

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

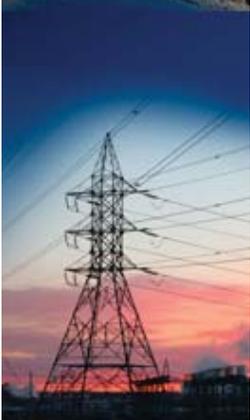


2008 REPORT ON ENFORCEMENT
Docket No. AD07-13-001

Prepared by the Staff of the
Office of Enforcement
Federal Energy Regulatory Commission
Washington, D.C.

October 31, 2008

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



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I. Introduction

The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (the Commission) is issuing this report as directed by the Commission in the Revised Policy Statement on Enforcement (Revised Policy Statement).¹ This report informs the public and the regulated community of the Commission's enforcement activities during FY2008,² including an overview and statistics on the activities of the four divisions within Enforcement. Additionally, this report provides guidance, *inter alia*, on the types of violations for which the Commission has approved settlement and investigations that were closed without payment of a civil penalty.

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 the instant report.

2 The Commission's fiscal year begins October 1 and ends September 30 of the following year.

II. Background

In November 2007, the Commission held a widely-attended Conference on Enforcement Policy to entertain questions and suggestions regarding its enforcement policies and practices since the passage of the Energy Policy Act of 2005 (EPAcT 2005).³ Prior to the Conference, staff released a Report on Enforcement (2007 Report), which discussed the investigative, audit, and oversight activities of Enforcement since the enactment of EPAcT 2005. The report emphasized the importance of informing the public of the activities of Enforcement staff, given the scope and reach of the Commission's enforcement authority. The 2007 Report also recognized that, because the investigative work of Enforcement's Division of Investigations is non-public, the majority of the information that the industry receives about investigations comes from orders issued by the Commission approving settlements or ordering companies to show cause why conduct should not be sanctioned. In actuality, investigations that result in settlements or orders to show cause

³ Energy Policy Act of 2005, P.L. No. 109-58, 119 Stat. 594 (2005).

are a small fraction of Division of Investigations' activities. Therefore, in the 2007 Report staff provided the public with more information regarding those items that remain non-public, such as self-reported violations and investigations that close without any public enforcement action or civil penalty assessments.

After the 2007 Conference on Enforcement Policy, the Commission received many comments and suggestions from industry participants suggesting that the 2007 Report was well-received and useful to the public. Thus, in May of this year, the Commission announced that Enforcement staff would issue an annual statistical report at the end of each fiscal year summarizing its enforcement activities for the preceding year.⁴ This report is the first of these annual statistical reports, and includes an overview and statistics regarding the activities of Enforcement, including Division of Investigations, the Division of Audits, the Division of Energy Market Oversight, and the Division of Financial Regulation.

⁴ See *supra* note 1.

III. Enforcement Activities During FY2008

In addition to the annual release of this report, the Commission and its staff adopted several other measures in response to the comments and concerns raised during and after the 2007 Conference on Enforcement Policy. On May 15, 2008, the Commission addressed a number of these comments in four issuances that clarify the Commission's internal processes, expand the mechanisms for receiving guidance from staff, ensure due process during investigations, and emphasize the Commission commitment to promoting industry-wide compliance. Further, staff held a workshop on compliance and updated the enforcement section of the Commission's website. Recently, the Commission also issued a Policy Statement on Compliance.

A. May 15, 2008 Issuances

1. Revised Policy Statement on Enforcement

In response to some of the comments received at the November 2007 Conference, the Commission issued the Revised Policy Statement⁵ to supersede the 2005 Policy Statement on Enforcement.⁶ The Revised Policy Statement informed and updated the public on the Commission's enforcement experience and procedures, and provided explanations of the factors that are considered in determining which remedies and sanctions to impose. The Revised Policy Statement, therefore, offered further guidance on: (1) Enforcement's internal procedures; (2) the factors considered by enforcement staff when determining whether to open and close an investigation; and (3) the factors considered by the Commission to determine an appropriate civil penalty. The Revised Policy Statement also announced additional

procedures to ensure due process and increase the transparency of the Commission's enforcement program.⁷

Finally, the Revised Policy Statement demonstrated the Commission's pledge to promote industry-wide compliance and the creation of effective compliance programs by making clear that a company's commitment to compliance is one of the two most important factors in the Commission's determination of civil penalty amounts, along with the seriousness of the offense. The Commission also provided additional guidance as to what constitutes an effective compliance program and announced its intention to hold periodic workshops on compliance issues.⁸

2. Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms for Obtaining Guidance

The Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms for Obtaining Guidance (Interpretive Order) describes and compares the various methods by which the industry can receive staff guidance.⁹ These methods include petitions for declaratory orders, general counsel opinion letters, accounting interpretations, the enforcement hotline, and other informal communications with staff. The Interpretive Order describes the types of requests that are appropriate for each of these mechanisms and the degree of reliance that can be placed on the guidance received.

The Interpretive Order also enhanced the methods

⁵ Revised Policy Statement, *supra* note 1.

⁶ *Enforcement of Statutes, Orders, Rules, and Regulations*, 113 FERC ¶ 61,068 (2005) (2005 Policy Statement).

⁷ Revised Policy Statement at P 5. For example, the Commission announced that if the subject of an investigation submits a written response to staff's presentation of the facts and legal theories of the case before staff seeks settlement authority, that response will be included in staff's request for settlement authority for contemporaneous Commission review. *Id.* at P 34.

⁸ *Id.* at P 59.

⁹ *Obtaining Guidance on Regulatory Requirements*, 123 FERC ¶ 61,157 at P 7-13 (2008).

for receiving staff guidance. First, it expanded the scope of the no-action letter process to include any issue that falls within the Commission's jurisdiction, with only a few exceptions.¹⁰ Second, the Commission introduced the virtual Compliance Help Desk to provide a mechanism to submit questions regarding compliance to an appropriate staff member.¹¹

3. *Ex Parte* Contacts and Separation of Functions

The Commission issued a Notice of Proposed Rulemaking that proposed to revise the Commission's regulations to clarify the application of the *ex parte* and separation of functions rules in the context of non-public investigations.¹² The Commission issued a final order adopting these revisions on October 16, 2008.¹³ In particular, the revisions codify the Commission's practice of designating staff as non-decisional employees at the time an order to show cause issues. This revision ensures due process by limiting Commission litigation staff's contact with the Commission and decisional staff in the same manner as it currently limits the contacts of outside parties. These revisions also clarify the intervention rule to state that intervention is not permitted as a matter of right in proceedings arising from non-public investigations.

