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FEDERAL ENERGY REGULATORY COMMISSION

2016 REPORT ON ENFORCEMENT

Docket No. AD07-13-010

Prepared by Staff of the

Office of Enforcement
Federal Energy Regulatory Commission
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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 2016 (FY2016),[2] including an overview of, and statistics reflecting, the activities of the four divisions within Enforcement: Division of Investigations (DOI), Division of Audits and Accounting (DAA), Division of Energy Market Oversight (Market Oversight), and Division of Analytics and Surveillance (DAS).

Enforcement recognizes the importance of informing the public of the activities of its staff and prepares this report with that objective in mind. Because much of the investigative work of Enforcement is non-public, most of the information the public receives about investigations comes from public Commission orders approving settlements, orders to show cause, publicly released staff reports, audit reports, and notices of alleged violations. However, not all of Enforcement's activities result in public actions by the Commission. As in previous years, the FY2016 report provides the public with more information regarding the nature of non-public Enforcement activities, such as self-reported violations and investigations that are closed without public enforcement action. This report also highlights Enforcement's work auditing jurisdictional companies, monitoring market trends and market competitiveness, and performing surveillance and analysis of conduct in wholesale natural gas and electric markets.

In response to requests from the industry, concurrent with the release of this Annual Report, Enforcement also is releasing two white papers providing insights regarding Enforcement staff's views and emerging trends related to manipulation of the FERC jurisdictional markets. The first, which is entitled *Staff White Paper on Effective Energy Trading Compliance Practices*, provides guidance to entities regarding best practices within their own organizations to help prevent and detect market manipulation and other violations.[3] The second, which is entitled *White Paper on Anti-Market Manipulation Enforcement Efforts Ten Years After EPAct*, summarizes recent Commission and federal court case law regarding development of the Commission's anti-manipulation doctrine and identifies factors staff considers when deciding whether to pursue or close allegations of manipulation.[4]

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

[2] The Commission's fiscal year begins October 1 and ends September 30 of the following year. FY2016, the subject of this report, began on October 1, 2015 and ended on September 30, 2016.

[3] *See* White Paper on Effective Energy Trading Compliance Practices, *available at* http://www.ferc.gov/legal/staff-reports/2016/tradecompliancewhitepaper.pdf.

[4] *See* White Paper on Anti-Market Manipulation Enforcement Efforts Ten Years After EPAct, *available at* http://www.ferc.gov/legal/staff-reports/2016/marketmanipulationwhitepaper.pdf

OFFICE OF ENFORCEMENT PRIORITIES

The Commission's current Strategic Plan announced its mission of assisting consumers in obtaining reliable, efficient, and sustainable energy services at a reasonable cost through appropriate regulatory and market means.[5] The Strategic Plan identifies three primary goals to fulfill this mission: (1) ensuring that rates, terms, and conditions of jurisdictional services are just, reasonable, and not unduly discriminatory or preferential; (2) promoting the development of a safe, reliable, and efficient energy infrastructure that serves the public interest; and (3) facilitating organizational excellence through increased transparency, communication, and managing Commission resources and employees. To further those goals and assist the Commission in its obligation to oversee regulated markets, Enforcement's four divisions gather information about market behavior, market participants, and market rules. Enforcement also gathers information as appropriate regarding energy infrastructure. The divisions continue to work to bring entities into compliance with applicable statutes, Commission rules, orders, regulations, and tariff provisions.

In FY2016, Enforcement had the same priorities as in previous years, continuing to focus on matters involving:

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

Enforcement does not intend to change these priorities in Fiscal Year 2017. Conduct involving fraud and market manipulation poses a significant threat to the markets the Commission oversees. Such intentional misconduct undermines the Commission's goal of ensuring provision of efficient energy services at a reasonable cost, because the losses imposed by fraud and manipulation are ultimately passed on to consumers. Similarly, anticompetitive conduct and conduct that threatens market transparency undermine confidence in the energy markets and harm consumers and competitors. Such conduct might also involve the violation of rules designed to limit market power or to ensure the efficient operation of regulated markets. Enforcement focuses on preventing and remedying misconduct involving the greatest harm to the public, where there may be significant gain to the violator or loss to the victims.

The Reliability Standards established by the Electric Reliability Organization (ERO) and approved by the Commission protect the public interest by ensuring a reliable and secure bulk power system. This office enforces these standards and focuses primarily on violations resulting in actual harm, through the loss of load or other means. Enforcement also focuses on cases involving repeat violations of the Reliability Standards or violations that present a substantial risk to the bulk power system.

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[5] The Federal Energy Regulatory Commission, Strategic Plan FY 2014-2018 (Mar. 2014), *available at* http://www.ferc.gov/about/strat-docs/FY-2014-FY-2018-strat-plan.pdf.

Enforcement continued its commitment to these priorities in FY2016. DOI staff opened 17 new investigations, while bringing 11 pending investigations to closure either with no action or through a Commission-approved settlement. During FY2016, staff negotiated settlements allowing it to recover a total of more than $12.25 million in civil penalties and disgorgement of nearly $5.7 million in unjust profits.[6] These settlements also included provisions requiring the subjects to enhance their compliance programs and periodically report back to Enforcement regarding the results of those compliance enhancements.

Staff from DAA reviewed the conduct of regulated entities through 14 audits of oil pipeline, public utility, and natural gas companies, resulting in 214 recommendations for corrective action and directing refunds and recoveries totaling $5.3 million.

Market Oversight continued its analysis of market fundamentals (including significant trends and developments) and enhanced its analytical capabilities related to identifying anticompetitive outcomes and anomalies that may indicate an exercise of market power. As in prior years, Market Oversight presented its annual State of the Markets report assessing significant events of the previous year, as well as its Winter Energy Market Assessment and Summer Energy Market and Reliability Assessment. It also published a revised edition of Market Oversight's *Energy Primer* handbook. Additionally, Market Oversight continued ensuring compliance with the Commission's filing requirements for Electric Quarterly Reports (EQR) and various Commission financial forms.

Finally, in FY2016, DAS worked on more than 40 investigations and reviewed numerous instances of potential misconduct, with some reviews resulting in referrals to DOI. DAS also continued to develop its Notice of Proposed Rulemaking (NOPR) to revise the Commission's regulations to facilitate the collection of certain information from market-based rate (MBR) sellers and entities trading virtual products or holding financial transmission rights and to change certain aspects of the substance and format of information submitted for MBR purposes. The information collected would assist the Commission's screening and investigative efforts to detect market manipulation by providing it with a more complete view of the relationships between electric market participants and the incentives underlying their trading activities. In response to public comments and informal outreach, the Commission withdrew an earlier version of the NOPR that it had issued in Fiscal Year 2015 (FY2015) and revised its proposal to eliminate duplication with existing MBR requirements, ease compliance burdens, modernize its data collections, and render information collected through its programs usable and accessible for the Commission and its staff.

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[6] A table of FY2016 Civil Penalty Enforcement Actions, both those resolved through settlement and those resolved through agency proceedings, is attached to this report as Appendix B.

DIVISION OF INVESTIGATIONS

A. Overview

The Division of Investigations (DOI) conducts investigations of potential violations of the statutes, regulations, rules, orders, and tariffs administered by the Commission. Those investigations may begin from self-reports, tips, calls to the Enforcement Hotline, referrals from organized markets or their monitoring units, other agencies, other divisions within Enforcement, other program offices within the Commission, or as a result of other investigations. DOI staff works closely with other Enforcement divisions, and other Commission offices as appropriate, throughout its investigations. If staff finds significant violations, it reports its findings to the Commission and attempts to settle investigations for appropriate sanctions and future compliance improvements before recommending that the Commission initiate a public show cause proceeding.[7]

As in previous years, DOI staff continued in FY2016 to support the Commission's initiatives to increase transparency and promote consistency as it carried out its investigatory mission. Among other efforts to support these initiatives, the Director of Enforcement directed the Secretary to issue four notices of alleged violations (NAVs) involving conduct of five separate individuals or entities. The notices identified investigation subjects and included a concise description of alleged violations of applicable statutes and Commission regulations and orders.[8]

If a settlement cannot be reached, the Commission may issue an order to show cause (OSC) directing the subject to explain why it did not commit a violation and why penalties and disgorgement are not warranted. The subject has a full opportunity to respond to that 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 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 FY2016, the Commission issued two OSCs related to FPA investigations, and it assessed civil penalties in both of those matters. The third matter in which the Commission issued an OSC, a proceeding under the Natural Gas Act (NGA), remains pending before the Commission.

If the company or individual against which the Commission assessed a civil penalty pursuant to the FPA does not pay that penalty in a timely fashion, DOI staff seeks to affirm and enforce that assessment in federal court through the *de novo* review process set forth in section 31 of the FPA. Including actions filed in previous years, staff currently is litigating six such actions in federal court, and it is seeking to enforce the Commission's combined assessment of more than $592 million in penalties and disgorgement in those proceedings. Staff settled two other FPA matters that were pending in federal court at the beginning of the fiscal year. As noted, one

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[7] 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.

[8] See Appendix C to this report for a complete listing of the notices of alleged violations that Enforcement issued in FY2016.

NGA-related proceeding is pending before the Commission following the issuance of an OSC. In another NGA-related proceeding, the Commission's Order on Initial Decision assessing more than $20 million in civil penalties, plus disgorgement and interest, is pending rehearing before the Commission

Most DOI investigations do not result in contested litigation but are either closed without further action or settled. In all cases, staff attempts to settle matters when it is in the public interest to do so. In addition to the two federal court matters that staff settled in FY2016, Enforcement staff also settled with: (1) the owner of a generator and its administrative services firm for violations of the Commission's Anti-Manipulation Rule (18 C.F.R. § 1c.1), the Market Behavior Rules (18 C.F.R. §§ 35.41(a) & (b)), various provisions of an RTO/ISO tariff, and Commission-approved Reliability Standards; (2) a trader and his employer for violations of the Anti-Manipulation Rule; and (3) an energy trading firm for violations of an RTO/ISO tariff.

Although the public NAVs, settlements, orders to show cause, and orders assessing penalties often receive the most public attention, DOI generally closes the majority of its investigations with no further action and without those investigations becoming public. During the course of its investigation, if DOI concludes that there is insufficient evidence to establish a violation or otherwise concludes that further proceedings are not warranted, it tries to close the matter promptly. DOI closed five investigations in FY2016 because either staff found no violation or because there was not enough evidence to conclude that a violation had occurred. Adding those five closed investigations to the six investigations that DOI closed through settlement brings the total investigations closed in FY2016 to 11.

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 in FY2016. It also worked on a rulemaking to update regulations concerning the civil penalties that may be assessed by 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 FY2016 preparing reports, briefs, and other public filings related to OSC proceedings before the Commission and subsequent litigation in federal courts. The Commission issued three OSCs in FY2016, two related to investigations arising out of violations of the FPA and one related to an investigation arising out of violations of the NGA. The Commission subsequently assessed civil penalties in both of the FPA matters in which it issued OSCs: (1) *ETRACOM LLC and Michael Rosenberg* (Docket No. IN16-2-000) and (2) *Coaltrain Energy, L.P., Peter Jones, Shawn Sheehan, Robert Jones, Jeff Miller, Jack Wells* (Docket No. IN16-4-000). The subjects of those investigations declined to pay the assessed penalties and, consistent with their elections, the Commission sought affirmance and enforcement of its penalty assessment orders in United States District Court.

The Commission issued an OSC in a third matter, an NGA matter captioned *Total Gas & Power North America, Inc., Total, S.A., Total Gas & Power, Ltd., Aaron Hall, and Therese Tran f/k/a Nguyen*, Docket No. IN12-17-000 (Total). Enforcement and the subjects of the investigation submitted their reports and responses pursuant to that OSC, and the matter currently is pending before the Commission. One of the Total entities and two traders filed an action for declaratory judgment in the United States District Court for the Western District of Texas, challenging (among other things) the Commission's authority to assess penalties for

violations of the NGA. The court rejected that challenge on multiple grounds, and the Commission is continuing its review of the merits.

Staff also continued its work on another NGA matter, this one concerning Enforcement's investigation of BP America, Inc. and various affiliates (collectively, BP). As described more fully below, the Commission affirmed the Administrative Law Judge's initial decision in FY2015 that BP had engaged in market manipulation. In FY2016, the Commission assessed a civil penalty of $20,160,000 and required BP to disgorge unjust profits in the amount of $207,169, but it stayed BP's obligation to pay that money until it issues an order on rehearing.

In addition to those matters, Enforcement staff continues litigating four other FPA matters in United States District Courts. It also settled two litigation matters that were pending in United States District Court at the beginning of the fiscal year.

In total, counting all pending federal court and the BP ALJ litigation, staff currently is seeking to recover $567,210,000 in civil penalties and $45,708,118 in unjust profits through seven litigation proceedings.

1. District Court Litigation

In FY2016, excluding matters that settled, Enforcement staff litigated six matters in United States District Courts to enforce the Commission's penalty assessments under the FPA. It also litigated in United States District Court a challenge to the Commission's jurisdiction brought by one of the Total entities and two of its traders. Those seven District Court litigation matters are:

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

On July 16, 2013, in Docket No. IN08-8-000, the Commission issued an order assessing civil penalties, in which it determined that Barclays Bank, PLC (Barclays) and several of its traders had violated the Commission's Anti-Manipulation Rule by engaging in loss-generating trading of next-day, fixed-price physical electricity on the Intercontinental Exchange with the intent to benefit financial swap positions at primary electricity trading points in the western United States. The Commission assessed civil penalties of $435 million against Barclays and $18 million against the named traders and ordered Barclays to disgorge $34.9 million in unjust profits, plus interest. On October 9, 2013, Enforcement staff filed a petition in the United States District Court for the Eastern District of California to enforce the penalty assessment order. On May 20, 2015, the court denied in full the respondents' motion to dismiss or alternatively transfer. On October 2, 2015, the court issued a scheduling order indicating that it will proceed with this case by reviewing the Commission's penalty assessment order and underlying administrative record and will also consider whether a determination as to this penalty assessment requires supplementation of the administrative record submitted by the Commission and/or alternative means of fact-finding. Pursuant to the scheduling order, Enforcement staff filed a motion to affirm the Commission's penalty assessment order on December 2, 2015. Before filing their oppositions to that motion, the respondents filed a motion seeking discovery, but the court denied that motion. Proceedings in the District Court are ongoing.

In addition to the District Court litigation, the respondents appealed the court's scheduling order to the United States Court of Appeals for the Ninth Circuit on November 9, 2015. After briefing, the Ninth Circuit rejected the appeal on jurisdictional grounds.

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

On August 29, 2013, in Docket Nos. IN12-12-000 & IN12-13-000, the Commission issued orders assessing civil penalties in which it determined that Competitive Energy Services, LLC (CES) and Richard Silkman (CES's Managing Partner) had violated the Commission's Anti-Manipulation Rule by engaging in a scheme related to ISO-NE's day ahead load response program. More 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 a petition in the United States District Court for the District of Massachusetts to enforce the penalty assessment order against CES and Silkman. The petition was filed at the same time as the related case, *FERC v. Lincoln*, discussed later in this Annual Report. The respondents filed motions to dismiss the petitions in Fiscal Year 2014, which the District Court denied on April 11, 2016. In its order denying the respondents' motions to dismiss in both the *Silkman* and *Lincoln* cases, the court specifically rejected their argument that the Commission was required to file its District Court action within five years of the violation (confirming that it has five years after the order assessing penalty to make such a filing), as well as their argument that the Commission cannot assess penalties against individuals for violating the Anti-Manipulation Rule. The court then transferred the cases to the United States District Court for the District of Maine. The Maine District Court held a scheduling conference in the *Silkman/CES* case on June 3, 2016 and ordered briefing on whether Silkman and CES should be entitled to discovery. That issue has been fully briefed and is pending decision by the court.

c) FERC v. Powhatan Energy Fund LLC, 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 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") intended for bona fide UTC trades. 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. After rejecting the respondents' motion to dismiss, the court requested briefing, on the *de novo* review procedures required by section 31(d)(3) of the FPA. The court has not yet issued an order identifying the procedures that it plans to use.

d) FERC v. City Power Marketing LLC, No. 15-cv-01428 (D.D.C.)

On July 2, 2015, in Docket No. IN15-5-000 addressing a PJM UTC market manipulation matter, the Commission issued an order assessing civil penalties against City Power Marketing, LLC (City Power) and its owner, K. Stephen Tsingas. The Commission found that City Power and Tsingas had violated its Anti-Manipulation Rule by engaging in fraudulent UTC trades in the PJM market during the summer of 2010. As part of that finding, the Commission determined that City Power and Tsingas had engaged in three types of trades to improperly collect MLSA payments intended for bona fide UTC trades: (1) round-trip trades that constituted wash trades, (2) trading between export and import points (SOUTHIMP and SOUTHEXP) that had the same prices, and (3) trading between two other points (which had minimal price differences) not to profit from spread changes but instead for the purpose of collecting MLSA payments. The Commission also found that City Power had violated section 35.41(b) of the Commission's regulations by making false and misleading statements and material omissions in its communications with Enforcement staff to conceal the existence of relevant instant messages. The Commission assessed $14 million in civil penalties against City Power and $1 million against Tsingas and ordered disgorgement of $1,278,358 in unjust profits, plus interest. On September 1, 2015, Enforcement staff filed a petition in the United States District Court for the District of Columbia to enforce the Commission's Order. After rejecting the respondents' motion to dismiss, the court held that the case would be treated as an ordinary civil action, but noted that FERC could move immediately for summary judgment, which it did on September 21, 2016. That motion is pending.

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

On June 17, 2016, in Docket No. IN16-2-000, the Commission issued an order assessing civil penalties against ETRACOM LLC and its majority owner and primary trader, Michael Rosenberg. The Commission determined that ETRACOM and Rosenberg had 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 CRR positions sourced at that location. The Commission assessed civil penalties against ETRACOM and Rosenberg in the amounts of $2,400,000 and $100,000, respectively. The Commission further directed ETRACOM to disgorge $315,072 of unjust profits, with interest. On August 17, 2016, Enforcement staff filed a petition in the United States District Court for the Eastern District of California to enforce the Commission's order. Proceedings are ongoing.

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

On May 27, 2016, in Docket No. IN16-4-00, the Commission issued an order assessing civil penalties against Coaltrain Energy, L.P., its owners, Peter Jones and Shawn Sheehan, and Robert Jones, Jeff Miller, and Jack Wells, who developed and implemented the trading strategy. The Commission found that the respondents had violated the Commission's Anti-Manipulation Rule by engaging in fraudulent UTC trades in the PJM market during the summer of 2010. In so doing, it determined that the "over-collected loss" or "OCL" trading strategy in which Respondents had engaged, which sought to capture payments by placing large volumes of UTC trades between trading points with negligible price separation, was fraudulent and manipulative. The Commission found that the respondents' OCL trading strategy involved three types of trades to improperly collect MLSA payments intended for bona fide Up-To Congestion trades: (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 not to profit from spread changes but instead for the purpose of collecting MLSA payments. The Commission also found that the respondents had violated section 35.41(b) of the Commission's regulations by making false and misleading statements and material omissions in Coltrain's communications with Enforcement staff 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 penalties on Peter Jones and Shawn Sheehan of $5 million each, on Robert Jones of $1 million, and on Jeff Miller and Jack Wells $500,000 each. On July 27, 2016, Enforcement staff filed a petition in the United States District Court for the Southern District of Ohio to enforce the Commission's Order. On September 26, 2016, the respondents filed three separate motions to dismiss, and the Commission filed its opposition brief on October 20, 2016.

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

On, January 27, 2016, Total Gas & Power North America, Inc. and two of its traders filed a lawsuit in United States District Court for the Western District of Texas seeking to prevent the Commission from adjudicating the violations identified by staff in the Order to Show Cause proceeding regarding Total. The plaintiffs sought a declaratory judgment that the Commission: (1) 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 during the investigative stage (*i.e.* before issuance of the Order to Show Cause) of the *Total* matter 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, and that court 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, and 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.

2. Administrative Hearings

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

On August 5, 2013, the Commission issued an order to show cause and notice of proposed penalty in Docket No. IN13-15-000 directing BP to demonstrate why it should not be required to pay $28 million in civil penalties and disgorge $800,000 of unjust profits related to certain trading by BP of next-day, fixed-price natural gas at the Houston Ship Channel. Enforcement staff alleged that such trading was uneconomic and part of an unlawful manipulative scheme to increase the value of BP's financial position that was based on Houston Ship Channel (HSC)

natural gas prices. The Commission later ordered that an Administrative Law Judge hold a hearing as to whether BP violated the Commission's Anti-Manipulation Rule.

After substantial discovery and a lengthy hearing, Judge Carmen Cintron issued an Initial Decision finding that BP's Texas team had engaged in market manipulation by changing BP's trading patterns in the investigative period to flood HSC with next day gas to benefit its corresponding short financial positions. The Commission affirmed Judge Cintron's decision on July 11, 2016, finding that the record showed that BP's trading practices during the investigative period were fraudulent or deceptive, undertaken with the requisite scienter, and carried out in connection with Commission-jurisdictional transactions. After reviewing the statutory factors for civil penalties under the NGA, the Commission assessed a civil penalty of $20,160,000 and required BP to disgorge unjust profits in the amount of $207,169 to the Low Income Home Energy Assistance Program (LIHEAP) of Texas for the benefit of its energy consumers. On August 10, 2016, BP sought rehearing and a stay of the Commission's July 11, 2016 order. The Commission responded by staying the payment directive of the July 11, 2016 order until it issues an order on BP's request for rehearing. On September 7, 2016, while the request for rehearing of the merits was pending, BP appealed the Commission's original order setting the matter for hearing before an ALJ to the U.S. Court of Appeals for the Fifth Circuit.

C. Settlements

In FY2016, the Commission approved six settlement agreements between Enforcement and 11 separate subjects to resolve pending matters. The settlements totaled more than $12.25 million in civil penalties and disgorgement of nearly $5.7 million. Since 2007, the total civil penalties assessed by the Commission (excluding pending and overturned proceedings) amounts to approximately $641 million, and the total disgorgements amount to slightly over $401 million.

Since the 2010 issuance of the Revised Penalty Guidelines,[9] almost every Commission-approved settlement subject to the Penalty Guidelines has 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.[10] Because a number of factors can influence the civil penalty in each case, the amount of disgorgement of unjust profits (if any) does not always directly relate to the amount of the civil penalty.

