



UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION



2011 REPORT ON ENFORCEMENT

Docket No. AD07-13-004

Prepared by the 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 activities during Fiscal Year 2011 (FY2011),² including an overview of and statistics reflecting the activities of the three divisions within Enforcement: Division of Investigations (DOI), Division of Audits (DA), and Division of Energy Market Oversight (Market Oversight).

Enforcement recognizes the importance of informing the public of the activities of Enforcement staff and prepares this report with that objective in mind. Also consistent with the recognition of the public's interest in Enforcement activity, the reader will find in the pages of this report how Enforcement implemented certain other measures in FY2011 designed to increase the transparency and consistency of the work of this Office. Because the investigative work of Enforcement is non-public, the majority of the information that the public receives about investigations comes from public Commission orders that approve settlements or release staff reports, or orders to show cause why conduct should not be sanctioned. However, not all of the duties Enforcement performs result in public actions by the Commission. As in previous years, the FY2011 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 any public enforcement action. The report also highlights other Enforcement work in auditing companies subject to the Commission's jurisdiction, compiling and monitoring data from forms and reports submitted by industry participants to the Commission, and monitoring wholesale electric and natural gas markets.

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. FY2011, the subject of this report, began on October 1, 2010 and ended on September 30, 2011.

OFFICE OF ENFORCEMENT PRIORITIES

The Commission's 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.³ The Strategic Plan identifies two primary goals in order to fulfill this mission: (1) ensuring that rates, terms, and conditions are just, reasonable, and not unduly discriminatory or preferential; and (2) promoting the development of a safe, reliable, and efficient energy infrastructure that serves the public interest. In order to further those goals, Enforcement's three divisions gather information about market behavior, market participants, and market rules to assist the Commission in its obligation to oversee regulated markets and will work to bring entities into compliance with the applicable statutes, Commission rules, regulations, and tariff provisions.

Enforcement has selected priorities for its three divisions. In FY2011, Enforcement continues its 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 its priorities in FY2012. Conduct involving fraud and market manipulation poses a significant threat to the markets overseen by the Commission. Such intentional misconduct undermines the Commission's goal of providing efficient energy services at a reasonable cost because the losses imposed by such actions 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 involve the violations of rules designed to limit market power or to ensure the efficient operation of regulated markets. Of particular concern to Enforcement are cases involving the greatest harm to the public, where there is often significant gain to the violator and/or loss to the victims of the misconduct.

The Reliability Standards established by the Electric Reliability Organization and approved by the Commission protect the public interest by requiring a reliable and secure Bulk-Power System. Enforcement enforces these standards and focuses primarily on violations resulting in actual harm, through the loss of load or otherwise. Enforcement also focuses on cases involving repeat violations of the Reliability Standards, violations of Standards that carry a high Violation Risk Factor, or violations that present a substantial actual risk to the Bulk-Power System. In addition, Enforcement enforces safety and environmental standards established by the Commission in order to promote the development of a safe, reliable, and efficient energy infrastructure with a particular emphasis on cases involving actual harm or a high risk of harm.

³ The Federal Energy Regulatory Commission, The Strategic Plan (Oct. 2009), *available at* <http://www.ferc.gov/about/strat-docs/FY-09-14-strat-plan-print.pdf>.

DIVISION OF INVESTIGATIONS

A. Overview

DOI conducts public and non-public investigations of possible violations of the statutes, rules, orders, and tariffs administered by the Commission. Investigations may begin from self-reports, tips, calls to the Enforcement Hotline, referrals from organized markets or their monitoring units, other agencies, other offices within the Commission, or as a result of other investigations. During most investigations, DOI staff coordinates with other divisions in Enforcement and subject matter experts in other Commission offices. Where staff finds violations of sufficient severity, staff so reports to the Commission and attempts to settle the investigation for appropriate sanctions and future compliance before recommending that the Commission initiate a public show cause proceeding.⁴

The Commission continues to increase the transparency of Enforcement activities and promote consistency in Enforcement actions. In FY2011, the Commission denied rehearing and clarified certain aspects of a FY2010 order that increases transparency in investigations by authorizing the Secretary of the Commission to publicly issue, upon direction from the Director of the Office of Enforcement, staff's notice of alleged violations after staff preliminarily determines that a violation has occurred.⁵ The Secretary has issued several such notices. The notices identify the subject of the investigation and the alleged violations with a concise description of the alleged wrongful conduct. Also in FY2011, the Commission has begun implementation of the Penalty Guidelines, consistent with the Revised Policy Statement on the Penalty Guidelines,⁶ and applied them to its three most-recently issued settlements. Staff believes that application of the Penalty Guidelines to settlements of its investigations will yield greater consistency and clarity to the remedies and sanctions that resolve such investigations.

In FY2011, the Office of Enforcement led a multi-office task force, inquiring into significant power outages in the southwestern United States during the winter of 2011. Through an extensive fact-finding mission, the task force identified the causes of the outages and made recommendations for prevention of future widespread electricity failures and gas curtailments. The task force capitalized on the investigative skills of DOI to lead a team of FERC and North American Electric Reliability Corporation (NERC) experts to quickly issue a comprehensive report that was released in August 2011.

In FY2011, DOI has continued to focus on the enforcement of the Reliability Standards. Through Enforcement's investigations, with the assistance of technical expertise from the Office of Electric Reliability (OER) and in conjunction with the investigative efforts of NERC, the Commission addressed and resolved findings of violations of Reliability Standards by two entities. Moreover, DOI staff continues its coordination with the compliance programs of NERC and the eight Regional Entities (REs) as to Reliability Standards. DOI played a central role in processing 270 Notices of Penalty (NOPs) that NERC filed with the Commission during FY2011, in which REs proposed monetary penalties totaling approximately \$12 million for alleged violations of the Reliability Standards.

⁴ For a discussion of the processes by which Enforcement staff conducts and concludes investigations, see Revised Policy Statement, *supra* note 1.

⁵ *Enforcement of Statutes, Regulations, and Orders*, 134 FERC ¶ 61,054 (2011).

⁶ *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010) (Penalty Guidelines).

Notably, during this fiscal year the Commission affirmed an Initial Decision ordering an individual to pay a civil penalty of \$30 million for violating the Commission's Anti-Manipulation Rule. In another matter, the Commission affirmed an Initial Decision agreeing with DOI staff arguments that a complainant before the Commission failed to prove allegations of energy market manipulation.

The work of DOI this fiscal year included twelve Commission orders related to investigations. In addition to the two matters discussed in the foregoing paragraph, the Commission issued nine orders approving settlements reached by DOI staff with the subjects of investigations and one order assessing a \$50,000 penalty following briefing by both staff and the investigative subject before the Commission. The nine settlements resolved investigations concerning market manipulation, submission of misleading information, Reliability Standards, OATT provisions, natural gas open access policies, and market based rate (MBR) regulations. The settlements from these matters resulted in the payment of over \$2.9 million in civil penalties and more than \$2.75 million in disgorgement of unjust profits, as well as compliance monitoring reporting requirements in most cases.

Furthermore, DOI staff appeared in federal district court with respect to two of its investigations during this fiscal year. Staff filed an action in the United States District Court for the District of New Jersey to enforce a subpoena against a non-cooperative witness. Staff also sought an injunction in the United States District Court for the Northern District of Indiana to enforce the terms of a compliance order issued under Part I of the FPA to address deficiencies under a Commission-issued hydropower license. In addition to investigation-related work, DOI continued its rigorous analysis of self-reports, Hotline calls, referrals, and other matters brought to staff's attention.

B. Significant Matters

1. Southwest Inquiry Task Force Regarding February Outages and Curtailments

On February 14, 2011, the Commission ordered an inquiry into the causes of widespread electricity outages and gas curtailments in Texas and the Southwest that occurred during the first week of February 2011.⁷ Approximately 4.4 million electric customers within the footprints of the Electric Reliability Council of Texas (ERCOT) and the Western Electric Coordinating Council (WECC) lost power because of rolling blackouts. Over 50,000 gas customers had curtailed gas service in New Mexico, Arizona, and Texas, some for as long as a week. Working jointly with NERC, DOI led a task force, comprising members from each of the Commission's program offices, which completed the inquiry in six months. The Commission and NERC released a joint report in August 2011.⁸ The task force concluded that extreme, prolonged cold weather caused the majority of the electric outages and gas curtailments subject to the inquiry.

In the report, task force staff and NERC made twenty-six recommendations to prevent future electrical outages, in the areas of planning and reserves, coordination with generator owners/operators, winterization, communications, and load shedding. As a result of the inquiry findings, NERC is considering the need for a new standard that directly requires generators to develop, implement, and maintain plans to winterize their units (such as inspecting and maintaining heat tracing and thermal insulation, and installing wind breaks and enclosures to protect equipment and lines vulnerable to freezing).

⁷ Inquiry into Recent Outages in Texas and the Southwest, 134 FERC ¶ 61,104 (2011).

⁸ The report is available at <http://www.ferc.gov/legal/staff-reports/08-16-11-report.pdf>

The report also set forth the FERC and NERC staff finding that additional gas storage could have prevented many of the gas curtailments. The report made six recommendations to prevent future gas curtailments. The report also encouraged lawmakers in Texas and New Mexico to work with state regulators and the gas industry to explore adopting uniform standards for the winterization of natural gas production and processing facilities. Further recommendations encouraged state commissions to work with gas utilities on curtailment plans, including how to prioritize retail gas customers versus gas-fired electric generators that serve retail electric load. On November 9, 2011, staff sent letters to the WECC Regional Entity, the Southwest Power Pool Regional Entity, and the Texas Reliability Entity asking them each to report on any efforts they have taken to assess preparedness in their respective regions for this winter. The letters specifically requested that their responses focus on the report's recommendations, such as modifications to the planning and balancing authorities' winter preparation processes.

2. Public Notice of Staff's Preliminary Findings in Investigations

The Commission moved forward this fiscal year with its policy to promote transparency in investigations. On January 24, 2011, the Commission issued its order on rehearing confirming and clarifying its policy regarding issuance of public notices of alleged violations, which was first stated in a Commission Order dated December 17, 2009.⁹ In the order on rehearing, the Commission rejected rehearing requests but responded to concerns about providing transparency prior to Commission issuance of a show cause order. The Commission reaffirmed several benefits of the public notice. For example, the notice enables third parties to bring relevant information, either inculpatory or exculpatory, to the attention of staff, and also provides notice to the public of conduct that may be subject to penalties and should be self-reported. The order clarified that the public notices will only issue after an entity has had the opportunity to respond to preliminary findings and that response has not changed staff's conclusions as to findings of violation; that the Director may issue a notice that an investigation has terminated if public notice of preliminary findings has previously issued; that staff will tell subjects in advance that the notice will be issued; and that third-party submissions will not be treated as interventions, but will be treated confidentially and subjects will have the opportunity to respond to those submissions. Since issuance of the order on rehearing, the public notices have issued in eleven matters.

3. Brian Hunter

In April 2011, the Commission affirmed in all respects the presiding judge's Initial Decision finding that former Amaranth Advisors L.L.C. trader Brian Hunter violated the Anti-Manipulation Rule (18 C.F.R. section 1c.1) and assessed against Mr. Hunter a \$30 million civil penalty.¹⁰ Significantly, the Commission's issuance confirmed findings in the Initial Decision regarding the Commission's personal jurisdiction over Mr. Hunter; the burden of proof; the manipulative scheme; "open market" trading as a violation of the Commission's regulations where there is manipulative intent; and that staff need not show the scheme resulted in artificial prices or the absence of trades at prevailing prices. The Commission affirmed the findings of fact that Hunter sold significant numbers of futures contracts during the settlement periods of three at-issue months with the intent to depress prices and financially benefit Amaranth's significant derivative positions held on other platforms. The Commission further concluded that Hunter's manipulative scheme had a direct and substantial effect upon FERC-jurisdictional natural gas transactions. The Commission ordered Hunter to pay the full penalty recommended

⁹ *Enforcement of Statutes, Regulations, and Orders*, 129 FERC ¶ 61,247 (2009) *order on reh'g*, 134 FERC ¶ 61,054 (2011).

¹⁰ *Brian Hunter*, 135 FERC ¶ 61,054 (2011).

by DOI staff. This is the first fully litigated proceeding under Section 4A of the Natural Gas Act (NGA), and involves the largest civil penalty since EAct 2005.¹¹

In May 2011, Hunter filed a request for rehearing, which is pending before the Commission.

4. ISO-NE Connecticut Parties' Complaint Alleging Market Manipulation

In May 2011, the Commission affirmed the presiding judge's Initial Decision agreeing with DOI staff's position that a third-party complainant had failed to establish violations of the Anti-Manipulation Rule (18 C.F.R. section 1c.2).¹² Complaints filed by the Connecticut Attorney General, the Connecticut Department of Public Utility Control and the Connecticut Office of Consumer Council (the Connecticut Representatives) against ISO-New England, Inc. (ISO-NE), Constellation Energy Commodities Group, Inc., Shell Energy North America (U.S.) LP, and Brookfield Energy Marketing Inc. related to the three market participants' capacity imports into ISO-NE from capacity resources located in the New York ISO. After hearing and briefing, the ALJ issued an Initial Decision that found against market manipulation in September 2010. The Connecticut Representatives filed exceptions to the decision in October 2010 on a variety of grounds. Staff and the market participants filed briefs opposing the exceptions as without merit and the Commission agreed, affirming the findings of the Initial Decision. The Commission agreed with DOI that the complainants failed to demonstrate that the market participants acted with the requisite scienter for a finding of market manipulation, in part because the market participants "fully intended to deliver their capacity-backed energy in the unlikely event ISO-NE actually called on it."¹³

In June 2011, the Connecticut Representatives filed a request for rehearing. In July 2011, the Commission granted rehearing for further consideration and tolled the time period for rehearing. Two of the market participants subsequently filed answers to the Connecticut Representatives' request for rehearing. These filings are pending before the Commission.

5. Enforcement Actions in Federal Court

Staff appeared in federal district court on behalf of two investigations this year. As mentioned above, staff pursued an injunction in the United States District Court for the Northern District of Indiana to enforce compliance with a Commission hydropower project license. After staff filed the complaint seeking enforcement of the terms of a compliance order issued by the Office of Energy Projects (OEP), and briefed issues raised by the licensee regarding the need to join other state and federal agencies as interested parties, the licensee resolved compliance issues that had been outstanding for several years. The action and investigation terminated with DOI's withdrawal of the complaint upon confirmation by OEP staff that the licensee had cured its compliance deficiencies. DOI staff also filed an administrative subpoena enforcement petition in the United States District Court for the District of New Jersey. In *Allegations of Market Manipulation of the Electric Energy Markets in the West*, Commission Docket No. IN08-8-000, a witness in the investigation refused to comply with a Commission subpoena and, failed to appear at his deposition. The court issued an order to show cause compelling the witness to appear and explain his failure to comply with the subpoena. Upon issuance of the court order, the witness agreed to testify under oath and staff, in turn, withdrew its petition to enforce the subpoena.

¹¹ Energy Policy Act of 2005, Pub. No. 109-58, 119 Stat. 594 (2005).

¹² *Richard Blumenthal, Attorney General for the State of Connecticut v. ISO-New England Inc., et al.*, 135 FERC ¶ 61,117 (2011).

¹³ *Id.* at P 36.

6. Moussa I. Kourouma

In June 2011, the Commission issued an order finding an individual, Moussa I. Kourouma, to have violated 18 C.F.R. section 35.41(b) by knowingly submitting misleading information and omitting material facts regarding ownership of Qantum Energy, LLC to the Commission and a Commission-approved regional transmission organization.¹⁴ The Commission's order followed a non-public investigation and a paper hearing on an order to show cause. The order directed Mr. Kourouma to pay a penalty of \$50,000. In August 2011, Mr. Kourouma filed a motion to stay enforcement of the civil penalty pending the outcome of his petition for review of the penalty assessment before the U.S. Court of Appeals for the District of Columbia Circuit. In September 2011, the Commission issued an order denying the motion for stay, but allowing briefing on Mr. Kourouma's ability to pay, which issue remains pending.

C. Settlements

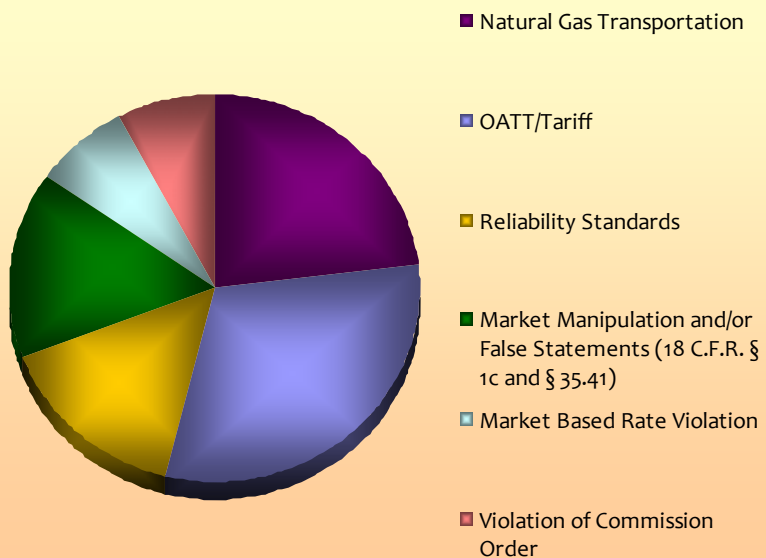
In FY2011, the Commission approved nine settlement agreements entered into by Enforcement for total civil penalty payments of over \$2.9 million and disgorgement of more than \$2.75 million plus interest.¹⁵ These settlements resolved OATT violations by two entities, a violation of 18 C.F.R. section 35.41 by one entity, Reliability Standards violations by two entities, violations of natural gas open access transmission rules by three entities, violations of regulations related to MBR authority regulations by one entity, and a violation of 18 C.F.R. section 1c.2 by one entity.