10 *Id.* at P 7-13. Those issues that are excluded from the No-Action Letter process are issues arising under the following sections: (1) Federal Power Act Part I, 16 U.S.C. §§ 791- 824w (2006); (2) Federal Power Act §§ 215-216, 16 U.S.C. §§ 824o-824p; (3) Natural Gas Act §§ 3, 7, and 15, 15 U.S.C. §§ 717b, 717f, 717n (2000); (4) Natural Gas Policy Act § 311, 15 U.S.C. § 3371 (2000).

11 *Id.* at P 16. The Compliance Help Desk became operational in mid-June 2008, and received 168 inquiries by mid-October 2008. The largest number of inquiries pertained to accounting matters (20) with the rest spread across many subject areas. Roughly two-thirds of the inquiries related in some sense to a compliance issue; the remainder involved research questions and consumer complaints.

12 *Ex Parte Contacts and Separation of Functions*, 73 Fed. Reg. 29451 (May 21, 2008), FERC Stats. & Regs. ¶ 32,634 (2008).

13 *Ex Parte Contacts and Separation of Functions*, Order No. 718, 125 FERC ¶ 61,063 (2008).

4. Instant Final Rule on Submissions to the Commission upon Staff Intention To Seek an Order To Show Cause

As noted in the Revised Policy Statement, the Commission issued an instant final rule to amend its regulations so as to give the subject of an investigation the right to be notified, except in extraordinary circumstances, if staff intends to recommend the issuance of an order to show cause.¹⁴ Upon this notification, the subject of the investigation will be given the opportunity to make a non-public submission to the Commission arguing against the issuance of an order to show cause, which will be considered together with enforcement staff's memorandum seeking an order to show cause.¹⁵ This amendment took effect on May 21, 2008.

B. Updated Enforcement Webpage

In May of this year, staff designed a new and improved enforcement section for the Commission's website to provide easy access to all of the Commission's public enforcement-related information. This redesigned webpage is accessible from the Commission's home page and includes links to relevant statutory and regulatory provisions, policy statements, orders, guidance, and reports. It also provides information about recent settlements and links to all of the stipulation and consent agreements that the Commission has entered into since the enactment of EAct 2005. This webpage is updated regularly to provide access to all newly-released enforcement-related documents and announcements.¹⁶

14 *Submissions to the Commission upon Staff Intention To Seek an Order To Show Cause*, Order No. 711, 73 Fed. Reg. 29431 (May 21, 2008), 123 FERC ¶ 61,159 (2008) *amending* 18 C.F.R. § 1b.19 (2007).

15 *Id.*

16 The Enforcement webpage can be accessed through this link: <http://www.ferc.gov/enforcement/enforcement.asp>.

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C. Compliance Workshop

In accordance with the Commission's announcement in both the Revised Policy Statement and the Interpretive Order, staff held a widely-attended Workshop on Regulatory Compliance on July 8, 2008, expanding upon the principles on compliance already articulated in the May 15 Revised Policy Statement on Enforcement.¹⁷ The workshop provided a forum for the public, market participants, and legal practitioners to share their perspectives and experiences on a number of topics related to the development of sound compliance programs. The workshop was divided into two panels entitled, "Designing and Developing a Compliance Program" and "Implementing and Maintaining a Compliance Program." The workshop facilitated an exchange of ideas to assist industry participants in developing and implementing strong and effective compliance programs that prevent and detect violations of the Commission's requirements. The workshop also assisted staff in formulating recommendations to the Commission.

D. Policy Statement on Compliance

On October 16, 2008, the Commission issued a Policy Statement on Compliance.¹⁸ The Policy Statement on Compliance supplements the discussion in the Revised Policy Statement as to the factors underpinning effective compliance and points out four hallmarks of effective compliance: active engagement and leadership by senior management; preventative measures appropriate to the circumstances of the company that are effective; prompt detection of problems, cessation of misconduct, and reporting of violations; and remediation of the conduct. The Policy Statement on Compliance demonstrates the benefits that inure to companies that implement comprehensive compliance programs and describes in more detail the civil penalty credit the Commission

may provide for effective compliance, including reduction or even complete elimination of civil penalties under certain circumstances.

E. Rulemakings on Reporting Requirements

An important aspect of the Commission's enforcement program is the oversight and maintenance of accurate financial, market, and other data so that Commission staff and market participants have ready access to information to monitor effectively the activities of regulated companies. In this regard, during FY2008, the Commission issued three significant rules that revised existing requirements or created new ones to improve the integrity of data used by Enforcement and other staff, as well as members of the public, in ensuring compliance with the Commission's rules, regulations, and orders.

1. Reporting Requirements for Natural Gas Pipelines

In March 2008, the Commission issued a final rule adopting revisions to the Commission's financial reporting requirements for natural gas pipelines, FERC Form Nos. 2,¹⁹ 2-A²⁰ and 3-Q.²¹ In particular, the final rule requires the forms' filers to provide additional information related to the disposition of shipper-supplied gas,²² affiliate transactions,²³ individual rate treatments for services,²⁴ discounted and

19 The requirements for FERC Form No. 2 are prescribed in section 260.1 of the Commission's regulations, 18 C.F.R. § 260.1 (2008).

20 The requirements for FERC Form No. 2-A are prescribed in section 260.2 of the Commission's regulations, 18 C.F.R. § 260.2 (2008).

21 The requirements for FERC Form No. 3-Q are prescribed in section 141.400 of the Commission's regulations, 18 C.F.R. § 141.400 (2008). *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 73 Fed. Reg. 19389 (Apr. 10, 2008), FERC Stats. & Regs. ¶ 31,267 (2008) (Order No. 710), *reh'g granted in part and denied in part and clarification granted*, Order No. 710-A, 73 Fed. Reg. 36414 (June 20, 2008), 123 FERC ¶ 61,278 (2008), *appeal pending sub nom.*, *Am. Gas Ass'n v. FERC*, No. 08-1266 (D.C. Cir. Aug. 15, 2008).

22 Order No. 710 at P 13-16.

23 *Id.* at P 20-22.

24 *Id.* at P 23-25.