In FY2016, the Commission approved settlement agreements that resolved investigations concerning violations of the Anti-Manipulation Rule by ten entities, violations of tariff provisions by three entities (and related violations of the market behavior rules by two entities),

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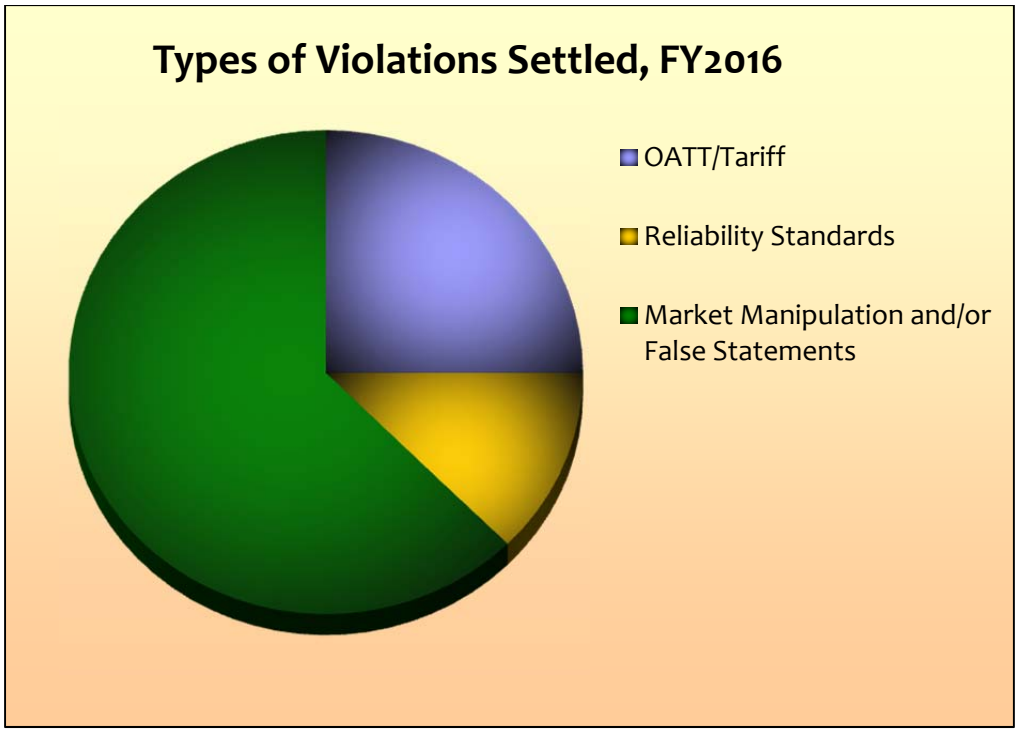
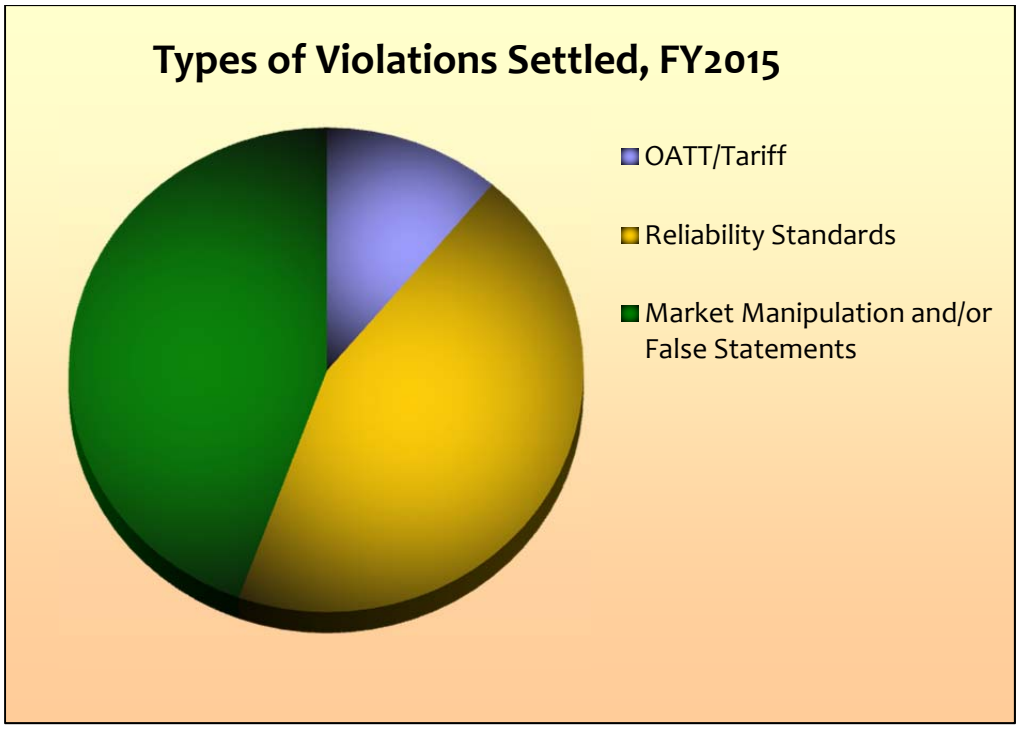
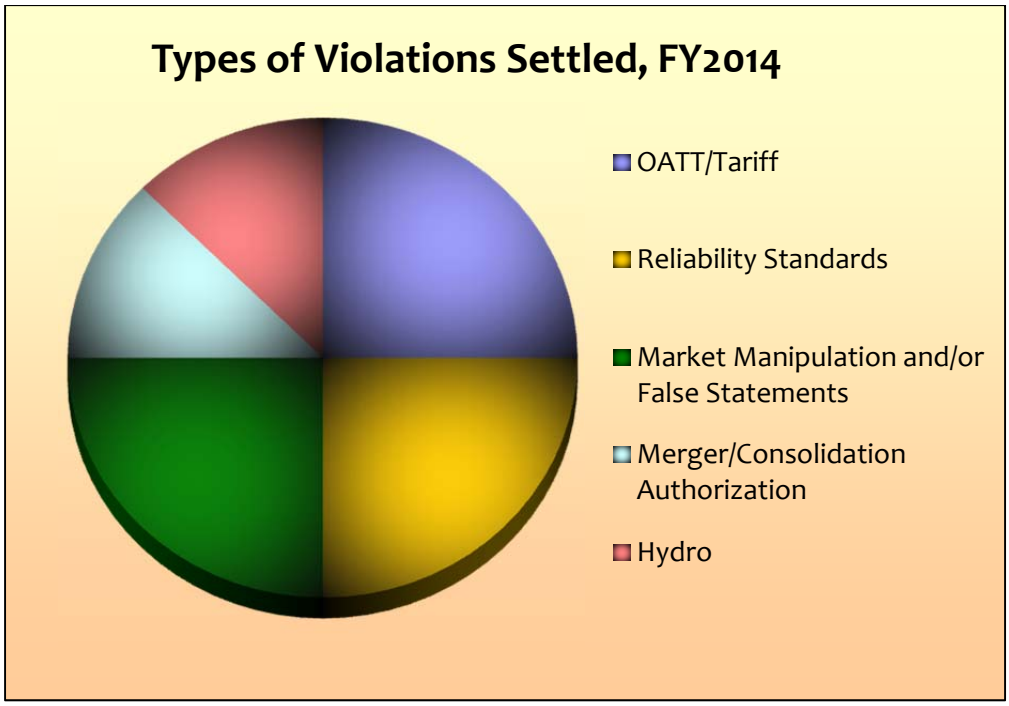
[9] *Revised Policy Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines).

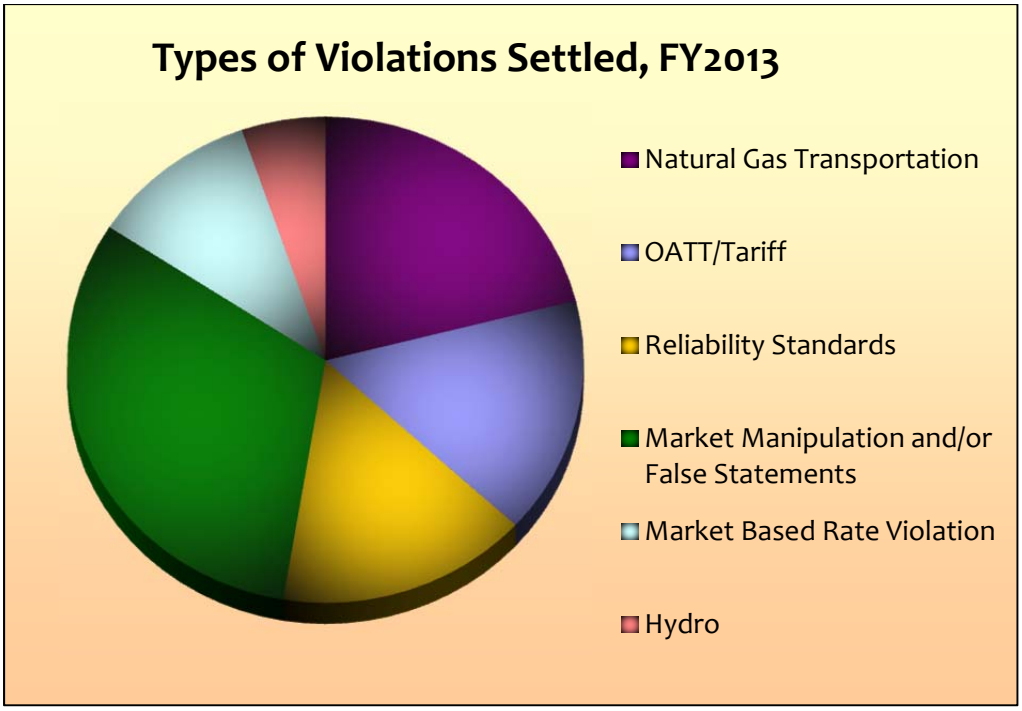
[10] *Revised Penalty Guidelines*, 132 FERC ¶ 61,216 at P109.

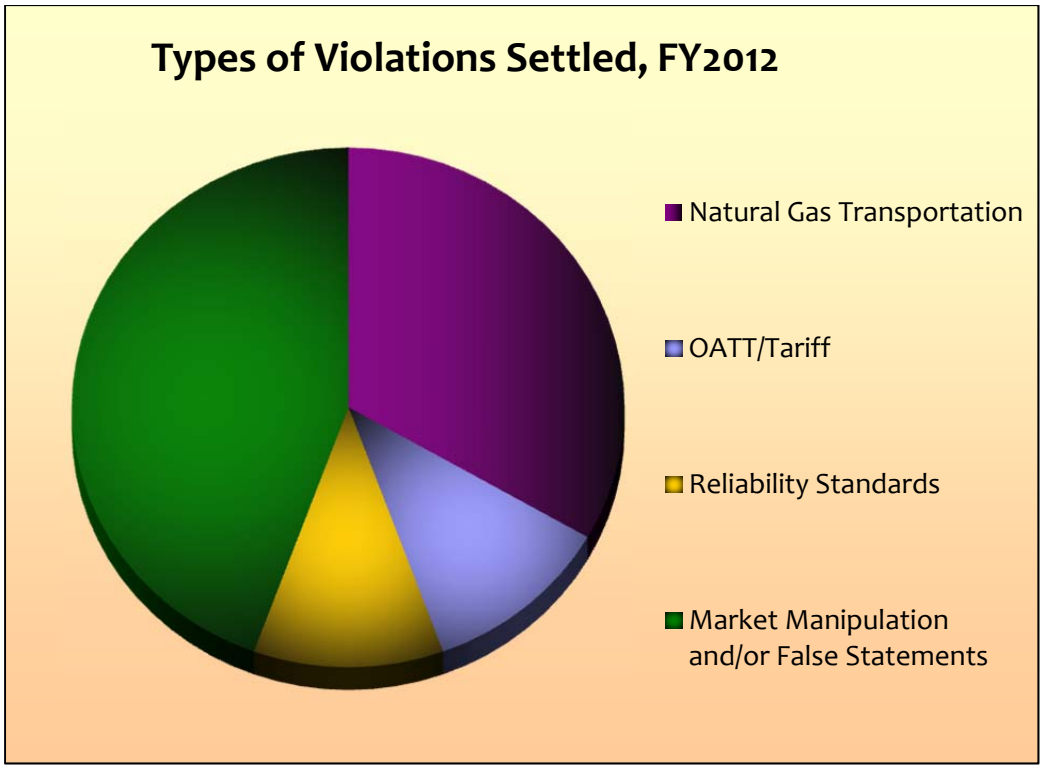
and violations of the Reliability Standards by two entities. Some of those settlements concerned multiple types of violations.

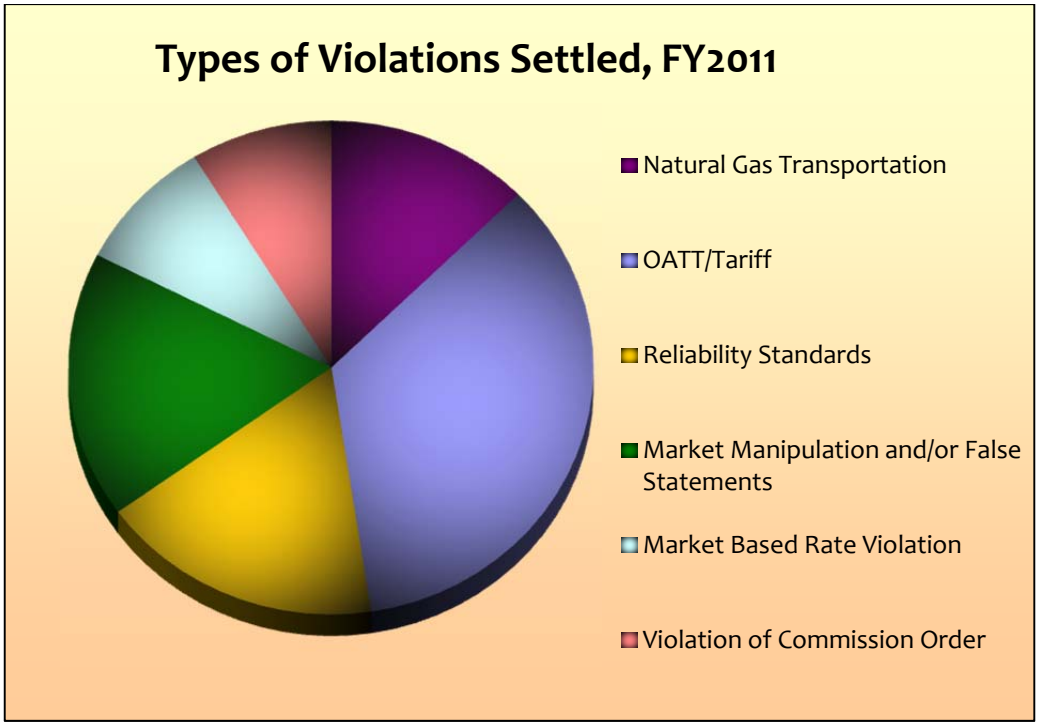





Types of Violations Settled, FY2014
OATT/Tariff
Reliability Standards
Market Manipulation and/or False Statements
Merger/Consolidation Authorization
Hydro


Types of Violations Settled, FY2013
Natural Gas Transportation
OATT/Tariff
Reliability Standards
Market Manipulation and/or False Statements
Market Based Rate Violation
Hydro





The Commission approved the following settlement agreements in FY2016:

National Energy & Trade, LP and In re David Silva, Docket Nos. IN16-5-000 & IN16-6-000. On September 1, 2016, the Commission issued two separate orders approving settlements in market manipulation investigations of National Energy & Trade, LP (National Energy) and one

of its traders, David Silva. Following an investigation, staff determined that National Energy had violated the Commission's Anti-Manipulation Rule by engaging in directional trading in the January 2012 and April 2014 bidweeks at natural gas trading hubs in New York and Texas, respectively to benefit its related financial positions. The Commission also found that Silva was directly responsible for the manipulative trading in New York in January 2012. In settling, National Energy and Silva agreed to the facts, but neither party admitted nor denied the violations. Nevertheless, National Energy agreed to pay a civil penalty of $1,155,225.91 and to disgorge $305,780.50. The disgorgement payment was made to the Low Income Home Energy Assistance Program (LIHEAP) of the state of Texas. Silva agreed to pay a $40,000 civil penalty and to accept a one-year trading ban.

Saracen Energy Midwest, LP, Docket No. IN16-7-000. On August 22, 2016, the Commission issued an order approving the settlement of an investigation into violations by Saracen Energy Midwest, LP (Saracen) of the Southwest Power Pool, Inc.'s (SPP's) Open Access Transmission Tariff (OATT). Following a referral from SPP's Market Monitoring Unit (MMU), staff concluded that Saracen had violated the SPP OATT by submitting bids for Transmission Congestion Rights at Electronically Equivalent Settlement Locations (EESLs) during the periods September-October 2014, and March-April 2015. The SPP OATT prohibits such bids because EESLs are modeled such that there should never be congestion between electronically equivalent points and, therefore, trading transmission congestion rights between such points serves no legitimate purpose. Saracen stipulated and agreed to the facts, but neither admitted nor denied the violations. It agreed to pay a civil penalty of $25,000 and to implement new reporting and compliance measures.

Berkshire Power Company and Power Plant Management Services, LLC, Docket No. IN16-3-000. On March 30, 2016, the Commission issued an order approving the settlement of an investigation concerning concealment of generating plant maintenance and associated outages by Berkshire Power Company, LLC (Berkshire) and Berkshire's administrative services firm, Power Plant Management Services (PPMS). This investigation arose out of a referral from the United States Attorney's Office for the District of Massachusetts. An Assistant United States Attorney uncovered facts suggesting a potential violation of the FPA while she was investigating potential criminal violations of the Clean Air Act at the Berkshire-owned plant and then contacted Enforcement staff. After completing its fact-finding, Enforcement staff concluded that both companies had violated the Commission's Anti-Manipulation Rule and that Berkshire separately had violated the Commission's Market Behavior Rules, the ISO-NE Tariff, and several Commission-approved Reliability Standards. For their violations of the Anti-Manipulation and Market Behavior Rule violations and the violations of the ISO-NE Tariff, the two companies agreed to pay a civil penalty of $2,000,000, and Berkshire agreed to pay to ISO-NE disgorgement of $1,012,563. For its violations of the Reliability Standards, Berkshire agreed to pay an additional civil penalty of $30,000. The parties also agreed to additional reporting and compliance measures. On the same day that the Commission approved this settlement, the United States Attorney announced that PPMS had agreed to plead guilty to a criminal violation of the FPA for making false statements and failing to disclose certain maintenance outages. The court accepted that guilty plea on May 3, 2016, thereby marking the first criminal conviction obtained in the 81-year history of the FPA.

***FERC v. Lincoln Paper & Tissue, Inc.*, No. 1:13-cv-13056 (D. Maine).** On June 1, 2016, the Commission issued an order approving a settlement with Lincoln Paper & Tissue, LLC (Lincoln). The Commission previously had assessed a civil penalty of $5 million against Lincoln and disgorgement of $379,016 for violating the Commission's Anti-Manipulation Rule

during its participation in ISO-NE's day-ahead load response program. On December 2, 2013, Enforcement staff filed a petition in United States District Court for enforcement of that penalty assessment order. The ensuing litigation was related to the *FERC v. Silkman* matter, discussed earlier in this Annual Report. On September 28, 2015, Lincoln commenced a voluntary Chapter 11 bankruptcy reorganization in the United States Bankruptcy Court for the District of Maine and then argued that the District Court was required to stay all enforcement proceedings against Lincoln while the bankruptcy was pending. Enforcement staff filed a proof of claim in that bankruptcy proceeding for civil penalties and disgorgement and, in a matter of first impression, filed a motion for declaratory order that the automatic stay in bankruptcy proceedings does not apply to enforcement of the Commission's civil penalty orders under the FPA. After briefing and argument, the Bankruptcy Court agreed and held that the Enforcement case fell within the "regulatory power" exception to the automatic stay. Lincoln and DOI staff then negotiated a settlement, in which Lincoln stipulated to the facts but neither admitted nor denied the violations. The Commission agreed that the disgorgement could be paid as an unsecured claim and the civil penalty could be treated as a subordinated claim. The Bankruptcy Court approved the Commission-approved settlement order on July 18, 2016, and the Commission dismissed its petition for enforcement as to Lincoln in the District Court on August 8, 2016.

FERC v. Maxim Power Corporation, No. 15-cv-30113 (D. Mass.). On May 1, 2015, the Commission issued an order assessing civil penalties against Maxim Power Corporation, Maxim Power (USA), Inc., Maxim Power (USA) Holding Company, Inc., Pawtucket Power Holding Co., LLC, and Pittsfield Generating Company, LP (collectively, Maxim) and Maxim employee Kyle Mitton. It determined that Maxim and Mitton had violated the Commission's Anti-Manipulation Rule through a scheme to collect $3 million in inflated payments from ISO-NE for reliability runs by charging ISO-NE for costly oil when it actually burned much less expensive natural gas. The Commission also found that Maxim had violated section 35.41(b) of the Commission's regulations by making false and misleading statements and material omissions in its communications with the ISO-NE Market Monitor. The Commission assessed civil penalties of $5 million against Maxim and $50,000 against Mitton. Enforcement staff filed a petition in the United States District Court for the District of Massachusetts to enforce the Commission's order, and the respondents filed a motion to dismiss that petition. The court denied the respondents' motion, finding that the Commission had properly pleaded claims both for market manipulation and for violation of section 35.41(b). The court held that the case would proceed as an ordinary civil action, but with limited discovery.

While Enforcement staff was litigating the 2015 order assessing penalties in District Court, it also was investigating a separate potential violation of the Commission's Anti-Manipulation Rule by Maxim. Enforcement staff ultimately concluded that Maxim had violated the rule by gaming the ISO-NE mitigation procedures to maximize its uplift payments when it was dispatched for reliability purposes. On September 26, 2016, the Commission approved a settlement between Enforcement and Maxim, resolving both the claims in the District Court lawsuit and the alleged gaming violations. Maxim stipulated to the facts but neither admitted nor denied the violations. It agreed to pay $4 million in disgorgement to ISO-NE and $4 million in civil penalties.

