluate market trends and assess participant behavior. Staff also presents analyses at Commission meetings and makes analyses available to the public on the Commission website. During FY2018, such reports and presentations included the following:

1. 2017 State of the Markets Report

Market Oversight annually presents to the Commission, and makes public, its State of the Markets report, which assesses the significant events in the energy markets during the prior year.³⁵ Posted on April 19, 2018, the report for 2017 reviewed trends and events in natural gas and power markets, including trends in prices, supply, and demand. The report also reviewed the effects of the extreme cold-weather conditions in the northeast during December 2017 and January 2018. Further, the report highlighted certain rules promulgated by the Commission, including offer cap reform (Order No. 831) and requirements for electric storage participation in energy, ancillary services, and capacity markets (Order No. 841).

³⁵ See State of the Market Report 2017, available at <https://www.ferc.gov/market-oversight/reports-analyses/st-mkt-ovr/2017-som-A-3-full.pdf>

2. Seasonal Market Assessments

Market Oversight prepares seasonal assessments that it presents at Commission meetings and makes available to the public on the Commission website. In FY2018, Market Oversight's seasonal assessments included the following:

2017-2018 Winter Energy Market Assessment, October 19, 2017. Market Oversight staff presented its assessment of fuel and electricity market preparedness for the 2017-18 winter season. For fuels markets, the assessment covered natural gas storage volumes, U.S. liquefied natural gas export trends, regional natural gas price outlooks, and pipeline capacity expansion. For electricity markets, the assessment examined the adequacy of regional electric power supplies and fuel diversity trends. The assessment also discussed ISO New England's Winter Reliability Program and the continued expansion of the Western Energy Imbalance Market.³⁶

2018 Summer Energy Market and Reliability Assessment, May 17, 2018. This assessment reviewed the outlook for the electricity and fuels markets for summer 2018. For electricity markets, the assessment discussed the adequacy and diversity of regional electric power supplies, California ISO's generation mix, capacity market design in ISO New England and PJM, and trends in electric storage. For fuels markets, the assessment highlighted increasing natural gas production and demand, which were poised to set record highs. These offsetting market factors resulted in lower natural gas futures prices across the country. The presentation also discussed expectations for natural gas storage volumes.³⁷

C. Market-Based Rate *Ex Post* Analysis

Market Oversight develops, refines, and implements tools and algorithmic indicators to conduct ongoing analysis of transactional and other market data to detect the presence of market power, and to ensure that jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential. This *ex post* analysis evaluates transactions against market fundamentals at the time of execution, with the primary goal of identifying outcomes that may be inconsistent with expectations of a competitive market, and thus an indication of an exercise of market power. Once such outcomes are identified, Market Oversight coordinates with other Commission program offices to determine whether to recommend the Commission take action to remedy market power concerns. Market Oversight also uses these tools to assist in analyzing applications and filings for market-based rates, public utility mergers, and other docketed proceedings.

³⁶ See 2017-2018 Winter Energy Market Assessment, available at <https://www.ferc.gov/market-oversight/reports-analyses/mkt-views/2017/10-19-17-18-A-3.pdf>.

³⁷ See 2018 Summer Energy Market and Reliability Assessment, available at <https://www.ferc.gov/market-oversight/reports-analyses/mkt-views/2018/05-17-18.pdf>.

D. Commission Orders and Rulemakings

Market Oversight assists the Commission in evaluating the efficacy of certain regulatory policies in light of evolving energy markets and ensures that the Commission has the information needed to administer and monitor the markets effectively. In FY2018, Market Oversight participated in over 40 docketed Commission proceedings. Through its work on these matters, Market Oversight seeks to enhance market transparency and efficiency while balancing the regulatory burden on market participants.