17 Revised Policy Statement at P 44-48, 57-60.

18 *Compliance with Statutes, Regulations, and Orders*, 125

FERC ¶ 61,058 (2008) (Policy Statement on Compliance).

negotiated rate services,²⁵ deferred income tax and state tax issues,²⁶ regulatory assets and liabilities,²⁷ employee pensions and benefits,²⁸ the entity whose capital structure is reported,²⁹ the source of return on equity,³⁰ and, costs and revenues associated with trackers or special surcharges.³¹ The final rule also eliminated FERC Form No. 11³² and incorporated the information contained in that form into Form Nos. 2 and 3-Q.³³ These revisions will enhance the transparency of financial reporting by interstate natural gas pipelines and better reflect the current market and cost information needed for the Commission's oversight of interstate natural gas pipeline rates.

2. Reporting Requirements for Electric Utilities and Licensees

In September 2008, the Commission issued a final rule adopting revisions to the Commission's financial reporting requirements for FERC Form Nos. 1,³⁴ 1-F,³⁵ and 3-Q on September 19, 2008.³⁶ In particular, the final rule requires the forms' filers – public utilities and licensees – to provide additional information with regard to formula rates,³⁷ affiliate transactions,³⁸ and revenues.³⁹ In addition,

²⁵ *Id.* at P 26-28.

²⁶ *Id.* at P 29-34.

²⁷ Order No. 710 at P 35-37.

²⁸ *Id.* at P 38-40.

²⁹ *Id.* at P 41-43.

³⁰ *Id.* at P 44-46.

³¹ *Id.* at P 47-48.

³² The requirements for FERC Form No. 11 are prescribed in section 260.3 of the Commission's regulations, 18 C.F.R. § 260.3 (2008).

³³ Order No. 710 at P 49-51.

³⁴ The requirements for FERC Form No. 1 are prescribed in section 141.1 of the Commission's regulations, 18 C.F.R. § 141.1 (2008).

³⁵ The requirements for FERC Form No. 1-F are prescribed in section 141.2 of the Commission's regulations, 18 C.F.R. § 141.2 (2008).

³⁶ *Revisions to Forms, Statements, and Reporting Requirements for Electric Utilities and Licensees*, Order No. 715, 73 Fed. Reg. 58720 (Oct. 7, 2008), FERC Stats. & Regs. ¶ 31,277 (2008) (Order No.715).

³⁷ *Id.* at P 21-50.

³⁸ *Id.* at P 56-73.

³⁹ *Id.* at P 78-90.

the Commission addressed numerous technical revisions to the Form No. 1,⁴⁰ including, copying information from one page to another, correcting printing features, edit checks, and revising instructions.

These revisions improve the forms, reports and statements to provide, in fuller detail, the information the Commission needs to carry out its responsibilities under the Federal Power Act to ensure that rates remain just and reasonable. In particular, the revised reporting requirements will enhance the Commission's and customers' review of formula rates, permit better understanding of non-power goods and services transactions with affiliates, and provide additional detail of revenues not previously specified in the reporting requirements. In addition, the final rule will expedite reporting by clarifying instructions and cross-references and making certain technical improvements. In particular, the Commission enhanced its software program to include edit checks which will require companies to conduct an additional level of review before submitting their information. This enhancement will help to ensure that information reported to the Commission is accurate.

3. Rule on Reporting of Transactions to Price Index Publishers and their Blanket Sales Certificate Status

On December 26, 2007, the Commission issued Order No. 704 which requires natural gas wholesale market participants, including a number of entities that may not otherwise be subject to the Commission's traditional Natural Gas Act (NGA) jurisdiction, to identify themselves and report summary information about their physical natural gas

⁴⁰ *Id.* at P 94-102.

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transactions on an annual, calendar year basis.⁴¹ To facilitate such reporting, Order No. 704 created FERC Transaction Report FERC Form No. 552: Annual Report of Natural Gas Transactions (Form No. 552) and various implementing regulations. Form No. 552 is to be filed by May 1, 2009, for transactions occurring in calendar year 2008 and by May 1 of each year thereafter for each previous calendar year. By obtaining information about natural gas transactions, the final rule furthers the Commission's efforts to monitor price formation in the wholesale natural gas markets, which supports the Commission's market-oriented policies for the wholesale natural gas industries. Those policies in turn require that interested persons have broad confidence that reported market prices accurately reflect the interplay of legitimate market forces. Without confidence in the basic processes of price formation, market participants cannot have faith in the value

of their transactions, the public cannot believe that the prices they see are fair, and it is more difficult for the Commission to ensure that jurisdictional prices are "just and reasonable."⁴²

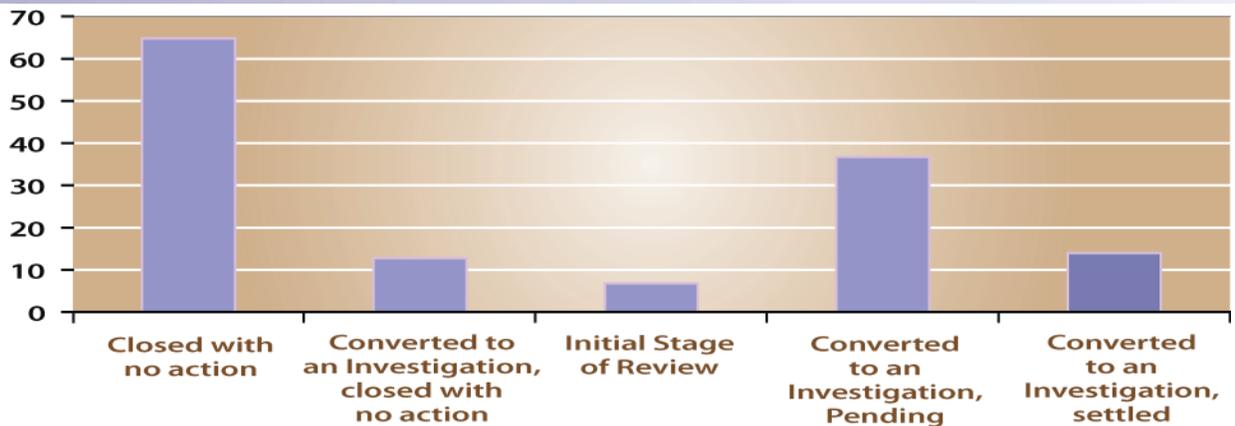
Following the issuance of Order No. 704, staff from the Division of Energy Market Oversight and the Division of Financial Regulation held two technical conferences during which potential filers of Form No. 552 and other industry stakeholders discussed the form. Based on the industry feedback during those technical conferences, as well as requests for rehearing and clarification filed in response to Order No. 704, on September 18, 2008, the Commission issued Order No. 704-A affirming and clarifying its basic determinations in Order No. 704.