D. Self-Reports

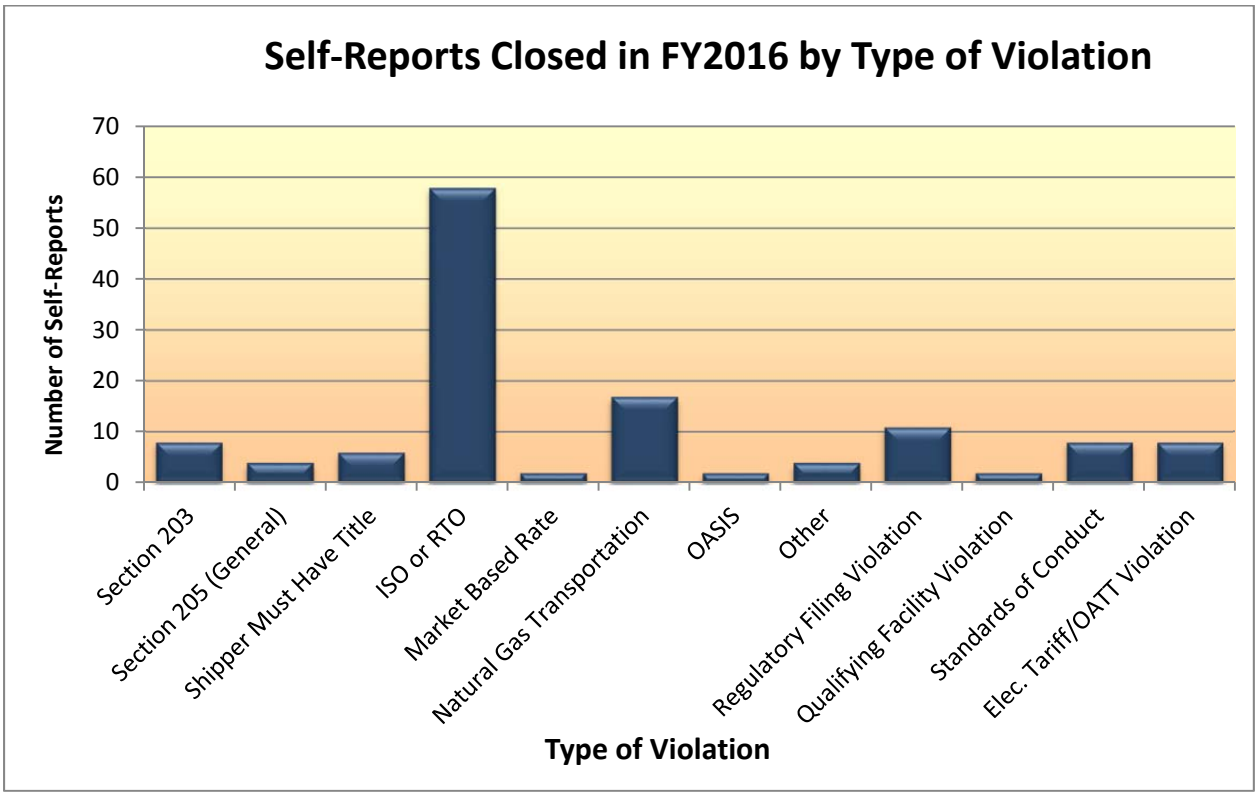
Over the past five years (FY2012-16), staff has received approximately 470 self-reports. Staff concluded that further enforcement action was not necessary following review of the vast majority of those reports, because, for example, there was no material harm (or the reporting

companies already had agreed to remedy any harms) and the companies had taken appropriate corrective measures (including appropriate curative filings), both to remedy the violation and to avoid future violations through enhancements to their compliance programs.

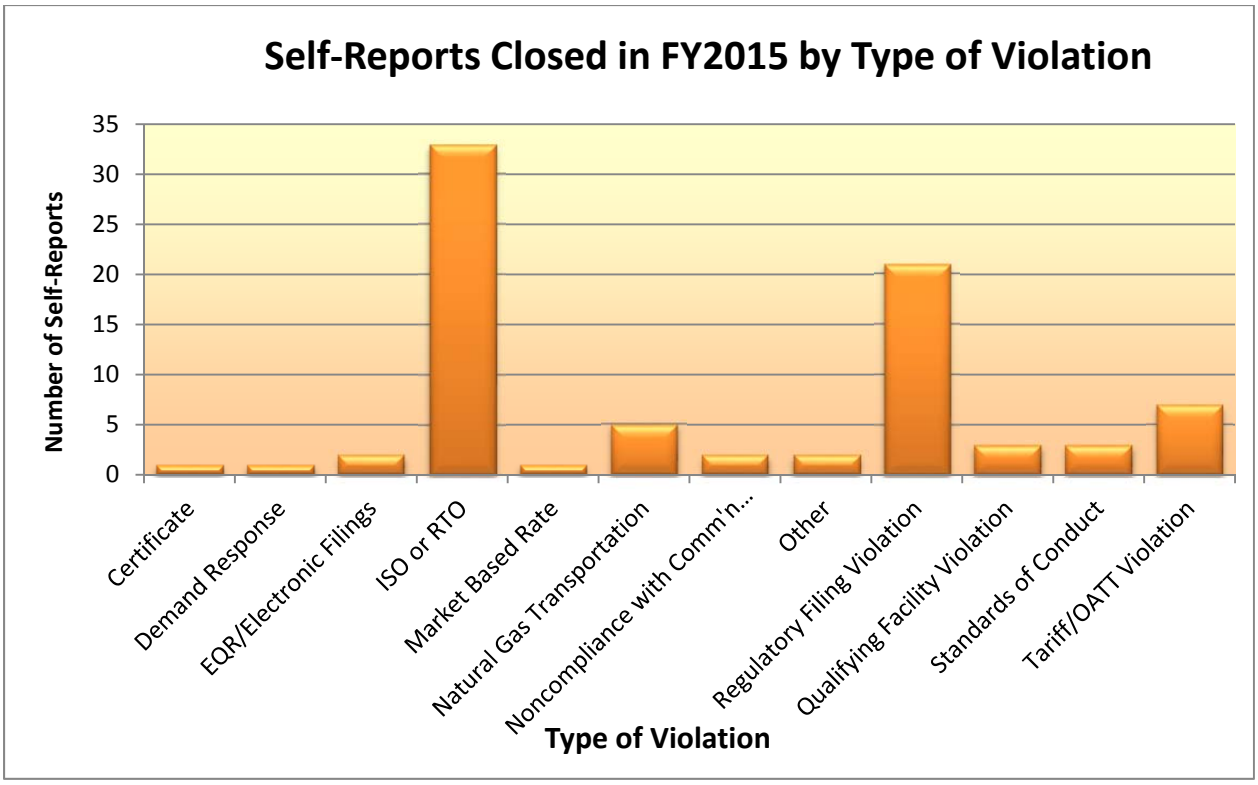
In FY2016, staff received 110 new self-reports from a variety of market participants, including electric utilities, natural gas companies, generators, and RTO/ISOs. A significant number of these self-reports were from RTOs/ISOs. Staff closed 126 self-reports that had been submitted during this fiscal year and previous fiscal years.

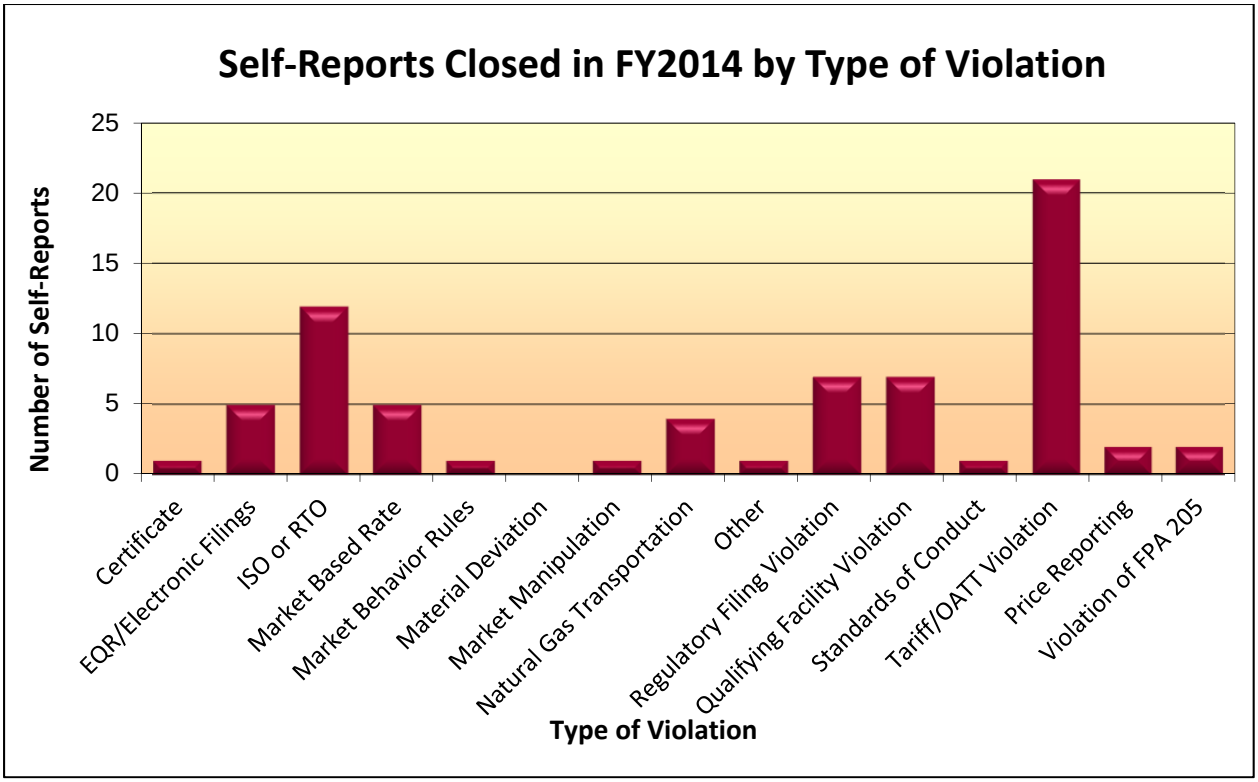
The Penalty Guidelines emphasize the importance of self-reporting by providing credit that can significantly mitigate a penalty when a self-report is made.[11] Staff continues to encourage the submission of self-reports and views self-reports as showing a company's commitment to compliance.

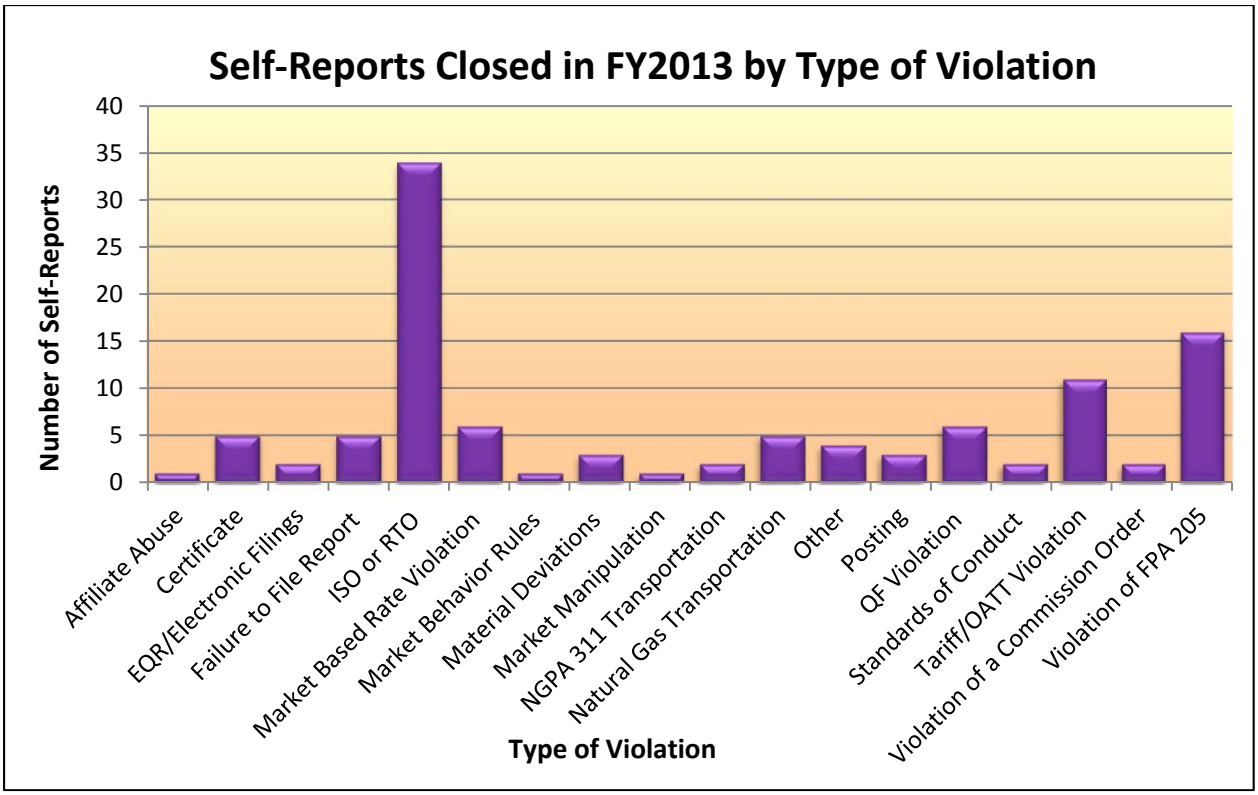
The following charts depict the types of violations for which staff received self-reports from FY2012 through FY2016. Some self-reports include more than one type of violation. In FY2016, RTO/ISO self-reports and regulatory filing violations accounted for the majority of the self-reports received.

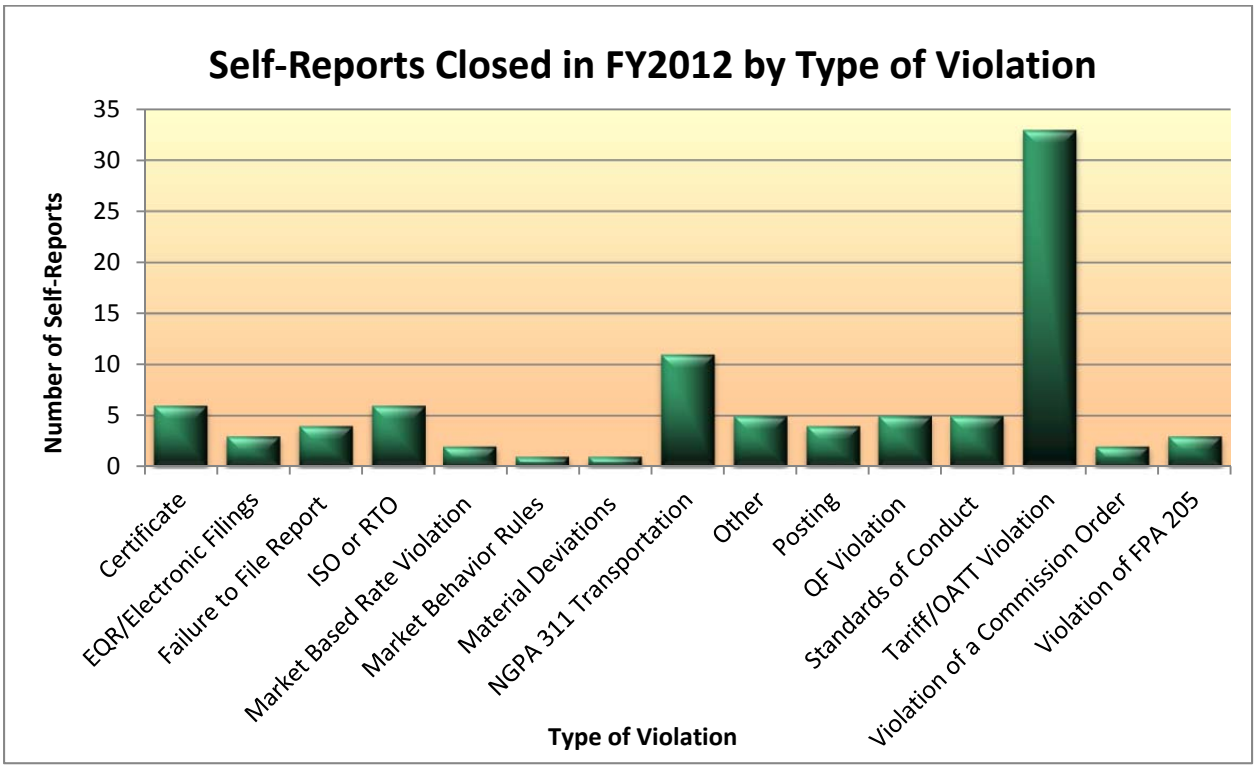


[11] *Revised Penalty Guidelines*, 132 FERC ¶ 61,216, at P 127 (2010).


Self-Reports Closed in FY2015 by Type of Violation
Number of Self-Reports
35
30
25
20
15
10
5
0
Certificate
Demand Response
EQR/Electronic Filings
ISO or RTO
Market Based Rate
Natural Gas Transportation
Noncompliance with Comm'n...
Other
Regulatory Filing Violation
Qualifying Facility Violation
Standards of Conduct
Tariff/OATT Violation
Type of Violation


Self-Reports Closed in FY2014 by Type of Violation
Number of Self-Reports
25
20
15
10
5
0
Certificate
EQR/Electronic Filings
ISO or RTO
Market Based Rate
Market Behavior Rules
Material Deviation
Market Manipulation
Natural Gas Transportation
Other
Regulatory Filing Violation
Qualifying Facility Violation
Standards of Conduct
Tariff/OATT Violation
Price Reporting
Violation of FPA 205
Type of Violation


Self-Reports Closed in FY2013 by Type of Violation
Number of Self-Reports
40
35
30
25
20
15
10
5
0
Affiliate Abuse
Certificate
EQR/Electronic Filings
Failure to File Report
ISO or RTO
Market Based Rate Violation
Market Behavior Rules
Material Deviations
Market Manipulation
NGPA 311 Transportation
Natural Gas Transportation
Other
Posting
QF Violation
Standards of Conduct
Tariff/OATT Violation
Violation of a Commission Order
Violation of FPA 205
Type of Violation


Self-Reports Closed in FY2012 by Type of Violation
Number of Self-Reports
35
30
25
20
15
10
5
0
Certificate
EQR/Electronic Filings
Failure to File Report
ISO or RTO
Market Based Rate Violation
Market Behavior Rules
Material Deviations
NGPA 311 Transportation
Other
Posting
QF Violation
Standards of Conduct
Tariff/OATT Violation
Violation of a Commission Order
Violation of FPA 205
Type of Violation

1. Illustrative Self-Reports Closed with No Action

In a continuing effort to promote transparency while encouraging the compliance efforts of regulated entities, Enforcement presents the following illustrative examples of self-reports that DOI staff closed in FY2016 without conversion to an investigation. One of the various factors staff considered in closing the following self-reports was the absence of significant harm to the relevant market. These summaries 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.

RTO/ISO Violations. Multiple RTO/ISOs reported relatively minor violations of their tariffs, resulting from either software errors or human errors. Such errors included making payments to generating units that were not authorized by the RTO/ISO's tariff (in some cases, shortly after the tariff language changed making the units ineligible for the payments); failing to post information, settle the market, respond to settlement mitigation requests, or make billing adjustments within the applicable tariff-mandated periods; improperly curtailing transmission service for a short period (where most of the curtailed transactions were related later in the day and the customers whose transactions could not be reloaded were given credits); and inadvertently forwarding market participants' confidential information to other companies or individuals (but promptly reporting the disclosures and directing the recipients destroy the confidential information). In all such instances, the harm from the self-reported violation was relatively small and inadvertent, and the RTO/ISO took appropriate steps to ameliorate any such harm and prevent future violations. Accordingly, staff closed those matters with no further action.

Electric Quarterly Report (EQR) Violation. A public utility reported errors in its subsidiaries' Electric Quarterly Reports (EQRs). Over the next six years, the company subsequently refiled 12 quarters of EQRs for 95 subsidiaries (a total of 1,100 refiled EQRs). DOI and Market Monitoring staff worked closely with the company to identify the errors and necessary corrections. Staff closed the self-report without further action because: (1) the company comprehensively reviewed its compliance obligations and identified all existing errors and then implemented procedures and processes to prevent similar violations, (2) company officials were thorough and transparent in all their dealings with staff, and (3) none of the company's customers raised any concerns that they had been harmed by the erroneous EQRs.

Qualifying Facility. The owner of a 1.2 MW hydropower project reported a violation of section 205 of the FPA resulting from its failure to self-certify the project as a Qualifying Facility (QF) after acquiring it in August 2006. To remedy this violation, the project's owner submitted a Form No. 556 self-certification and paid time value refunds to its customer. This violation was inadvertent and resulted from an administrative oversight. Staff closed this self-report without further enforcement action because: (1) the violation was isolated and inadvertent, and (2) the harm from not having an appropriate rate of file was remedied by the time-value refunds.

Trading Violation. An energy trading firm reported that a trader accidentally had placed bids into an RTO/ISO day ahead market for an identical amount of INCs and DECs at the same node for four hours. Such off-setting trades match the pattern of a prohibited wash trade. The company promptly notified Enforcement, its RTO/ISO, and the RTO/ISO's external market monitor of these trades. It also immediately ceased trading INCs and DECs in the RTO/ISO to resolve the error giving rise to the trades. The company lost money on the trades, because the prices negated each other and it had to pay uplift on both the INC and the DEC transactions. The

firm's risk management software should have prevented the trader from being able to submit such bids, but it had failed to do so. Staff closed the matter with no action after determining that the trades were in fact due to an error and resulted in the company losing money with no apparent manipulative intent. The company's errors were inadvertent, self-reported, self-corrected, and did not result in any harm to the market. The company has since adopted and implemented compliance measures sufficient to ensure that a similar error does not recur in the future.

Oil Transportation Violation. An oil pipeline reported a potential violation of the Interstate Commerce Act involving a contract employee accidentally copying a shipper when emailing third party scheduling and nominations information to a connecting pipeline. Another employee who learned of the error elevated it to management, and the pipeline promptly asked the shipper to destroy that information. The shipper confirmed it had all recipients of the email delete it, and the shipper's legal department instructed those employees not to disclose the information. The pipeline reviewed its procedures and determined that no further training was required, as the violation resulted from simple error. Because the pipeline self-reported the potential violation, the disclosure was isolated and inadvertent, the information was sent to only one shipper with no apparent harm, and the error was elevated to senior management who acted quickly to resolve the issue and take personnel action, staff closed the self-report without further enforcement action.

Failure to Report Change-In-Status. Several affiliated companies with market-based rate (MBR) authority under section 205 of the Federal Power Act reported that they inadvertently had omitted their one-percent ownership interest in a 6-mile intrastate gas lateral pipeline from their MBR applications and asset appendices that are required by Order No. 697. The affiliated companies became aware that a different affiliate holds a general partner interest in the lateral pipeline that has the sole function of serving a generating facility formerly owned by an affiliate. The companies filed a notice of change-in-status under section 35.42 of the Commission's regulations, implemented steps to ensure that all future filings contain complete information regarding affiliated entities, and committed to doing periodic reviews to confirm the accuracy of the information. The Commission's order accepting the notice of change-in-status included a footnote reminding the companies that they must submit required filings on a timely basis or face possible sanctions by the Commission. For these reasons, and because there was no apparent harm to the market, staff closed this matter without additional enforcement action.