The graphs below compare settlements approved in FY2011, by type of violation, with settlements in prior years. Investigations resulting in settlements of violations of open access transmission policies, i.e., capacity release violations, continue to decrease. This trend is not surprising as those regulations, and related compliance programs, mature.

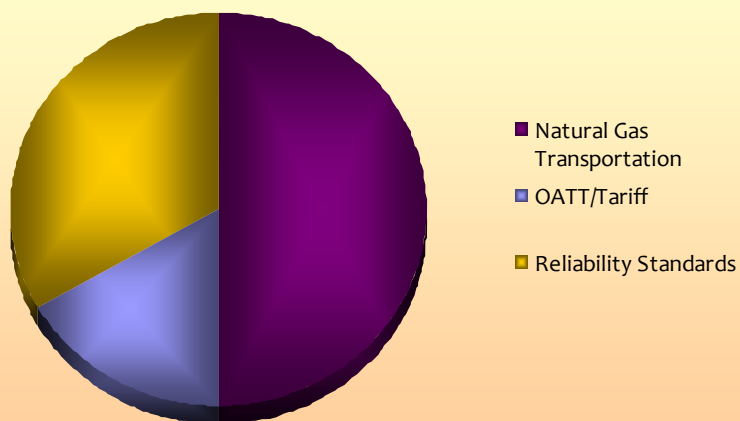
¹⁴ *Kourouma*, 135 FERC ¶ 61,245 (2011).

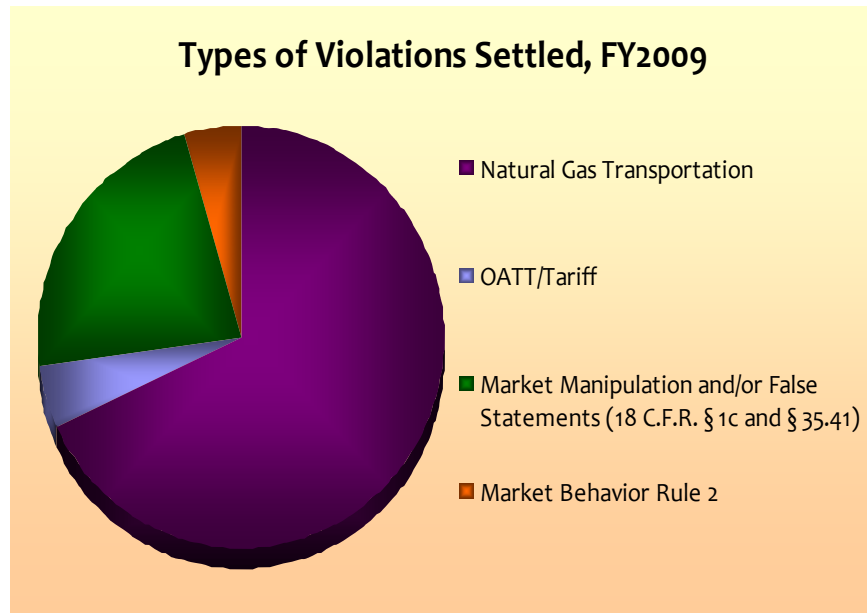
¹⁵ A table of FY2011 Civil Penalty Enforcement Actions, both those resolved through settlement and those resolved through agency proceedings, is attached to this report as Appendix B.

Types of Violations Settled, FY2011



Types of Violations Settled, FY2010





The nine settlement agreements between Enforcement and the investigation subjects are described more fully as follows.

North America Power Partners. On October 28, 2010, the Commission approved a settlement between the Office of Enforcement and North America Power Partners (NAPP).¹⁶ NAPP is a curtailment service provider assisting individual resources participating in demand response programs in the PJM Interconnection, LLC (PJM). Upon referral by PJM, staff investigated NAPP's compliance with the PJM Open Access Transmission Tariff (OATT) and with 18 C.F.R. section 1c.2 (2010). Staff determined that NAPP offered several resources into PJM's Synchronized Reserve Market at times when those resources had reported to NAPP they were unavailable. In addition, during numerous Synchronized Reserve Events, NAPP failed to notify resources that they must respond. Enforcement also determined that NAPP submitted inaccurate information to PJM in the registration of resources and improperly registered 101 resources before obtaining authorizations or verifications of their willingness to be a resource. All of the foregoing conduct violated PJM's tariff and 18 C.F.R. section 1c.2. Lastly, staff determined that NAPP engaged in two additional minor tariff violations. Under the settlement agreement approved by the Commission, NAPP agreed to pay a civil penalty of \$500,000, disgorge \$2,258,127, plus interest, in unjust profits, and undertake compliance monitoring. The size of the penalty took into account the financial instability of the company; otherwise the seriousness of the conduct would have resulted in a higher civil penalty.

¹⁶ *North America Power Partners*, 133 FERC ¶ 61,089 (2010).

National Energy & Trade, L.P. On January 31, 2011, the Commission approved a settlement in the matter of National Energy & Trade, L.P. (NET).¹⁷ Enforcement discovered apparent flipping transactions involving NET and its affiliated intrastate natural gas pipeline, Mission Valley Pipeline Company, through another investigation into an unrelated entity's potential violations of the open access transportation policies. Flipping transactions involve entering a series of consecutive, prearranged, short-term discounted releases alternating between affiliated shippers, to circumvent the bidding requirement that would apply to a longer-term discounted release. Enforcement concluded that NET engaged in prohibited flipping transactions between November 2006 and March 2007, involving approximately 4.2 Bcf of gas. Enforcement also concluded that between August 2005 and March 2008, Mission Valley violated the shipper-must-have-title requirement by transporting 17.6 Bcf of NET-titled gas on capacity held by Mission Valley. Under the settlement agreement, NET agreed to pay a civil penalty of \$500,000. NET also agreed to submit to compliance monitoring by Enforcement staff.

Dartmouth Power Associates Limited Partnership. On February 3, 2011, the Commission approved a settlement between Dartmouth Power Associates Ltd. Partnership (Dartmouth) and Enforcement in which Dartmouth admitted to violations of ISO-NE's tariff and 18 C.F.R. section 35.41 (2010).¹⁸ Dartmouth failed to timely report to ISO-NE an outage of its generating unit. ISO-NE withheld from Dartmouth the \$231,952.50 capacity payment that would have followed from Dartmouth's conduct. Dartmouth adopted compliance procedures enhancing its communications with ISO-NE and was fully cooperative with Enforcement's investigation. The Commission accepted the settlement without requiring further payment, but noted that but for ISO-NE's withholding of this payment, the Commission would likely have assessed a civil penalty.

National Fuel Marketing Company, LLC. On April 7, 2011, the Commission approved a settlement between Enforcement and National Fuel Marketing Company, LLC (NFM).¹⁹ This order resolved staff's investigation into whether NFM and three of its affiliates' (NFM Midstream, LLC, NFM Texas Pipeline, LLC and NFM Texas Gathering, LLC) bidding for, and use of, interstate natural gas pipeline transportation capacity in a 2007 open season on Cheyenne Plains Gas Pipeline Company, LLC (Cheyenne Plains) violated any Commission statutes, rules or requirements. In the settlement approved by the Commission, NFM neither admitted nor denied violation of the Commission's shipper-must-have-title requirement and agreed to pay a \$290,000 civil penalty. Because NFM experienced a net loss on the transactions at issue, it did not have unjust profits subject to disgorgement. NFM also agreed to submit compliance monitoring reports.

Seminole Energy Services, LLC. On April 7, 2011, the Commission approved a settlement between Enforcement and Seminole Energy Services, LLC (Seminole).²⁰ This order resolved staff's investigation into whether Seminole and four of its affiliates' (Seminole Gas Company, LLC, Seminole High Plains, LLC, Lakeshore Energy Services, and Vanguard Energy Services, LLC) bidding for, and use of, interstate natural gas pipeline transportation capacity in a 2007 open season on Cheyenne Plains violated any Commission statutes, rules or requirements. In the settlement approved by the Commission, Seminole neither admitted nor denied violation of the Commission's prohibition against buy/sell transactions and agreed to pay a \$300,000 civil

¹⁷ *National Energy & Trade, L.P.*, 134 FERC ¶ 61,072 (2011).

¹⁸ *Dartmouth Power Associates Limited Partnership*, 134 FERC ¶ 61,085 (2011).

¹⁹ *National Fuel Marketing Company, LLC*, 135 FERC ¶ 61,011 (2011).

²⁰ *In re Seminole Services, LLC*, 135 FERC ¶ 61,010 (2011).

penalty. Seminole disgorged \$271,315 of unjust profits arising from the transactions at issue, and also agreed to submit compliance monitoring reports.

Western Electricity Coordinating Council. On July 7, 2011, the Commission approved a settlement between the Office of Enforcement, NERC, and WECC related to a February 14, 2008, disturbance in Utah.²¹ Enforcement and NERC determined that the Pacific Northwest Security Coordinator (PNSC), the predecessor to WECC's function as a reliability coordinator, violated nine requirements of five Reliability Standards. Enforcement and NERC determined that the Reliability Coordinator failed to respond adequately to the disturbance and thereby violated requirements related to the restoration of Area Control Error (ACE), issuance of energy emergency alerts and three-part communication. Enforcement and NERC further determined that PNSC violated requirements related to situational awareness. Accordingly, WECC agreed to pay a \$350,000 civil penalty, divided equally between the U.S. Treasury and NERC.

Black Hills Power, Inc. On August 5, 2011, the Commission approved a settlement in the matter of Black Hills Power, Inc. (Black Hills) that addressed violations Black Hills committed in connection with posting, non-discrimination, and tariff requirements.²² In the agreement, Black Hills admitted that it (1) failed to make non-firm available transmission capacity (ATC) available on an AC/DC/AC converter tie facility (DC Tie); (2) failed to charge its customers the appropriate on-peak and off-peak transmission rates for non-firm transmission service over the DC Tie; (3) improperly provided and discounted firm transmission service to an affiliate, which discounted service Black Hills did not provide to non-affiliate customers; (4) provided brokering services without charge for an affiliate and did not disclose the services on its OASIS; and (5) failed to post an accurate list of designated network resources. Black Hills agreed to pay a civil penalty of \$200,000 and undertake specific compliance measures to deter similar prospective violations.

Grand River Dam Authority. On August 29, 2011, the Commission approved a settlement between Enforcement and the Grand River Dam Authority (GRDA) in August 2011 resolving violations of fifty-two requirements of nineteen Reliability Standards.²³ GRDA, as owner and operator of a transmission system within the Eastern Interconnection, agreed to pay a \$350,000 penalty, one-half to the U.S. Treasury and one-half to NERC. GRDA also agreed to submit to compliance monitoring and a \$2 million investment in compliance measures, as well as continued mitigation efforts. The violations related to visibility and control of GRDA's transmission system, maintenance of protection system components, long term system planning, facility ratings, facility connection requirements, emergency operations in the event of a control center failure, and personnel training.

Duke Energy Carolinas, LLC. On September 30, 2011, the Commission approved a settlement between Enforcement and Duke Energy Carolinas, LLC (DEC), resolving an investigation of issues referred by the Division of Audits. DEC agreed to pay a \$425,000 civil penalty and to submit compliance monitoring reports for at least one year for violations of a Commission order, DEC's Commission-approved tariffs, and Commission regulations related to DEC's MBR authority and the Commission's Electric Quarterly Reports (EQR) filing requirements.²⁴ Although the Commission had previously revoked DEC's MBR authority by order and required DEC to provide cost-based rate sales in its control area, DEC entered into forty-two transactions in which it charged eight counterparties prices exceeding the maximum allowed rate in DEC's

²¹ *Western Electricity Coordinating Council*, 136 FERC ¶ 61,020 (2011).

²² *Black Hills Power, Inc.*, 136 FERC ¶ 61,088 (2011).

²³ *Grand River Dam Authority*, 136 FERC ¶ 61,132 (2011).

²⁴ *Duke Energy Carolinas, LLC*, 136 FERC ¶ 61,237 (2011).

cost-based rate tariff. The eight counterparties were entitled to obtain power from DEC at cost-based rates because Duke had market power in the area of the sales. DEC also misreported 134 transactions as MBR sales in its EQR filing reports. DEC admitted to its violations and refunded \$97,591 plus interest to the counterparties before and independent of finalizing its settlement with Enforcement. Because DEC has already disgorged profits related to its violation, the settlement did not include a disgorgement provision.

D. Self-Reports

In the period from issuance of the first Policy Statement on Enforcement in 2005 through the end of FY2011, staff has received a total of 458 self-reports. Recent years' reports are broken down by fiscal year as follows:

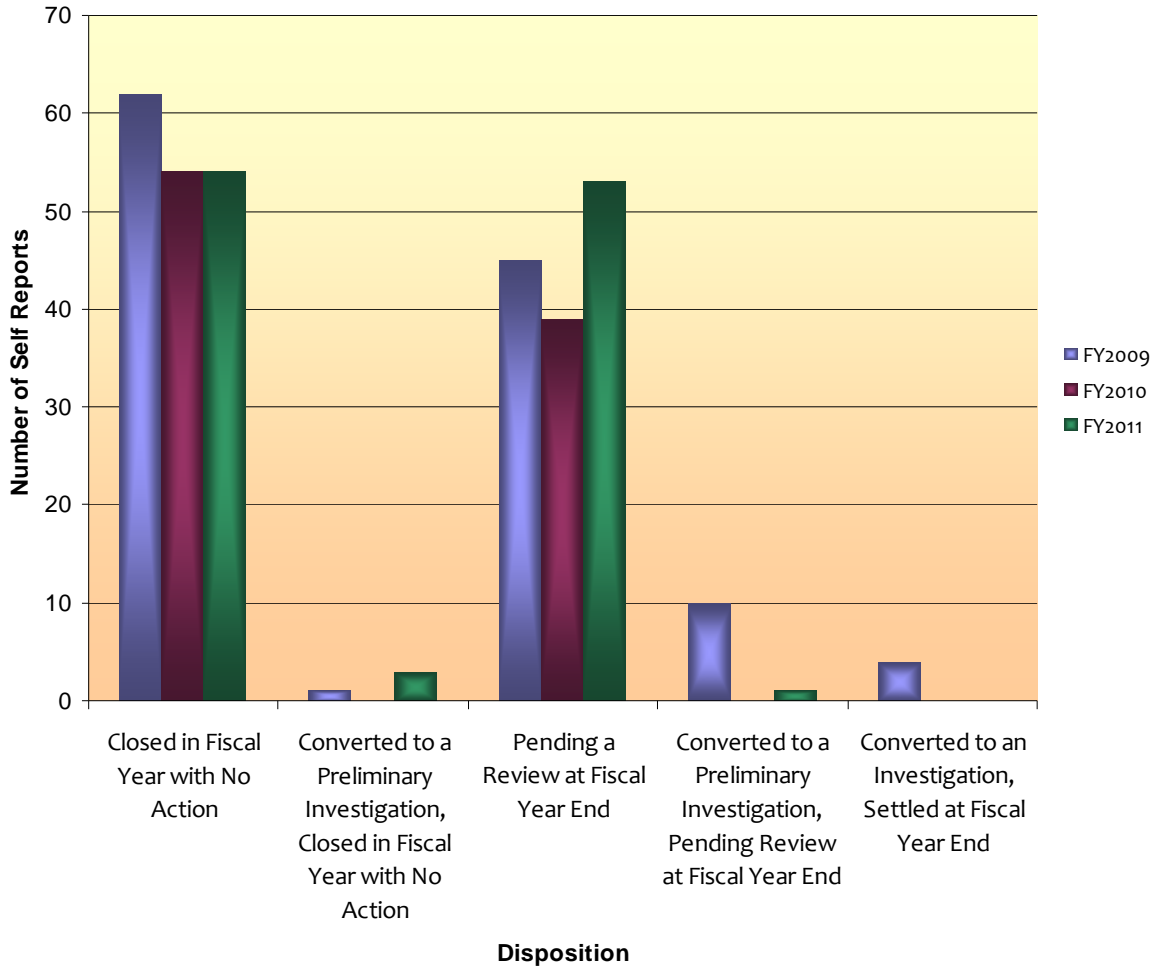
- FY2009 – 122 reports received
- FY2010 – 93 reports received
- FY2011 – 107 reports received

Of the 107 self-reports received in FY2011, staff closed 54 after an initial review and without opening an investigation. Staff's review is still pending on 53 self-reports. Staff received self-reports from a variety of market participants, including power marketers, electric utilities, natural gas companies, and RTO/ISOs.