⁴¹ *Transparency Provisions of Section 23 of the Natural Gas Act*, Order No. 704, 73 Fed. Reg. 1014 (Jan. 4, 2008), FERC Stats. & Regs. ¶ 31,260 (2008), *reh'g denied and clarification granted*, Order No. 704-A, 73 Fed. Reg. 55726 (Sept. 26, 2008), 124 FERC ¶ 61,269 (2008), *reh'g pending*. Order No. 704 has its genesis in the EAct 2005. EAct 2005 added section 23 of the Natural Gas Act (NGA), 15 U.S.C. § 717t-2 (2000 & Supp. V 2005) to authorize the Commission "to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce, having due regard for the public interest, the integrity of those markets, and the protection of consumers."

⁴² See Natural Gas Act §§ 4 and 5, 15 U.S.C. §§ 717c, 717d (2006); Federal Power Act §§ 205 and 206, 16 U.S.C. §§ 824d, 824e (2006).

IV. Division of Investigations Activities

ALL SELF-REPORTS, BY DISPOSITION



While participating in the development of the enforcement policies and procedures discussed above in section III.A.-D., the Division of Investigations (DOI) staff has continued its primary function of investigating potential violations of the Commission's statutes, orders, rules, and regulations. First, this section of the report presents statistics on the number and type of self-reported violations and investigations that staff handled during FY2008, in a similar fashion as the 2007 Report.⁴³ In addition, staff provides here an expanded discussion of the types of violations for which no action was necessary, including the illustrations of particular self-reports and investigations that have been closed with no further action and no civil penalties. This is in response to requests for this information and to provide the industry with real-world examples where an enforcement action was not pursued. Staff notes, however, that in providing these examples, it must preserve the non-public nature of these self-reports and investigations. Therefore, these examples do not provide the names of the entities involved or specific details that would reveal the identities of those entities. Additionally,

⁴³ Unlike the 2007 Report, this report and future reports will present the statistics by fiscal year, comparing the current year to the previous year. The applicable fiscal year will be determined by the date staff received the written self-report or opened an investigation.

in providing these examples, staff is offering no assurances that similar situations will be handled in the same manner. All determinations as to whether to pursue an enforcement action are made on a case-by-case basis.

This report then describes the settlements that staff negotiated and the Commission approved during FY2008 and the types of violations involved. In addition, staff compares and contrasts these settlements to explain the variation in the penalties paid. Finally, this section of the report provides an update on the two proceedings that resulted from orders to show cause in which Enforcement litigation staff is currently participating.

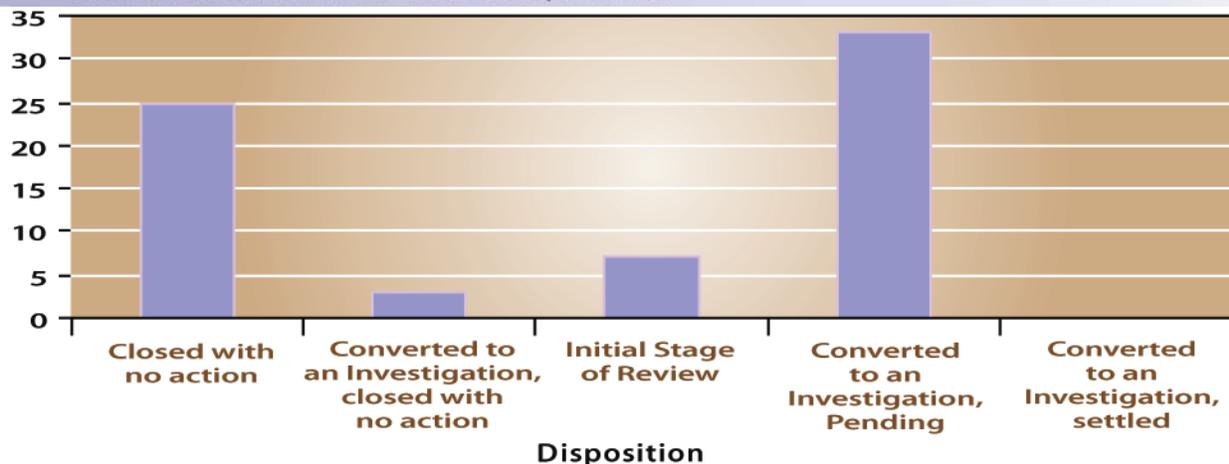
A. Self-Reporting Statistics

The 2005 Policy Statement announced the importance of self-reporting violations and inspired numerous companies to begin reporting violations that they discovered to the Commission's DOI staff. The Commission reiterated that importance recently in the Revised Policy Statement.⁴⁴ To date, the staff has received a total of 136 self-reports (see chart above). This total is broken down by fiscal year as

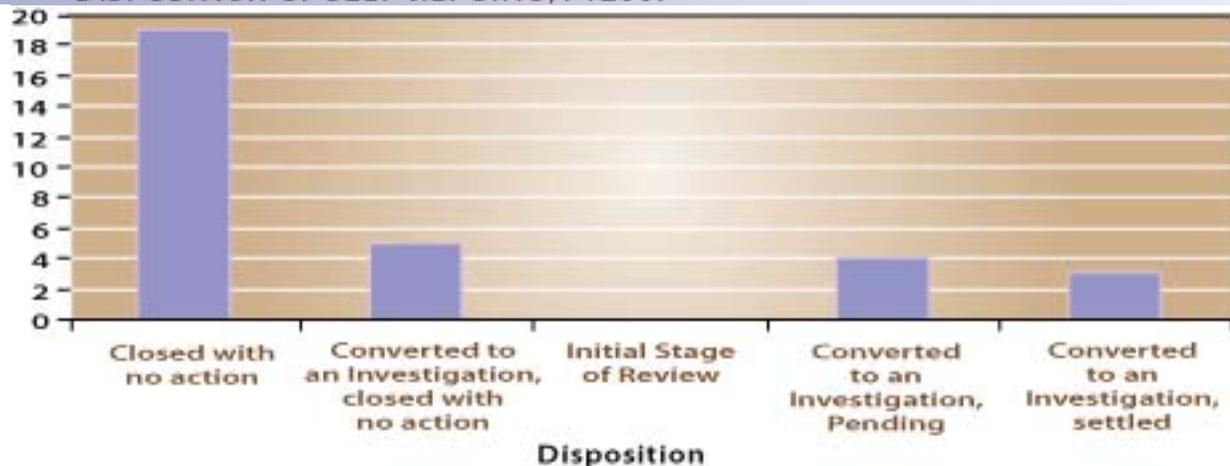
⁴⁴ Revised Policy Statement at P 61-64.