Failure to Report Change-In-Status. An energy trading firm and its related companies reported that they had failed to timely submit change-in-status reports to the Commission, as was required by section 35.42 of the Commission's regulations and the Commission order granting market-based rate authority. The entities failed to report that an affiliate indirectly had acquired substantial indirect passive tax equity interests in a solar project and a wind farm. After learning of the omissions, the firm submitted the required change-in-status reports and reviewed its filings to ensure that appropriate reports had been filed regarding other transactions. Staff closed this matter without further action, because: (1) the filings were delayed for only a short time, (2) there was no apparent harm to the market, (3) the violations were limited in scope, and (4) the firm took appropriate measures to prevent similar violations in the future.

Interlocking Directors Violation. Multiple companies reported that they inadvertently had created improper interlocking positions with a subsidiary by appointing their parent company's officers as officers of the subsidiaries. Section 305(b) of the FPA generally prohibits such interlocking positions absent a prior Commission finding pursuant to Part 45 of the Commission's regulations that neither public nor private interests will be adversely

affected. The companies had not identified the potential violation until after they had made the appointments, but each company promptly made the requisite filing with the Commission and implemented additional compliance measures to avoid similar violations in the future. There was no indication that any of the relationships led to market harm. Accordingly, staff closed this matters without further action.

Shipper Must Have Title Violation. A natural gas transmission provider reported a series of shipper must have title violations over a period of more than two years. The volume of gas involved in the violations was a tiny fraction of the total gas transported by the pipeline during the same period and involved a service that was used on only five days in two years. The pipeline concluded that the violations resulted from schedulers' lack of familiarity with a rarely-used service and reviewed procedures and implemented training immediately to prevent future errors. Staff closed the matter with no further action because: (1) the violations were unintentional, were quickly remedied upon discovery, and were unlikely to be repeated; (2) a small number of customers were affected; (3) no customer suffered harm; and (4) the volume of gas involved was a small fraction of the total gas the provider transported.

Tariff/OATT Violation. A utility reported an unexpected flow of 100 MWH in violation of its tariff due to operators' failure to reprogram a piece of equipment from daylight time to standard time. Staff closed the matter with no further action because: (1) the violation was unintentional and was quickly remedied upon discovery; (2) training made the error unlikely to recur; and (3) no customer suffered harm.

Natural Gas Transportation. A natural gas transmission provider reported several posting and gas tariff violations involving section 284.13(d)(1) of the Commission's regulations: (1) failure to post no-notice service information for seven days, (2) delay in posting successful offer capacity awards by five hours, (3) delay in posting a successful offer capacity award by 45 minutes and failure to notify a potential matching shipper by 30 minutes to match an offer for capacity, (4) failure to correct a data entry thereby allowing a competitor to receive sensitive commercial information improperly, and (5) failure to require a firm shipper to use up its daily allocation before receiving deliveries under an interruptible contract. Staff closed this matter without further action, because each violation was isolated, relatively minor as to flow volume involved, and caused little or no monetary harm (particularly after the company compensated affected shippers), and because the company took prompt and comprehensive action to prevent similar violations in the future.

Natural Gas Tariff Violation. A pipeline company reported that a software error had caused it to erroneously assign a firm shipper secondary firm capacity in violation of the company's tariff. The shipper's nominations were pro-rated over portions of five different days until the company detected and corrected the error. Once it detected the error, the company provided the shipper with reservation charge credits equal to the denied service. Staff closed the matter with no action because the violation was unintentional, remedied quickly, unlikely to be repeated, affected only one customer, and resulted in very limited (if any) harm.

Natural Gas Transportation. Two local distribution companies (LDCs) that also provide interstate service as Hinshaw pipelines inadvertently failed to timely revise their respective Statements of Operating Conditions (SOC) after changing their state commission-approved rates for gas transportation service. Section 284.123(e) of the Commission's regulations requires that such revisions be made within 30 days of the rate change. The companies provided results of an internal investigation that: (1) determined that no customers were harmed because they were billed the (accurate) state commission-approved rate; (2) concluded that there was no harm to the

market because of the transparency associated with the changes to the state rate; and (3) led the companies to implement procedural measures to prevent similar late filings/omissions. After the companies finally submitted their revisions to the Commission, the Commission accepted those revisions in an order that reminded the companies that future filings must be made on a timely basis or they may face sanctions. Staff then closed this self-report without additional enforcement action.

Natural Gas Tariff Violation. A natural gas pipeline reported tariff violations resulting from a programming error related to calculation of cash-out of excess tolerance level imbalances. The pipeline had failed to reprogram its system to use a new methodology for the calculation for 30 months after that methodology had been approved by the Commission. It discovered the error in response to a customer inquiry and promptly corrected the most recent six months of invoices per its tariff and compensated customers for the remaining 24 months according to a Commission-approved approach. Staff closed the matter with no further action because: (1) the violations were isolated to the events described and were not willful, (2) the customers who may have suffered any injury received refunds with interest, and (3) customers who were overpaid were forgiven from any refund obligation with the pipeline absorbing the difference.

FPA Section 203 Violation. Several public utility companies reported that they had transferred jurisdictional assets or that their upstream owners' interests had changed prior to obtaining Commission approval pursuant to section 203 of the FPA. The companies made the required filings concurrent with, or shortly after, their self-reports, and the Commission approved the transactions with a reminder that the companies must submit required filings on a timely basis or face possible sanctions.

Violation of FPA Sections 203 & 205. A direct-to-retail power vendor that also engaged in incidental balancing wholesale sales of electricity reported that it (1) violated FPA section 203 by transferring indirect control of the company without prior Commission authorization, and (2) violated FPA section 205 by engaging in balancing wholesale sales of electricity without MBR authority. The company submitted curative filings contemporaneously with its self-report to Enforcement, and the Commission issued orders: (1) concluding that the transfer was consistent with the public interest and giving prospective authorization under section 203, and (2) designating the company as a Category 1 seller and granting it MBR authority under section 205. The Commission's orders reminded the company that it must submit the required filings on a timely basis or face possible sanctions. In light of the company's timely self-report once it recognized that its balancing sales subjected it to FERC jurisdiction, its prompt and thorough curative filings, its subsequent continued compliance, the lack of market harm, and its remedial measures, staff closed the self-report without further action.

Ancillary Services Sales Violation. An electric power marketing company reported that it had made sales of ancillary services without explicit authority to make such sales under its MBR authorization and FPA section 205. The company filed a request to amend its MBR tariff to include an ancillary services sales provision, which the Commission granted with a prospective effective date. However, in that order, the Commission denied the company's request for waiver of the 60-day prior notice requirement and reminded the company that it must submit required filings on a timely basis or face possible sanctions by the Commission. Staff closed this matter without further enforcement action, because it appeared that there was no market harm and the company had updated its internal procedures to ensure compliance with regulatory requirements.

FPA Section 205 Violation. Two affiliated retail sales companies reported that they had made sales of electricity at market-based rates to three RTO/ISOs without obtaining this authority from

the Commission as required by section 205 of the FPA. The companies do not own generation assets, but they purchase power to meet retail customer needs and sell any excess through balancing transactions. The total amount of unauthorized sales was less than $22,000. The companies discovered the violations shortly after they were acquired by a new owner, and they promptly submitted requests for MBR authority. The Commission granted the MBR authorization prospectively, and, following consultation with Enforcement staff, the companies made time-value refunds to the affected customers. Staff closed this matter without further enforcement action because the companies self-reported and promptly remedied the violations, took steps to ensure future compliance with Commission regulations and filing requirements by (among other things) hiring a new regulatory manager, and the unauthorized sales were relatively small and occurred over a short period of time.

Violation of FPA Section 205 and Standards of Conduct. A vertically-integrated public utility transmission provider reported that when implementing tools for one of its operating applications, certain transmission outage information was inadvertently available to its wholesale merchant function (WMF) employees. Based on an internal investigation, the WMF employees had preferential access to non-public information related to three different outages that related to planned and ongoing work on certain transmission lines in violation of the undue preference provisions of section 205 of the FPA and the Standards of Conduct. The WMF employees attested that they had not actually accessed the information even though they had the capability to do so. The transmission provider retrained the employees and implemented new procedures for testing operating applications prior to going "live." Staff closed this matter without further enforcement action because the WMF employees had not accessed or used the outage information, the transmission provider modified its compliance processes for revising operating applications to avoid such violations in the future, and the utility posted notice of the disclosure on its OASIS.

Violation of the Standards of Conduct. A vertically-integrated public utility transmission provider made multiple self-reports regarding its failure to update on a timely basis certain information in its Standards of Conduct organizational chart postings under section 385.7(f) and (g) of the Commission's regulations. Among other omissions, the company failed to update the organizational structure posting when an intern position was added to the transmission function and failed to disclose changes to job titles and functions. After identifying the violation, the transmission provider posted the updated information, made other curative postings, provided remedial training to key employees, and implemented policy changes to prevent similar violations in the future. Because there was no harm to the market and the company implemented new policies to prevent recurrence of similar violations, staff closed the matter without additional enforcement action.

Violation of the Standards of Conduct. A vertically-integrated public utility transmission provider reported that an employee in its customer relations group inadvertently had forwarded an email containing non-public transmission outage to a WMF employee. The No-Conduit Rule of the Standards of Conduct (section 385.6 of the Commission's regulations) prohibits such indirect disclosure through a conduit to a transmission provider's marketing function employees. The WMF employee promptly notified his superior and the utility's Chief Compliance Officer. The WMF was retrained and the Compliance Department worked with its information technology staff to identify and implement enhancements to the email system to reduce the risk of sharing non-public information. Staff closed this matter without further enforcement action, because it appeared that there was no market harm, and the company posted a notice of the disclosure on its OASIS.

E. Investigations

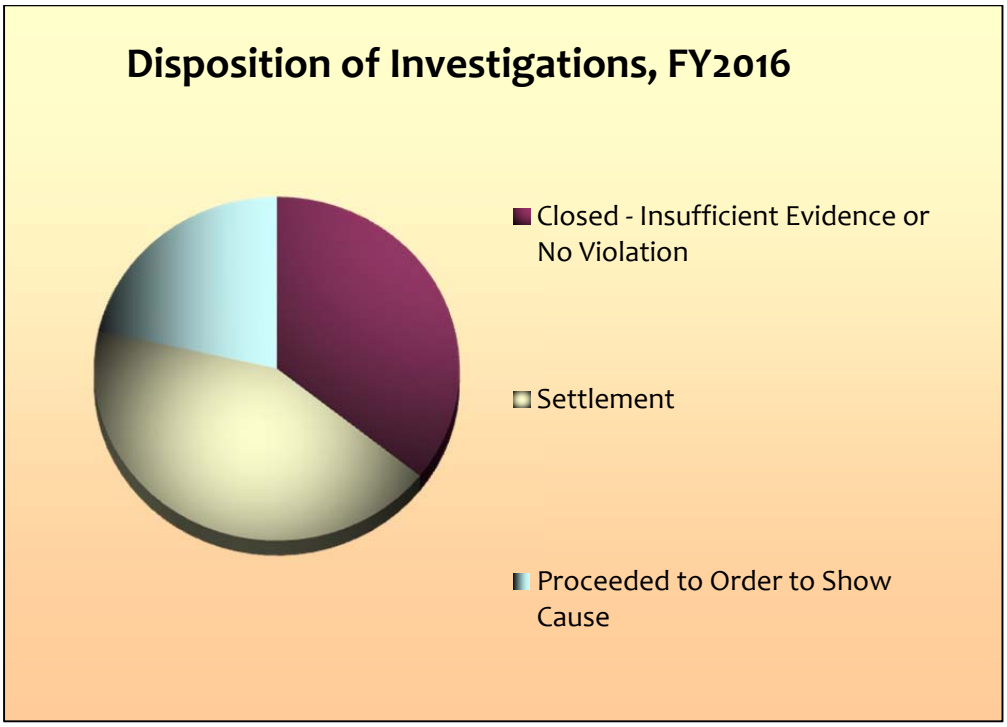
During FY2016, DOI staff opened 17 investigations, as compared to 19 investigations opened in FY2015. Nearly half of these new investigations arose from Commission referrals, with the vast majority of the remainder arising from conduct observed through surveillance by either DAS or the RTO/ISO Market Monitoring Units, and the rest arising from self-reports and Hotline tips. Staff closed 11 investigations in FY2016, either through a settlement or resolution without further action, as compared to 22 investigations closed in FY2015.

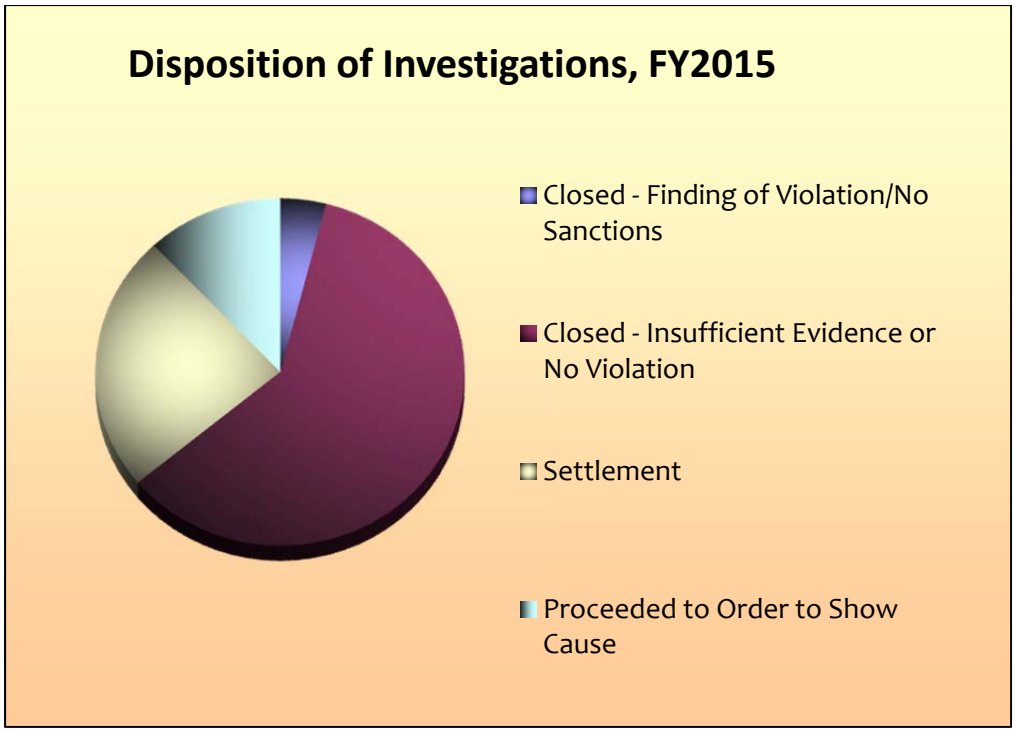
1. Statistics on Investigations

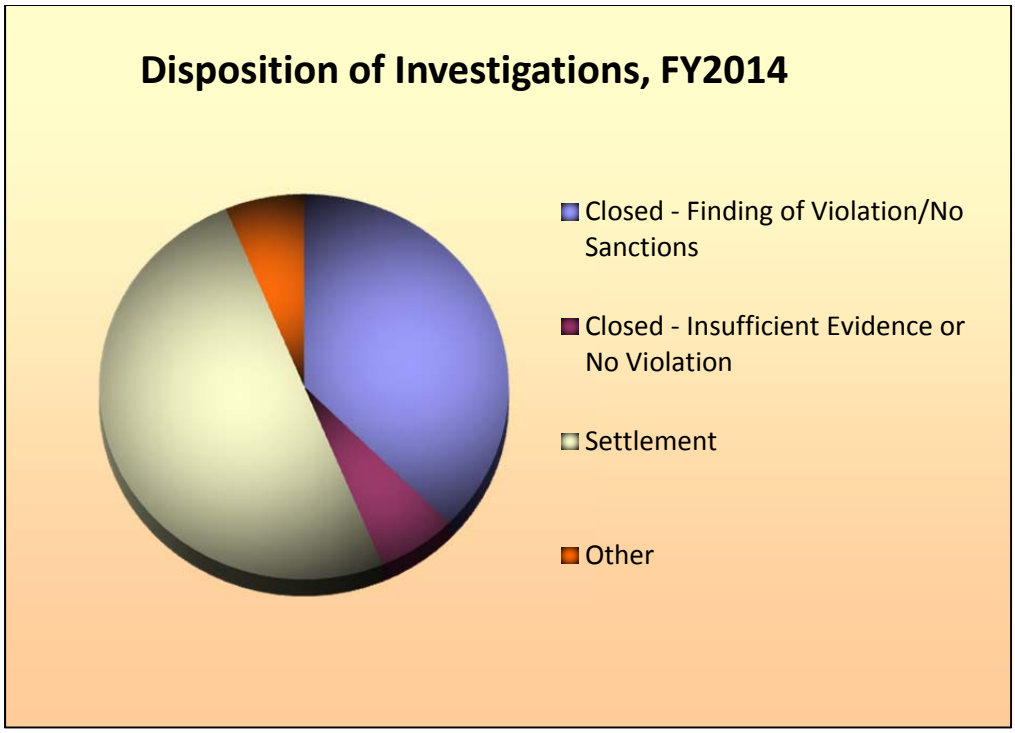
Of the 17 investigations staff opened this fiscal year (some of which involve more than one type of potential violation or multiple subjects), 12 involve potential market manipulation, 11 involve potential tariff violations, one involves potential violations of a Commission certificate order, one involves potential violations of the Standards of Conduct, and one involves potential violation of a Commission filing requirement.

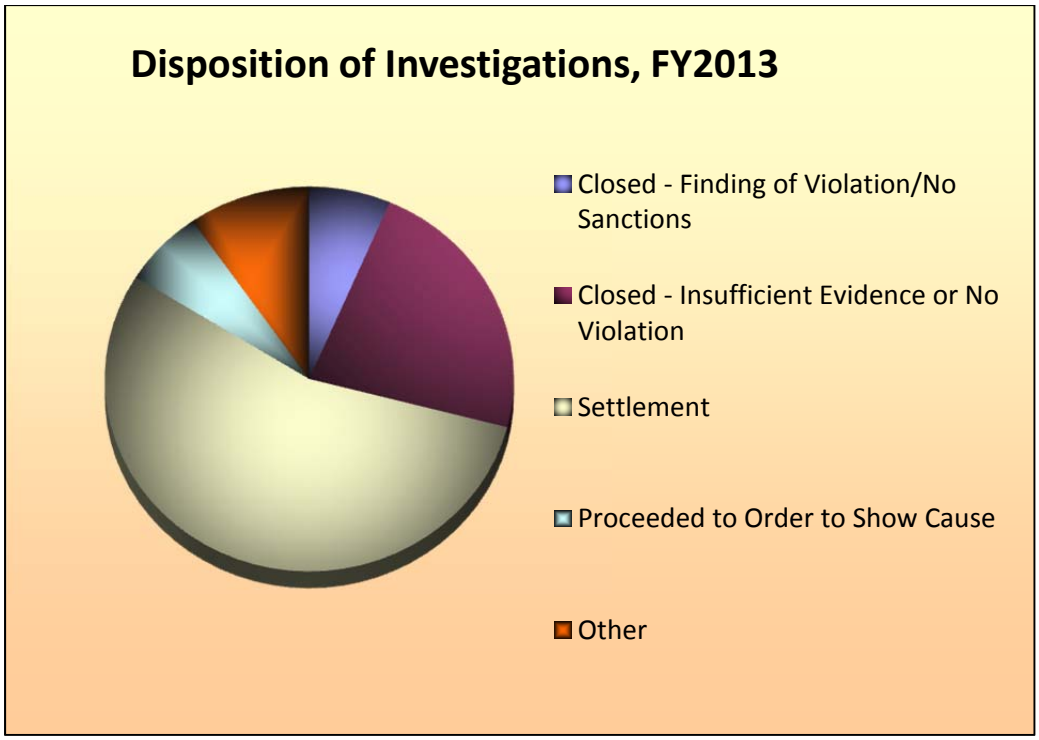
DOI staff closed 11 investigations in FY2016, and it closed about half of those investigation through settlement. It closed the other half because staff concluded that the evidence did not support finding a violation. The Commission-approved settlements of investigations are summarized above, and illustrative examples of investigations closed without enforcement action are discussed below.

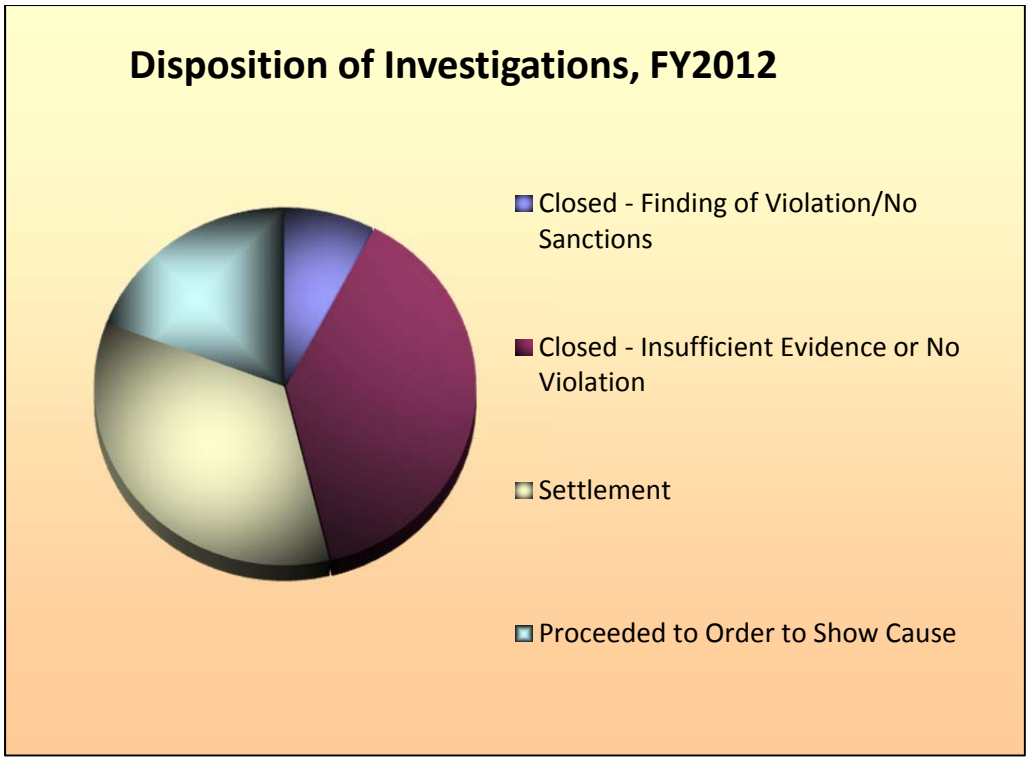
The following charts show the year-by-year disposition of investigations that closed over the past five years (fiscal years 2012 through 2016) and the aggregate disposition of investigations that closed in fiscal years 2007 through 2016.