The Penalty Guidelines emphasize the importance of self-reporting, providing credit that could significantly mitigate a penalty if the violation came to staff's attention through a self-report.²⁵ Staff continues to encourage the submission of self-reports.

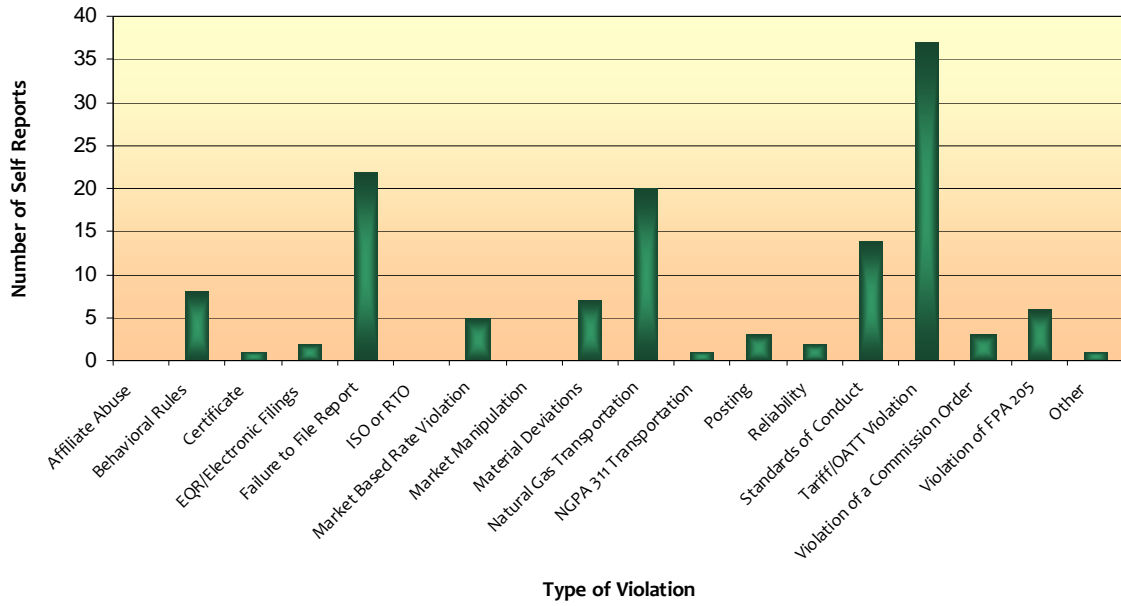
²⁵ Penalty Guidelines, 132 FERC ¶ 61,216 at P 127.

Self Report Dispositions at End of Fiscal Year, FY2009 - FY2011

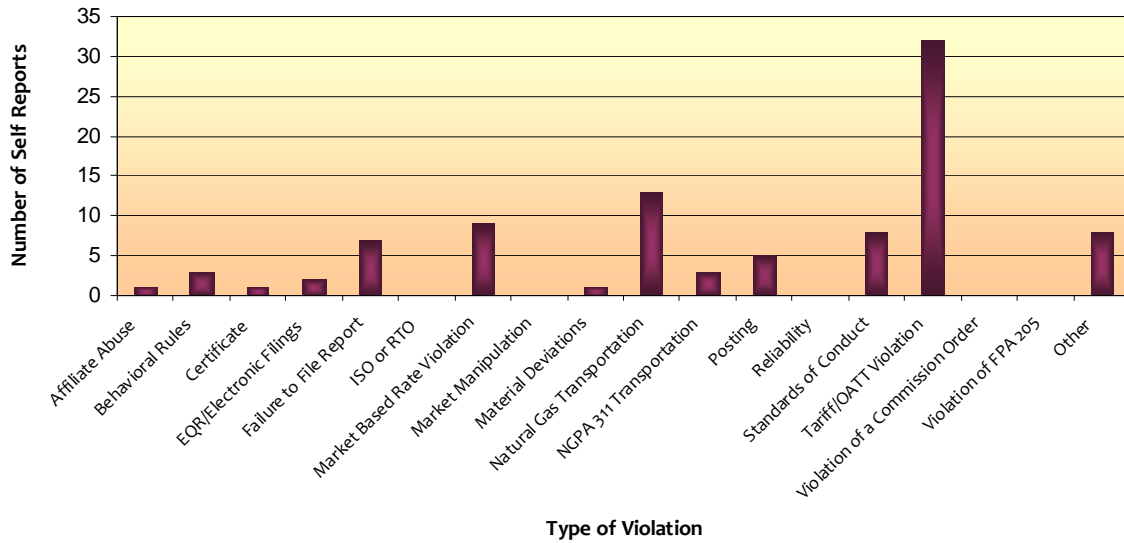


The following charts depict the types of violations for which staff received self-reports from FY2009 through FY2011. As in previous years, Open Access Transmission Tariff (OATT) violations accounts for a significant portion of the self-reports received in FY2011.

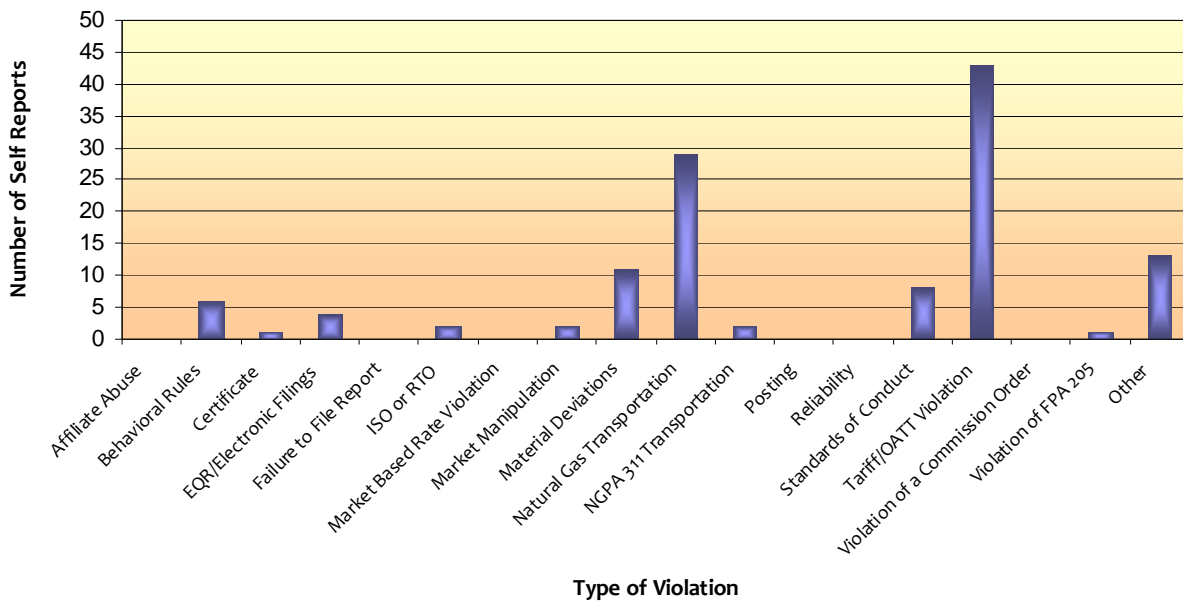
Self Reports Closed in FY2011 by Type of Violation



Self Reports Closed in FY2010 by Type of Violation



Self Reports Closed in FY2009 by 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, staff presents the following illustrations summarizing some of the self-reports that staff closed in FY2011. These illustrations are intended to provide guidance to the public and to regulated entities as to why staff chose not to pursue enforcement action, while still preserving the non-public nature of the self-reports.

Tariff/OATT Violation. A transmission provider self-reported its granting of transmission service requests within 20 minutes before the hour, which constituted an act of discretion because the tariff was silent as to this authority. The entity did not initially log and publicly disclose these acts of discretion as required by Commission regulations. Upon discovery of this violation, the entity posted a blanket statement on its OASIS stating that requests within the 20-minute period will be accepted when practicable. It also promptly filed with the Commission a proposed tariff modification stating that requests for transmission made within 20 minutes before the hour would be accommodated when practicable, which the Commission accepted. The transmission provider gave credible evidence that the requests for service in question were granted in a non-discriminatory manner. Because the conduct did not cause any harm to market participants and the entity took appropriate remedial measures, staff closed the self-report with no further action.

Tariff/OATT Violation. An electric utility's tariff required it to assess penalties for generator and energy imbalances and make timely distribution of the money collected to non-offending customers. The utility had accumulated approximately \$100,000 in such penalties over more than three years that it inadvertently failed to distribute. After reporting this violation, the utility filed a refund report, accepted by the Commission, and disbursed the accumulated amount with interest. The utility revised its procedures regarding satisfying this tariff requirement and provided additional training to its employees. Based on the self-report, the absence of wrongful

intent, the amount of disbursements at issue, the compensatory remedial measures, and the measures taken to prevent recurrence, staff closed the self-report without action.

Tariff/OATT Violation. An RTO/ISO self-reported four tariff violations due to its market operations; in each, the RTO/ISO did not adhere to the tariff requirements for market operations or price calculations due to software errors. These minor software errors affected prices in the following four ways: using a generation reference bus instead of a load reference bus in calculating the Locational Marginal Price (LMP) for certain intervals when there otherwise was no market solution; failing to periodically mitigate certain bids as required when conducting the Day-Ahead Market; calculating LMPs for zonal trading hubs based on an improper aggregation of LMPs within those hubs; and calculating default prices using lagging gas price indices. Staff determined that the RTO/ISO had remedied each matter promptly upon discovery, minimal market harm resulted, and the errors were inadvertent. To ensure that the RTO/ISO adhered to its market operations responsibilities, staff referred the four matters to the Division of Audits to examine as part of its audit of the RTO/ISO. The Division of Audits confirmed that the ISO had remedied the errors and found that it had established procedures to prevent similar tariff violations.

Tariff/OATT Violation. While preparing a compliance filing for its public utility commission, an investor-owned utility (IOU) discovered that, in violation of its tariff, it had neglected to file a Small Generator Interconnection Agreement (SGIA) for the interconnection of a pilot photovoltaic project it owned to its own wholesale distribution network. The IOU mistakenly believed that, because it was on both sides of the SGIA, the filing requirement did not apply to it. The IOU's failure to file did not improperly benefit the IOU. Upon discovering the violation, the IOU found that it had filed interconnection agreements for all of its other photovoltaic projects. The IOU promptly remedied the violation by filing the SGIA and implementing additional training and work process documentation protocols that should prevent repeat violations. Staff closed the self-report with no further action.

Standards of Conduct Violation. A transmission provider self-reported a violation of the non-conduit rule of the Standards of Conduct for Transmission Providers, 18 C.F.R. section 358.6 (2011). During a storm, an employee sent out a company-wide email, received by marketing function employees, describing the outage caused by the storm amid a general description of company's efforts to restore service. Within 20 minutes of the email, the company compliance officer posted the information on OASIS, as required by the transparency rule of the Standards of Conduct. Staff confirmed that the company's marketing function did not undertake any bidding in reliance on the non-public information. Further, the company changed its policy for sending company-wide emails. Staff therefore closed the self-report with no action.

Standards of Conduct Violation. During the course of an internal audit of its Standards of Conduct training program, an electric company discovered that 14 of 30 newly hired employees or contractors completed the Standards of Conduct training outside the first 30 days of their employment. Further, 14 of 61 contractors (whose contracts expired before the end of the year) did not complete the required annual Standards of Conduct training. After this discovery, the company immediately revised its internal training procedures. Since the company quickly self-reported the problem, took immediate steps to remedy the situation, and no harm resulted from the error, staff closed the self-report with no action.

Market-Based Rate Authority Violation. A retail provider of electric power self-reported that it sold energy into two RTO/ISOs without first obtaining MBR authority. Additionally, the company failed to notify the Commission of (1) whether it reported to price index publishers, (2) its sales in quarterly Electric Quarterly Report (EQR) submissions, (3) its 20 largest retail purchasers, and (4) its designated corporate official, as required by regulation. The company did

not realize any unjust profits from these transactions, which likewise caused no harm to the market. The company obtained MBR authority, corrected its EQR and filing deficiencies, and implemented additional compliance measures to prevent recurrence. Based on the nature of the infractions and prompt remediation, staff closed the self-report without further action.

Qualifying Facility and Market-Based Rate Authority Violations. An electric company filed a self-report indicating it made sales without MBR authority from the Commission. Although the company is a Commission-approved exempt Qualifying Facility (QF), FERC Order No. 671 required QFs of certain sizes to obtain authorization from the Commission under Section 205 of the FPA prior to selling power at market-based rates. Upon discovering that it had failed to seek required MBR authority and had therefore made unauthorized MBR sales, the company immediately self-reported. After obtaining MBR authorization from the Commission, the company also refunded its customers approximately \$1.25 million for the period it collected the rate without Commission authorization. To ensure future compliance with the Commission's MBR requirements, the company designated a compliance officer whose job responsibilities include review of the company's compliance with all applicable government regulations.

Commission Filing Requirement Violation. An electric utility self-reported that it had inadvertently failed to file required quarterly reports with the Commission reflecting progress on construction of jurisdictional distribution facilities built for its customers. The company identified these errors through a new compliance program and check system that staff concluded was sufficient to ensure that no similar violations occur in the future. The company did not profit from the error and submitted requisite notices with the Commission. Based upon these representations and a review of the construction contract provisions at issue, staff determined to close the self-report with no further action.

Commission Filing Requirement Violation. A fifty-three MW generator with MBR authorization under section 205 of the FPA was late in filing a request for Category 1 seller status, in violation of section 35.36 of the Commission's regulations, and late in filing a change in status report regarding the acquisition of new generation capacity, in violation of section 35.42(d) of the Commission's regulations. After submitting a self-report of these unintentional late filings, the generator promptly submitted the required filings to remedy the violations. The generator self reported that it had discovered the late filings as part of a comprehensive regulatory compliance review and its personnel were unaware of these filing requirements. There was no economic benefit from the failure to timely file these submissions and the generator's late filing of these submissions did not cause harm to the market as the volume of additional generation sites did not raise any vertical market power concerns. The generator has implemented compliance procedures to prevent future recurrence.

Disclosure Violation. An RTO/ISO self-reported that its electronic settlement support system, which allows market participants to access reports regarding their own settlement information, had inadvertently disclosed the confidential settlement information of another market participant. The recipient market participant immediately reported this error to the RTO/ISO and destroyed the information received. The RTO/ISO contacted the company whose information had been inadvertently released, and the entity was satisfied with the steps taken to correct the disclosure. The RTO/ISO determined that a software error was responsible for the disclosure and emailed its market participants alerting them to the situation. Because the violation was quickly remedied and no harm resulted from the disclosure, staff closed the self-report with no further action.

Interlocking Directorate Violation. An electric transmission provider reported that one of its employees held two officer or director level positions for two affiliated companies, in violation of the Commission's interlocking directorate requirements. One of the companies was not engaged in wholesale sales at the time of the violation and has since filed to withdraw its MBR

authority with the Commission. Staff determined that no harm resulted from this violation. The employee resigned from one position, filed an interlock request with the Commission, and then was re-elected to his previous position. The companies likewise improved their compliance measures to prevent future violations of this nature. Staff closed the matter without further action.

Shipper-Must-Have-Title Violations. A company admitted violating the Commission's shipper-must-have-title requirement through two isolated transactions. In the first transaction, the company and a supplier had purchased their own capacity on the same pipelines. The company acting as scheduling agent for the supplier violated the shipper-must-have-title requirement by confusing ownership of the gas and ownership of capacity during scheduling of specific shipments. In the second transaction, the company confused gas purchased for its retail supply business and for its affiliate-owned power plants when scheduling shipment. The company realized no profit from either of these impermissible transactions. Staff also determined that little to no harm occurred because of these violations, and the company improved its personnel training to prevent future violations. Staff closed the matter without further action.

Natural Gas Act/Commission Order Violation. An interstate pipeline self-reported that certain natural gas backhauls and displacement transportation transactions of limited volumes on its pipeline system violated section 3 of the NGA and the Presidential Permit authorizations associated with the importation of natural gas across the international border with Canada. The pipeline brought about deliveries of gas from the United States to direct or retail customers in Canada by displacement; gas did not flow physically from the United States to Canada and did not use any physical transportation capacity. Nevertheless, the pipeline did not have authorization to deliver gas to Canada. After reporting the violation, the pipeline filed for and received authorization from the Commission to export gas to Canada, including the previously unauthorized backhauls and displacement deliveries, thereby ensuring that no similar violations could occur. The company also voluntarily disgorged with interest the small profit it realized from the transactions. Staff closed the matter with no further action.