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DISPOSITION OF SELF-REPORTS, FY2008



DISPOSITION OF SELF-REPORTS, FY2007



follows: (1) FY2006, 37 reports received; (2) FY2007, 31 reports received; and (3) FY2008, 68 reports received. As the yearly totals demonstrate, there was a significant increase in the number of self-reports submitted to DOI over the last year.

There are two potential explanations for this increase. First, companies are improving their compliance programs and auditing procedures, so they are better able to detect violations and report them to staff. The Commission recognizes that effective compliance programs that include auditing and reporting procedures can result in an increase in

reports of violations even though the companies are improving compliance. Second, the Commission offers penalty mitigation credit to those who self-report violations.⁴⁵ The Commission has repeatedly stated that it will reduce or even eliminate a company's potential penalty for a violation if it is self-reported.⁴⁶ The settlement orders issued in the past three years for self-reported violations provide confirmation that the Commission does reduce penalties when the violation is

⁴⁵ *Id.*

⁴⁶ See Revised Policy Statement at P 64; 2005 Policy Statement at P 25; Policy Statement on Compliance at P 17, 24.

Division of Investigations Activities

self-reported.⁴⁷ The 2007 Report further informed the public that in many instances there is no penalty assessed – indeed, approximately 75 percent of the self-reports received in 2006 and 2007 were closed without any formal action or penalty assessment.

Of the 68 self-reports received in FY2008, staff closed 25 of them after an initial review and without opening an investigation and three more were closed without penalties after conducting an investigation. Staff's initial review is pending for seven of these self-reports and 33 are pending as investigations. To date, none of these self-reports resulted in the imposition of a civil penalty. For comparison, in FY2007, staff received 31 self-reports. Staff closed 19 of them after an initial review and without opening an investigation. Five more self-reports were closed without penalties after conducting an investigation. Four of these self-reports are pending as investigations, but none of them is still pending in an initial review. To date, three of these self-reports resulted in settlements (see charts on page 11).

Just as the number of self-reports has increased, so has the quality of the reports that we have received. It appears companies are following the guidance provided in the 2007 Report regarding what constitutes a good self-report.⁴⁸ When self-reports are complete and accurate, staff does not have to request as much additional information from the company before determining whether to pursue an enforcement action and staff can dispose of the matter in a more timely manner. This benefits both the Commission and those companies who are reporting violations.

⁴⁷ *In re Entergy New Orleans, Inc.*, 122 FERC ¶ 61,219 at P 11 (2008); *In re Constellation New Energy-Gas Division, LLC*, 122 FERC ¶ 61,220 at P 22 (2008); *In re BP Energy Company*, 121 FERC ¶ 61,088 at P 23 (2007); *In re MGTC, Inc.*, 121 FERC ¶ 61,087 at P 15 (2007); *In re Gexa Energy, L.L.C.*, 120 FERC ¶ 61,175 at P 14 (2007); *In re Cleco Power, LLC*, 119 FERC ¶ 61,274 at P 8 (2007); *In re Calpine Energy Services, L.P.*, 119 FERC ¶ 61,125 at P 15 (2007); *In re Bangor Gas Company*, 118 FERC ¶ 61,186 at P 12 (2007); *In re PacifiCorp*, 118 FERC ¶ 61,026 at P 12 (2007); *In re SCANA Corporation*, 118 FERC ¶ 61,028 at P 7 (2007); *In re Entergy Services, Inc.*, 118 FERC ¶ 61,027 at P 18 (2007); *In re NRG Energy, Inc.*, 118 FERC ¶ 61,025 at P 7 (2007).

⁴⁸ *Staff Report on Enforcement*, Docket No. AD07-13-000, at 17-18 (Nov. 14, 2008).

B. Trends in Self-Reporting

Staff receives self-reports on a variety of matters. The following chart depicts the types of violations for which staff received self-reports for fiscal years 2007 and 2008. As the chart shows, the majority of the self-reports received in both years related to the Commission's natural gas pipeline capacity release requirements. However, in 2007, there were an equal number of self-reported violations of the standards of conduct as there were violations of the Commission's capacity release requirements. In 2008, the number of self-reported standards of conduct violations decreased to only 10 percent of the total. This decrease may have resulted from the pendency of a rulemaking where the Commission had proposed major changes in the Standards of Conduct. That rulemaking has now been finalized with the issuance of Order No. 717 on October 16, 2008 (see charts on page 13).⁴⁹

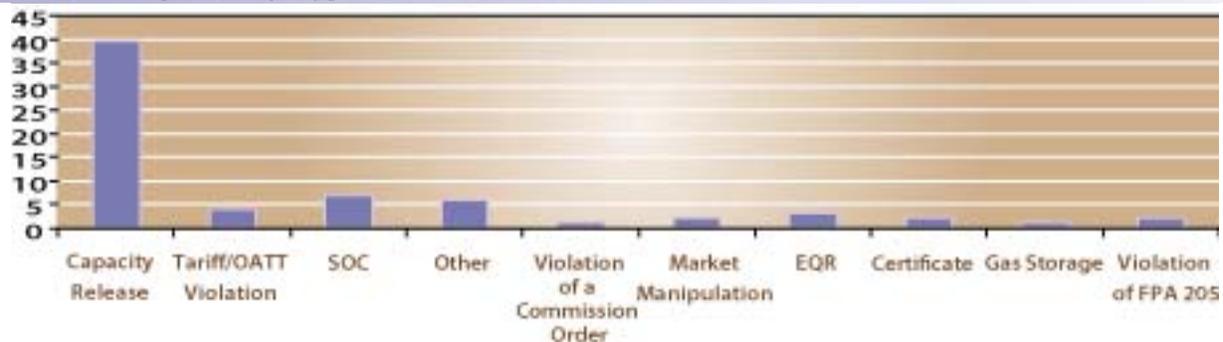
After receiving each self-report, staff reviews the report to determine whether the matter is of sufficient gravity to warrant an investigation or whether the matter may be disposed of with correction and compliance. Staff regularly considers whether (1) there is an explanation for the conduct; (2) the self-reported matter caused any harm; (3) corrective action has been taken; and (4) the company has adopted measures to prevent future violations. If the violation was inadvertent or isolated, did not cause harm, was corrected, and preventative measures have been taken, then staff closes the self-report without an investigation or sanctions. Other times, staff finds it necessary to open an investigation into a self-reported matter to receive more information than was included in the self-report. Depending on the circumstances, after receiving additional information, staff may decide that further action is not warranted and will close the investigation.