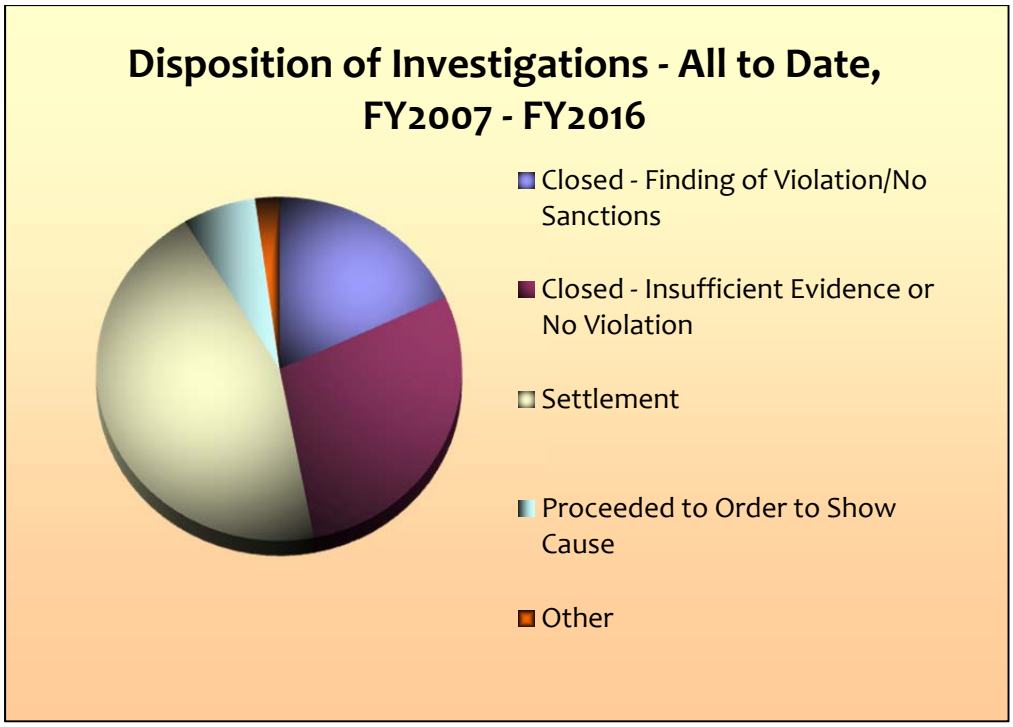



Disposition of Investigations, FY2015
Closed - Finding of Violation/No Sanctions
Closed - Insufficient Evidence or No Violation
Settlement
Proceeded to Order to Show Cause

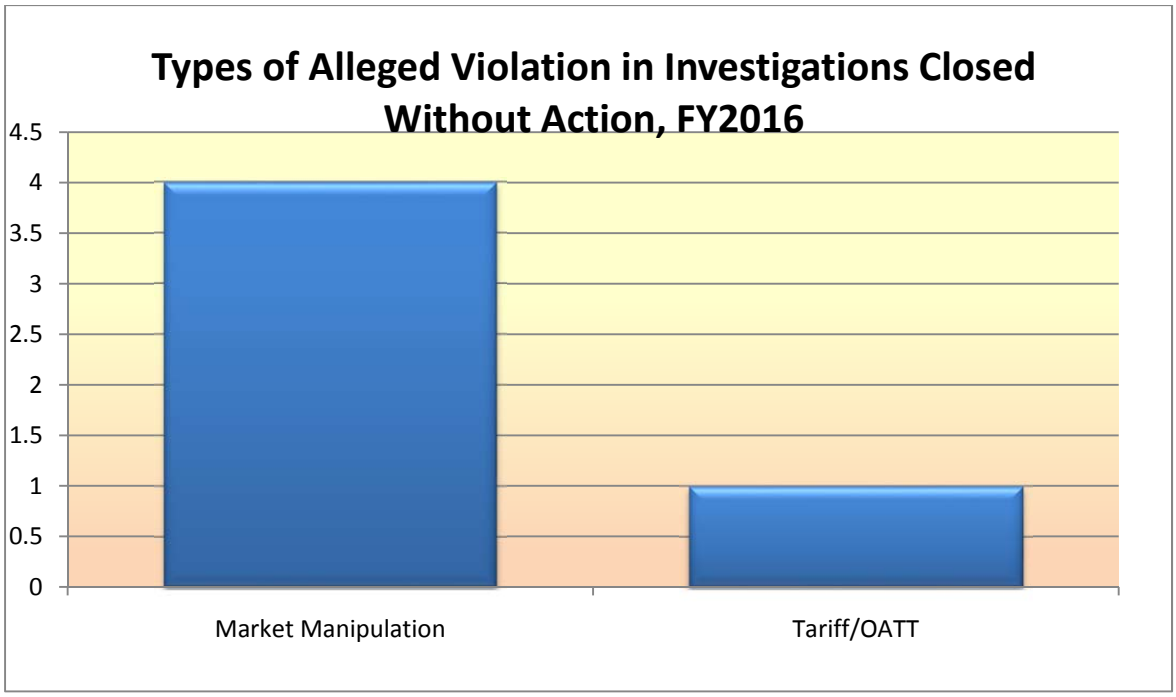

Disposition of Investigations, FY2014
Closed - Finding of Violation/No Sanctions
Closed - Insufficient Evidence or No Violation
Settlement
Other

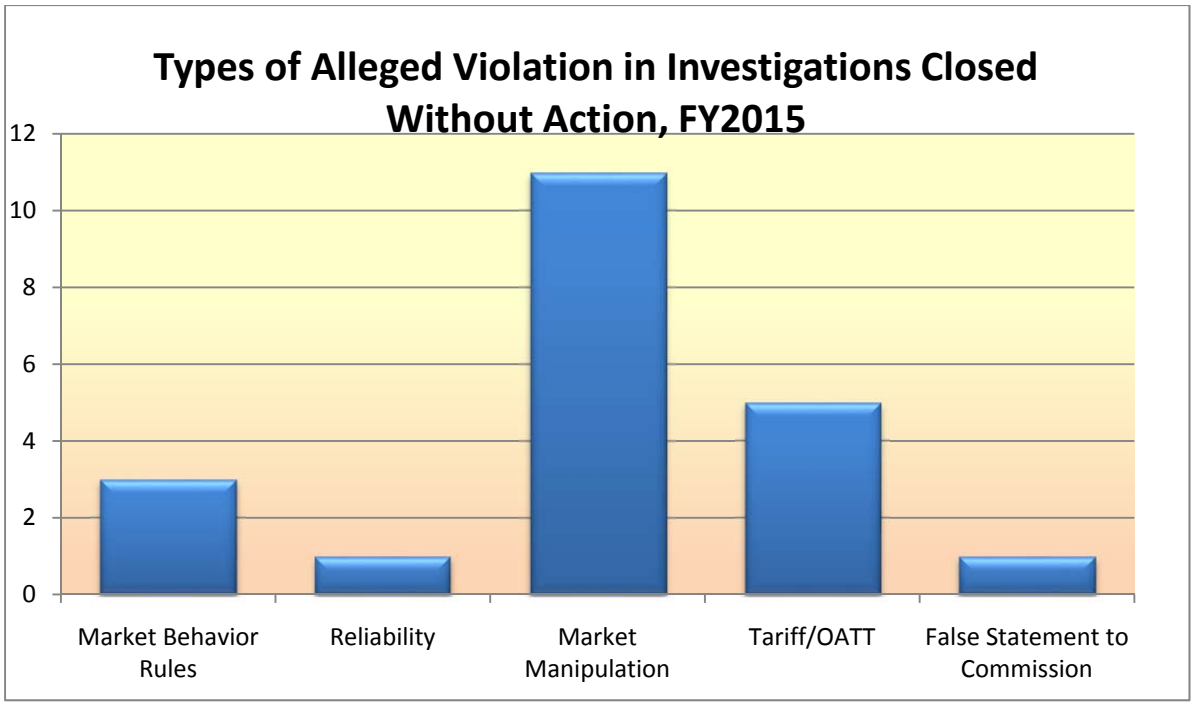

Disposition of Investigations, FY2013
Closed - Finding of Violation/No Sanctions
Closed - Insufficient Evidence or No Violation
Settlement
Proceeded to Order to Show Cause
Other

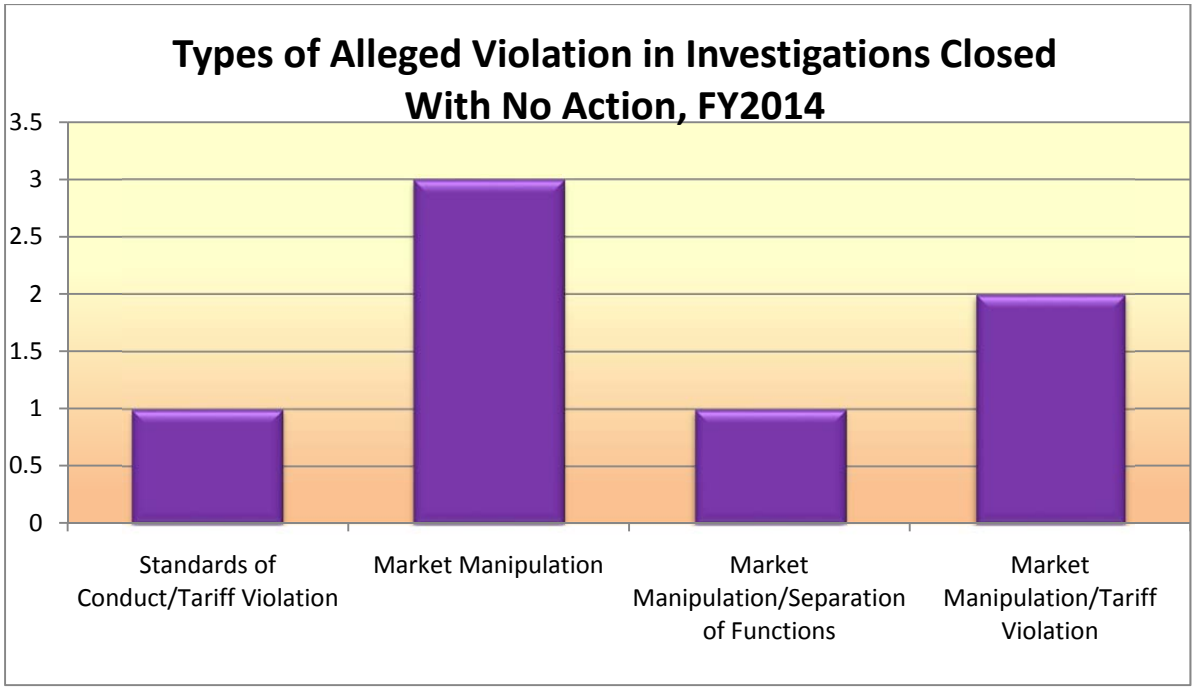

Disposition of Investigations, FY2012
Closed - Finding of Violation/No Sanctions
Closed - Insufficient Evidence or No Violation
Settlement
Proceeded to Order to Show Cause

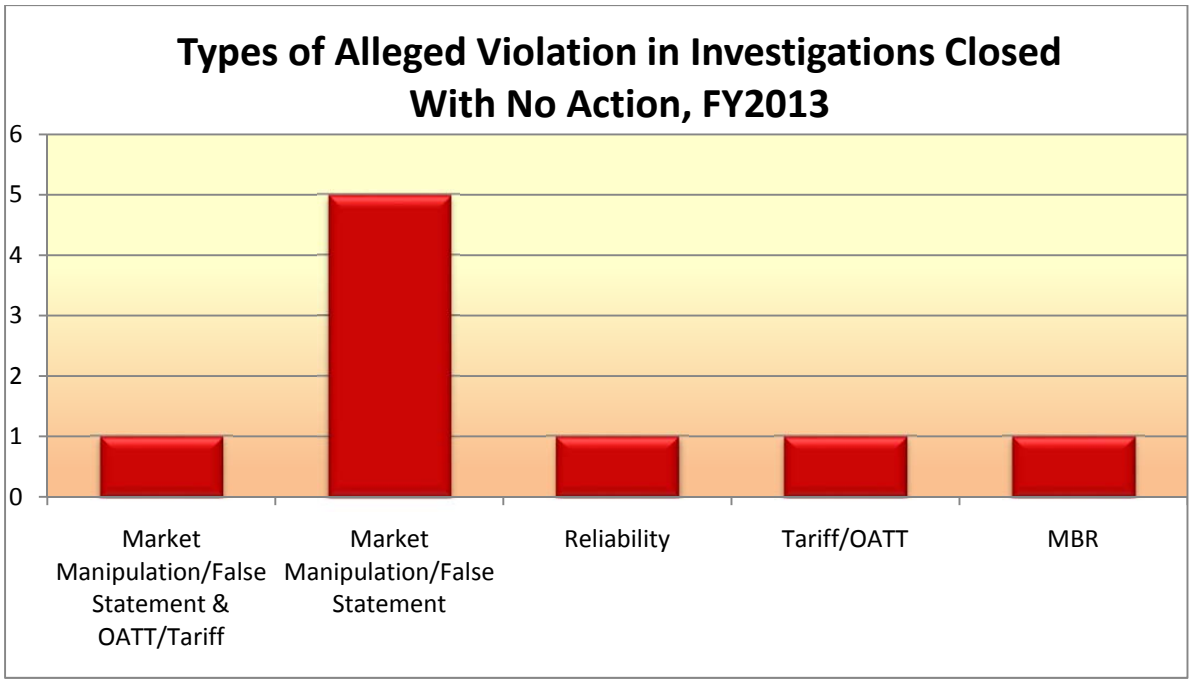


The following charts summarize the nature of the conduct at issue for those investigations that were closed without action in fiscal years 2013 through 2016.




Types of Alleged Violation in Investigations Closed Without Action, FY2015
12
10
8
6
4
2
0
Market Behavior Rules
Reliability
Market Manipulation
Tariff/OATT
False Statement to Commission


Types of Alleged Violation in Investigations Closed With No Action, FY2014
3.5
3
2.5
2
1.5
1
0.5
0
Standards of Conduct/Tariff Violation
Market Manipulation
Market Manipulation/Separation of Functions
Market Manipulation/Tariff Violation



2. Illustrative Investigations Closed with No Action

The following summaries of the investigations that Enforcement closed without action in FY2016 are intended to provide guidance to the public while preserving the non-public nature of DOI's investigations.

Market Manipulation (Electricity). Acting on a referral from an RTO/ISO MMU, staff investigated whether a group of affiliated companies had violated the RTO/ISO tariff and/or the Commission's Anti-Manipulation Rule by fraudulently avoiding one of the RTO/ISO's settlement rules. The settlement rule at issue claws back profits from market participants when their Day-Ahead financial trading sufficiently affects their monthly congestion positions. After conducting written fact discovery and taking testimony, staff determined that while the corporate family avoided the settlement rule by splitting its trading among different affiliates (and not executing its trades through one entity), it did not do so with fraudulent intent. Accordingly, staff closed the investigation without further action.

Market Manipulation (Natural Gas). In response to a referral from DAS's Market Surveillance Group, staff opened an investigation into whether an energy trading firm had violated the Commission's Anti-Manipulation Rule by engaging in directional trading within the physical natural gas markets to benefit the company's various financial positions. After obtaining and analyzing relevant trade data and other documentary evidence and considering testimony from (and numerous telephone calls with) the relevant trader, and the trader's behavior in other markets, staff concluded that there was insufficient evidence to establish manipulative intent, and staff decided to close the investigation.

Market Manipulation (Natural Gas). DOI staff independently initiated an investigation of an energy trading company after identifying suspicious physical gas trades that the trading company had executed with another company that was under investigation. After the company repeatedly delayed production of relevant trading data, the Commission converted the non-public

preliminary investigation to a formal one. It initially appeared that the companies may have been engaged in wash trading with an intent to affect monthly index prices to benefit both companies' financial positions. However, after a thorough review of the relevant trader's transactions during his tenure at the company and documentary evidence, staff determined that the potential financial benefit from the suspicious trades was not significant enough to incentivize manipulative behavior. Accordingly, staff closed the matter with no action.

Market Manipulation (Electricity). Acting on a referral from an RTO/ISO MMU, staff investigated whether a demand-response provider had violated the Commission's Anti-Manipulation Rule by providing inaccurate load data to that RTO/ISO. After reviewing relevant documents and testimony, staff concluded that there was insufficient evidence of manipulative intent.

Market Manipulation (Electricity) and OATT/Tariff Violation. In response to a referral from an RTO/ISO MMU, staff investigated whether a public utility violated the RTO/ISO's tariff or Commission regulations by submitting erroneous maximum daily energy values in one day of Day-Ahead and Real-Time offers for its generation assets. The information submitted by the utility caused the RTO/ISO to treat approximately half of the utility's generators as if they were not available, which in turn caused local marginal prices to spike. This error arose during an upgrade to the entity's bidding software and was caught within 24 hours. After reviewing documentary evidence, conferring with the RTO/ISO, meeting with the utility's representatives, and reviewing the utility's response to follow-up questions, staff closed the investigation without further action. This decision was based on several factors, the most significant of which were: (1) the absence of manipulative intent and (2) the utility's due diligence in testing its bidding software in the RTO/ISO's software testing environment prior to using it to place live bids.

F. Enforcement Hotline

DOI staff fields calls and other inquiries made to the Enforcement Hotline (Hotline).[12] 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, the Hotline calls lead to investigations by DOI.

In FY2016, Enforcement received 198 Hotline calls and inquiries, 186 of which were promptly resolved within the fiscal year through advice provided by staff or otherwise, and 12 of which remained pending as of the end of the fiscal year. Staff also closed several Hotline matters that had been pending from previous years. In FY2016, staff converted one Hotline call to a preliminary investigation, and multiple FY2016 Hotline calls concerned conduct in investigations that were already pending. 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 those callers where they

[12] *See* 18 C.F.R. § 1b.21 (2016).

may find the information they need, or directing them to the appropriate Commission office or docketed proceeding.

G. Other Matters

In addition to this investigative work, DOI staff worked on other important matters in 2016, including:

Revision of Maximum Civil Penalties. In December 2015, Congress passed—and the President signed—a law requiring each federal agency to adjust for inflation the maximum civil penalties that may be assessed under the laws that the agency administers.[13] Pursuant to that law, DOI drafted an interim 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.[14] Those revised maximum penalties took effect in July 2016.

Collaboration With Other Commission Offices. DOI staff regularly coordinates with other Commission offices regarding potential enforcement matters. This includes working with the Office of the General Counsel (OGC) and the Office of Energy Market Regulation (OEMR) to address late filings submitted under sections 203 or 205 of the FPA. There were 225 such late filings in FY2016. Such collaboration also includes consulting on "No-Action Letter" requests submitted by regulated entities and assisting with the Commission's Compliance Help Desk. Regulated entities can submit No-Action Letter requests and submit questions to the Compliance Help Desk to reduce their risk of subsequent findings of noncompliance and potential enforcement actions.[15] Staff acted on one No-Action Letter submission and assisted in four Compliance Help Desk inquiries in FY2016. Finally, DOI staff confers with OGC and OEMR on requests for waiver of the Standards of Conduct under Order No. 717 and requests for waiver of the Affiliate Restrictions under Order No. 697. During FY2016, DOI staff reviewed approximately 11 such requests for waivers.

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

[14] *See* Civil Monetary Penalty Inflation Adjustments, Order No. 826, Docket No. RM16-16-000, FERC Stats. & Regs. ¶ 31,386 (2016), 81 Fed. Reg. 43,937 (Jul. 6, 2016).

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

DIVISION OF AUDITS AND ACCOUNTING

A. Overview

The Division of Audits and Accounting (DAA) administers the Commission's audit and accounting programs to support the Commission's mission to assist customers in obtaining reliable, efficient, sustainable energy service at a reasonable cost through appropriate regulatory and market means. DAA's audit branches perform various types of audits that respond to the needs of the Commission and the industry, as well as advise the Commission on compliance and other matters. DAA's regulatory accounting branch acts as the focal point for interpretive guidance concerning the Commission's financial accounting and reporting rules, orders, regulations and statutes, and advises the Commission and the industry on accounting and other financial issues. In conducting its public audit and accounting activities, DAA's primary goal is to enable the Commission to achieve its strategic objectives by ensuring compliance, accountability, and transparency. Consistent with this goal, DAA works with the Commission's regulated industries as companies face and address audit and accounting challenges.

DAA's audit program supports Commission strategic objectives through the implementation of public risk-based audits. The audit program is a resource for the Commission to examine areas of concern within regulated industries to inform its actions addressing rates, tariffs, financial and operational transparency, policy initiatives, law, reliability, and other areas in the electric, natural gas, and oil industries. The audit program also provides jurisdictional entities the opportunity to work with audit staff to evaluate and improve their overall compliance, and identifies potential areas of noncompliance before they escalate. For the Commission's regulated industries as a whole, the publicly-published commencement letters and audit reports provide insight into the 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 rates. The accounting program ensures the accuracy of financial information affecting rate design and also ensures that accounting outcomes best reflect the economic reality of an entity's operations. DAA's accounting program also provides accounting expertise to Commission program offices in developing Commission policies and rulemakings to ensure these initiatives properly consider and evaluate accounting and financial issues affecting jurisdictional entities.

DAA's programs inform the industry, public, and others about what constitutes effective compliance, accountability, and transparency through its outreach and guidance opportunities. DAA actively engages in industry outreach through interactions with trade associations, such as the Interstate Natural Gas Association of America, Edison Electric Institute, Association of Oil Pipe Lines, and Energy Bar Association; and encourages interested parties to contact DAA with any inquiries or concerns. In addition, DAA continues to provide formal accounting guidance through accounting requests filed with the Commission. Informal accounting guidance may be obtained 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). DAA's goal through its outreach efforts is to provide jurisdictional entities with ample opportunity to achieve compliance and avoid noncompliance that may result in harm to jurisdictional customers and energy markets.