Certificate Order Violation. A gas company self-reported that it commenced service for five withdrawal wells without first obtaining Commission authorization as stipulated in its certificate order, which required specific approval for various phases and facilities. The company had described the five wells under construction in a request for authorization for service under Phase I, but approval may only be sought or granted after completion of construction. The pipeline did not specifically seek authorization to commence service from these five wells before placing them into service. The company's customers were able to take advantage of the full withdrawal service via those wells, which helped ease gas supply needs during several cold weather events. Staff closed the matter without further action because the company's failure did not harm the environment or the market; the company's oversight was inadvertent and promptly corrected; the company implemented measures to prevent a reoccurrence; and the company implemented measures for future compliance.

Material Deviations Violations. Nine natural gas pipeline companies separately self-reported that they failed to ensure that a number of their transportation service agreements (TSAs) and transportation-related agreements adhere and conform to their currently effective pro-forma TSAs and tariff General Terms and Conditions of Service, as required by the Commission's regulations. Following comprehensive internal reviews of over 7500 TSAs and transportation-related agreements, the companies determined that there were numerous deviations, some of which could affect the substantive rights of market participants. All of the companies promptly self-reported their findings to staff and cured all of these violations by (1) restating the non-conforming TSAs, (2) revising their pro-forma TSAs and tariff consistent with the non-

conforming TSAs, (3) terminating certain non-conforming TSAs pursuant to contractual provisions contained in such agreements, and (4) filing certain non-conforming TSAs and transportation-related agreements with the Commission for approval. All of the companies had compliance programs in place at the time of the violations and improved their compliance programs to account for the lapses that led to the violations. Staff found no evidence that the non-conforming TSAs or transportation-related agreements contained material deviations that were unduly preferential, discriminatory, or caused harm to similarly situated market participants. Furthermore, staff found no evidence that the failure to file the non-conforming TSAs was willful. Accordingly, staff closed these matters with no further action.

E. Investigations

During FY2011, DOI staff opened and closed approximately the same number of investigations as it did in FY2010. Staff opened 12 non-self-reported investigations and 2 inquiries (staff opened 15 investigations in FY2010). Staff closed 19 pending investigations through settlement, Commission order on an order to show cause, or without enforcement action (staff closed 16 investigations and 1 inquiry in FY2010).

1. Statistics on Investigations

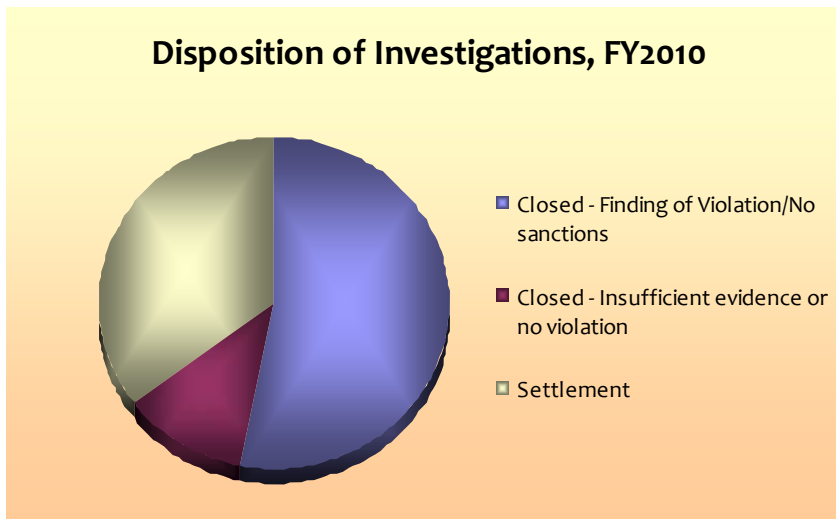
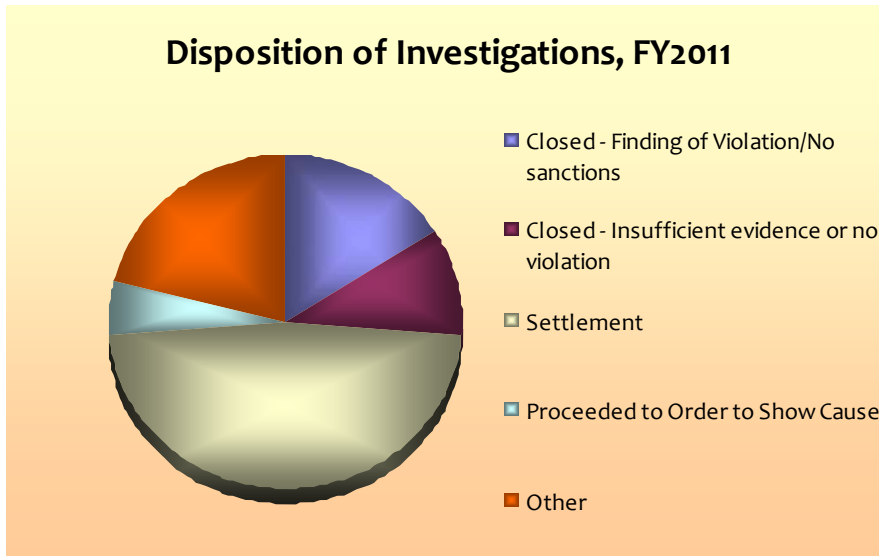
Of the 12 investigations staff opened this fiscal year, some of which involve more than one type of violation or multiple subjects, 5 address RTO/ISO tariff violations, 8 involve market manipulation or false statements to the Commission or RTO/ISO, 2 relate to Commission-issued hydropower licenses, 1 involves a Standards of Conduct issue, and 1 involves the Commission's authority under the Interstate Commerce Act. Additionally, DOI staff inquiries examined widespread power outages in the Southwest and are currently examining potential reliability concerns associated with the power outages in early September 2011 in parts of California, Arizona, and northern Baja California, Mexico.

Staff first learned of the issues in 6 investigations that it opened in FY2011 through referrals from RTO/ISO market monitoring units (MMUs). Pursuant to Commission policy, MMUs shall refer potential misconduct to the Commission for investigation.²⁶ Staff opened 2 investigations this fiscal year upon referral from Market Oversight, and 1 other based on a referral from another program office within the Commission. One investigation resulted from a directive from the Commission. Two resulted from tips from outside callers through the Enforcement Hotline, and the Commission identified the need for the inquiries into significant disturbances on the Bulk-Power System through its own efforts.

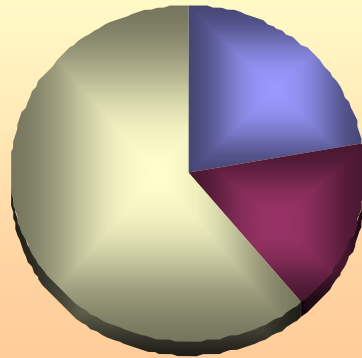
Of the investigations closed this fiscal year, staff closed two upon finding no violations. In three investigations, staff found a violation, but determined not to pursue an enforcement action. Nine investigations concluded with settlement orders and one, the case against Moussa I. Kourouma discussed above, closed with an order of penalty following an order to show cause. Staff closed three investigations that related closely to a complaint resolved by a Commission settlement judge, concluding that the resolution addressed all concerns of Enforcement. Finally, one investigation, in which staff pursued an injunction in federal district court, closed upon withdrawal of the action after the entity had cured its compliance deficiencies.

²⁶ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009). See also *Market Monitoring Units in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267 (2005).

The following charts show the disposition of investigations that closed in fiscal years 2008 through 2011.

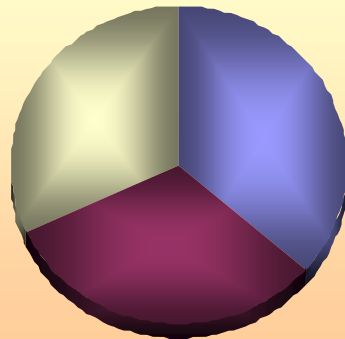


Disposition of Investigations, FY2009



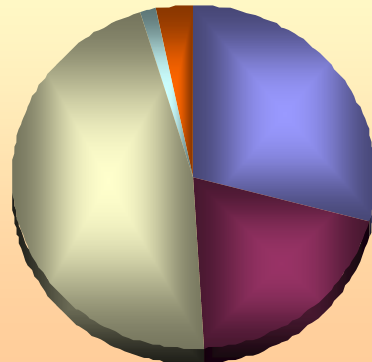
- Closed - Finding of Violation/No sanctions
- Closed - Insufficient evidence or no violation
- Settlement

Disposition of Investigations, FY2008



- Closed - Finding of Violation/No sanctions
- Closed - Insufficient evidence or no violation
- Settlement

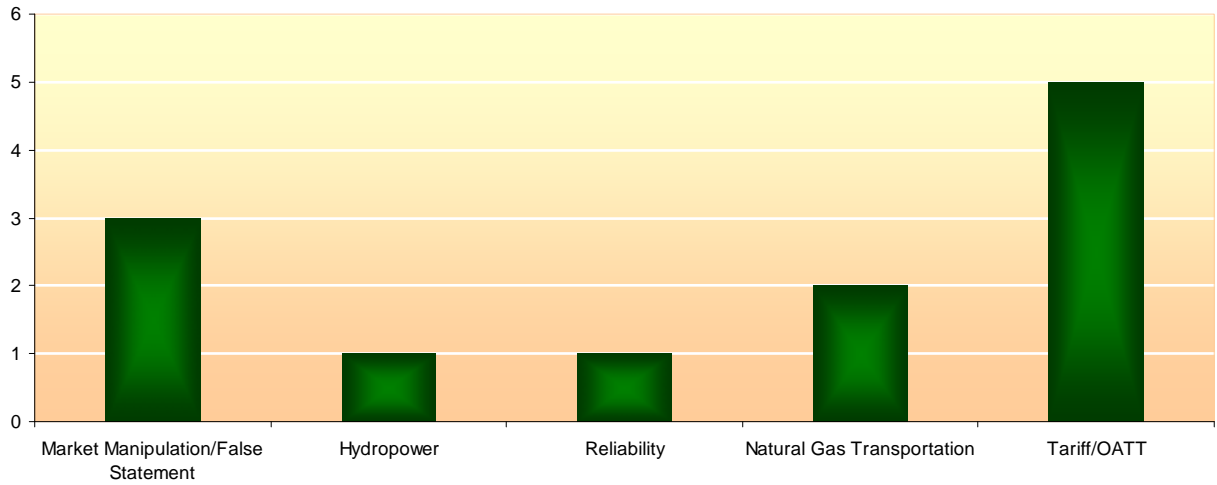
Disposition of Investigations All to Date, FY2007 - FY2011



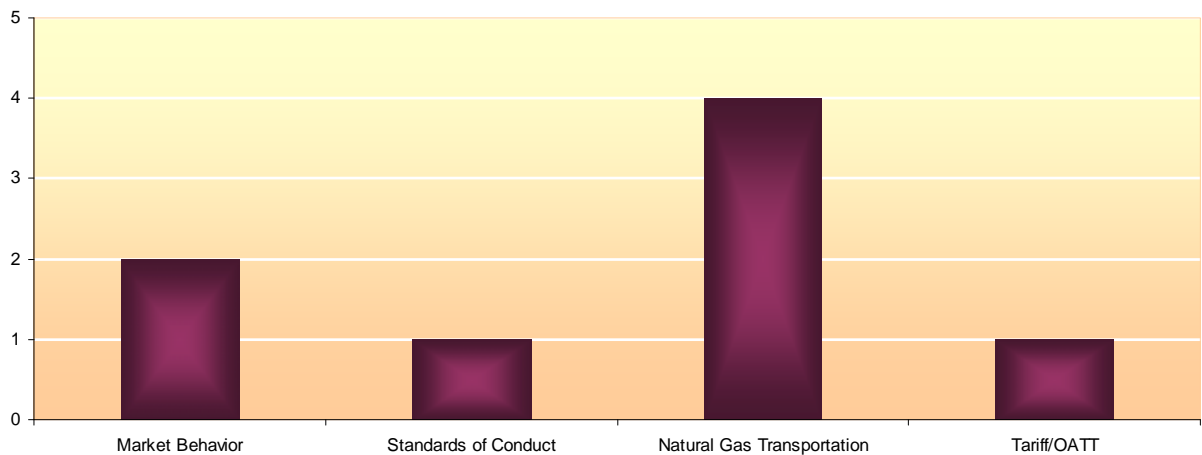
- Closed - Finding of Violation/No sanctions
- Closed - Insufficient evidence or no violation
- Settlement
- Proceeded to Order to Show Cause
- Other

The following charts provide the nature of the conduct at issue for those investigations that were closed without action in fiscal years 2009 through 2011.

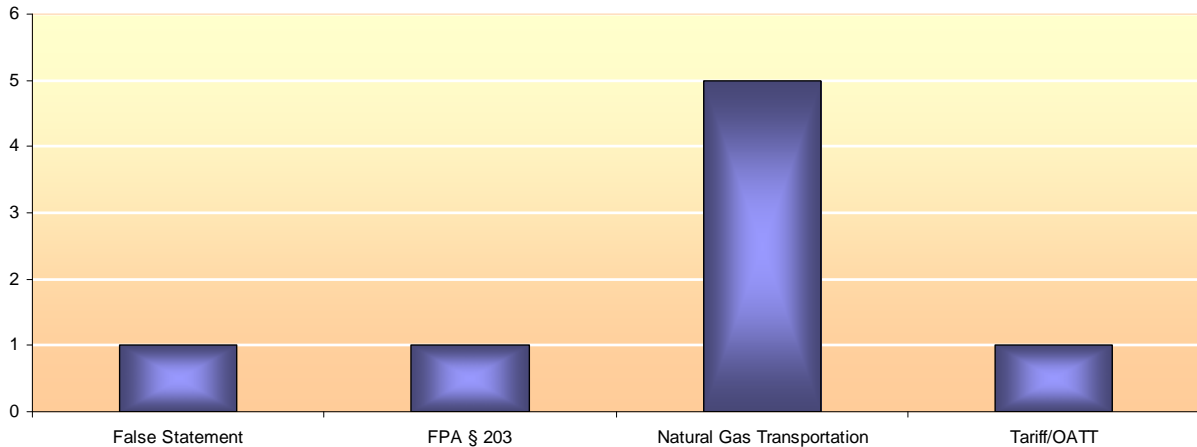
Types of Violation in Investigations Closed Without Action, FY2011



Types of Violation in Investigations Closed Without Action, FY2010



Types of Violation in Investigations Closed Without Action, FY2009



2. Illustrative Investigations Closed with No Action

The following describes some of the circumstances of selected investigations in which staff found a violation, but did not take any enforcement action. Like the self-report illustrations, these are intended to provide guidance to the public while still preserving the non-public nature of DOI's investigations.

Reliability. Staff investigated whether there were Reliability Standards violations committed by three companies related to a loss of transmission lines and generators. Staff found violations by two of the companies relating to requirements addressing protection system design and coordination, protection system maintenance and testing, and post emergency event reporting. After evaluating the risk presented to the Bulk-Power System, the mitigation completed by the companies, the remedial measures put into place, and the companies' compliance programs, staff determined that these violations lent themselves more readily to resolution by the relevant RE. Staff referred the matter to the RE, who participated in two of the investigations, with a synopsis of staff's findings. Staff found no violations by the third company.

18 C.F.R. § 35.41 and OATT Violation. A generator participating in an RTO/ISO capacity market, after taking a peaking unit out of service for annual maintenance, returned the unit to service as available for fast start and at full load. Shortly thereafter, the RTO/ISO called a test of the unit upon receiving an anonymous tip that the unit was not available at full load. The unit failed to perform consistent with its offer. Staff investigated the RTO/ISO's referral of this matter to determine whether the generator offered the unit at full capacity and collected capacity payments knowing the unit could not perform if called upon, thereby violating the RTO/ISO's tariff and Commission regulations requiring truth and accuracy in communications with the RTO/ISO. Because the generator did not test whether the unit could perform at full load after returning the unit to service, staff determined that the generator did not have a good faith basis to offer the unit as it did. Staff also determined, however, that the generator did not unjustly profit from its offer because it promptly repaired the unit and confirmed its performance such that the unit was available consistent with its offer the next time the RTO/ISO called upon it. Furthermore, staff concluded that the offer was based in part upon a lack of understanding by the plant operators as to how to comply with the relevant tariff provisions. The generator owner

conducted significant training of the operators and changed its procedures to test the unit for performance after annual maintenance outages and before returning the unit to the service of the capacity market.

Right of First Refusal. A municipal shipper on a small interstate natural gas pipeline contacted the Hotline to complain that the pipeline had refused to offer a right of first refusal (ROFR) in connection with a one-year firm transportation contract at maximum rates, in violation of the pipeline's tariff and Section 284.221(d)(2) of the Commission's regulations. When Hotline staff contacted the pipeline, it promptly extended a ROFR to the aggrieved shipper. Staff opened an investigation to determine whether the violations were widespread (i.e., whether the pipeline had improperly refused to offer ROFR to other shippers). Although the pipeline identified no similar violations, staff did identify a single, non-conforming contract that the pipeline failed to file in violation of Part 154 of the Commission's regulations. Staff determined that the pipeline received no economic gain from the violations, and the violations did not cause any economic harm. After being made aware of the violation, the pipeline improved its compliance and training programs to prevent future violations. Staff accordingly closed the investigation without action.