E. Forms Administration and Compliance

Market Oversight staff administers and ensures compliance with certain Commission filing requirements. The Commission requires 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 (2012), and Part 35 of the Commission's regulations, 18 C.F.R. Part 35 (2018), require, among other things, that all rates, terms, and conditions of jurisdictional service be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements to require public utilities, including power marketers, to file EQRs summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and providing transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.³⁸

In FY2018, the Commission received EQR submittals from nearly 2,500 entities each quarter. Market Oversight assesses whether sellers have timely complied with the requirements set forth in the multiple orders surrounding EQR filings, and, through automated validations, whether the data is accurate and reliable. It also coordinates with the Division of Audits and Accounting on EQR issues that arise during the audits, and submits candidate entities that do not timely file their EQRs

³⁸ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127 (2002), *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074 (2002), *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342 (2002), *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003), *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270 (2007), *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

to the Office of Energy Market Regulation for possible revocation of Market Based Rate authority. Market Oversight held two EQR user group meetings in FY2018 to conduct outreach with the filing community and to discuss potential system improvements and enhancements. Each meeting had over 370 participants attend either in person or via webcast/phone. Staff also updated the EQR Frequently Asked Questions (FAQ)³⁹ and the EQR Filing Requirements Guide⁴⁰ to provide additional assistance to filers.

2. eForms Refresh Project

On April 16, 2015, the Commission directed Commission staff to begin the process of replacing its electronic filing format for many of the forms submitted by the industry, as the current filing software is no longer supported.⁴¹ Throughout FY2018, Market Oversight staff, with the assistance of subject matter experts from other Commission offices, evaluated the use of data standards for the forms included in this project. This research included consultation with data collection experts, site visits to other regulatory agencies, and a comprehensive assessment of the forms included in this project, their use and future possible uses.

F. Outreach and Communication

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

1. Website

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

2. Snapshot Calls

Market Oversight holds semi-annual conference calls with representatives of public utility commissions and state agencies in the eastern, central, and western states. These calls provide a

³⁹See Electric Quarterly Report Frequently Asked Questions, *available at* <http://www.ferc.gov/resources/faqs/eqr-2013.asp/>

⁴⁰See Electric Quarterly Report Filing Requirements Guide, *available at* <http://www.ferc.gov/docs-filing/eqr/eqr-requirements-guide.pdf>.

⁴¹ *Order Instituting Proceeding to Develop Electronic Filing Protocols for Commission Forms*, 151 FERC ¶ 61,025 (2015).

current “snapshot” of energy markets. Regional Snapshot Reports, which include data and information on natural gas, electricity, LNG, weather, infrastructure development, and other market developments, serve as the basis for discussion on the calls. Market Oversight’s Snapshot Reports are available on website at <http://www.ferc.gov/market-oversight/mkt-snp-sht/mkt-snp-sht.asp>, and are archived back to 2007.

3. Domestic and Foreign Delegation Briefings

Market Oversight periodically hosts visitors, including domestic and foreign delegations of regulators and industry participants, who are interested in energy markets and in the Commission’s market monitoring activities. In FY2018, Market Oversight conducted 10 briefings for various domestic and foreign delegations in the Market Monitoring Center.

DIVISION OF ANALYTICS AND SURVEILLANCE

A. Overview

The Division of Analytics and Surveillance (DAS) develops surveillance tools, conducts surveillance, and analyzes transactional and market data to detect potential manipulation, anticompetitive behavior, and other anomalous activities in the energy markets. DAS focuses on: (1) natural gas surveillance; (2) electric surveillance; and (3) analytics for reviewing market participant behavior. The analysts and economists in DAS identify market participants whose conduct calls for investigation, and participate in investigations with attorneys from DOI, providing detailed transactional analysis, market event analysis, and subject matter expertise.

To perform these functions, access to high quality, relevant, and timely data is essential. Since the creation of DAS in 2012, the Commission has 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 ISO/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.⁴² On average, the Commission receives, on a non-public basis, approximately seven gigabytes of data in more than 1,200 tables each day from the six organized markets combined. Each ISO/RTO database is different, and DAS is responsible for understanding the particular nuances of each database and preparing them for use in surveillance screens and analyses.