B. Compliance Reviews and Alerts

1. Compliance Reviews

Reviewing internal compliance related to the scope of the audit remains a key activity in DAA's audit program. DAA's assessment of a jurisdictional entity's compliance under the scope areas serves as a necessary tool to help identify and understand the level of risk that internal compliance efforts may fail to detect or prevent noncompliance and factors into audit planning, e.g., the level of required detailed testing. Reviewing compliance also entails a review of a jurisdictional entity's compliance culture. The results of this review are communicated to the jurisdictional entity under audit to encourage improved compliance. Providing such feedback to jurisdictional entities on their compliance is in line with the Commission's strategic plan and enables jurisdictional entities to quickly implement corrective actions, reducing the risk of future noncompliance. The Federal Energy Regulatory Commission Strategic Plan, FY 2014-2018, continues to encourage strong compliance and places emphasis on timely implementation of corrective actions within six months of audit completion. In FY2016, 98 percent of all audit recommendations were implemented within six months by the audited companies. DAA continues to be encouraged by the proactive responses of audited entities to address audit recommendations.

2. 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 heighten awareness of these concerns and facilitate compliance efforts. The topics presented below are not the only areas in which compliance has been at issue, but relate also to areas where DAA has found consistent compliance concerns or noncompliance. DAA believes that focusing greater attention in these areas will enable jurisdictional entities to prevent noncompliance, avoiding enforcement actions.

Formula Rate Matters. Compliance with the Commission's accounting and the FERC Form No. 1 regulations 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 the jurisdictional entity's accounting and rate staff to prevent the recovery of costs that should be excluded from the formula rate. Additionally, formula rate audits in recent years have observed certain patterns of noncompliance in the following areas:

- Transmission vs. Distribution Plant – Utilities have included plant balances related to their distribution function in transmission formula rates. This has occurred when a distribution capital project is placed in service, and the appropriate policies and controls are not utilized to ensure that those project costs are classified as distribution plant and that the related depreciation is appropriately classified.
- Tax Prepayments – 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. Including these overpayments in Account 165 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.

- Internal Merger Costs – Utilities have included merger-related costs in rates without Commission approval that are typically related to internal labor, severance, and integration costs. In these cases, utilities are subject to hold-harmless commitments to exclude merger-related costs from rates unless the Commission approves recovery of such costs. Utilities must have appropriate controls and procedures to ensure that merger-related costs are tracked and excluded from formula rates.
- Merger Goodwill – Utilities have included goodwill in the equity component of the capital structure without Commission approval. It is the Commission's long-standing policy that goodwill should be excluded from rates.
- Depreciation Rates – Utilities have used state-approved depreciation rates or a blended depreciation rate in their formula rate recovery mechanisms, rather than the depreciation rates approved by the Commission.
- Asset Retirement Obligation (ARO) – Utilities have included ARO amounts in formula rates without explicit Commission approval. This includes the asset component that increases rate base, the depreciation expense related to the asset, the accretion expense related to the liability, and associated deferred taxes.
- Allocated Labor – Utilities have charged labor costs to transmission projects without using an appropriate cost allocation method or time tracking. Specifically, DAA observed that controls were not sufficient to ensure that labor costs charged were appropriately allocated between transmission and distribution capital projects when employees worked on both, resulting in an inappropriate or unsupported allocation of labor costs charged to transmission projects.
- Administrative and General (A&G) Expenses – Utilities have recorded nonoperating expenses and functional operating and maintenance expenses in A&G expense accounts, leading to an inappropriate inclusion of such costs in the formula rates.
- Unused Inventory and Equipment – Utilities have included the cost of materials, supplies, and equipment purchased for a construction project without removing the cost of items unused in whole or in part from the cost of a project.

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

Natural Gas Accounting and Tariff Matters. DAA continues to evaluate natural gas pipeline compliance with the Commission's accounting and the 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 the approved gas tariff. In recent comprehensive natural gas audits, DAA has observed noncompliance in the following areas:

- Gas Tariff Matters – Some natural gas pipelines did not comply with FERC gas tariff procedures. Specifically, they were not using the method specified in the tariff for

valuing system gas activities, were not enforcing stipulations in Operational Balancing Agreements to manage and monitor gas imbalance activities between interstate and intrastate pipelines, were not updating reservation credit procedures for force majeure and non-force majeure events to be consistent with Docket No. RP11-1538-000,[16] and were not reporting operational available capacity data consistent with North American Energy Standards Board requirements.

- Accounting and Reporting Matters – Some natural gas pipelines did not comply with Commission accounting requirements as they pertain to gas charges and activities, including: 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 accounting areas of noncompliance included derivation of allowance for funds used during construction; classification of non-operating activities associated with donations, fines and penalties, and lobbying activities; and capital project reimbursements and advances from customers. In regard to the FERC Form No. 2 reporting, there was some inaccurate or incomplete information for affiliate transactions and other subsidiary investment activities. Besides this, there were omissions and incomplete information from various schedules supporting the pipeline financial statements.
- Pipeline Integrity Management Costs – Certain natural gas pipelines have misclassified integrity management costs that are properly recorded as maintenance expenses. Commission accounting requirements, including 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 greater competitive and efficient use of such capacity. Recent audits identified deficiencies in posting available pipeline capacity where quantities were omitted or incorrectly reported. The result is that some shippers may not be aware of or able to avail themselves of operational opportunities for use of available pipeline capacity.

Oil Pipeline (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.[17] The information reported on page 700 could be used by the Commission and interested parties to evaluate interstate pipeline rates, among other uses. Recent oil pipeline audits have identified some accounting errors that impact the accuracy of amounts reported on page 700, including: intrastate amounts incorrectly included as interstate on page

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[16] *See Natural Gas Supply Association, et al.*, 137 FERC ¶ 61,051(2011).

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

700, misclassification of carrier property, charitable donations, fines/penalties, lobbying activities, and failure to use Commission-approved depreciation rates. DAA also identified a another company that did not use or charge correct rates for intermediate points in billings to customers and a company that inadvertently disclosed confidential shipper information in a filing made with the Commission.

Nuclear Decommissioning Trust Funds. The Commission's regulations concerning nuclear decommissioning trust funds require jurisdictional utilities owning nuclear power plants to file annual trust fund reports, among other requirements. Recent audit activity has identified utilities that have not satisfied the Commission's regulations by failing to: submit annual decommissioning trust fund reports, clearly distinguish Commission-jurisdictional monies from nonjurisdictional monies held in the trust funds, or accurately report the amount of Commission-jurisdictional money in the trusts.

Allowance for Funds Used During Construction (AFUDC). Recent audit activity has shown deficiencies in how jurisdictional entities have calculated AFUDC, resulting in excessive accruals of AFUDC. Common findings during audits include: failure to exclude goodwill-related equity from the equity component of the AFUDC rate, 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.[18]

Consolidation. Commission accounting regulations require the equity method of accounting for all investments in subsidiaries. Recent audit activities 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.

Price Index Reporting and FERC Form No. 552 Reporting. DAA's recent energy-reporting audits have revealed common deficiencies that have led to unreported transactions to price indexes. Transactions that are unreported in price indexes lead to less robust price indexes and can impact prices published by indexes, particularly at illiquid hubs. Common deficiencies revealed during audits of the FERC Form No. 552 include: failures to disclose affiliate companies, improper transaction categorization, and inclusion of non-reportable transactions. These reporting errors on the FERC Form No. 552 hinder the usefulness and transparency of the form's contents.

Untimely Filing of Commission Reports. DAA identified instances in which companies have failed to file various reports with the Commission timely. These instances included decommissioning trust fund reports and required filings and reports related to mergers. Failure to timely file these reports immediately impacts the Commission's and industry's ability to use report-provided data. Untimely filing also negatively impacts the transparency of information and creates doubt regarding the effectiveness of these companies' compliance programs.

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[18] Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, FERC Stats. & Regs, ¶ 30,985 (1993).

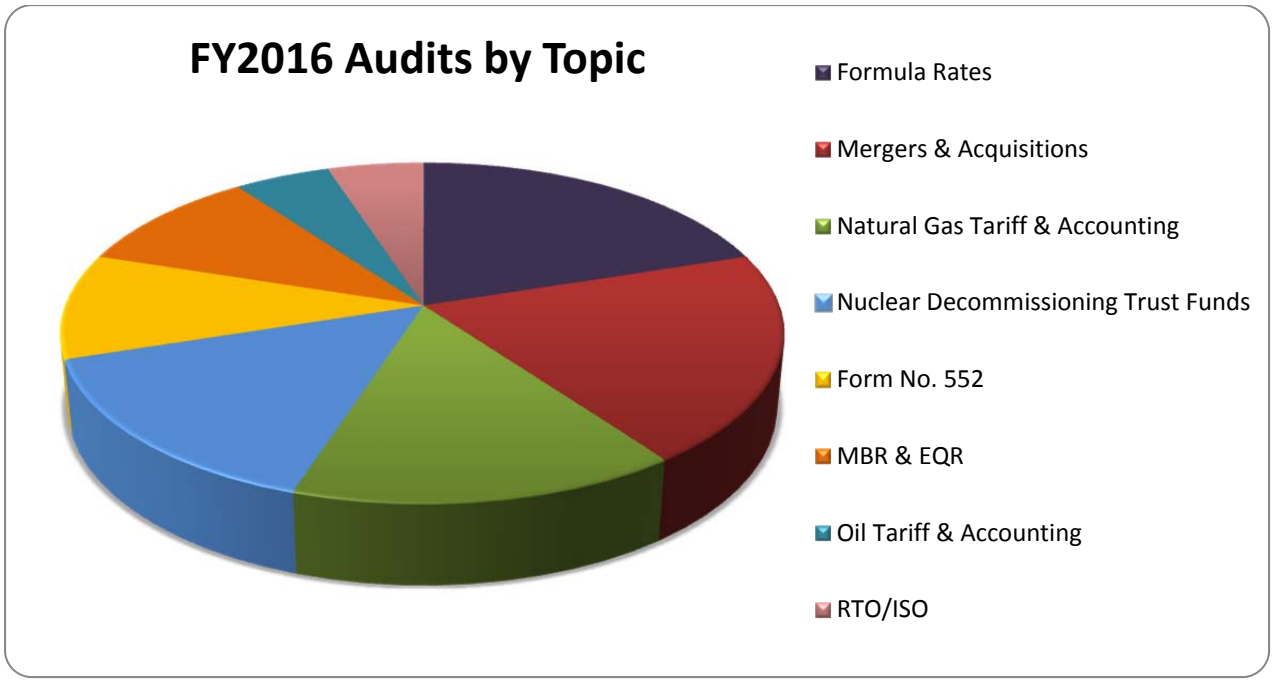
Record Retention. DAA has identified instances in which companies have failed to retain records in accordance with Commission regulations. In some cases, DAA determined that companies have failed to obtain records from the original owner when acquiring jurisdictional assets. DAA also identified instances in which inadequate records management programs led to premature destruction of records. Failure to maintain adequate records can impair the Commission's ratemaking and enforcement activities and ultimately impact an entity's ability to recover costs associated with those assets.

C. Significant Audit Matters

DAA's audits are public, risk-based, and cover a variety of audit scope areas. They are typically commenced without reference to any allegation of wrongdoing. DAA consults with other divisions within OE and other Commission 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 inform 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; it responds to the needs of the Commission and the industry. Individual audits often contain multiple scope areas, and generally the audits review the entity's compliance with respect to the audit scope area. The audits below were completed in FY2016 and provide a sample of DAA findings and results.

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 be better informed, avoid noncompliance, and improve operational performance. Finally, DAA expects timely implementation of all audit recommendations, which demonstrates an entity's commitment to carry out enhancements to improve compliance with FERC rules and precedents and reduces the risk of future noncompliance.

In FY2016, DAA completed 14 audits of oil pipeline, public utility, and natural gas companies covering a wide array of topics. The audits resulted in 214 recommendations for corrective action, all of which were accepted by the audited companies, and directed $5.3 million in refunds and recoveries. Specifically, DAA directed over $3.7 million to be refunded to jurisdictional customers and prevented over $1.6 million from being inappropriately included in transmission plant and wholesale formula rates. Audit recommendations also directed improvements to the audited companies' internal processes and procedures, financial reporting for accuracy and transparency, web site postings, and efficiency and cost-effectiveness of operations. Collectively, these refunds, recommendations, prevented charges (*i.e.*, savings), and procedural and process enhancements benefit ratepayers and market participants.



The following significant audit activities reflect the issues and priorities identified and discussed above.

Southwest Power Pool, Inc. (SPP) – PA15-6-000. DAA evaluated SPP's compliance with: (1) the transmission provider obligations described in the SPP Open Access Transmission Tariff, with particular emphasis on the implementation of the Integrated Marketplace, under Attachment AE as of March 1, 2014; (2) Order No. 719, Wholesale Competition in Regions with Organized Electric Markets; (3) Commission accounting regulations under the Uniform System of Accounts (USofA); and (4) the FERC Form No. 1 financial reporting requirements.[19] The audit resulted in five findings, one other matter, and 16 recommendations for corrective action. The five findings were: (1) SPP RTO's inappropriate involvement with market monitoring unit (MMU) operations, such as SPP executive management involvement in MMU staff bonus determinations, performance review of the MMU Director, and other staffing matters; (2) the MMU's inappropriate reliance on SPP RTO for legal services, IT resources, and staffing; (3) the MMU's lack of a process to ensure that MMU staff members focused on MMU-related activities rather than performing SPP RTO activities unrelated to MMU operations; (4) the MMU's lack of sufficient physical safeguards to preserve the MMU's independence by limiting access to MMU confidential work products; and (5) the MMU's involvement with SPP RTO tariff formation, which went beyond the advisory role and resulted in conflicts that led to inefficient MMU and SPP RTO operations. SPP did not contest any of the audit report findings and committed to implement corrective actions to address all recommendations. Corrective actions related to these recommendations will result in the MMU strengthening its separation and independence from SPP RTO. While the audit specifically addressed SPP RTO and its internal MMU, the audit report garnered the attention of other MMUs in other RTO/ISOs on issues related to separation and independence. This led DAA to proactively engage in outreach to all

[19] *Southwest Power Pool, Inc.*, Docket No. PA15-6-000 (July 15, 2016) (delegated letter order).

jurisdictional MMUs to discuss how best to enhance their performance by incorporating the recommendations, as applicable, in these critical areas.

Duke Energy Corporation (Duke) – PA14-2-000. DAA evaluated Duke Energy's compliance with requirements established in Commission orders authorizing Duke's merger with Progress Energy, Inc. and each of Duke's public utility subsidiaries' compliance with: (1) tariff requirements governing its transmission formula rate; (2) Commission accounting regulations under the USofA; and (3) Commission financial reporting regulations.[20] The audit report identified eight findings of noncompliance and made 37 recommendations for corrective action. Of particular note, Duke and its subsidiaries improperly included approximately $32.9 million of merger transaction internal labor, outside services, and related costs in wholesale power and transmission formula rate service cost determinations without first submitting a section 205 filing demonstrating that the costs were offset by quantified savings produced by the merger. Consequently, the wholesale power and transmission customers' revenue requirements were inappropriately overstated by an estimated $17.5 million. Additional findings of noncompliance identified at certain of Duke's public utility subsidiaries included the following: failing to file merger accounting entries with the Commission and improperly recording merger transaction costs in operating accounts; improper accounting for investments in subsidiaries on a consolidated basis; improper inclusion of $2.4 million of lobbying costs in operating accounts; insufficient support for the allocation of labor costs of internal lobbyists and their support staff; and accounting misclassification of approximately $490,000 of other nonutility expenses in operating accounts. Collectively, these findings resulted in anticipated refunds of $1.6 million to wholesale customers.

In addition, the audit identified accounting misclassifications of an estimated $94.7 million of non-operating expenses and receivables arising from sale of accounts receivable to subsidiaries. The audit determined that approximately $61 million of these funds may have been improperly charged to wholesale power and transmission customers. Upon rehearing, the Commission affirmed the Chief Accountant's finding that discounts on the sale of accounts receivable without recourse are non-operating in nature and are appropriately recorded in Account No. 426.5.[21]

D. Other Audit Matters

1. Formula Rates

Kansas Gas and Electric Company (KGE) – FA15-15-000 and Westar Energy, Inc. (Westar) – FA15-9-000. DAA evaluated KGE and Westar's compliance with: (1) approved terms, rates, and conditions of their transmission formula rate mechanism as provided in Attachment H-1 of Westar's Open Access Transmission Tariff (OATT) and other jurisdictional rates on file with the Commission; (2) the accounting requirements of the Uniform System of Accounts for Public Utilities and Licensees; and (3) the reporting requirements of the FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees, and Others and Supplemental Form 3-Q: Quarterly

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[20] *Duke Energy Corporation*, Docket No. PA14-2-000 (May 1, 2016) (delegated letter order).

[21] *Duke Energy Carolinas, LLC,* 156 FERC ¶ 61,201 (2016).

Financial Report.[22] The audits resulted in 13 findings (seven on KGE and six on Westar) and 44 recommendations (25 on KGE and 19 on Westar). DAA found that KGE and Westar conducted improper formula rate billing of distribution plant and asset retirement obligations. DAA also determined that KGE and Westar improperly accounted for nonoperating expenses, such as amounts associated with discriminatory employment practices, corporate-owned life insurance policy expenses, and expenses related to running a nonprofit charitable organization. Westar and KGE also did not allocate various administrative and general expenses to their nonregulated subsidiary companies. As a result of DAA's findings, Westar and KGE will remit approximately $2.3 million in refunds and recoveries and will exclude significant amounts from being improperly included in future wholesale formula rate calculations.

2. Mergers and Acquisitions

Exelon Corporation (Exelon) – PA13-15-000. DAA evaluated whether Exelon and its subsidiaries complied with: (1) conditions established in Commission orders issued on March 9, 2012, July 1, 2005, and April 12, 2000 that authorized corporate mergers; (2) Commission regulations governing nuclear plant decommissioning trust funds; (3) Commission accounting regulations under the USofA; and (4) Commission financial reporting regulations.[23] DAA identified five areas of noncompliance, made 12 recommendations, and issued one other matter. Of note, an Exelon subsidiary Commonwealth Edison, inappropriately included $851,000 of merger-related costs in transmission service cost calculations through its transmission formula rate, consequently overcharging transmission customers a total of $89,234. Additionally, Exelon and its subsidiaries did not properly comply with Commission regulations on nuclear decommissioning trust funds requiring proper separation of monies, filing of financial reports, and retention of records. As a result of DAA's findings, Exelon issued a refund of $89,234, including interest, to its transmission customers, strengthened procedures and controls surrounding its merger condition compliance, and corrected and refiled the necessary nuclear decommissioning trust fund reports.

Entergy Services, Inc. (Entergy) – FA15-13-000. DAA evaluated Entergy's compliance with the Commission's: (1) accounting regulations under the USofA and (2) financial reporting regulations. The audit primarily focused on examining the transactions and costs associated with Entergy's attempted merger with ITC Holdings Corporation.[24] DAA identified one area of noncompliance and made four recommendations. DAA found that Entergy operating companies recorded approximately $107 million in merger-related costs in operation and maintenance (O&M) and administrative and general (A&G) expense accounts rather than in Account No. 426.5, Other Deductions, as required by Commission precedent. The improper accounting led to overstatements of O&M and A&G expenses in the Entergy operating companies' FERC Form No. 1 filings. However, the Entergy operating companies excluded most of the merger-related costs from transmission formula rate calculations with the exception of a few costs. As a result

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[22] *Kansas Gas and Electric Company*, Docket No. FA15-15-000 (Sept. 29, 2016); *Westar Energy, Inc.*, Docket No. FA15-9-000 (Sept. 29, 2016) (delegated letter orders).

[23] *Exelon Corporation*, Docket No. PA13-15-000 (Dec. 22, 2015) (delegated letter order).

[24] *Entergy Services, Inc.*, Docket No. FA15-13-000 (Apr. 19, 2016) (delegated letter order).

of DAA's findings, Entergy strengthened processes and procedures around its tracking of and accounting for merger-related costs.

ITC Holdings Corporation (ITC) – FA15-14-000. DAA evaluated ITC's compliance with the Commission's accounting regulations under the USofA and financial reporting regulations. The audit primarily focused on examining the transactions and costs associated with ITC's attempted merger with Entergy Corporation.[25] DAA identified one area of noncompliance and made three recommendations. DAA found that ITC operating companies recorded approximately $200,000 in merger-related costs in operating accounts included in the determination of transmission formula rate billings, rather than in Account No. 426.5, Other Deductions, as required by Commission precedent. The improper accounting led to inappropriate recovery of the merger-related costs in transmission formula rate billings. As a result of DAA's findings, ITC refunded approximately $154,000 to wholesale transmission customers and strengthened processes and procedures around its tracking of and accounting for merger-related costs.

Emera Maine (Emera Maine) – PA15-4-000. DAA evaluated Emera Maine's compliance with conditions established in the Commission order authorizing its merger with Maine Public Service Company.[26] DAA identified four areas of noncompliance and made nine recommendations. Of note, DAA determined that Emera Maine inappropriately included merger-related costs through its formula rate recovery mechanisms without first making a compliance filing under section 205 of the Federal Power Act. Additionally, Emera Maine inappropriately computed AFUDC on construction work in progress by using the annual weighted average cost of debt and computing its AFUDC rate monthly, instead of annually. As a result of DAA's findings, Emera Maine refunded $757,324 to ratepayers for inappropriately including merger-related costs through its formula rate recovery mechanisms and inappropriately calculating AFUDC on construction work in progress.

3. Oil

Enbridge Energy Partners, LP (EEP) – FA15-4-000. DAA evaluated EEP's compliance with the Commission's regulations for oil pipeline companies, including the USofA and the FERC Form No. 6 financial reporting requirements. This audit primarily focused on North Dakota Pipeline Company, LLC (NDPL).[27] The audit report identified 12 findings of noncompliance and made 30 recommendations for corrective action. One particular finding noted NDPL billed its shippers for oil movements not nominated by the shippers, contrary to its tariff language. Consequently, some shippers paid more and others paid less than what was appropriate under the filed tariff rates. The net result was that NDPL over-collected $536,555. NDPL subsequently analyzed and improved its invoicing process. DAA reviewed the analysis performed by NDPL and confirmed that NDPL has properly resolved the billing for its shippers during this audit period.

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[25] *ITC Holdings Corporation*, Docket No. FA15-14-000 (Apr. 19, 2016) (delegated letter order).

[26] *Emera Maine*, Docket No. PA15-4-000 (Jan. 4, 2016) (delegated letter order).

[27] *Enbridge Energy Partners, LP*, Docket No. FA15-4-000 (May 9, 2016) (delegated letter order).