F. Reliability

Pursuant to its Compliance Monitoring and Enforcement Program, NERC files Notices of Penalty (NOPs) with the Commission that reflect violations of the Reliability Standards found by NERC or one of the eight REs after investigation. Each NOP indicates resolution of a violation or potential violation through a penalty and mitigation plan, which may result from an assessment by the relevant RE or NERC, or from settlement negotiations with the registered entity. Pursuant to the Commission's regulations, an NOP becomes effective by operation of law thirty days after filing with the Commission if the Commission takes no action within that time either to request more information or to open the matter for further review, or the entity does not file an application for review.

In FY2011, the Commission received 270 NOPs, encompassing 1,392 potential or confirmed violations.²⁷ DOI staff, together with staff from the Office of Electric Reliability (OER) and the Office of General Counsel (OGC), reviewed the NOPs as they were filed and recommended whether the Commission should take action or decline further review. The Director of Enforcement extended the time period for consideration of 5 NOPs for the purpose of requesting additional information, and the Commission did so for 1 NOP. All 6 NOPs later became effective without further review by the Commission. In October 2010, the Army Corps of Engineers – Tulsa District initiated review of zero dollar penalties assessed against it in FY2010, asserting that the Commission does not have jurisdiction to enforce the Reliability Standards against federal agencies. The Commission issued its order in that proceeding in December 2010, finding in favor of Commission jurisdiction but declining to reach the question of whether the federal entities may be subject to monetary penalties for violations of the Standards.²⁸ In July 28, 2011, NERC submitted an NOP assessing a \$19,500 penalty against the Southwestern Power Administration (SWPA),²⁹ a federal entity within the Department of Energy (DOE). Upon request by the DOE and SWPA that the Commission resolve the question of whether the Commission may enforce penalties assessed against another federal entity, the Commission

²⁷ All Notices of Penalty are available on the NERC website at <http://www.nerc.com/filez/enforcement/index.html>.

²⁸ Order on Review of Notice of Penalty, 133 FERC ¶ 61,037 (2010).

²⁹ *North American Electric Reliability Corporation*, Docket No. NP11-238-000 (2011).

noticed its review of this NOP in August 2011.³⁰ The SWPA NOP is the only NOP submitted to the Commission in FY2011 that remains pending as of the date of this report.

The NOPs that NERC filed with the Commission in FY2011 included 29 zero dollar penalties and 241 non-zero dollar penalties totaling \$12,274,627. Nine of the NOPs consisted of compiled monthly submissions of lesser reliability violations, including both zero dollar and non-zero dollar penalties. Eight of these compilations were in the form of Administrative Citation NOPs and one was submitted as a “Spreadsheet NOP.” The largest single penalty assessed by an NOP submitted to the Commission in FY2011 was \$650,000. In FY2011, the Commission received 522 potential or confirmed violations of the Critical Infrastructure Protection (CIP) Reliability Standards authorized by Order No. 706.³¹

On September 30, 2011, NERC requested Commission approval for a new enforcement mechanism entitled Find, Fix, Track and Report (FFT).³² NERC proposes to dispose of certain possible violations that pose lesser risks to the Bulk-Power System and that the entity has mitigated by making monthly informational filings to the Commission advising of remediated issues. This filing would be in lieu of processing these same issues as NOPs. The FFT proposal, along with an initial FFT spreadsheet containing potential violations by Registered Entities, is pending before the Commission.

Also outstanding is the NOP in Docket No. NP10-18-000, filed in FY2010, which proposes an \$80,000 penalty against Turlock Irrigation District (Turlock) pursuant to a settlement agreement between it and WECC RE. The penalty is for multiple violations, of which the most severe is a violation of FAC-003-1 R2 related to a vegetation-caused outage and loss of load of 270 MW for more than an hour on August 29, 2007. This NOP was the first in which a vegetation contact that led to the outage of a transmission line resulted in a loss of load. The Commission affirmed the penalty on March 17, 2011;³³ the order is currently subject to a pending request for rehearing.

In addition, the Commission may investigate alleged violations of the Reliability Standards on its own or in coordination with NERC.³⁴ Several such investigations are pending. In another significant reliability initiative, FERC and NERC are conducting a joint inquiry into the September 8, 2011 power outage that left more than 2 million customers in Southern California, parts of Arizona and northern Baja California, Mexico without electricity. FERC and NERC will coordinate with the California Independent System Operator, California and Arizona state regulators and the registered entities involved to assess the event. The inquiry will focus on the causes of the outages and potential recommendations to avoid similar outages.

³⁰ Order Initiating Review of Notice of Penalty, 136 FERC ¶ 61,135 (2011).

³¹ *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 73 Fed. Reg. 7368 (Feb. 7, 2008), 122 FERC ¶ 61,040 (2008), *order on reh'g*, Order No. 706-A, 123 FERC ¶ 61,174 (2008), *order on clarification*, Order No. 706-B, 126 FERC ¶ 61,229 (2009).

³² *Petition Requesting Approval of New Enforcement Mechanisms and Submittal of Initial Informational Filing Regarding NERC's Efforts to Refocus Implementation of its Compliance Monitoring and Enforcement Program*, Docket No. RC11-6-000 (2011).

³³ Order on Review of Notice of Penalty, 134 FERC ¶ 61,209 (2011).

³⁴ See *2008 Florida Blackout*, 122 FERC ¶ 61,244 (2008); *Florida Blackout*, 129 FERC ¶ 61,016 (2009); *Florida Blackout*, 130 FERC ¶ 61,163 (2010).

G. Enforcement Hotline

DOI staff operates the Enforcement Hotline.³⁵ The Hotline is a means for persons to inform Enforcement staff, anonymously if preferred, of potential violations of Commission statutes, rules, regulations, and orders. The Hotline is also a means by which the public can obtain informal guidance and nonbinding opinions on matters within the Commission's jurisdiction, including applicability of Commission orders and policies to particular circumstances. When staff members receive calls concerning possible violations, such as allegations of market manipulation, abuse of an affiliate relationship, or violation of a tariff or order, DOI staff researches the issue presented and 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. Hotline staff also provides informal dispute resolution services.

In FY2011, Enforcement received 161 Hotline calls and inquiries, and resolved 144 matters (including matters that remained open at the end of FY2010). The majority of these calls were requests for information that were successfully resolved through advice provided by DOI staff. In six instances staff informally assisted callers in resolving disputes, often with the assistance of subject matter experts from other Commission program offices. In FY2011, staff converted two Hotline calls to preliminary investigations. Every year, a significant fraction of the calls received relate to subjects outside of the Commission's jurisdiction or contested matters pending before the Commission. DOI staff will advise those callers of where they may find the information they need, or direct them to the appropriate Commission docket.

³⁵ See 18 C.F.R. § 1b.21 (2011).

DIVISION OF AUDITS

A. Overview

The Division of Audits (DA) within Enforcement operates and maintains the Commission's audit program and administers the Commission's accounting regulations.

DA conducts compliance, performance, and other types of audits and related activities to ensure that jurisdictional companies comply with Commission statutes, orders, rules, tariffs, and regulations. DA follows a rigorous audit process to promote and ensure compliance. During audit engagements, audit staff discusses and provides informal compliance guidance to audited entities.

Through the Chief Accountant, DA also administers the Commission's accounting regulations to ensure compliance programs are robust. DA provides expert accounting advice to the electric, natural gas, and oil industries about compliance with the Commission's accounting requirements. DA reviews and acts on proposed accounting submissions from jurisdictional companies involving a variety of accounting matters, including mergers and acquisitions, transmission rate incentives, regulatory assets, depreciation, formula rates, allowance for funds used during construction, and operating units or systems. DA also works with other Commission offices on various policy matters and advises the Commission on accounting issues affecting regulated industries. DA reviews exposure drafts and other publications of the U.S. Securities and Exchange Commission (SEC) and the Financial Accounting Standards Board (FASB) for items that may affect the Commission in its regulation of jurisdictional entities.

Transparency and outreach continue to be critical elements DA has used to educate and promote compliance with Commission rules and regulations. DA continues to promote audit transparency through public postings of audit commencement letters and final audit reports on the Commission's eLibrary system, and information about the audit process on the Commission's website.³⁶ DA promotes accounting transparency by holding pre-filing and other periodic meetings with jurisdictional companies seeking to make filings with the Commission, by providing accounting guidance and publicly posting major accounting orders on the Commission's website, and by staffing a phone line and email address for the public to make accounting inquiries.³⁷ DA also participates in various formal speaking engagements, industry liaison meetings, discussions with audited entities and their outside counsel, and informal discussions of compliance matters with audited entities.

B. Significant Audit Matters

In FY2011, DA completed 72 audits and related activities. Of these, 56 were traditional, DA-directed audits of public utilities, natural gas pipelines, and storage companies. The remaining 16 audits were reliability oversight audits jointly conducted with the Office of Electric Reliability (OER). These oversight audits were undertaken to observe and provide feedback to the Regional Entities (REs) as they conduct audits of registered entities.

The 56 DA-directed audits consisted of nonfinancial and financial audits. The nonfinancial audits addressed compliance with requirements including provisions of an entity's OATT,

³⁶ The Office of Enforcement audit process is described at www.ferc.gov/enforcement/audits/audit-process.pdf.

³⁷ FERC accounting guidance, including a topic index, and accounting point-of-contact information is available at <http://www.ferc.gov/legal/acct-matts.asp>.

market-based rates (MBR) tariffs, electric quarterly reports, mergers and acquisitions, and pipeline postings. The financial audits addressed compliance of affiliated transactions with the Public Utility Holding Company Act of 2005 (PUHCA 2005), fuel cost recovery mechanisms, and reporting requirements of FERC Form Nos. 1 and 2. Several audits included both financial and nonfinancial areas of interest.

During FY2011, DA-directed audits resulted in 300 recommendations for corrective action and included \$290,000 in refunds and the write-off of \$95.8 million in regulatory assets for one company. Specifically, audit staff identified \$177,000 in refunds resulting from misallocated costs between affiliates and \$113,000 in refunds resulting from inappropriate accounting for lobbying costs. Additional refunds are likely because some companies are still in the process of determining refund amounts as a result of DA recommendations. The write-off of the \$95.8 million in regulatory assets will preclude the company involved from seeking recovery of this amount in the future from ratepayers.

The reliability oversight audits provided the opportunity for OE and OER to participate in audits initiated and directed by the eight REs. During and at the conclusion of the oversight audits, OE and OER provide feedback to the REs' audit teams concerning the audit process, techniques, and methods, as well as the technical rigor of the audit engagement.

DA continues to require that jurisdictional companies implement regulatory compliance plans, including comprehensive employee training, periodic self-auditing, and establishing and monitoring of processes, practices, and procedures. To assess whether jurisdictional companies and entities properly implement corrective action, DA staff often conducts a post-audit site visit to examine whether the subject of an audit has implemented DA's audit recommendations. DA tracks and follows up on all audit recommendations to ensure that they are implemented.

1. ITC Holdings Corporation

At ITC Holdings, audit staff identified noncompliance with conditions established in the Commission's December 3, 2007 order approving ITC Holdings' acquisition of the transmission facilities of Interstate Power and Light Company (IPL).³⁸ ITC Holdings did not obtain approval from its Board of Directors for dividend payments and equity infusions between ITC Holdings and ITC Midwest, as required by its own internal procedures. Also, ITC Holdings did not provide timely notification to the Commission when a shareholder or shareholder group had acquired five percent or more of its common stock. ITC Holdings has agreed to both of these findings.

DA also had concerns with ITC Midwest's determination to start including in its formula rate estimated tax benefits (\$128 million) associated with goodwill related to the acquisition of IPL transmission facilities. In 2009 and 2010, ITC Midwest passed \$18 million of the tax effect of amortized goodwill through its formula rate. This action was inconsistent with its application for authorization to purchase IPL's transmission facilities and approval of proposed transmission service rates. ITC Holdings explicitly stated that it is not seeking recovery of any acquisition premium in rates, which the Commission reiterated in its order.³⁹ DA concluded that ITC Midwest should not have included the tax benefits associated with goodwill in its formula rate and recommended accounting adjustments and refunds to ITC Midwest's formula rate customers. ITC Holdings is contesting this audit finding and recommendations.⁴⁰

³⁸ *ITC Holdings Corp.*, 121 FERC ¶ 61,229 (2007).

³⁹ *Id.* at P 110.

⁴⁰ *ITC Holdings Corporation*, Docket No. PA10-13-000 (Sept. 23, 2011) (delegated letter order).

2. Entergy Services, Inc.

At Entergy, DA assessed Entergy's compliance with the requirements of its Open Access Transmission Tariff (OATT) and practices related to Bulk-Power System planning and operations. DA identified seven areas of noncompliance and recommended thirty-two corrective actions. DA was concerned with Entergy's reporting of Available Flowgate Capacity (AFC) errors, because Entergy experienced AFC-related errors during the course of the audit engagement. Additional concerns noted in the audit report include Entergy's Weekly Procurement Process, use of secondary network transmission service, and transmission capacity reassignment.⁴¹

3. National Grid USA

At National Grid, DA identified 12 areas of concern: (1) allocation of global information services costs for senior management personnel without an appropriate study; (2) improper allocation of merger-related costs to certain jurisdictional companies; (3) failure to properly allocate software license permit costs among affiliate companies; (4) improper accounting, allocation, and recovery through formula rates of certain costs; (5) inappropriate accounting and possible recovery of costs associated with compromise settlements resulting from discriminatory employment practices; (6) inability of National Grid's accounting system to reconcile to certain FERC Form No. 60 accounts; (7) incorrect accounting classification of revenues for services rendered to non-associated companies; (8) improper use of clearing accounts; (9) deficiencies in FERC Form No. 60 notes to financial statements; (10) reporting of cost allocation information; (11) delinquent filings to the Commission; and (12) National Grid's recovery of merger-related costs from its customers prior to achieving an equal amount of merger savings. National Grid refunded \$177,000 to jurisdictional companies, and it is in the process of determining whether additional refunds are warranted for costs that may have been improperly recovered through its formula rate recovery mechanisms. DA staff coordinated this audit with the state commissions of Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.

4. ANR Pipeline Company

At ANR, DA identified noncompliance with requirements related to the FERC Form No. 2 reporting, North American Energy Standards Board (NAESB) standards, and provisions of ANR's tariff. DA identified six areas of noncompliance that resulted in 14 recommendations. Most significantly, DA recommended that ANR remove \$95.8 million in environmental costs from its Other Regulatory Assets Account because ANR could not demonstrate that recovery of these costs was probable. DA also identified noncompliance related to accounting for cash-outs, reporting operational purchases and sales, FERC Form No. 2 filing requirements, NAESB standards, and the accuracy of its Index of Customers filings.⁴²

5. Reliability Audits

During FY2011, DA and the Office of Electric Reliability (OER) continued to conduct oversight audits of Regional Entities' (REs') compliance audits of owners, users, and operators of the Bulk-Power System. Specifically, DA and OER staff examined the audit resources, techniques, and technical rigor employed by the RE audit teams on compliance audits and spot checks for compliance with standards addressed in Order Nos. 693 and 706. The audit staff provided on-site guidance and recommendations during the review of evidence, the interviews of

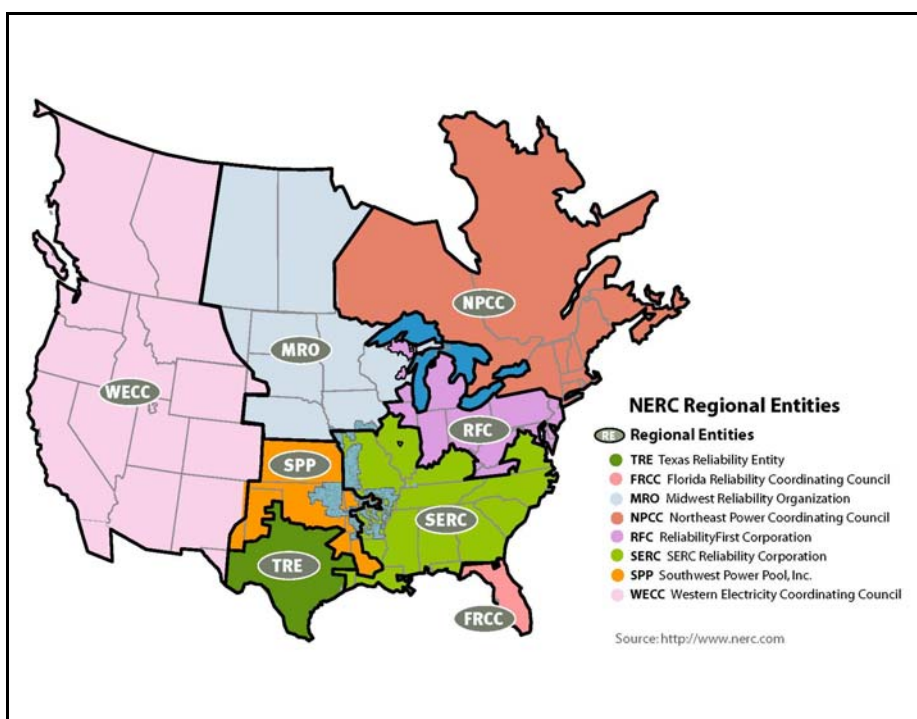
⁴¹ *Entergy Services, Inc.*, Docket No. PA10-1-000 (Oct. 29, 2010) (delegated letter order).