In FY2008, staff continued to close many self-reports without pursuing an enforcement action. Approximately 40 percent of the self-reports received in FY2008 were either

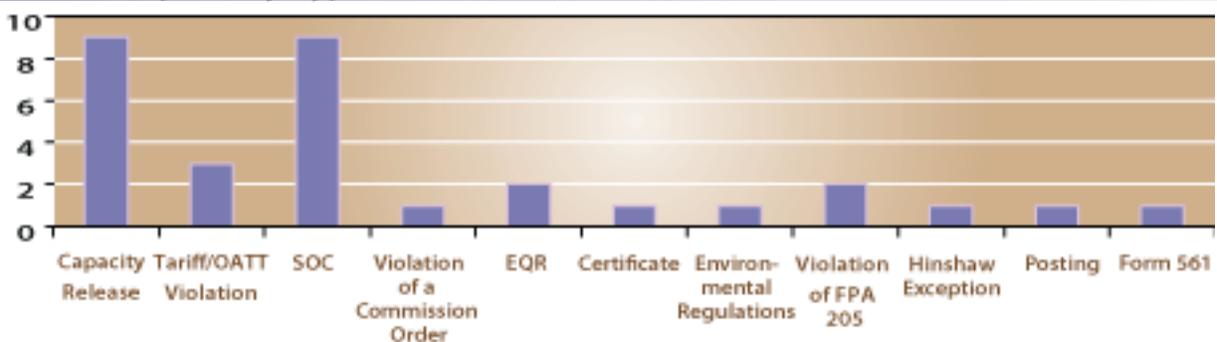
⁴⁹ *Standards of Conduct for Transmission Providers*, Order No. 717, 125 FERC ¶ 61,064 (2008).

Division of Investigations Activities

Self-Reports by Type of Violation, FY2008



Self-Reports by Type of Violation, FY2007



closed after staff’s initial review or closed after an investigation without any further action. By contrast, in FY2007, approximately 75 percent of self-reports were closed with no action. The next charts depict the types of self-reported violations for which staff determined that no enforcement action was warranted in fiscal years 2008 and 2007 (see charts on page 14).

Staff recognizes that it is beneficial to regulated entities’ compliance efforts to have more information regarding the circumstances in which staff determines that penalties are not necessary. Therefore, staff is including illustrations, which give a short summary of some of the circumstances surrounding some of the self-reports that were closed with no action and the reasons why staff chose not to pursue an enforcement action.⁵⁰ These illustrations are intended to provide guidance

to the industry, while still preserving the non-public nature of the self-reports.

Capacity Release Violations

Posting Violation. A natural gas company (Company) reported that it failed to post a seven month capacity release at a discounted rate in violation of 18 C.F.R. § 284.8 (2007). The Company also neglected to report its failure to post the seven month capacity release at a discounted rate in a quarterly compliance report as required under an enforcement settlement. The Company submitted an affidavit to staff stating that the omission was human error, that subsequent review of all capacity release transactions over the previous year and a half found no other errors, and that the Company has programmed its software to disallow a discounted capacity release of longer than 31 days to go forward without first being posted. Moreover, the Company posted the capacity release in its non-critical notices section, stating that the proposed

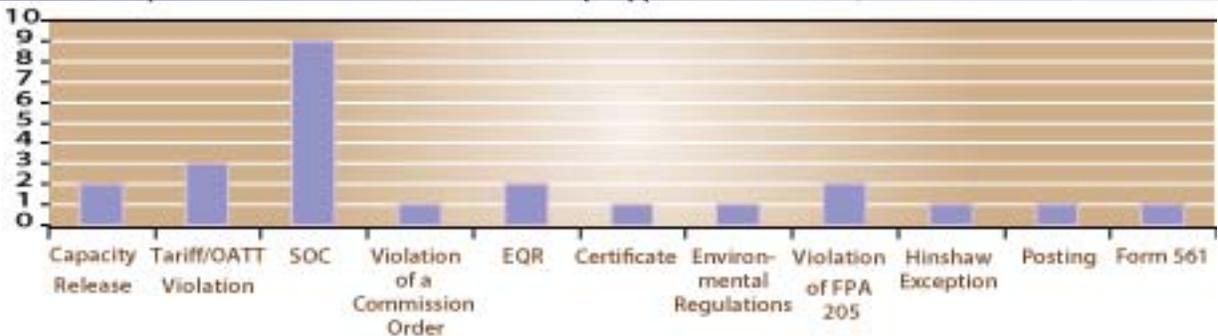
⁵⁰ This section does not include illustrations of those self-reports that were converted to investigations and then closed with no action. Illustrations of those self-reports can be found *infra* section IV.D.

Division of Investigations Activities

Self Reports Closed with No Action by Type of Violation, FY2008



Self Reports Closed with No Action by Type of Violation, FY2007



release should have been posted earlier. Because the Company had already remedied the matter and it was an isolated incident, staff closed the matter without further action.

Shipper-Must-Have-Title Violation. During its Federal Power Act (FPA) section 203 due diligence review,⁵¹ a company that purchases natural gas for gas-fired electric generation (Company) found and self-reported a “questionable transport contract” where, a company acting as a nominating and scheduling agent for a natural gas production company (Production Company) under a power purchase agreement, shipped gas it owned on pipeline capacity held by the

Production Company. Staff closed the matter without further action because the violations occurred before the Commission’s civil penalty authority became effective, there was low likelihood of unjust profits to disgorge, and there was certification from the Production Company that full capacity of the Production Company’s facility is currently contracted to the company that acts as a nominating and scheduling agent under a tolling agreement.

Shipper-Must-Have-Title Violation. A natural gas transportation company (Company) self-reported a violation on a natural gas pipeline in which gas was transported on the wrong interruptible transportation contract. The violation

⁵¹ 16 U.S.C. § 824b (2006).

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lasted for only one day. Staff recommended that the case be closed because the violation was inadvertent, occurred on an interruptible transportation contract, was very short in duration, involved a small quantity of gas, and was responded to quickly by the Company.