Similarly, pursuant to Order No. 771,⁴³ 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 7.6 million eTags and gains access to approximately 5,000 new eTags each day. The Commission also routinely receives non-public physical electric and natural gas market data from the Intercontinental Exchange (ICE) and a subset of the Large Trader Report from the Commodities Futures Trading Commission (CFTC) through a Memorandum of Understanding. DAS surveillance and analytics staff continue to use these data sources, Electric Quarterly Report data, and data from a variety of subscription-based services, extensively.

⁴² *Enhancement of Electricity Market Surveillance and Analysis through Ongoing Electronic Delivery of Data from Regional Transmission Organizations and Independent System Operators*, Order No. 760, FERC Stats. & Regs. ¶ 31,330 (2012).

⁴³ *Availability of E-Tag Information to Commission Staff*, Order No. 771, 141 FERC ¶ 61,235 (2012).

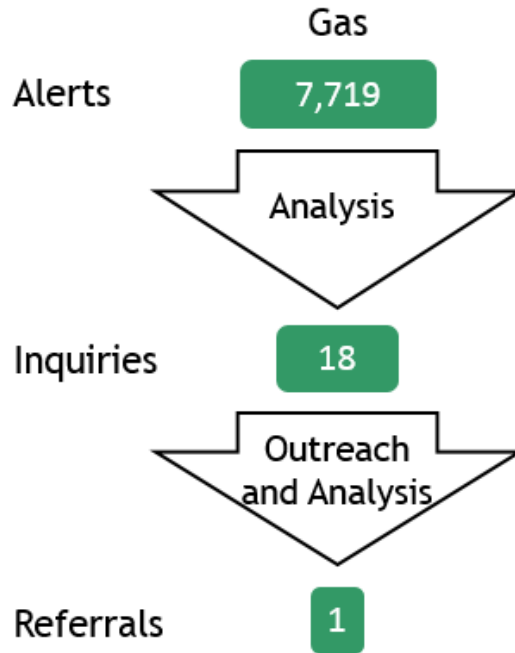
B. Surveillance

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 issues an alert, staff conducts a series of analyses to gain information about the activity that caused it. First, staff evaluates the activity using available 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 alert, staff performs a more in-depth review of the conduct, which may involve contacting the market participant to request additional information and explanations for the conduct. Staff classifies this enhanced review as the opening of a surveillance inquiry. If, after conducting an inquiry, staff is still concerned that there is a potential violation, it will recommend that DOI open an investigation into the matter.

1. Natural Gas

DAS conducts surveillance and analysis of the physical natural gas markets to detect potential manipulation and anti-competitive behavior. Automated natural gas screens cover the majority of physical and financial trading hubs in the United States on a daily and monthly basis. DAS also employs asset-based screens that monitor cash trading around infrastructure, including natural gas storage, pipeline capacity, and electric generation. These screens alert staff to a variety of market conditions and market participant actions. In addition, DAS uses Large Trader Report data from the CFTC to look for potential financial incentives that might encourage a market participant to engage in a manipulative scheme.

In FY2018, the natural gas surveillance screens produced approximately 7,719 alerts. Staff reviewed these screen alerts by comparing the conduct that caused them to that at other hubs and evaluating whether there was a fundamentals-based explanation for the activity based on a review of supply, demand, pipeline utilization, operational notices, and physical and financial trading. In most cases, alerts were of low concern or follow-up analysis provided an explanation for high concern and elevated concern alerts. When it did not, DAS opened an inquiry and performed a more in-depth review of the specific trading behavior. In FY2018, DAS conducted 18 such natural gas surveillance inquiries. Of these inquiries, DAS referred one to DOI for investigation.