⁴² *ANR Pipeline Company*, Docket No. PA10-2-000, (Feb. 23, 2011) (delegated letter order).

subject matter experts, and the deliberations leading to the compliance determinations. In addition, DA staff made certain suggestions to NERC to improve the process, reach appropriate compliance determinations, and ensure consistency across regions. DA staff reviewed each RE audit team's draft and provided formal feedback to each RE.

The insights that DA staff gained from its oversight of RA audits have also been used to facilitate Commission guidance to NERC. These efforts include:

- Periodic meetings between audit staff management and NERC managers
- Identification of the need for NERC to provide additional guidance on the appropriate interpretation of standards
- Development of appropriate application of audit techniques
- Participation at NERC and RE auditor training workshops



Order No. 706 audits. During FY2011, DA and OER participated in RE audits of owners, users, and operators of the Bulk-Power System pursuant to Order No. 706.⁴³ These audits evaluate compliance with Critical Infrastructure Protection (CIP) Reliability Standards. Eight such audits were completed in FY2011:

- MRO spot check of American Transmission Co.
- NPCC spot check of Niagara Mohawk Power
- MRO spot check of Minnesota Power
- WECC audit of Arizona Public Service
- SPP audit of Kansas City Power & Light

⁴³ *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 73 Fed. Reg. 7368 (Feb. 7, 2008), 122 FERC ¶ 61,040 (2008), *order on reh'g*, Order No. 706-A, 123 FERC ¶ 61,174 (2008), *order on clarification*, Order No. 706-B, 126 FERC ¶ 61,229 (2009).

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- TRE audit of Bryan Texas Utilities
 - FRCC audit of Tampa Electric Company
 - SERC audit of Duke Energy Carolina

Order No. 693 audits. During FY2011, DA and the OER participated in RE audits of owners, users, and operators of the Bulk-Power System pursuant to Order No. 693.⁴⁴ These audits evaluate compliance with Reliability Standards designed to ensure the reliable operation of the Bulk-Power System through requirements related to, among other areas, transmission planning and operation, vegetation management, and communications. Eight such audits were completed in FY2011:

- WECC audit of Imperial Irrigation District
- MRO audit of Northern States Power Company
- RFC audit of Detroit Edison Company
- FRCC audit of the City of Homestead (Florida)
- NPCC audit of New England Power Company
- SPP audit of Oklahoma Gas & Electric Company
- SERC audit of Duke Energy Carolinas
- TRE audit of Bryan Texas Utilities

6. Public Utility Holding Company Act and Affiliate Transactions

Ameren Corporation. At Ameren, audit staff evaluated compliance with Commission cross-subsidization restrictions on affiliate transactions; recordkeeping and reporting requirements for holding companies and service companies; preservation of records requirements; the USofA for centralized service companies; and FERC Form No. 60 Annual Report requirements. The audit identified 10 accounting and reporting deficiencies and recommended 18 corresponding corrective actions. To correct errors in accounting for lobbying costs and donations, Ameren effectively refunded \$113,000 to its formula rate customers.

FirstEnergy Corporation. At FirstEnergy, audit staff evaluated compliance with Commission cross-subsidization restrictions on affiliate transactions; accounting, recordkeeping, and reporting requirements; the USofA for centralized service companies; preservation of records requirements; the FERC Form No. 60 Annual Report requirements; and cost allocation methods. Audit staff concluded that FirstEnergy did not submit FERC-61 filings for 13 affiliates for 2008.

The Toledo Edison Company. At Toledo Edison, a FirstEnergy affiliate, audit staff evaluated compliance with accounting regulations in the USofA; preservation of records requirements; and FERC Form Nos. 1 and 3-Q reporting regulations. Audit staff concluded that Toledo Edison did not report affiliate transactions with FirstEnergy Service Company in its 2009 FERC Form No. 1.⁴⁵

Pepco Holdings, Inc. At Pepco, audit staff evaluated compliance with the Commission's cross-subsidization restrictions on affiliate transactions; accounting, recordkeeping, and reporting

⁴⁴ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg. 16,416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2007), *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

⁴⁵ *FirstEnergy Corporation*, Docket No. FA10-2-000 (Dec. 6, 2010) (delegated letter order); *The Toledo Edison Company*, Docket No. FA10-5-000 (Dec. 6, 2010) (delegated letter order).

requirements; preservation of records requirements for holding and service companies; USofA for centralized service companies; and FERC Form No. 60 Annual Report requirements. Audit staff identified seven areas of noncompliance, including incorrect accounting for charitable and political donations; incorrect pricing of affiliate transactions; reporting errors; failure to make FERC-61 filings; and untimely filed cash management plans.⁴⁶

7. Natural Gas

Tennessee Gas Pipeline Company. At Tennessee Gas, audit staff evaluated compliance with nonconforming contract requirements; FERC Form No. 2 reporting requirements; NAESB standards; select reporting and accounting requirements in Order No. 581; and portions of the Company's FERC gas tariff governing penalties, balancing, and tracking mechanisms. Audit staff identified seven issues, four of which were related to accounting for refunds of penalties, cash-outs, natural gas sales, and imbalances. Audit staff also found that more than half of a sample of 146 Tennessee Gas contracts were inconsistent with the form-of-service agreement in Tennessee Gas' gas tariff. Audit staff also identified 55 NAESB posting errors and an inaccurate report of the number of miles of Tennessee Gas's transmission line in its FERC Form No. 2.⁴⁷

Equitrans L.P. At Equitrans, audit staff evaluated compliance with NAESB standards; FERC Form No. 2 filing requirements; nonconforming contract requirements; and select reporting and accounting requirements in Order No. 581.⁴⁸ Audit staff compiled 10 findings and 27 recommendations for corrective actions and identified several findings related to Order No. 581, including inappropriate accounting and reporting errors in its FERC Form No. 2. Audit staff also addressed issues of noncompliance with NAESB standards, posting and maintaining archives of interruptible transaction reports, and reporting errors in the Index of Customers.⁴⁹

8. Mergers and Acquisitions

GDF SUEZ Energy North America, Inc. At GDF SUEZ Energy, audit staff evaluated compliance with conditions established in the Commission's November 20, 2008 order authorizing the acquisition of a 100 percent ownership interest in FirstLight Enterprises.⁵⁰ As a result of the transaction, GDF SUEZ Energy acquired ownership of 13 hydroelectric generating facilities, a coal-fired plant, a kerosene-fired facility, and a gas-fired peaking plant under development. Collectively, these facilities have approximately 1,538 MW of capacity in the ISO New England market area. Audit staff concluded that GDF SUEZ Energy did not submit change-of-status filings for two entities with MBR authority, North Jersey Energy Associates and Northeast Energy Associates, LP, and filed two untimely change-of-status filings for subsidiaries Astoria Energy, LLC, and Green Mountain Power Corp.⁵¹

LS Power Development, LLC and Luminus Wealth Management LLC. At LS Power and Luminus, audit staff evaluated compliance with conditions established in the Commission's December 4, 2008 order authorizing the acquisition of up to 40 percent of the common stock of

⁴⁶ *Pepco Holdings, Inc.*, Docket No. FA10-1-000 (May 2, 2011) (delegated letter order).

⁴⁷ *Tennessee Gas Pipeline Company*, Docket No. PA10-3-000 (February 23, 2011) (delegated letter order).

⁴⁸ *Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies*, Order No. 581, 60 Fed. Reg. 53,019, 53,049-51, FERC Stats. & Regs. ¶ 31,026 (1995), *order on reh'g*, Order No. 581-A, FERC Stats. & Regs. ¶ 31,032 (1996).

⁴⁹ *Equitrans L.P.*, Docket No. PA09-14-000 (Nov. 12, 2010) (delegated letter order).

⁵⁰ *SUEZ Energy North America, Inc.*, et al., 125 FERC ¶ 61,188 (2008).

⁵¹ *GDF Suez North America, Inc.*, Docket No. PA11-15-000 (June 15, 2011) (delegated letter order).

Calpine Corporation.⁵² Transaction conditions included a requirement to file with the Commission any filings the Companies submit to the SEC regarding Calpine. Audit staff found that LS Power and Luminus filed a Schedule 13G report with the SEC on March 26, 2009, but failed to file the report with the Commission until December 17, 2010.⁵³

9. Fuel Adjustment Clause

Xcel Energy, Inc. (NSP-Minnesota and NSP-Wisconsin). At Xcel, audit staff evaluated compliance by Xcel's subsidiaries, Northern States Power-Minnesota (NSP-Minnesota) and Northern States Power-Wisconsin (NSP-Wisconsin), with their Commission-approved tariff, Commission accounting regulations for the calculation of the fuel adjustment clause (FAC), and Commission accounting regulations under the USofA. Audit staff found that NSP-Minnesota failed to file cost-based agreements, cancel portions of expired agreements on file, and update Minnesota Public Utility Commission-approved FAC rates. More significantly, audit staff identified an accounting misclassification of nuclear fuel-related costs at NSP-Wisconsin, which resulted in a refund of the wholesale portion of the \$200,000 recovered through its FAC.⁵⁴

10. Market-Based Rate Authority and Electric Quarterly Reports

Credit Suisse Energy LLC. At Credit Suisse, audit staff evaluated compliance with the requirements of its MBR authorization and Electric Quarterly Report (EQR) filing and reporting requirements. Audit staff determined that Credit Suisse incorrectly listed contract commencement and execution dates for several contracts and used a single, unique identifier for multiple contracts.⁵⁵

D. Significant Accounting Matters

The Commission requires that electric utilities, natural gas companies, centralized service companies, and oil pipelines subject to its jurisdiction keep financial and related records in accordance with the rules and regulations contained in the applicable Uniform System of Accounts (USofA) to aid in the establishment and monitoring of just and reasonable rates. DA develops and maintains uniform regulations and requirements for accounting, financial reporting, and preservation of records. In addition, DA advises the Commission on current accounting issues affecting jurisdictional industries and provides its accounting expertise to the Commission's program offices in the development of Commission policies and proposed rulemakings, and advises the Commission on the disposition of electric and natural gas rate, merger, and natural gas certificate filings. In FY2011, DA reviewed approximately 190 filings to ensure that accounting was consistent with the applicable USofA.

DA also provides accounting advice to entities in the electric, gas, and oil industries subject to the Commission's accounting requirements and participates in liaison meetings with these entities to stay abreast of current and emerging accounting and financial reporting issues. DA monitors and participates in projects initiated by FASB, the SEC, and the International Accounting Standards Board for issues that may impact the Commission or its jurisdictional entities.

⁵² *LS Power Development, LLC*, 125 FERC ¶ 61,267 (2008).

⁵³ *LS Power Development, LLC and Luminus Wealth Management LLC*, Docket No. PA11-12-000 (Aug. 8, 2011) (delegated letter order).

⁵⁴ *Xcel Energy, Inc.*, Docket No. FA10-8-000 (Apr. 22, 2011) (delegated letter order).

⁵⁵ *Credit Suisse Energy LLC*, Docket No. PA10-38-000 (Feb. 24, 2011) (delegated letter order).

1. Requests for Approval of the Chief Accountant

In FY2011, the Chief Accountant responded to 43 requests for approval submitted by jurisdictional companies. These requests spanned the breadth of Commission accounting and reporting requirements as well as regulations for electric, natural gas, oil, and centralized service companies. Such requests included statutorily required filings, issues of first impression, items of questionable interpretation, and implementation of new or evolving generally accepted accounting principles. Many of these filings included accounting requests related to Commission-approved mergers, transfers of jurisdictional assets, prior period adjustments, capitalization of transformer fluid retrofills, and depreciation.

2. Certificate Proceedings

In FY2011, the Chief Accountant reviewed 34 natural gas pipeline certificate applications. Pursuant to section 7 of the Natural Gas Act (NGA), natural gas pipelines must file for a certificate of public convenience and necessity from the Commission to construct or abandon natural gas facilities, and to initiate or abandon natural gas service. A certificate application contains, in part, cost and accounting information related to the construction and operation of natural gas facilities used to determine initial rates charged to customers.

Working with the Office of Energy Projects (OEP), Office of the General Counsel (OGC) and Office of Energy Market Regulation (OEMR), DA reviews all items used to determine initial rates, including operation and maintenance expenses, depreciation, depletion, amortization, taxes, and return on investment to assure the Commission will set “just and reasonable” rates that are in the public interest. In its review of these items, DA ensures the applicant follows the Commission’s accounting rules and regulations. DA frequently addresses accounting issues related to Allowance for Funds Used During Construction (AFUDC) calculations, contributions in aid of construction, regulatory assets and liabilities, capacity leases, and sale and lease-back transactions.

3. Merger and Acquisition Proceedings

During FY2011, DA reviewed 72 merger and acquisition filings. DA reviews all merger and acquisition filings made under section 203 of the Federal Power Act (FPA) to ensure that proposed accounting for business combinations conforms to the Commission’s regulations. DA works with OGC and OEMR to provide critical accounting direction to ensure accounting does not result in unjust and unreasonable rates. For example, DA provides direction on the proper accounting for merger transaction costs, acquisition adjustments, and goodwill; ensures that filers maintain appropriate original cost records of assets; and addresses emerging accounting issues (e.g., fair value accounting and reporting of long-term debt) for cost-of-service rate-regulated entities. Once the Commission approves a business combination, DA reviews and approves filings made by applicants under the Commission’s accounting regulations to ensure proper implementation of all accounting directions in the order.

4. Rate Proceedings

During FY2011, DA participated in 41 rate proceedings by providing accounting insight and support to OEMR in reviewing electric, natural gas, and oil pipeline rate filings before the Commission. These filings raised issues including, inclusion of pre-commercial costs, construction costs, carrying charges, and large acquisition premiums in the development of rates. DA also advises the Commission on how new accounting pronouncements issued by FASB and others affect the ratemaking process. DA’s input on these and other matters ensures uniform

accounting and financial reporting for new and emerging issues, and aids in the development of just and reasonable rates.

5. International Financial Reporting Standards

DA continues to actively participate in activities related to the potential incorporation of International Financial Reporting Standards (IFRS) into the financial reporting system of publicly traded companies in the United States. IFRS is a body of global accounting standards established by the International Accounting Standards Board used by the vast majority of industrialized countries for financial reporting. The potential incorporation of IFRS in U.S. financial reporting is very important to the Commission and its regulated entities because the Commission's accounting regulations are based on U.S. Generally Accepted Accounting Principles (GAAP), and many accounting principles in IFRS differ from those in U.S. GAAP.⁵⁶ The most significant divergence from U.S. GAAP involves the lack of an IFRS accounting standard for the economic effects of regulation, principally, regulatory assets and liabilities.

The SEC has the ultimate responsibility for deciding whether, when, and how to adopt IFRS for financial reporting in the United States. The SEC has promoted a single set of high quality, globally accepted accounting standards and begun to work towards establishing a timeline for a possible incorporation of IFRS into the U.S. financial reporting system.⁵⁷ The SEC directed its staff to develop and execute a Work Plan regarding the potential adoption of IFRS for U.S. public companies. The Work Plan is intended to inform the SEC's determination in 2011 about whether to incorporate IFRS into the U.S. financial reporting system.

DA is involved in ongoing discussions with SEC staff regarding the impacts of adopting IFRS on the Commission's regulations and its regulated entities. DA has stressed the importance of an international accounting standard that permits reporting regulatory assets and liabilities for cost-based regulated entities. In March 2011, DA submitted a memorandum to SEC staff addressing implications of the major differences between U.S. GAAP and IFRS. The memorandum also explained that an international accounting standard permitting regulatory assets and liabilities in IFRS-based financial statements would ease the burdens and costs associated with adopting IFRS and ease the transition, should it occur.

In July 2011, the Chief Accountant participated in an SEC staff-sponsored roundtable to discuss the benefits and challenges of incorporating IFRS into the U.S. financial reporting system. During panel discussions, the Chief Accountant highlighted the regulatory implications of the adoption of IFRS and focused on the need for an accounting standard under IFRS to recognize the economic effects of regulation.

In July 2011, the Chief Accountant also submitted a comment letter to an SEC staff paper exploring a possible method of incorporating IFRS into the U.S. financial reporting system.⁵⁸ Under the proposal, U.S. GAAP would be retained, but the FASB would incorporate IFRS into U.S. GAAP over a defined timeframe, with a focus on minimizing transition costs, pursuant to an established endorsement protocol. This endorsement protocol would provide the SEC and the FASB with the ability to modify or supplement IFRS when in the public interest and necessary

⁵⁶ U.S. GAAP includes various standards, conventions, and rules for recording and summarizing transactions and in the preparation of financial statements. GAAP was first set forth by the Accounting Principles Board of the American Institute of Certified Public Accountants, which was superseded by the Financial Accounting Standards Board in 1973. GAAP has been the standard for accounting in the United States for more than half a century.