Standards of Conduct

Organizational Chart. A natural gas transmission company (Company) informed staff of an error in an organizational chart and in its compliance marketing procedures listing one of its local distribution companies (LDC) as a market affiliate in violation of 18 C.F.R. § 358.4(b)(3) (2007). The LDC did not meet the definition of a marketing affiliate. The Company made an oral presentation to staff and staff closed the matter with no further action, because it was self-reported, corrected, and because of the non-serious nature of the incident and the lack of harm.

Disclosure of Transmission Information. Employees of an affiliate to a natural gas transmission company (Company) had access to certain transmission and customer information at one of the Company's pipeline meter stations. The Company discontinued the access as soon as it became aware of the issue and provided staff with an investigative report. Staff concluded that none of the employees who had access to the information was engaged in natural gas trading activities other than servicing end-use customers of the interstate affiliate and also that the Company now has procedures to ensure that future incidents do not occur. Because there was no economic harm or economic benefit, no intent, and no involvement of senior management, and because this was an isolated compliance issue that was immediately addressed, the matter was closed with no further action.

Disclosure of Transmission Information. An internal audit determined that certain employees of a natural gas company (Company) improperly had access to, but likely did not access, transmission information. Access to such information was removed. The Company self-reported the matter and provided a sworn affidavit that none of the employees attempted to access the information. Staff took no further action because the violation was inadvertent, employees did not attempt to access the information, and the Company implemented safeguards to prevent future access to the information.

Tariff Violations

Open Access Transmission Tariff (OATT). An electric company (Company) failed to bid two small Installed Capacity units into the market day-ahead as required for capacity resources not on output status by PJM OATT § 1.10.1A(d). The Company self-reported and asserted that this occurred because its plant operator failed to clearly communicate to the Company's trading operation. The Company said that it promptly notified the North American Electric Reliability Corporation (NERC), retroactively changed the characterization of the event to PJM from a planned outage to a forced outage, and instituted new communications procedures to ensure that similar errors do not occur in the future. Staff reviewed documentation sent by the Company and determined that this event was an unintentional mistake, there was no harm to the market, it was highly improbable that traders would seek to, or actually did benefit from the event, and, in fact, the Company was likely to suffer financial consequences as a result of the error. The matter was closed without further action.

Natural Gas Pipeline Tariff. This self-report involved a situation where a natural gas pipeline allowed a shipper

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to use Park-and-Loan (PAL) service in conjunction with Management of Balancing Agreement (MBA) service. The pipeline violated its tariff when it provided MBA service to the shipper even though the shipper did not use a third-party to provide firm delivery of gas at a downstream Balancing Point. In its self report, the pipeline also indicated that PAL service was provided at the delivery point which resulted in a violation because that service could no longer be provided downstream as required by the pipeline's tariff. Staff closed the matter with no further action because the violations were not serious as there was no impact on other shippers, and no evidence of affiliate preference.

Electric Quarterly Reports

Discrepancies in Filed Electric Quarterly Reports (EQRs). A public utility (Company) self-reported that, while compiling data and information for the submission of its updated market power analysis on behalf of its Regulated and Market-Regulated public affiliates, it identified discrepancies pertaining to the prior reporting of wholesale sales of energy, capacity, and/or ancillary services in certain of the market-based rate sellers' EQR submitted to the Commission. The Company performed a comprehensive review of its EQR submittals for all of its market-based rate sellers and filed amended EQRs to the extent that it found discrepancies. The Company also implemented detailed compliance procedures that included mandatory training. Staff closed the matter without further action.

Failure to File Cost-Based Requirements Contracts in EQRs. Prior to Commission Order No. 2001, which modified utilities' transaction reporting requirements to include the reporting of

cost-based transactions in EQRs, the Company entered into an agreement with a marketing affiliate (Affiliate) whereby the Company's wholesale market-based transactions were conducted through the Affiliate. From that point forward, the Affiliate submitted the EQRs for itself and for the Company. The Affiliate dealt only with market-based transactions and had no responsibility for information concerning the Company's cost-based requirements contracts. As a result, the Affiliate failed to file cost-based transactions in EQRs, as required by Order No. 2001, after it went into effect. Even after the Company and the Affiliate ended their relationship, the Company continued its failure to file because it employed the same reporting format used by the Affiliate. Finally, the Company also discovered market-based rate transactions that were not reported or instances where the sales price was reported inaccurately, which it determined was the result of human error. The Company self-reported the matter and amended its EQRs and put into place measures to prevent reoccurrences of the problem. Staff closed the matter without further action.

C. Trends in Investigations

During FY2008, staff also observed trends in the types and sources of investigations it conducted. First, there was a large increase in the number of market manipulation investigations conducted.⁵² In FY2007, staff opened 12 investigations involving market manipulation and this fiscal year, staff opened 20 investigations involving allegations of market manipulation. These investigations into market manipulation can result in findings that there is insufficient evidence of manipulation for staff to further pursue an

⁵² See 18 C.F.R. Part 1c (2007).

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enforcement action.⁵³ Nevertheless, these investigations, even when they do not result in enforcement action, are generally more time-consuming and labor-intensive than other investigations.

In addition, there was a large increase in the number of investigations into allegations that entities violated section 35.41 of the Commission's regulations. This regulation imposes a duty upon electric power sellers authorized to engage in sales for resale of electric energy at market-based rates to provide accurate, factual, and complete information in communications with the Commission and Commission-approved entities, such as regional transmission organizations and independent system operators.⁵⁴ As an example, the Commission, in May, issued an order approving a settlement which concluded an investigation into Edison Mission in which the company admitted a violation of section 35.41.⁵⁵ However, importantly, not all of these investigations involve circumstances similar to those in the Edison Mission settlement, wherein Edison Mission's conduct resulted in staff being misled during the investigation. Rather, the majority of these investigations involve allegations that entities have provided inaccurate information to Commission-approved entities in connection with bidding, scheduling, or unit availability.

In FY2008, staff received more referrals from the market monitoring units (MMU) of the RTOs and ISOs than it had in previous years. According to the Commission policy now codified in its regulations, MMUs are to refer potential

misconduct to the Commission for investigation.⁵⁶ In FY2007, staff only received two referrals from MMUs, whereas, in FY2008, staff received 15 such referrals.