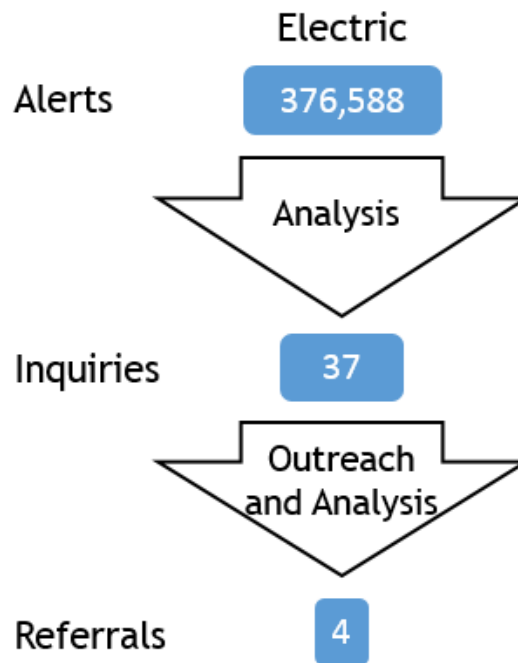


2. Electricity

DAS regularly accesses data from a variety of sources to screen for anomalies and potentially-manipulative behavior in the ISO/RTO and bilateral electricity markets. During FY2018, staff ran monthly and weekly screens to identify patterns at the hourly level by monitoring the interactions between bids and cleared physical and financially-settled electricity products. In particular, these screens identify 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 the fiscal year, staff continued to refine its processes for screening to detect: (1) uneconomic virtual transactions by node, zone, and constraint; (2) day-ahead and real-time market congestion manipulation that would benefit financial transmission rights, synthetic real-time financial transmission rights, swap-futures positions for physical load and generation portfolios; (3) anomalies in physical offer patterns; (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 FY2018, DAS ran and reviewed 84 electric surveillance screens monthly, hourly and intra-hour sub-screens, and reports for over 36,000 hub and pricing nodes within the six ISO/RTOs. Additionally, DAS screened non-RTO markets and cross-RTO portfolio trades for potential manipulation. In reviewing screen alerts and, in some cases, after communicating with the ISO/RTO Market Monitoring Units, DAS identified 37 instances of market behavior that required further analysis through a surveillance inquiry. Of the 37 electric surveillance inquiries, four were referred to DOI for investigation, 25 were closed with no referral, and three remain open with staff continuing its analytic work.



3. Illustrative DAS Surveillance Inquiries Closed With No Referral

Market Manipulation (Gas). DAS natural gas surveillance screens identified a market participant selling gas at a hub in the Gulf below the Gas Daily daily (GDD) index and with a high market concentration. In addition, the market participant held large, benefitting positions tied to the index settlement. The benefitting positions significantly exceeded the physical sales volumes. Staff contacted the market participant, who explained both its physical and financial activities. Physically, the market participant had encountered reduced demand for an extended period after Hurricane Harvey and at times had to sell below the index to flatten its position. Financially, the market participant explained that the open interest was hedging regional price risk and thus provided much less leverage. After reviewing the market participant’s internal documentation pertaining to open interest relative to region-wide price exposure, the surveillance inquiry was closed with no referral to DOI.

Market Manipulation (Gas). DAS natural gas surveillance screens identified a market participant buying high in next-day fixed price trading at Henry Hub while holding significant, long financial GDD exposure and at the same time selling gas priced at the daily Henry Hub index. DAS looked closely over an extended time period to: (1) gain a better sense of whether there was a pattern to the observed trading and financial incentives; (2) consider the extent to which the company’s cash trading at Henry Hub was out-of-market; and (3) explore whether the financial positions at Henry may have been part of a spread to another hub. In sum, staff concluded that the company did not incur significant or statistically outlying out-of-market losses in trading fixed price gas during the months it held its greatest financial incentives and that the largest financial positions may have been part of locational spreads to other hubs. Further, staff looked at early trading and could reach no definite conclusions regarding the timing and market framing aspects of the company’s trading.