⁵⁷ See Roadmap for the Potential Use of Fin. Statements Prepared in Accordance with Int'l. Fin. Reporting Standards by U.S. Issuers, SEC Release No. 33-8982, 73 Fed. Reg. 70,816 (Nov. 21, 2008).

⁵⁸ Comments on Work Plan for Global Accounting Standards, available at <http://www.sec.gov/comments/4-600/4-600.shtml>.

for the protection of investors. The Chief Accountant's comment letter supported this approach and stated that it would provide regulators and rate-regulated entities time to understand and reconcile differences between U.S. GAAP and IFRS, and prevent unintended effects on rates. The Chief Accountant also stated that the proposed approach provides regulators, rate-regulated entities, the SEC, the FASB, and others with the much-needed platform to continue to press for an international standard that recognizes the economic effects of energy industry regulations.

6. Capitalization of Allowance for Funds Used During Construction (AFUDC)

On February 16, 2011, the Chief Accountant revised Accounting Release No. 5, *Capitalization of Allowance for Funds Used During Construction*, to be consistent with the Commission's new policy on AFUDC capitalization. The revised accounting release was issued in Docket No. A111-1-000 and explains that AFUDC may be capitalized on construction projects when the company has incurred capital expenses for the project and activities necessary to get the project ready are progressing. This new policy promotes infrastructure development by allowing jurisdictional entities to recover all money invested in the construction of interstate natural gas or electric facilities. Under the former policy, a natural gas pipeline could not capitalize AFUDC until after a pipeline filed an application with the Commission for a certificate of public convenience and necessity. Since many natural gas pipelines now engage in activities that require them to incur significant project-related expenditures while participating in pre-filing activities with the Commission and stakeholders but before filing a certificate application, it was necessary to revise DA's accounting policy to reflect changes in the industry.

E. Division of Audits Compliance Program

DA continues its long-standing history of promoting compliance through transparency and outreach. DA publicly posts audit commencement letters and audit reports on the Commission's eLibrary system, providing the public and jurisdictional entities with information about compliance areas that the Commission is emphasizing. In addition, DA has provided greater detail in its reports to enable entities to be better informed and prepared for similar audits of their operations.

DA also engaged in other outreach efforts to enable audit and accounting staff to provide compliance guidance to the public and jurisdictional companies. DA continues to respond to questions received directly from jurisdictional entities, industry stakeholders, and consultants, as well as questions arising through the Commission's Compliance Help Desk, Office of External Affairs, Enforcement Hotline, or other offices within the Commission. During FY2011, DA responded to more than 120 such questions, providing informal advice on various aspects of Commission accounting, financial reporting, and record retention regulations.

DA also oversees accounting liaison activities with industry groups, such as the Edison Electric Institute, American Gas Association, Interstate Natural Gas Association of America, and the Association of Oil Pipelines. In meetings with industry groups and jurisdictional entities, and by responding to inquiries, DA staff helps provide regulatory certainty on accounting and reporting matters, thereby reducing regulatory risk to jurisdictional entities.

Collectively, transparency and outreach provide jurisdictional entities the information and tools needed for developing and enforcing their own compliance programs. This transparency takes the form of DA's publicly available audit commencement letters, audit reports, audit process, detailed scope and methodology, frequently asked questions on the Commission website, and feedback from reliability observation audits.

In FY2011, DA continued to support the Commission’s goal of promoting internal compliance programs at jurisdictional entities. DA’s scrutiny of compliance programs during each of its audits has enabled Enforcement personnel to better evaluate the state of compliance in regulated industries. DA uses this understanding in its review of internal controls and compliance programs, and has provided feedback to companies regarding compliance shortcomings. DA also has shared the “best practices” of compliance programs, including the use of compliance help lines, annual certifications that managers have complied with compliance regulations, and the use of external consultants and auditors to evaluate compliance effectiveness.

DA has also observed innovative approaches to emphasizing compliance including a company-sponsored art competition among employees’ children with ethics as a theme culminating in an ethics-themed calendar featuring the children’s art and the designation of an “Ethics Week” where activities highlight compliance and ethics in the workplace. Audit staff has continued to see evidence of robust compliance programs in which companies have proactively and quickly implemented corrective actions, often before audit reports have been issued, or have even enhanced their compliance with Commission regulations before audit commencement. In some cases, companies brought in outside consultants to preemptively correct deficiencies. In addition, several companies have exceeded the requirements of the audit report recommendations in an attempt to craft a robust compliance program.

DIVISION OF ENERGY MARKET OVERSIGHT

A. Overview

The Division of Energy Market Oversight (Market Oversight) within the Office of Enforcement is responsible for monitoring and overseeing the nation's wholesale natural gas and electric power markets. Market Oversight continuously examines and monitors the structure and operation of these markets to identify market anomalies, flawed or inadequate market rules, tariff and rule violations, and other illicit behavior. Staff performs daily oversight of the nation's wholesale natural gas and electric markets and related fuel and financial markets, identifying market events and trends. Market Oversight analyzes and reports its observations to the Commission and, as appropriate, the public, and proposes policy options and regulatory strategies for addressing the issues identified. Staff assesses factors that relate to the competitiveness, fairness, and efficiency of wholesale energy markets, applies quantitative analysis to screen markets for anomalous behavior, and provides technical expertise to investigations of market participant behavior. Market Oversight administers, analyzes, and ensures compliance with the filing requirements for Electric Quarterly Reports (EQR) and various Commission financial forms. Market Oversight advises the Commission on the efficacy of its current 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 Monitoring

Market Oversight staff continuously examines the structure, operation, and interaction of natural gas and electric markets. On an ongoing basis, Market Oversight staff accesses and surveils data from a variety of sources to review market fundamentals and emerging trends; staff holds daily meetings in its Market Monitoring Center to facilitate this process.

As developments warrant, Market Oversight staff initiates projects designed to evaluate market trends, to assess participant behavior, and to identify potential manipulation or fraud. During FY2011, such projects included analyses of bidweek natural gas prices and assessments of renewable portfolio standards. Staff may also present analyses at Commission meetings. During FY2011, such analyses included the following.

1. 2010 State of the Markets Report, April 21, 2011

Each year, Market Oversight presents a State of the Markets report assessing the significant events of the past year. In 2010, staff observed that natural gas supply and demand set new records, while natural gas prices remained moderate through most of the year. The markets also reflected regional changes in natural gas production and new infrastructure changing utilization along some key pipeline routes. There was also increased demand in the power sector, but a decrease in the amount of power generation capacity added compared to prior years. Specifically, the addition of wind and natural gas-fired generation dropped off in 2010.⁵⁹

2. Seasonal Market Assessments

Market Oversight prepares seasonal assessments that are presented at Commission meetings and made available to the public on the Commission website. In FY2011, Market Oversight staff presented the following assessments:

⁵⁹ This presentation is available at <http://www.ferc.gov/market-oversight/st-mkt-ovr/som-rpt-2010.pdf>.

[2010/2011 Winter Energy Market Assessment, October 21, 2010](#). Market Oversight staff presented the outlook for natural gas markets and noted that production had reached levels not seen in more than 35 years, that gas prices were moderate, and that storage was 90% full going into winter. Despite record demand for gas by power generators, new supply and infrastructure, combined with forecasts for a relatively mild winter, were expected to keep prices moderate. Staff also noted increased market transparency and efficiency as a result of the greater availability of market information following two transparency Orders, Nos. 704 and 720.⁶⁰

[Summer 2011 Energy Market and Reliability Assessment, May 19, 2011](#). This assessment reviewed the outlook for the electric market for the coming summer. The Office of Electric Reliability contributed a summary of the North American Electric Reliability Corporation's (NERC's) market review, which raised little concern for reliability for the coming season. On the market side, staff highlighted the abundant hydro conditions contributing to lower prices in Pacific Northwest and adjacent markets.⁶¹

3. 2009 Analysis of Physical Gas Market Transactions, December 16, 2010

Market Oversight staff presented the Office of Enforcement's analysis of physical gas market transactions for 2009, using FERC Form 552 submissions. This information helps Market Oversight and the public understand the market's level of reliance on published price indices. The data collected for 2009 showed that the respondents who reported fixed price transactions to index publishers accounted for just 11% to 13% of the total gas volumes reported by Form 552 respondents. Thus, the data indicated that index publishers were deriving their index prices from relatively small gas volumes, which may be of some concern as these indices may set the price of physical and financial gas contracts.

Form 552 submissions provide the approximate size of the wholesale market for physical gas in the U.S. Almost 56 Tcf of physical gas market transactions occurred in 2009, 2.5 times the volume of gas produced. Form 552 indicates the largest participants and details common transactions by buyers and sellers, allowing insight into the types of participants that contribute to and rely on those indices for pricing information. In 2009, the top ten gas sellers accounted for 33% of total reported volumes; monthly and daily index sales accounted for the majority of total reported volumes. The addition of this information to the market advances the goal of price transparency and provides a better understanding of the formation of price indexes. However, since the data are aggregated nationally, the actual leverage of index volumes on fixed price volumes by trading hub is not captured by the data.⁶²

4. Reversal by United States Court of Appeals of Order No. 720 Rule on Natural Gas Market Transparency

On October 24, 2011, the U.S. Court of Appeals for the Fifth Circuit reversed an initiative by the Commission to improve transparency and monitoring of the natural gas market by vacating FERC's Order No. 720 rulemaking on information reporting by intrastate pipelines. In Order No. 720, the Commission issued a final rule that required intrastate natural gas pipelines that deliver more than 50 million MMBtu per year to post scheduled flow information and to post information for each receipt and delivery point with a design capacity greater than 15,000 MMBtu per day. The data provided as a result of Order No. 720 recently helped Enforcement quickly assess many of the factors leading to the power outages in the southwestern United

⁶⁰ This presentation is available at <http://www.ferc.gov/market-oversight/mkt-views/2010/10-21-10.pdf>.

⁶¹ This presentation is available at <http://www.ferc.gov/market-oversight/mkt-views/2011/05-19-11.pdf>.

⁶² This presentation is available at <http://www.ferc.gov/market-oversight/reports-analyses/overview/gas-transactions2009.pdf>.

States after the gas well freeze-offs in February 2011. In *Texas Pipeline Association, et al. v. FERC*, No. 10-60066 (5th Cir. Oct. 24, 2011), however, the court held that the Commission lacks authority over purely intrastate pipelines and therefore cannot direct those pipelines to post scheduled flow information. Although the court did not question the merits of the Commission's policy judgment on the importance of facilitating price transparency in the interstate market, the effect of the decision is to diminish significantly transparency in the interstate natural gas market.

C. Technical Analysis and Investigation Support

Market Oversight staff examines the structure, operation, and interaction of natural gas and electric markets. Staff performs technical analyses using available data that includes hourly prices at RTO nodes and hubs, pipeline nominations, electric and gas prices, open interest and volumes of physical and financial products traded on public exchanges, and data reported in compliance with the Commission's filing requirements. On an ongoing basis, staff uses these and other data to appraise the markets, to assess the economics of market behavior, and to identify possible anomalies. Market Oversight also evaluates behavior of specific market participants, including detailed portfolio examinations and market event analysis.

Market Oversight continues to develop and improve automated surveillance tools to evaluate market activity efficiently and to identify possible illicit behavior. For example, in FY2011, staff applied screens to identify uneconomic trading of electric products traded on IntercontinentalExchange and developed programs to evaluate index divergence in natural gas markets.

Market Oversight works with Investigations throughout the lifecycle of market manipulation investigations, providing detailed portfolio analyses and subject matter expertise. Through the re-creation of positions and trading activities, staff reviews the interaction between physical and financial products within corporate portfolios to uncover improper uses of jurisdictional markets. Market Oversight serves a key role during investigations, providing critical market context, specific trading portfolio review, and subject matter support in the areas of trading and markets.

D. Outreach and Communication

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

1. Website

Market Oversight publishes data and analyses on the Market Oversight website at <http://www.ferc.gov/market-oversight/market-oversight.asp>. The site is organized into pages for (a) national overviews of electricity and natural gas markets, and (b) 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 several other relevant markets, including liquefied natural gas (LNG), coal, and emissions markets.

2. Snapshot Calls

Market Oversight holds monthly conference calls with representatives of state agencies in four main regions of the country: Northeast, Midwest and SPP, Southeast, and West. These calls provide a current “snapshot” of energy markets.

Regional Snapshot Reports are compiled monthly and serve as the basis for discussion on the calls. The reports include data on electricity, natural gas, LNG, weather, and other market-affecting developments. In addition, the Snapshot Report occasionally incorporates reports on special topics. In FY2011, special reports included:

- Summary of Findings in the February Southwest Outages and Curtailment Report;
- Review of the Five Year Oil Index Update;
- Notes on Demand Response and Advanced Metering; and
- Highlights from the Natural Gas Capacity Release Report.

Snapshot Reports are available on the Market Oversight website at <http://www.ferc.gov/market-oversight/mkt-snp-sht/mkt-snp-sht.asp>, where they are archived back to 2007.

3. Domestic and Foreign Delegation Briefings

Market Oversight periodically hosts visitors, including foreign and domestic delegations of regulators and industry participants. In FY2011, Market Oversight conducted a number of briefings in the Market Monitoring Center (MMC) including:

- Thirteen domestic briefings. These included briefings to one Congressional delegation, five groups of federal or state agency officials, four industry groups, and five college or law school groups.
- Seven presentations to foreign delegations. These included delegations from India, China, Korea, Japan, Russia, and South Africa as well as a delegation from the International Gas Union. Each briefing was tailored to the particular interests of the visiting delegation.

Market Oversight briefs new Commission employees, summer interns, and special visitors on how Market Oversight maintains constant monitoring of market fluctuations and manages the Market Monitoring Center resources and applicable data to support oversight functions.

E. Forms Administration and Filing Compliance

Market Oversight staff administers and ensures compliance with the Commission’s filing requirements. The Commission requires companies subject to its jurisdiction to submit annual and quarterly reports regarding jurisdictional sales, financial statements, and operational data. The Commission uses these reports for analyses, including evaluation of whether existing rates continue to be just and reasonable. Industry participants also use these reports for a variety of business purposes. Accordingly, accurate reporting is a critical aspect of monitoring the markets. During FY2011, approximately 3,000 respondents submitted FERC forms as shown below:

Form	Filing Frequency	Total Respondents in Last Collection
Form No. 1 ⁶³	Annually	209
Form No. 1-F ⁶³	Annually	5
Form No. 2 ⁶⁴	Annually	86
Form No. 2A ⁶⁴	Annually	57
Form No. 6 ⁶⁵	Annually	149
Form No. 60 ⁶⁶	Annually	35
FERC-61 ⁶⁷	Annually	6
Form No. 552 ⁶⁸	Annually	691
FERC-730 ⁶⁹	Annually	34
Form No. 3-Q major Electric ⁷⁰	Quarterly	202
Form No. 3-Q non-major Electric ⁷⁰	Quarterly	5
Form No. 3-Q major Gas ⁷⁰	Quarterly	88
Form No. 3-Q non-major Gas ⁷⁰	Quarterly	43
Form No. 6Q ⁶⁵	Quarterly	144
Electric Quarterly Report (FERC-516) ⁷¹	Quarterly	1,523
Form No. 549D ⁷²	Quarterly	108

Market Oversight performs a series of data validation checks for the various FERC forms to ensure compliance with filing requirements and to improve the accuracy and quality of the

⁶³ Form No. 1 is a comprehensive financial and operating report submitted for electric rate regulation and financial audits. The Form No. 1-F is a comprehensive financial and operating Report submitted by Non-major Electric Utilities and Licensees. Non-major is defined as having total annual sales of 10,000 megawatt-hours or more in the previous calendar year and not classified as Major.

⁶⁴ Form No. 2 is a compilation of financial and operational information from major interstate natural gas pipelines subject to the jurisdiction of the FERC. "Major" is defined as having combined gas transported or stored for a fee that exceeds 50 million dekatherms. Form No. 2 respondents must also file a CPA Certification by an independent certified public accountant. Form No. 2A is an abbreviated Form No. 2 filed by non-major interstate natural gas pipelines subject to the jurisdiction of the Commission. "Non-major" is defined as having total gas sales or volume transactions exceeding 200,000 dekatherms. Form No. 2A respondents must provide CPA Certification by an independent certified public accountant.

⁶⁵ Form No. 6 is filed by oil pipeline carriers with annual jurisdictional operating revenues of \$500,000 or more. Oil pipeline carriers with revenues more than \$350,000 but less than \$500,000 must file pages 1, 301, and 700; oil pipeline carriers with revenues less than \$350,000 must file page 1 and page 700. Oil pipeline carriers submitting FERC Form No. 6 (annual jurisdictional operating revenues of \$500,000 or more) must submit FERC Form No. 6-Q.

⁶⁶ Form No. 60 contains financial information from centralized service companies subject to FERC jurisdiction.