4. Natural Gas Tariff, Accounting, and Reporting

Destin Pipeline Company, LLC (Destin) – FA15-1-000. DAA evaluated Destin's compliance with: (1) certain information reporting requirements in the FERC Form No. 2; (2) accounting regulations under the USofA; and (3) Destin's FERC Gas Tariff.[28] The audit identified nine areas of noncompliance, made 28 recommendations, and issued one other matter. Of note, Destin improperly accounted and reported certain items, such as gas imbalances, lost and unaccounted-for gas, accumulated deferred income taxes, and accruals and customer advances related to third-party reimbursements. As a result of DAA's findings, Destin updated its accounting practices, resulting in the reclassification of gas imbalances in the amount of $5.8 million and reclassification of accruals and customer advances related to third-party reimbursements in the amount of $13.4 million. Furthermore, Destin implemented accounting procedures to ensure that gas volumes furnished to the pipeline by its shippers for compressor fuel and other pipeline system use and amounts related to lost and unaccounted-for gas are properly classified and reported in the FERC Form No. 2.

Empire District Electric Company (Empire District) – PA15-7-000. DAA evaluated Empire District's compliance with the requirements of its MBR authorizations, EQR filing regulations, and the FERC Form No. 552 reporting requirements. The audit also examined Empire District's wholesale electric and natural gas market activity, including compliance with applicable tariff provisions and Commission regulations concerning natural gas transportation and sales. The audit identified two findings and seven recommendations that required corrective action. The two findings were: (1) Empire District did not report in its EQRs its wholesale sales to four municipalities within Empire District's service territory or wholesale sales made from its hydro facility and (2) Empire District's EQRs during the audit period contained various errors in the contracts and transactions it reported, including incorrect prices, quantities, customers, points of delivery, and affiliate identifications. As a result of DAA's findings, Empire District committed to correct and refile the necessary filings, strengthen controls surrounding the filing of complete and accurate information with the Commission, and enhance internal controls regarding compliance training and EQR reporting.

Natural Gas Pipeline Company of America (NGPL) – PA13-5-000. DAA evaluated NGPL's compliance with the Commission's: (1) accounting regulations under the USofA; (2) certain reporting information in the FERC Form No. 2; and (3) select portions of NGPL's tariff, including those provisions governing penalties, reservation charge crediting, capacity allocation, storage operations, and tracking and balancing mechanisms.[29] The audit identified eight findings of noncompliance and made 24 recommendations for corrective action. Of note, NGPL did not use the inventory method approved in its tariff for valuing system gas activities. This resulted in an undervaluation of system gas inventory of $44.5 million and operating expenses of $28.8 million. NPGL did not accurately apply its Commission-approved depreciation rates resulting in a $1.7 million understatement in depreciation expense and accumulated reserve. NGPL incorrectly recorded about $195 million of pipeline integrity management costs as operating

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[28] *Destin Pipeline Company*, LLC, Docket No. FA15-1-000 (Mar. 30, 2016) (delegated letter order).

[29] *Natural Gas Pipeline Company of America*, Docket No. PA13-5-000 (Oct. 30, 2015) (delegated letter order).

rather than maintenance expense. NGPL did not properly account for certain pipeline activities under Order No. 581 related to shipper imbalances, cash-outs, lost and unaccounted-for gas, and a sale of cushion gas. NGPL incorrectly recorded activities associated with lobbying, donations, and penalties as above-the line-rather than below-the-line expenses.

5. No Audit Findings

Yankee Atomic Electric Company (Yankee Atomic) – FA15-3-000. DAA evaluated Yankee Atomic's compliance with the Commission's regulations relating to nuclear decommissioning trust funds and Order Nos. 580 and 658. DAA also evaluated the company's compliance with the Commission's accounting and reporting requirements associated with nuclear decommissioning.[30] The audit resulted in no findings or recommendations that required corrective action to be taken.

Portland General Electric Company (PGE) – FA15-2-000. DAA evaluated compliance with the Commission's regulations relating to nuclear decommissioning trust funds and Order Nos. 580 and 658. DAA also evaluated the company's compliance with the Commission's accounting and reporting requirements associated with nuclear decommissioning.[31] The audit resulted in no findings or recommendations that require corrective actions to be taken.

E. Accounting Matters

DAA administers the Commission's accounting programs for the electric, natural gas, and oil industries, which are vital components of the Commission's strategy of setting just and reasonable cost of service rates. The foundation of the Commission's accounting programs is the USofA, codified in its regulations for electric utilities and licensees, centralized service companies, natural gas companies, and oil carriers. 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 USofA. This body of accounting regulations, orders, and guidance letters comprises the Commission's accounting requirements and allows for consistent, transparent, and decision-useful accounting information to be used by the Commission and stakeholders to set and monitor cost-of-service rates. DAA enables the Commission to achieve this strategic goal through insightful consideration of the Commission's ratemaking policies, past Commission actions, industry trends, and outside influences (*e.g.*, the economic environment, technological changes, and increased environmental mandates) that impact the industries under the Commission's regulations.

A substantial part of DAA's accounting workload involves extensive coordination with Commission program offices to provide regulatory accounting advice and analysis on various types of filings by jurisdictional entities. Further, 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

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[30] *Yankee Atomic Electric Company*, Docket No. FA15-3-000 (Oct. 23, 2015) (delegated letter order).

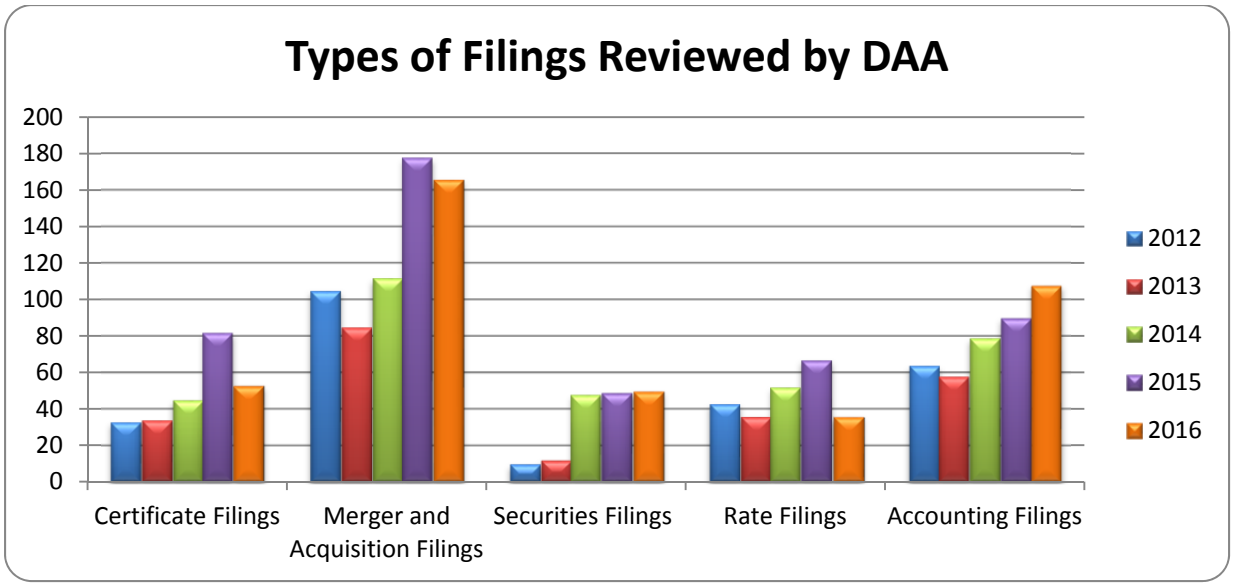
[31] *Portland General Electric Company*, Docket No. FA15-2-000 (Oct. 23, 2015) (delegated letter order).

jurisdictional entities. DAA also serves jurisdictional entities by holding pre-filing and other periodic meetings with jurisdictional companies 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, consultants, and other industry stakeholders, as well as through the Commission's Compliance Help Desk, Office of External Affairs, Enforcement Hotline, and other Commission program offices. Further, DAA encourages jurisdictional entities also to seek formal guidance on accounting issues of doubtful interpretation to enhance compliance with the Commission's accounting and financial reporting regulations. Finally, a critical part in DAA's effort is educating the regulated entities and promoting compliance with the Commission's regulations through participating in various formal speaking engagements and industry accounting meetings.

1. Filings Reviewed by DAA

DAA has advised the Commission and acted on filings submitted to the Commission covering various accounting matters with cost-of-service rate implications, such as accounting for mergers and business combinations, asset dispositions, depreciation, AFUDC, post-retirement benefits, income taxes, and prior-period corrections. While DAA focused on accounting matters within the filings, some of the filings came from jurisdictional entities seeking Commission approval primarily for matters other than accounting, such as requests for declaratory orders, natural gas certificate applications, merger and acquisition applications, electric and natural gas rate filings, and securities and debt applications. In these cases, DAA served 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 1,695 Commission filings to ensure proper accounting is followed and to advise the Commission on potential rate effects. In FY2016 alone, DAA reviewed a total of 413 filings.



2. Requests for Approval of the Chief Accountant

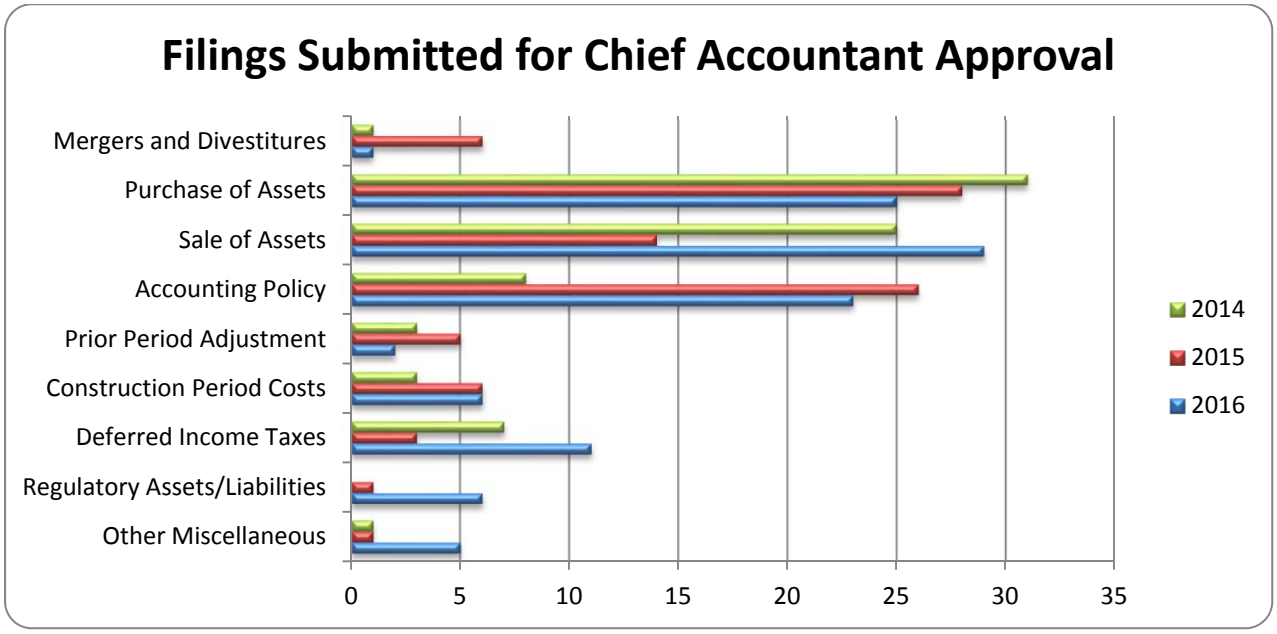
In FY2016, DAA, through the Chief Accountant's delegated authority, responded to 108 accounting filings requesting approval of a proposed accounting treatment or financial reporting. The matters covered in these accounting requests related to various topics within the Commission's accounting and financial reporting requirements for electric, natural gas, and oil pipeline entities. Of note in FY2016, there was an increase in filings related to adjustments to accumulated deferred income tax and equity accounts. There was also a large increase in filings during FY2016 requesting approval to record public utility asset sales.

Also of note in FY2016 was an accounting request and related orders that approved a limited waiver of the Commission's accounting regulations to permit consolidation and explained Commission precedent on accounting for discounts on the sales of accounts receivable with and without recourse. In Docket No. AC15-174-000, the Chief Accountant observed that Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and Duke Energy Florida, LLC (collectively, the Duke Companies) inappropriately recorded discounts related to the sales of accounts receivable without recourse in utility operating expense accounts. The Chief Accountant stated that Commission policy requires such discounts to be recorded in Account No. 426.5, Other Deductions. The Duke Companies filed a request for rehearing in Docket No. AC15-174-001, and in the rehearing order, the Commission affirmed the Chief Accountant's finding that discounts on the sale of accounts receivable without recourse are non-operating in nature and are appropriately recorded in Account No. 426.5.[32] The Commission order also distinguished this accounting treatment from account receivable sales transactions with recourse.

A Commission order was also issued in FY2016 related to an accounting request to use monthly compounding while calculating AFUDC. In Docket No. AC12-53-000, Kern River Gas Transmission Company (Kern River) requested approval to compound AFUDC monthly because

[32] *Duke Energy Carolinas, LLC,* 156 FERC ¶ 61,201 (2016).

it pays interest and principal on its debt and dividends on a monthly basis. The Commission denied the request reminding Kern River of the Commission's requirement under Federal Power Commission Order Nos. 561 and 561-A, and the instructions in 18 C.F.R. Part 201, that the utility cannot use an AFUDC rate higher than that which would have resulted from semi-annual compounding (*i.e.*, monthly compounding results in a higher AFUDC than semi-annual compounding and accordingly, is disallowed).[33]



3. Rate Proceedings

In FY2016, DAA participated in 36 rate filings with the Commission 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 many 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, respectively, DAA ensured that all proposed accounting in the rate proceedings was consistent with the Commission's accounting requirements. DAA also worked with other program offices to enhance the transparency of financial information affecting formula rates so that all stakeholders have an opportunity to review the costs included in rates. Particular items that DAA emphasized as critical information included plant assets' historical cost, merger-related costs, prior-period adjustments, affiliate cost allocations, and correction of errors, among other items. Accounting issues associated with each filing ranged in number and topic. Some of the more common accounting issues in FY2016 rate filings included merger-related costs, regulatory assets, post-retirement benefits, deferred taxes and prepayments.

[33] *Kern River Gas Transmission Company,* 154 FERC ¶ 61,186 (2016).

4. Certificate Proceedings

In FY2016, DAA reviewed 53 natural gas pipeline certificate application filings seeking Commission authorization to construct, own, and operate new pipeline facilities, abandon pipeline facilities, temporarily abandon or idle pipeline facilities, acquire pipeline facilities, or establish rates for new pipeline facilities in service. DAA continues to work with other Commission program offices to assist in the development of just and reasonable rates in the public interest by reviewing construction costs and all items used to determine initial rates, including operation and maintenance expenses, depreciation, amortization, taxes, AFUDC, and return on investment. DAA also continues to ensure that applicants follow Commission accounting requirements related to asset abandonment, construction, AFUDC calculations, contributions in aid of construction, regulatory assets and liabilities, leases, and system gas.

5. Merger and Acquisition Proceedings

In FY2016, DAA reviewed four merger applications and approximately 162 acquisition applications from electric utilities under section 203 of the FPA. The accounting review for merger transactions entails examining proposed accounting for costs to execute the transaction, costs to achieve integration and synergies, fair-value 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, DAA conducts an accounting review to ensure applicants properly account for the purchase and sale of plant assets consistent with Commission regulations. It ensures that jurisdictional entities maintain the appropriate original cost and historical accumulated depreciation of acquired utility plant and properly recorded acquisition premiums or discounts. DAA also reviewed merger and acquisition accounting entries to ensure they provide enough transparency to the Commission and all interested parties for evaluating the impact on rates. It also consistently reminded jurisdictional entities to file accounting entries timely, within six months of a finalized merger or acquisition transaction, in accordance with Electric Plant Instruction No. 5 and the requirements of Account No. 102, Electric Plant Purchased or Sold.

6. Debt and Security Issuance Proceedings

In FY2016, the Chief Accountant reviewed 50 electric utility security/debt applications. Section 204(a) of the FPA requires jurisdictional entities to receive Commission authorization before issuing securities or assuming liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person. In reviewing filings under section 204, the Commission evaluates an applicant's viability based on a review of financial statements submitted with the application, interest coverage ratio, 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 analysis also ensures that future issuance of debt is consistent with public interest.

7. Accounting Inquiries

In FY2016, DAA responded to 91 accounting inquiries from jurisdictional entities and other stakeholders within the Commission's jurisdiction on dozens of accounting and financial topics. Such accounting inquiries can be made through the Compliance Help Desk, the Accounting Inquiries phone line and email, or directly to DAA staff. The majority of those who had

accounting inquiries sought accounting and financial reporting direction on topics such as capitalization and cost allocations. Those who had accounting inquiries also sought guidance on depreciation, the appropriate functional classification of costs, and record-retention requirements. Of particular interest in FY2016 were inquiries related to emission allowances and renewable generation, income taxes, and AFUDC. DAA responds to these accounting inquiries by providing informal accounting and financial reporting guidance based on Commission precedent and regulations. It also instructs individuals how to find documents and regulations using the Commission eLibrary system[34] and the Code of Federal Regulations.[35] Such informal accounting guidance is not binding on the Commission, and DAA does not waive any Commission regulation or order through such communications.

8. Policy Statement on Hold Harmless Commitments

As a key contributor, DAA worked with other Commission program offices in the issuance of the Policy Statement on Hold Harmless Commitments.[36] In the Policy Statement, the Commission adopted policies regarding future implementation of hold harmless commitments offered by applicants as ratepayer protection mechanisms to mitigate adverse effects on rates that may result from transactions subject to section 203 of the FPA. The Policy Statement addresses numerous issues experienced by DAA reviews of merger applications before the Commission and audits of compliance with section 203 merger orders. In addition, the Commission clarified the scope and definition of the costs that should be subject to hold harmless commitments. For example, the Commission found that internal labor devoted to a merger transaction should be tracked and the related costs considered a cost of the transaction subject to a hold harmless commitment. Additionally, the Commission stated that the accounting related to merger transactions should not have an adverse effect on rates. The Commission also concluded that applicants offering hold harmless commitments should implement certain types of controls and procedures to track the costs from which customers will be held harmless.

The Policy Statement provides significant guidance and transparency on the types of transaction-related costs and ensures strengthened internal controls and procedures, which greatly facilitate Commission staff, including DAA staff, in reviewing section 203 applications and analyzing the proper identification, accounting, and rate treatment of transaction-related costs.

9. International Financial Reporting Standards

DAA continued its work with the International Financial Reporting Standards (IFRS) Foundation, the International Accounting Standards Board (IASB), and their project on Rate-Regulated Activities (RRA) as it remains to be of special interest to the Commission and its

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

[35] The Commission's regulations in 18 C.F.R. can be found at www.ecfr.gov/cgi-bin/text-idx?SID=03cdba1b6c896b3bd9734aab926c7b88&c=ecfr&tpl=/ecfrbrowse/Title18/18cfrv1_02.tpl

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

regulated entities. In FY2016, the Chief Accountant, a Consultative Group member for the RRA project, participated in informal meetings with U.S.-regulated entities, state commissions, and international regulators to inform the development of an IFRS accounting standard that provides for regulatory assets and liabilities in IFRS financial statements. During this period, the IASB continued its consideration of the prior comment letters and discussions with the Consultative Group, but has yet to issue an accounting standard that for regulatory assets and liabilities in IFRS financial statements. In FY2017, the Chief Accountant stands ready to continue providing expert advice to IASB staff to develop permanent standards on rate-regulated activities.

10. Hydro-Power Licensee Requirements under Part 1 of the FPA

DAA became aware that granting market-based rate authority and waiving the Commission's accounting requirements can be problematic for hydro-power licensees to comply with Part I of the FPA. Under Part I of the FPA, hydro-power licensees must maintain records that may be used in determining the actual legitimate original cost of and net investment in a licensed project in the event that the Commission opts to take over a hydro-power project or another entity wants to take over the license. Accordingly, DAA continued to work with other Commission program offices to include in orders granting market-based rate authority, language stating that hydro-power licensees are required to comply with the requirements of the USofA in 18 C.F.R. Part 101 to the extent necessary to carry out their responsibilities under Part I of the FPA.[37]

Additionally, DAA worked with other program offices on the Commission's recently-issued final rule on refinements to policies and procedures for market-based rates for wholesale sales of electric energy, capacity, and ancillary services by public utilities.[38] In this rule, the Commission discussed the waiver of the USofA for licensees that sell power only at market-based rates and those that sell power at market-based rates and cost-based rates for reactive power. Specifically, DAA helped draft the final rule to clarify the following: (1) a Commission waiver of the USofA for a licensee under market-based rate authority does not waive the requirements under Part I of the FPA; (2) hydro-power licensees that only make market-based sales may satisfy the requirements of Part I of the FPA by following General Instruction No. 16 of the USofA; and (3) hydro-power licensees that have cost-based rates are still required to comply with the requirements of the USofA and the amortization reserve articles in their licenses.

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[37] *See All Dams Generation, LLC,* 150 FERC ¶ 62,103 (2015); *FortisUS Energy Corporation*, 151 FERC ¶ 62,109 (2015); and *Balko Wind, LLC*, 151 FERC ¶ 61,162 (2015).

[38] *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, FERC Stats. & Regs. ¶ 31,374 (2015), *order on reh'g*, Order No. 816-A, 155 FERC ¶ 61,188 (2016).

DIVISION OF ENERGY MARKET OVERSIGHT

A. Overview

The Division of Energy Market Oversight (Market Oversight) is responsible for monitoring and overseeing the nation's wholesale natural gas and electric power markets. To carry out this responsibility, Market Oversight examines the structure and operation of the markets to identify anomalies, flawed market rules, tariff and rule violations, and other unusual market behavior as well as significant market events and trends. It also analyzes market-based rate transactions to determine whether entities are exercising market power and reports its various analyses and observations to the Commission and, as appropriate, to the public. Beyond these examinations, Market Oversight also collaborates with other Commission offices to develop regulatory strategies, focusing on the competitiveness, fairness, and efficiency of wholesale energy markets. In addition, Market Oversight administers, analyzes, and ensures compliance with the filing requirements of EQRs and various financial forms. Finally, Market Oversight advises the Commission on the efficacy of regulatory policies in light of evolving energy markets and ensures the Commission has the information needed to effectively administer and monitor those markets.