As such, although patterns over time suggested extended churning of gas in the form of buying fixed price volumes and partially selling them as daily index gas, the behavior in question, when reviewed in its totality, did not rise to the level of a referral. The matter was closed with no referral to DOI.

Market Manipulation (Electric). DAS electric surveillance screens identified a power plant receiving an unusually large amount of a specific type of uplift (out-of-market payment) relative to past periods for that unit, and relative to other generators during the same time period. Staff further researched the plant's bidding behavior and the market conditions prevailing at the time in question. DAS determined that the plant was needed for voltage support due to unusual line and generator outages. Additionally, the unit's energy offers and physical parameters were consistent with its reference levels. As a result, the inquiry was closed without a referral to DOI.

Market Manipulation (Electric). DAS electric surveillance screens flagged a market participant consistently trading virtual demand into a leveraged long swap-futures position at a hub. These virtual positions were taken over a one month period, and were slightly unprofitable. The associated swap-futures positions were highly leveraged, but since they traded at a liquid Eastern hub, they did not constitute an unduly large percentage of open interest at the hub. Further analysis revealed that the market participant had associated load obligations consistent with the size of its financial positions. As a result, the inquiry was closed with no referral to DOI.

C. Analytics

During FY2018, DAS worked on approximately 50 investigations, some of which are discussed above in the DOI section. Many of these investigations involve allegations of manipulation in the Commission-jurisdictional natural gas and electricity markets, or violations of tariff provisions that are intended to foster open, competitive markets. DAS's investigative activities generally include: (1) assessing market conditions during periods of suspected manipulation; (2) identifying patterns of market activity that could indicate market manipulation; (3) identifying time periods in which potentially manipulative activities occurred; (4) fully reconstructing and analyzing companies' trading portfolios; (5) supporting DOI in taking investigative testimony; and (6) calculating the amount of unjust profits and market harm resulting from violations to assist with determining a civil penalty recommendation under the Commission's penalty guidelines. Upon completion of the analytical process, staff develops data-based explanations to inform the structure and substance of further investigation, settlement discussions, and Commission actions. Staff also coordinates internally to refine and develop new screens to detect improper behavior discovered in prior investigations.

D. Data Management

During FY2018, DAS staff worked to improve data usability within DAS and throughout the Commission. The team's efforts included: (1) researching best-in-class data management organizational structures in government; (2) designing, building, and maintaining managed data pipelines; (3) collaborating across offices to improve master data management. These efforts are