⁶⁷ FERC-61 is a filing requirement for service companies in holding company systems (including special purpose companies) that do not have to file FERC Form No. 60.

⁶⁸ Form No. 552 provides information on natural gas transactions. Market participants must fill out the form annually if (1) their reportable natural gas sales were greater than 2.2 million MMBtu in the reporting year; or (2) their reportable natural gas purchases were greater than 2.2 million MMBtu in the reporting year.

⁶⁹ FERC-730 is used by the Commission to determine the effectiveness of its rules and to provide it with an accurate assessment of the state of transmission investment by public utilities. This annual report includes projections, information that details the level and status of transmission investment, and the reason for delay, if any. Public utilities that have been granted incentive based rate treatment for specific transmission projects under provisions of 18 CFR § 35.35 must file FERC-730. The report must conform to the format prescribed in Order No. 679, Appendix A. Filers are strongly encouraged to submit the FERC-730 electronically via eFiling.

⁷⁰ Form No. 3-Q is a comprehensive quarterly financial and operating report that supplements Annual Report Forms No. 1 and No. 2 and is submitted for all "Major" and "Non-Major" Electric Utilities, Licensees, and Natural Gas Companies.

⁷¹ All public utilities are required to electronically file Electric Quarterly Reports 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 transaction information for short-term and long-term market-based power sales and cost-based power sales during the most recent calendar quarter.

⁷² Form No. 549D collects quarterly contractual information by shipper from Section 311 and Hinshaw Pipeline companies on a quarterly basis. Each intrastate pipeline company providing interstate services pursuant to section 311 of the NGPA or Hinshaw pipeline company that provides interstate services pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations must file a quarterly report with the Commission and the appropriate state regulatory agency.

submissions. During FY2011, Market Oversight contacted filers regarding issues with their submittals. The majority of issues were resolved, and, as appropriate, filings were resubmitted to address concerns. When a company fails to file as required and cannot be contacted, the Commission must take action to address noncompliance.

F. Agenda Items and Rulemakings

Market Oversight advises the Commission on the efficacy of its current regulatory policies in light of evolving energy markets and ensures the Commission has the information needed to administer and monitor the markets effectively. During FY2011, Market Oversight staff continued to support Commission efforts to increase electric market transparency under section 220 of the Federal Power Act (FPA). Market Oversight continuously reviews the monitoring program to ensure that it is comprehensive and systematic, and also reviews reporting requirements to ensure that appropriate and accurate information is collected. Market Oversight seeks to enhance effective market surveillance and analysis to prevent both the exercise of market power and market manipulation while balancing the regulatory burden on market participants. As such, Market Oversight initiated, or provided significant support for, the following.

1. Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines - Order Nos. 710-B and 710-C

On January 20, 2011, the Commission issued a Final Rule revising its financial forms, statements, and reports for natural gas companies, contained in FERC Form Nos. 2, 2-A, and 3-Q, to include functionalized fuel data as well as amount of fuel waived, discounted, or reduced as part of a negotiated rate agreement.⁷³ The revisions are designed to enhance the forms' usefulness by providing greater fuel data transparency. On August 16, 2011 in Order No. 710-C, the Commission generally denied rehearing and reaffirmed the findings made in Order No. 710-B.⁷⁴ In that denial, however, the Commission also revised the burden estimate to more accurately account for initial start-up costs, and granted additional time to comply.

2. Electricity Market Transparency Rulemaking - Docket No. RM10-12

On April 21, 2011, the Commission issued a Notice of Proposed Rulemaking (NOPR) to facilitate price transparency in wholesale electricity markets under FPA section 220 by requiring certain market participants excluded from the Commission's FPA section 205 jurisdiction (i.e., non-public utilities) to file Electric Quarterly Reports (EQRs).⁷⁵ The proposal would give FERC and the public a more complete picture of prices in the wholesale electricity markets, thus increasing price transparency and improving the Commission's ability to monitor wholesale electricity markets for market power and manipulation. Currently, public utilities must file EQRs summarizing contractual terms and conditions in their agreements for cost-based and market-based rate sales and transmission service, as well as transaction information for cost-based and market-based rate sales and transmission capacity reassignments. This NOPR would extend those requirements to non-public utilities with annual wholesale sales of more than 4

⁷³ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710-B, 76 Fed. Reg. 4,516 (Jan. 26, 2011), 134 FERC ¶ 61,033 (2011) (Order No. 710-B or Final Rule).

⁷⁴ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710-C, 76 Fed. Reg. 52,253 (Aug. 22, 2011), 136 FERC ¶ 61,109 (2011).

⁷⁵ *Electricity Market Transparency Provisions of Section 220 of The Federal Power Act*, Notice of Proposed Rulemaking, 76 Fed. Reg. 24,188 (Apr. 29, 2011), 136 FERC ¶ 61,053 (2011).

million megawatt hours (MWh) and to non-public utility balancing authorities with 1 million MWh or more in annual wholesale sales. In addition to proposing that these non-public utilities file EQRs, the NOPR would refine the reporting requirements by directing all filers to report the following new information items: the transaction date and time; type of rate; indication of whether the transaction was reported to an index publisher; identity of any broker or exchange used for a sales transaction; and electronic tag ID data.

3. Availability of E-Tag Information to Commission Staff - Docket No. RM11-12

On April 21, 2011, the Commission issued a proposal requiring the North American Electric Reliability Corporation (NERC) to provide electronic tagging data (e-tags).⁷⁶ E-tag data is used to schedule the transmission of electric power in wholesale markets. NERC collects e-tag data in near real-time to enable regional reliability coordinators to identify transactions that need to be curtailed to relieve overload. The Commission seeks to gain access to this information to strengthen market monitoring and help prevent manipulation, and seeks this information from NERC instead of market participants to avoid requiring market participants to submit the same data to both NERC and the Commission.

4. Storage Reporting Requirements of Interstate and Intrastate Natural Gas Companies - Docket No. RM11-4

On September 15, 2011, the Commission released a NOPR to solicit comments on the potential retirement of semi-annual storage reports for Interstate and Intrastate Natural Gas Pipelines required by 18 C.F.R. section 284.13(e) and 18 C.F.R. section 284.126(c), respectively.⁷⁷ These reports now proposed for elimination are largely duplicative of other reporting requirements, including the new Form 549D for Intrastate Natural Gas Pipelines and the existing Form 549B Index of Customers.

5. Ongoing Electronic Delivery of Data from RTOs and ISOs - Docket No. RM11-17

Market Oversight staff also supported Commission efforts to require that regional transmission organizations (RTOs) and independent system operators (ISOs) electronically deliver to the Commission, on an ongoing basis, data related to the markets that they administer. Such data will facilitate the development and evaluation of policies and regulations, as well as enhance Commission efforts to detect market power abuse, market manipulation, and ineffective market rules. On October 20, 2011, the Commission issued a NOPR on the matter; comments are due December 27, 2011.⁷⁸

⁷⁶ *Availability of E-Tag Information to Commission Staff*, Notice of Proposed Rulemaking, 76 Fed. Reg. 23,516 (Apr. 27, 2011), FERC Stats. & Regs. ¶ 32,675 (2011), 135 FERC ¶ 61,052 (Apr. 21, 2011).

⁷⁷ *Storage Reporting Requirements of Interstate and Intrastate Natural Gas Companies*, Notice of Proposed Rulemaking, 76 Fed. Reg. 58,741 (Sep 22, 2011), FERC Stats. & Regs. ¶ 32,678 (2011), 136 FERC ¶ 61,172 (Sep. 15, 2011).

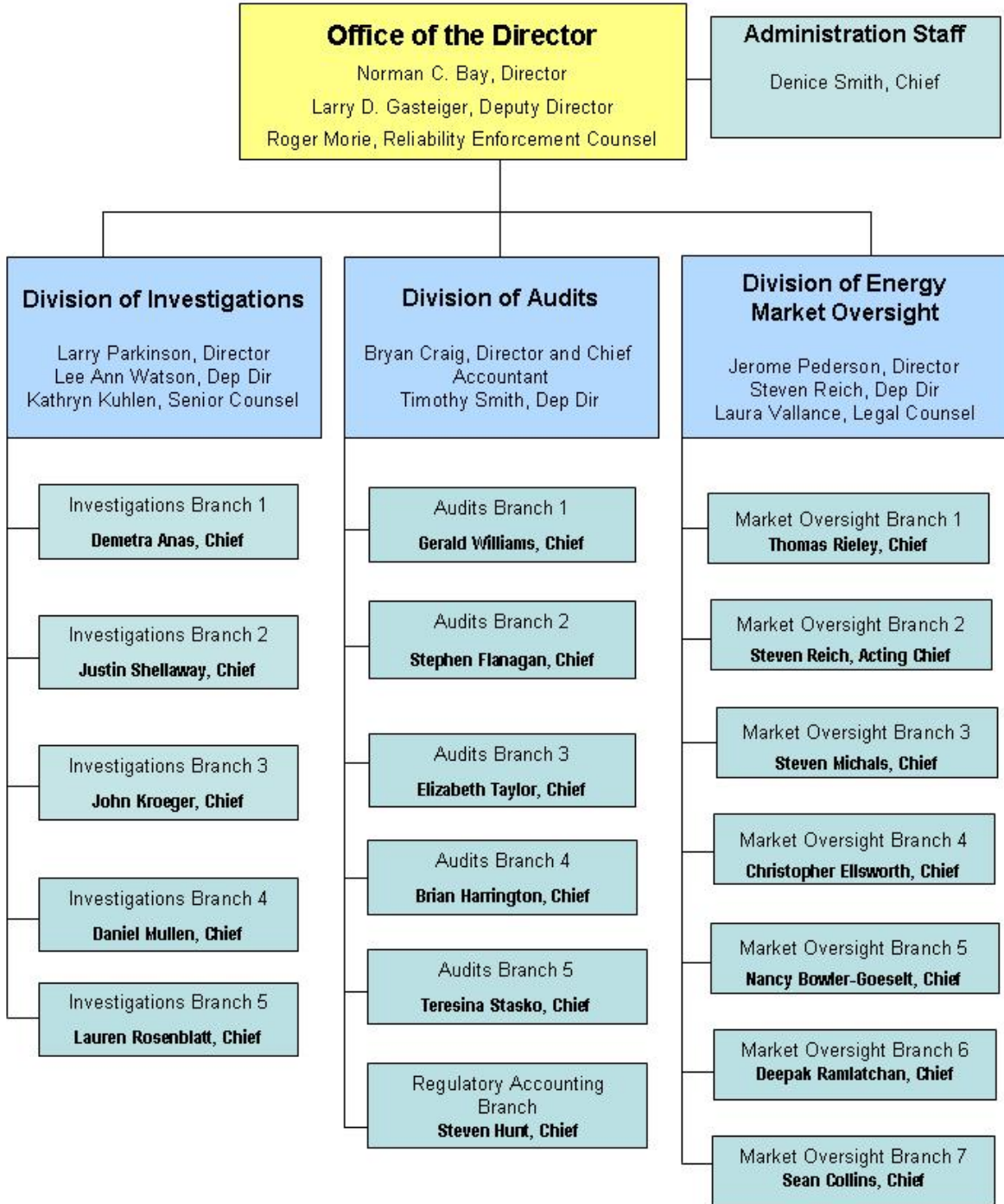
⁷⁸ *Enhancement of Electricity Market Surveillance and Analysis through Ongoing Electronic Delivery of Data from Regional Transmission Organizations and Independent System Operators*, Notice of Proposed Rulemaking, 76 Fed. Reg. 66,211 (Oct. 26, 2011), 137 FERC ¶ 61,066 (2011).

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, orders, rules, and regulations 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. The Division of Investigations will continue to focus its efforts on keeping markets transparent and competitive and helping to ensure the reliability of the Bulk-Power System. The Division of Audits will continue to work closely with entities to improve compliance, while Market Oversight examines and monitors the structure and operation of natural gas and electric markets.

APPENDIX A: ORGANIZATION CHART

OFFICE OF ENFORCEMENT



APPENDIX B: FY2011 CIVIL PENALTY ENFORCEMENT ACTIONS⁷⁹

SUBJECT OF INVESTIGATION ORDER AND DATE	TOTAL PAYMENT	EXPLANATION OF PAYMENTS AND COMPLIANCE PLANS
Duke Energy Carolinas, LLC, 136 FERC ¶ 61,237 (September 30, 2011)	\$425,000 Civil Penalty	Civil penalty and compliance monitoring resulting from violations of Commission-approved tariffs (18 C.F.R. § 35.1(e) (2011)), Commission order (111 FERC ¶ 61,506 (2005)), regulations of market-based rate authority, and Electric Quarterly Reports filing requirements (18 C.F.R. § 35.10b).
Grand River Dam Authority, 136 FERC ¶ 61,132 (August 29, 2011)	\$350,000 Civil Penalty (\$175,000 to each FERC and NERC) \$2,000,000 Mitigation and Compliance Enhancement Measures	Civil penalty, mitigation and compliance enhancement measures and compliance monitoring resulting from violations of fifty-two requirements of nineteen Reliability Standards (R5, R6, R10, R11 and R19 of TOP-002-2a; R1, R2 and R4 of TOP-004-2; R2 and R4 of TOP-008-1; R16.1 of TOP-002-2a; R6 of TOP-006-2; R1, R2 and R5 of COM-001-1.1; R1.1 through R1.8 of EOP-008-0; R3 of EOP-004-1; R1 of FAC-008-1; R1 of FAC-009-1; R1, R2 and R3 of FAC-001-0; R1, R2 and R3 of the TPL- series; R1 and R4 of PRC-001-1; R1 of PRC-004-1; R2.2 of PRC-001-1; Requirements R1, R2.1 and R2.2 of PRC-005-1; R1 of PRC-018-1; R1 of PER-002-0; R3.4 of PER-002-0).
Black Hills Power, Inc., 136 FERC ¶ 61,088 (August 5, 2011)	\$200,000 Civil Penalty	Civil penalty and compliance monitoring resulting from violations of 18 C.F.R. § 37.6(b) (Open Access Same Time Information Systems) and 18 C.F.R. § 35.39(f) (Affiliate Restrictions).

⁷⁹ A list of all EAct 2005 civil penalty orders is available at <http://www.ferc.gov/enforcement/civil-penalties/civil-penalty-action.asp>.

SUBJECT OF INVESTIGATION ORDER AND DATE	TOTAL PAYMENT	EXPLANATION OF PAYMENTS AND COMPLIANCE PLANS
Western Electric Coordination Council, 136 FERC ¶ 61,020 (July 7, 2011)	\$350,000 Civil Penalty	Civil penalty and reliability enhancement measures resulting from violations of nine requirements of five Reliability Standards (IRO-005-1, R11; IRO-005-1, R8; EOP-002-2, R1; IRO001-1, R3; IRO-005-1, R13; EOP-002-2, R8; COM-002-2, R2; IRO-005-1, R12; IRO-002-1, R9) associated with a Bulk -Power System disturbance.
Moussa I. Kourouma D/B/A Quntum Energy LLC, 135 FERC ¶ 61,245 (June 16, 2011)	\$50,000 Civil Penalty	Civil penalty resulting from violations of 18 C.F.R. § 35.41(b) (prohibition of submission of false or misleading information or the omission of material information in any communication with the Commission and certain jurisdictional entities)
Brian Hunter, 135 FERC ¶ 61,054 (April 21, 2011)	\$30,000,000 Civil Penalty	Civil penalty resulting from violations of 18 C.F.R. § 1c.1 (Natural Gas Anti-Market Manipulation Rule)
National Fuel Marketing Company, LLC, 135 FERC ¶ 61,011 (April 7, 2011)	\$290,000 Civil Penalty	Civil penalty and compliance monitoring resulting from violations of shipper-must-have-title requirements.
Seminole Services, LLC, 135 FERC ¶ 61,010 (April 7, 2011)	\$300,000 Civil Penalty \$271,315 Disgorgement	Civil penalty, disgorgement and compliance monitoring resulting from violations of the prohibition on buy/sell transactions.
Dartmouth Power Associates LTD. Partnership, 134 FERC ¶ 61,085 (February 3, 2011)	Settlement determined that a civil penalty would be appropriate but for \$231,952.50 penalty levied by ISO-NE	Compliance reporting resulting from violations of ISO-NE's Open Access Transmission Tariff and 18 C.F.R. § 35.41(a) and 35.41(b) (2010).
National Energy & Trade, L.P. and Mission Valley Pipeline Co., 134 FERC ¶ 61,072 (January 31, 2011)	\$500,000 Civil Penalty	Civil penalty and compliance reporting resulting from violations of open access transportation policies, including competitive bidding requirements for long-term, discounted rate capacity releases, flipping, and the shipper-must-have-title requirement.
North America Power Partners, 133 FERC ¶ 61,089 (October 28, 2010)	\$500,000 Civil Penalty \$2,258,127 Disgorgement	Civil penalty, disgorgement, and compliance reporting resulting from violations of 18 C.F.R. § 1c.2 (2010) and various provisions of Open Access Transportation Tariff.