B. Market-Based Rate *Ex Post* Analysis

Market Oversight develops, refines, and implements tools and algorithmic screens to conduct ongoing analysis of transactional and other market data to detect the presence of market power and 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 analyze applications and filings for market-based rates, public utility mergers, and other docketed proceedings.

C. 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 to assess participant behavior. Staff also presents analyses at Commission meetings. During FY2016, such presentations included the following:

1. 2015 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.[39] Presented on March 17, 2016, the report for 2015 observed that wholesale power and natural gas spot prices fell across trading hubs nationwide by roughly 30-40 percent. The report explained that fundamental changes in the North American natural gas market drove down U.S. natural gas spot prices in 2015. Specifically, gas production and storage reached record levels, while demand rose modestly, tempered by the El Niño warm weather during the 2015-2016 winter. Low gas prices resulted in monthly natural gas generation surpassing coal generation for seven months during 2015 and helped boost gas exports to Mexico. Despite low natural gas prices, natural gas production from the Marcellus and Utica shale plays reached record levels. The report also elaborated on how the generation fuel mix in the wholesale electricity markets changed as a result of lower natural gas prices. Besides describing natural gas developments in the power sector, the report provided updates on distributed energy resources and net metering nationwide and on the growth of renewables generation in California and New York between 2013 and 2015. The report also noted recent price divergence in the capacity and energy markets of PJM and ISO-New England, and noted trends in the expanded Southwest Power Pool (SPP) footprint.

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 FY2016, Market Oversight's seasonal assessments included the following:

Winter 2015/2016 Energy Market Assessment, October 15, 2015. Market Oversight staff presented the outlook for natural gas markets, highlighting both lower than expected demand and record inventories of natural gas in storage.[40] Additionally, record breaking gas production was expected to continue despite lower rig counts, increased exports, and the collapse of oil prices. Market Oversight staff also explained that new natural gas pipeline expansions and projects to reverse flows on some pipelines would provide more transportation capacity from producing to market areas during the 2015-16 winter.

In the wholesale electricity markets, staff presented information on the winter preparedness measures that the RTOs/ISOs were taking to ensure reliable operations. Included in this discussion were the steps that the regional markets have taken to enhance gas-electric coordination following the issuance of Order No. 787 *(Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators).* Additionally, staff described the effect of renewable generation sources on grid operations, particularly during the winter months, when usage fluctuates and demand changes due to shorter days with less daylight. The presentation concluded with a highlight of structural changes and developments in the power markets, notably the expansion of the SPP to include the Integrated System in parts of the Dakotas, Iowa, Minnesota, and Wyoming.

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[39] *See* State of the Market Report 2015, *available at* http://www.ferc.gov/market-oversight/reports-analyses/st-mkt-ovr/2015-som.pdf.

[40] *See* 2015-16 Winter Energy Market Assessment, *available at* http://www.ferc.gov/market-oversight/reports-analyses/mkt-views/2015/10-15-15-A-3.pdf.

Summer 2016 Energy Market and Reliability Assessment, May 19, 2016. This assessment reviewed the outlook for the electric market for summer 2016, highlighting the plentiful fuel supplies and low natural gas prices during that period.[41] The failure and closure of the Aliso Canyon gas storage field in the Los Angeles Basin was an area of particular concern in terms of both reliability and potential price impacts. This discussion item was complimented by a panel of speakers from various California entities that made presentations to the Commission. The speakers included representatives from the State of California, the California Independent System Operator (CAISO), and utilities.

This assessment also covered recent changes to the organized wholesale electricity markets – including the expansion of the CAISO's Energy Imbalance Market and the expansion of the SPP footprint – and discussed the market impacts that were expected for the summer.

Market conditions going into the summer reflected the continued low natural gas prices that resulted from robust production and near record levels of natural gas in storage. Moreover, despite modest load growth, regional electric system reserve margins were forecast to be adequate.

D. Outreach and Communication

Market Oversight makes available to the public its analyses 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 held semi-annual conference calls with representatives of public utility commissions and state agencies in the eastern, central, and western states. These calls provide a current "snapshot" of energy markets. Regional Snapshot Reports serve as the basis for discussion on the calls. The reports include data on natural gas, electricity, LNG, weather, and other market developments. Additionally, the Snapshot Report incorporates reports on infrastructure development. Snapshot Reports are available on the Market Oversight website at http://www.ferc.gov/market-oversight/mkt-snp-sht/mkt-snp-sht.asp, and are archived back to 2007.

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[41] *See* Summer 2016 Energy Market and Reliability Assessment, *available at* http://www.ferc.gov/market-oversight/reports-analyses/mkt-views/2016/05-19-16.pdf.

3. Domestic and Foreign Delegation Briefings

Market Oversight periodically hosts visitors, including foreign and domestic delegations of regulators and industry participants, who are interested in energy markets and in the Commission's market monitoring activities. In FY2016, Market Oversight conducted 14 briefings in the Market Monitoring Center, including briefings to Congressional delegations, groups of delegates from federal and state agencies, and delegations from industry, academia, and foreign governments.

4. Updated Energy Primer

Market Oversight developed a resource manual, entitled *Energy Primer: A Handbook of Energy Market Basics*, that provides the public with a broad overview of the physical wholesale markets for natural gas and electricity and energy-related financial markets. The manual lays out information on key aspects such as source of energy, production technologies, market terminology, and selected experience with implementing the Commission's anti-manipulation authority.

In FY2016, Market Oversight published an updated *Energy Primer* that included a new chapter covering the U.S. crude oil and petroleum product markets. This revised *Energy Primer* also included various updates such as information on SPP's expansion of its footprint to incorporate the Western Area Power Administration-Upper Great Plains region, the Basin Electric Power Cooperative, and the Heartlands Consumer Power District.

The *Energy Primer* is used by a wide range of entities interested in understanding the basic elements of energy markets and serves as a starting point for delving deeper into the many interrelationships of the energy markets. The Supreme Court recently relied on the *Energy Primer* as a resource and cited the manual multiple times in its landmark decision upholding the Commission's jurisdiction with respect to demand response in the electricity markets (*FERC v. Elec. Power Supply Ass'n*, 136 S. Ct. 760 (2016)).

The Energy Primer is available at http://www.ferc.gov/market-oversight/guide/energy-primer.pdf.

E. Forms Administration and Compliance

Market Oversight staff administers and ensures compliance with the Commission's forms filing requirements. The Commission requires companies subject to its jurisdiction to submit annual and quarterly reports regarding jurisdictional sales, financial statements, and operational data. It uses these reports for analyses, including evaluations of whether existing rates continue to be just and reasonable. Other government agencies and industry participants use them for a variety of business purposes. Accordingly, accurate reporting is a critical aspect of monitoring markets. During FY2016, companies completed and submitted over 10,000 FERC forms.

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 (2016), 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 requiring 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 provide transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.[42]

In FY2016, the Commission received EQR submittals from over 2,000 entities. Commission staff 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. Market Oversight also coordinates with the Division of Audits and Accounting on EQR issues that arise during the audits, and submits to the Office of Energy Market Regulation, candidate entities that do not timely file their EQRs for possible revocation of Market Based Rate authority. With the assistance of Market Oversight staff, the Commission has taken steps to clarify definitions and concepts in the EQR Data Dictionary, which will assist filers in filing accurate and reliable data.

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.[43] The Commission noted that it believes the best electronic format for submission of these forms is the Extensible Mark-Up Language (XML) file format, which the industry is currently using for submission of other files and reports to the Commission, including electronic tariff filings.[44] Throughout FY2016, Market Oversight staff, with the assistance of subject matter experts from other Commission offices and the North American Energy Standards Board (NAESB), have developed a robust framework of rules and validations for the forms included in this project.

F. Agenda Items 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 FY2016, Market Oversight

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[42] *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).

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

[44] Phase 1 of the eForms Refresh project is limited to Forms 1, 1-F, 2, 2-A, 3-Q electric, 3-Q gas, 6, 6-Q, FERC-60, and FERC-714.

participated on approximately 40 docketed proceedings. Through its work on these matters, Market Oversight seeks to enhance market transparency and efficiency while balancing the regulatory burden on market participants.

In FY2016, Market Oversight staff provided support relating to the Aliso Canyon natural gas storage outage in Southern California. Market Oversight staff participated in industry outreach and Commission technical conferences discussing the effect of the outage on summer market operations in California.[45] Market Oversight staff also participated on the White House-established interagency taskforce addressing the outage at Aliso Canyon, which includes the Commission, the Department of Energy, the Department of Transportation, and other federal agencies.

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[45] *Cal. Indep. Sys. Operator Corp.*, 155 FERC ¶ 61,224 (2016), *order on reh'g,* 156 FERC ¶ 61,135 (2016).

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 participate in investigations with attorneys from DOI, providing detailed transactional analysis, market event analysis, and subject matter expertise. 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, in both the natural gas and electric markets. The surveillance function seeks: (1) to detect anomalous activities in the markets; and (2) to identify potential investigative subjects.

Notice of Proposed Rulemaking on Data Collection for Analytics and Surveillance and Market-Based Rate Purposes. In FY2016, the Commission continued its efforts to enhance its surveillance of the electric markets by issuing a Notice of Proposed Rulemaking on Data Collection for Analytics and Surveillance and Market-Based Rate Purposes in Docket RM 16-17-000 (Data Collection NOPR).[46] The Data Collection NOPR proposes to revise the Commission's regulations to collect certain information from MBR sellers and entities trading virtual products or holding financial transmission rights and to change certain aspects of the substance and format of information submitted for MBR purposes. The revisions proposed include new requirements for those entities to report information related to their legal and financial connections to other entities into a relational database for use in the Commission's surveillance and MBR programs. This information would assist the Commission's screening and investigative efforts to detect market manipulation by providing it with a more complete view of the relationships between electric market participants and the incentives underlying their trading activities. The Commission previously proposed to require certain market participants in the Commission-jurisdictional organized wholesale markets to report similar information in the Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators Notice of Proposed Rulemaking issued in Docket No. RM15-23-000 in FY2015 (Connected Entity NOPR).[47] However, in response to comments received and informal outreach, the Commission withdrew the Connected Entity NOPR and reworked and revised its proposal in the Data Collection NOPR in order to eliminate duplication with existing MBR reporting requirements, ease compliance burdens, modernize its data collections, and render information collected through its programs usable and accessible for the Commission and its staff.

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[46] *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes, 156 FERC ¶ 61,045 (2016).*

[47] *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, 152 FERC ¶ 61,219 (2015).

B. Natural Gas Surveillance

DAS conducts surveillance and analysis of physical natural gas market behavior to detect potential manipulation and anti-competitive behavior. DAS creates and uses analytical tools, known as screens, that detect anomalous activity by analyzing data relating to trade prices, volumes, times, and other transaction characteristics. In addition, DAS uses Large Trader Report (LTR) data from the CFTC to look for potential financial incentives that might encourage a market participant to engage in a manipulative scheme. The automated screens cover the majority of physical and financial trading hubs in the United States. DAS also employs asset-based screens that monitor cash trading around infrastructure, including natural gas storage, pipeline capacity, and electric generation. The screens alert staff to a variety of market conditions and market participant actions.

When a screen issues an alert, staff conducts a series of analyses to gain information about the activity that caused it. First, staff compares the trading to that at other hubs and determines whether there is a fundamentals-based explanation for the activity based on a review of supply, demand, pipeline utilization, operational notices, and physical and financial trading. Most often, staff finds such an explanation. However, when the follow-up analysis fails to explain the alert, staff performs a more in-depth analysis of the specific trading behavior underlying the alert. Under some circumstances, DAS staff will contact market participants for additional transactional details or explanations of trading activities to better understand the purpose of the transactions. If staff continues to have concerns that the market activities underlying the screen alert could constitute manipulation, DAS refers the matter to DOI and recommends opening an investigation.

C. Electric Surveillance

DAS regularly accesses data from a variety of sources to screen for anomalies and potentially-manipulative behavior in the RTO/ISO and bilateral electricity markets. During FY2016, staff ran monthly and weekly screens to identify patterns at the hourly level by monitoring the interactions between bid and cleared physical and financially-settled 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, or move power between RTO/ISOs. Staff continued to refine its analytic tools and screens for: (1) determining uneconomic virtual transactions by node, zone, and constraint; (2) detecting day-ahead market congestion manipulation that would benefit financial transmission rights and swap-futures positions; (3) identifying anomalies in physical offer patterns; (4) identifying abnormal out-of-market payments and; (5) identifying loss making physical fixed-price offer strategies in bilateral electricity markets.

Throughout FY2016, DAS continued to develop and improve its surveillance capabilities. In particular, DAS increased its tools to view patterns of behavior on a portfolio basis and across RTO borders. DAS continues to use extensively the data from the RTO/ISOs under Order No.

760,[48] the e-Tag data from Order No. 771,[49] and LTR data from the CFTC. In addition, staff continued to work closely with the Market Monitoring Units of each RTO and ISO.

D. Analytics

During FY2016, DAS worked on approximately 40 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 electric 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 to refine and develop new screens to detect improper behavior that has been identified during prior investigations.

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[48] *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).

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

CONCLUSION

The information in this Report is provided to promote transparency and to encourage entities subject to Commission requirements to develop strong internal compliance programs. As discussed in this Report, Enforcement promotes compliance with the Commission's statutes, rules, orders, regulations, and tariff provisions by investigating a wide variety of matters, auditing regulated entities for both compliance and performance issues, and actively overseeing the gas and electric markets to assist the Commission in ensuring reliable, efficient, and sustainable energy for consumers. DOI will continue to focus its efforts on keeping markets transparent and competitive and helping to ensure the reliability of the bulk power system. DAA will work closely with entities to improve compliance, while Market Oversight will examine and monitor the structure and operation of natural gas and electric markets. DAS will conduct surveillance and analyze transactional and market data to detect potential manipulation, anticompetitive behavior, and other anomalous activities in the energy markets.

APPENDIX A: OFFICE OF ENFORCEMENT ORGANIZATION CHART

OFFICE OF ENFORCEMENT

Office of the Director
Larry Parkinson, Director
Lee Ann Watson, Deputy Director
Roger Morie, Reliability Enforcement Counsel

Administration Staff
Denice Smith, Chief

Division of Investigations
Courtney Spivey Urschel, Acting Director
Courtney Spivey Urschel, Dep Dir

- Investigations Branch 1 — **Demetra Anas, Chief**
- Investigations Branch 2 — **Jay Matson, Chief**
- Investigations Branch 3 — **Nicole Brisker, Chief**
- Investigations Branch 4 — **Gabriel Sterling, Chief**

Division of Audits and Accounting
Bryan Craig, Dir and Chief Accountant
Timothy Smith, Dep Dir
Steven Hunt, Dep Chief Accountant
Stephen Flanagan, Sr. Economist

- Audits Branch 1 — **Nicholas Coughlin, Chief**
- Audits Branch 2 — **Christopher Handy, Chief**
- Audits Branch 3 — **Sylvia Anderson, Chief**
- Audits Branch 4 — **Brian Harrington, Chief**
- Regulatory Accounting Branch — **Gerald Williams, Chief**

Division of Energy Market Oversight
Janel Burdick, Director
Melissa Lozano, Dep Dir
Christopher Ellsworth, Sr. Market Advisor
MaryBeth Tighe, Sr. Market Advisor
Laura Vallance, Legal Counsel to the Dir

- Market Oversight Branch 1 — **Donald Callow, Chief**
- Market Oversight Branch 2 — **Erin Mastrangelo, Chief**
- Market Oversight Branch 3 — **Jason Stanek, Chief**
- Market Oversight Branch 4 — **Maria Vouras, Acting Chief**

Division of Analytics and Surveillance
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Jamie Marcos, Dep Dir
Timothy Helwick, Attorney

- Analytics and Surveillance Branch 1 — **Thomas Pinkston, Chief**
- Analytics and Surveillance Branch 2 — **Nancy Bowler, Chief**
- Analytics and Surveillance Branch 3 — **Benjamin Jarrett, Chief**
- Analytics and Surveillance Branch 4 — **Steven Reich, Chief**
- Analytics and Surveillance Branch 5 — **Felice Richter, Chief**
- Analytics and Surveillance Branch 6 — **John Miller, Chief**

APPENDIX B: FY2016 CIVIL PENALTY ENFORCEMENT ACTIONS[50]

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
Maxim Power Corporation, Maxim Power (USA), Inc., Maxim Power (USA) Holding Company Inc., Pawtucket Power Holding Co., LLC, and Pittsfield Generating Company, LP, Order Approving Settlement, 156 FERC ¶ 61,223.	$4 million civil penalty; $4 million disgorgement.	The Commission approved a settlement that resolved the Federal District Court action it had filed to enforce its May 1, 2015 Order Assessing Penalties (151 FERC ¶ 61,094) for the Maxim entities' violation of section 222 of the FPA, and the Commission's Anti-Manipulation and Market Behavior Rules. The settlement also resolved findings that the Maxim entities had gamed the ISO-NE mitigation procedures to maximize uplift payments when the generating unit was dispatched for reliability purposes.
BP America Inc., BP Corporation North America Inc., BP America Production Company, BP Energy Company, Order on Initial Decision and Rehearing, 156 FERC ¶ 61,031.	$20.16 million civil penalty; $207,169 disgorgement.	The Commission issued an order affirming an Administrative Law Judge's August 13, 2015 Initial Decision finding that BP had violated the Commission's Anti-Manipulation Rule. The Commission ordered BP to pay $20,160,000 in civil penalties and disgorge unjust profits in the amount of $207,169. It also denied rehearing of the Commission's earlier order setting the matter for hearing before an ALJ.
National Energy & Trade, L.P., Order Approving Stipulation and Consent Agreement, 156 FERC ¶ 61,154.	$1,155,225.91 civil penalty; $305,780.50.	The Commission issued an order that approved a settlement resolving findings by Enforcement that National Energy & Trade had violated the Commission's Anti-Manipulation Rule by manipulating physical natural gas prices between January 1, 2011 and September 30, 2015 at the Houston Ship Channel, Tetco M3, Transco Zone 6 (New York), and Henry Hub in order to benefit its related financial positions.

[50] A list of all EPAct 2005 civil penalty orders is available at http://www.ferc.gov/enforcement/civil-penalties/civil-penalty-action.asp.

In re David Silva, Order Approving Stipulation and Consent Agreement, 156 FERC ¶ 61,155.	$40,000 civil penalty and a one-year ban from participating in any FERC-jurisdictional natural gas markets	The Commission issued an order that approved a settlement resolving findings by Enforcement that David Silva had violated the Commission's Anti-Manipulation Rule by manipulating physical natural gas prices in January 2012 in order to benefit his related financial position.
Saracen Energy Midwest, LP, Order Approving Stipulation and Consent Agreement, 156 FERC ¶ 61,122 (August 22, 2016)	$25,000 civil penalty and new reporting and compliance measures	The Commission issued an order that approved a settlement resolving findings by Enforcement that Saracen had violated Southwest Power Pool, Inc.'s Tariff by submitting bids for Transmission Congestion Rights at Electrically Equivalent Settlement Locations for auctions in September and October 2014, and March and April 2015.
ETRACOM LLC and Michael Rosenberg, Order Assessing Penalties, 155 FERC ¶ 61,284.	$2.5 million civil penalty; $315,072 disgorgement.	The Commission issued an order assessing penalties for violating its 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 CRR positions sourced at that location.
Lincoln Paper and Tissue, LLC, Order Approving Stipulation and Consent Agreement, 155 FERC ¶ 61,228.	$5 million civil penalty; $379,016.03 disgorgement.	The Commission approved a settlement that resolved the Federal District Court action it had filed to enforce its August 29, 2013 Order Assessing Penalties (144 FERC ¶ 61,162) for violation of its Anti-Manipulation Rule.
Coaltrain Energy, L.P., Peter Jones, Shawn Sheehan, Robert Jones, Jeff Miller, Jack Wells, Order Assessing Penalties, 155 FERC ¶ 61,204.	$38 million civil penalty; $4,121,894 disgorgement.	The Commission issued an order assessing civil penalties against Coaltrain Energy, and the named defendants for violating the Commission's Anti-Manipulation Rule by engaging in fraudulent Up To Congestion (UTC) transactions in PJM Interconnection L.L.C.'s energy markets.

Berkshire Power Company LLC and Power Plant Management Services LLC, Order Approving Stipulation and Consent Agreement, 154 FERC ¶ 61,259.	$2,030,000 civil penalty; $1,012,563 disgorgement; compliance monitoring.	The Commission approved a settlement that resolved findings by Enforcement that Berkshire and PPPMS had violated the Commission's Anti-Manipulation Rule by concealing maintenance work and associated outages. The settlement also resolved findings that Berkshire violated Commission-approved reliability standards by failing to provide outage and available generation resources information, and the Commission's Market Behavior Rules and various provisions of the ISO-NE Tariff.

APPENDIX C: FY2016 NOTICES OF ALLEGED VIOLATIONS[51]

Issue Date	Subject(s) of Investigation	Description of Alleged Misconduct	Dates of Alleged Misconduct
August 3, 2016	National Energy & Trade, L.P. (National Energy)	Violation by National Energy of 18 C.F.R. § 1c.1 by fraudulently trading physical basis at Texas Eastern M3 (Tetco M3) during the January 2012 bidweek to increase the value of its financial basis position and also fraudulently trading physical basis at Henry Hub during the April 2014 bidweek to increase the value of its financial exposure	January 2012 and April 2014
August 3, 2016	David Silva	Violation by David Silva of 18 C.F.R. § 1c.1 by fraudulently trading physical basis at Texas Eastern M3 (Tetco M3) during the January 2012 bidweek to increase the value of his financial basis position.	January 2012
May 6, 2016	Saracen Energy Midwest, LP	Violation by Saracen Energy Midwest, LP of Southwest Power Pool, Inc.'s Open Access Transmission Tariff § 7.4.1(4) by submitting bids for Transmission Congestion Rights at Electronically Equivalent Settlement Locations.	From August 2014 through March 2015

[51] A list of all notices of alleged violations is available at http://www.ferc.gov/enforcement/alleged-violation/notices.asp.

October 23, 2015	Berkshire Power Company LLC (Berkshire) and Power Plant Management Services LLC	Violation by Berkshire and Power Plant Management Services LLC of the Commission's Anti-Manipulation Rule, 18 CFR 1c.2 (2015) by engaging in a manipulative scheme to conceal maintenance work and associated outages. Berkshire is also separately alleged to have violated Commission-approved reliability standards by failing to provide outage and available generation resources information, and to have violated Commission regulations 35.41(a) by failing to comply with various provisions of the ISO-New England (ISO-NE) Tariff and 35.41(b) by making false and misleading statements to ISO-NE regarding its maintenance work and associated outages.	Beginning at least as early as January 2008 and continuing through March 2011.