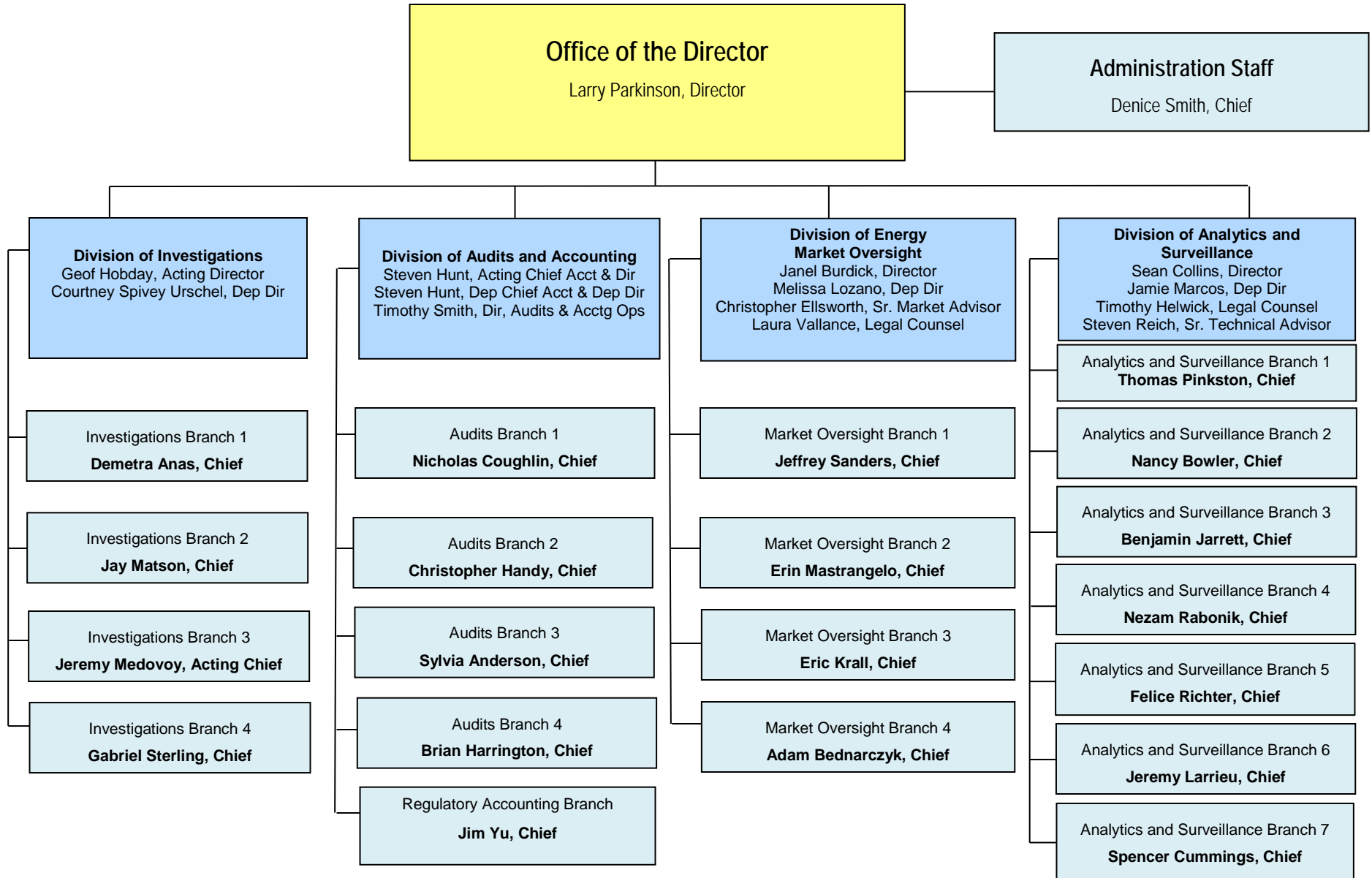
consistent with Objective 3.1 of the Commission's FY2018-2022 Strategic Plan,⁴⁴ which includes the following commitment:

The Commission will implement a multi-step initiative that includes: 1) data assessment, including identifying what data are currently available, uses the data could serve, and limits on such uses; 2) data validation and standardization; 3) development of user friendly analytic tools; and 4) building the internal capability to support the initiative, including a recruitment strategy.

⁴⁴ Federal Energy Regulatory Commission, Strategic Plan FY2018-2022, available at: <https://www.ferc.gov/about/strat-docs/FY-2018-FY-2022-strat-plan.pdf?csrt=14045742870455715118>.

APPENDIX A: OFFICE OF ENFORCEMENT ORGANIZATION CHART

OFFICE OF ENFORCEMENT



APPENDIX B: FY2018 CIVIL PENALTY ENFORCEMENT ACTIONS⁴⁵

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
Barclays Bank PLC, Daniel Brin, Scott Connelly, and Karen Levine, Order Approving Stipulation and Consent Agreement, 161 FERC ¶ 61,147.	\$70 million civil penalty; \$35 million disgorgement.	The Commission issued an order approving the settlement of an investigation of Barclays Bank PLC (Barclays) and several of its traders. In July 2013, the Commission issued an Order Assessing Civil Penalties, in which it determined that Defendants had violated the Commission’s Anti-Manipulation Rule by engaging in loss-generating trading of next-day, fixed-price physical electricity with the intent to benefit financial swap positions in the western United States.
Duke Energy Corporation, Order Approving Stipulation and Consent Agreement, 163 FERC ¶ 61,189.	\$3.5 million civil penalty.	The Commission issued an order approving the settlement of an investigation of Duke Energy Corporation and its public utility operating subsidiaries (collectively, Duke) relating to whether Duke failed to fully and accurately communicate information to the Commission concerning certain transmission studies submitted in support of the application for approval of Duke’s merger with Progress Energy, Inc. in violation of 18 C.F.R. § 35.41(b) (2017).
PSEG Energy Resources & Trade, LLC (PSEG), Order Approving Stipulation and Consent Agreement, 163 FERC ¶ 61,056.	\$8 million civil penalty; \$26,905,736 plus \$4,494,264 interest in disgorgement.	The Commission issued an Order Approving Stipulation and Consent Agreement, resolving Enforcement’s investigation of whether PSEG violated sections 1.2 and 6.4.2(a)(ii) of Schedule 1 of the PJM Operating Agreement and Attachment K – Appendix of the PJM Tariff, and the Market Behavior Rule, 18 C.F.R. § 35.41(a) (2017), when it submitted incorrect cost-based offers into the PJM energy market between 2005 and 2014.

⁴⁵ A list of all post-EPA Act 2005 civil penalty orders is available at <http://www.ferc.gov/enforcement/civil-penalties/civil-penalty-action.asp>

<p>ETRACOM LLC and Michael Rosenberg, Order Approving Stipulation and Consent Agreement, 163 FERC ¶ 61,022.</p>	<p>\$1,500,508.28 civil penalty; \$315,072 plus \$84,419.72 interest in disgorgement.</p>	<p>The Commission approved the Stipulation and Consent Agreement between ETRACOM LLC (ETRACOM), Michael Rosenberg (its majority owner and primary trader) and Enforcement. The Commission determined that ETRACOM and Rosenberg violated the Commission’s Anti-Manipulation Rule by submitting virtual supply transactions at the New Melones intertie at the border of the CAISO market in order to affect power prices and economically benefit ETRACOM’s congestion revenue rights positions sourced at that location.</p>
<p>Entergy Nuclear Power Marketing, L.L.C., 164 FERC ¶ 61,051.</p>	<p>\$115,000 civil penalty; \$47,084 in disgorgement and interest.</p>	<p>The Commission issued an order approving the settlement of an investigation into violations by Entergy Nuclear Power Marketing, L.L.C. (ENPM) of ISO New England (ISO-NE) Tariff provisions related to the company’s response to ISO-NE’s dispatch instructions. Specifically, staff concluded that ENPM violated 18 C.F.R. §§ 35.41(a) and (b) and ISO-NE Tariff, Market Rule 1 § III.13.6.1.1.1 (“Energy Market Offer Requirements”) and § III.1.10.1A(d) (“Day Ahead Energy Market Scheduling”) when ENPM: 1) failed to timely act in response to a natural gas pipeline notice restricting interruptible fuel transportation service, leading ENPM to have insufficient fuel to meet dispatch instructions at one gas-fired power plant, and 2) failed to timely update its open supply offer or otherwise notify ISO-NE of its potential inability to meet dispatch instructions after the notice was issued.</p>
<p>Wheelabrator Claremont Company, L.P., 164 FERC ¶ 61,237</p>	<p>\$250,000 civil penalty; \$107,231.34 in disgorgement and interest.</p>	<p>The Commission issued an order approving the settlement of an investigation into whether the collection by Wheelabrator Claremont of certain capacity payments associated with Capacity Supply Obligations (CSO) violated ISO-NE Transmission, Markets and Services Tariff, at Market Rule 1, § III.13.</p>