This year, DOI staff for the first time opened investigations related to potential violations of the Reliability Standards that went into effect in June 2007, in the Continental United States. DOI and Office of Electric Reliability (OER) staff are currently cooperating with and assisting the NERC and the Regional Entities (REs) in investigations into potential violations of the Reliability Standards. Although the Commission publicly announced that it was commencing an investigation in Docket No. IN08-5-000 into the February 26, 2008 Florida Blackout event, the subject matter and other information about the remaining reliability-related investigations are non-public.⁵⁷

D. Investigations Statistics

In FY2008, staff opened more investigations than it had in the previous year, 48 as compared to 35.⁵⁸ In addition, staff closed a total of 22 investigations during FY2008. Of these 22 closed investigations, eight, or 36 percent, were closed with a finding of a violation, but without the Commission imposing any sanctions. Seven investigations, or 32 percent, were closed with staff finding there was not sufficient evidence of a violation. Seven investigations, or 32 percent, were concluded through settlement. For comparison purposes, in 2007, staff closed eight investigations, or 27 percent, with a finding of a violation, but without the Commission imposing any sanctions. Eight investigations, or 27 percent, were closed with staff finding there was not sufficient evidence of a violation. Thirteen investigations, or 43 percent, were

53 This fiscal year, the Commission released two public reports that describe Enforcement staff's investigation into allegations of market manipulation. In the reports, staff explained why they did not find market manipulation in the situations presented in these investigations. See *DC Energy, LLC v. H.Q. Energy Services (U.S.), Inc.*, 124 FERC ¶ 61,295 (2008); *Enforcement Staff Report, Findings of a Non-Public Investigation of Potential Market Manipulation by Suppliers of the New York City Capacity Market*, Docket Nos. IN08-2-000 & EL07-39-000 (Feb. 28, 2008).

54 18 C.F.R. § 35.41 (2007). This regulation codified former Market Behavior Rule 3.

55 *In re Edison Mission*, 123 FERC ¶ 61,170 (2008), *reh'g denied*, 125 FERC ¶ 61,020 (2008).

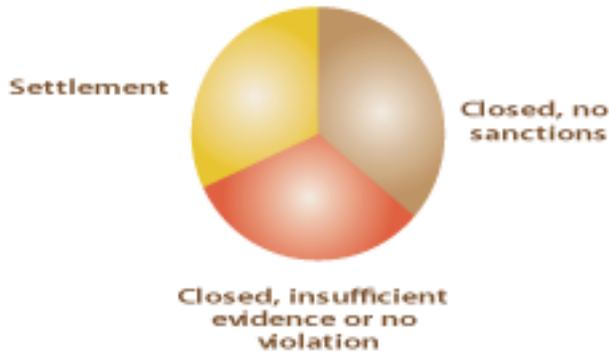
56 *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 125 FERC ¶ 61,071 (2008); *Market Monitoring Units in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267 (2005).

57 *2008 Florida Blackout*, 122 FERC ¶ 61,244 (2008).

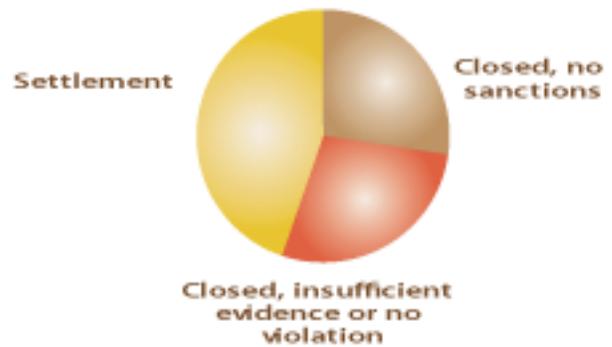
58 Notably, one investigation may have multiple subjects.

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DISPOSITION OF INVESTIGATIONS, FY2008



DISPOSITION OF INVESTIGATIONS, FY2007



concluded through settlement (see charts above).

As in FY2007, staff closed eight investigations in which it found violations but closed the investigation without pursuing enforcement action. As depicted graphically in the charts below, the violations at issue in these matters involved a variety of different statutes, rules, and regulations.

The following illustrations describe the circumstances surrounding some of these investigations that were closed with no action and explain why staff chose not to pursue an enforcement action. Like the self-report illustrations, these are intended to provide guidance to the industry, while still preserving the non-public nature of the investigations upon which they are based.

ISO Tariff Violations. Staff conducted an investigation into conduct by certain ISO market participants who bid supplemental energy at inter-ties and then “declined” the pre-dispatch instructions. This investigation revealed that the declines were attributable to an ambiguous (and therefore unenforceable) tariff provision. Staff concluded that the tariff provision was ambiguous, because it did not adequately define the terms used within the provision. Therefore, staff

recommended, and the ISO agreed, to begin the process of revising the tariff provision.

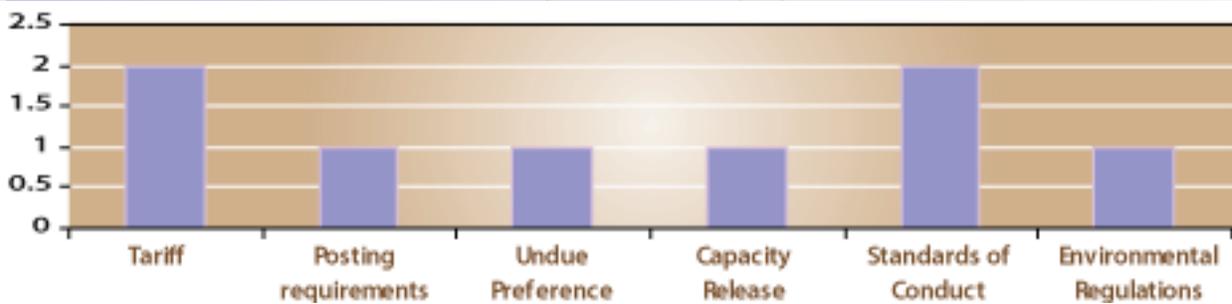
OATT Violations. Staff investigated allegations raised in a Hotline call regarding an RTO’s process for amending its transmission operations manual. During this investigation, staff determined that the RTO was not in compliance with a provision in its OATT that requires it to post the process for amending all of its rules, standards and practices that are related to transmission service. The process was not posted on its website, even though the manuals contain the administrative, planning, operating and accounting procedures. Staff met with RTO representatives to discuss how it should come into compliance with the provision. In response, the RTO posted a summary of the process on its website, bringing it into compliance with the provision.

Gas Pipeline Posting Violation. Staff investigated and determined that a natural gas pipeline failed to post all scheduled receipts of gas on a particular line in accordance with the Commission’s regulations.⁵⁹ Staff did not recommend sanctions for this violation, because it was due to a computer

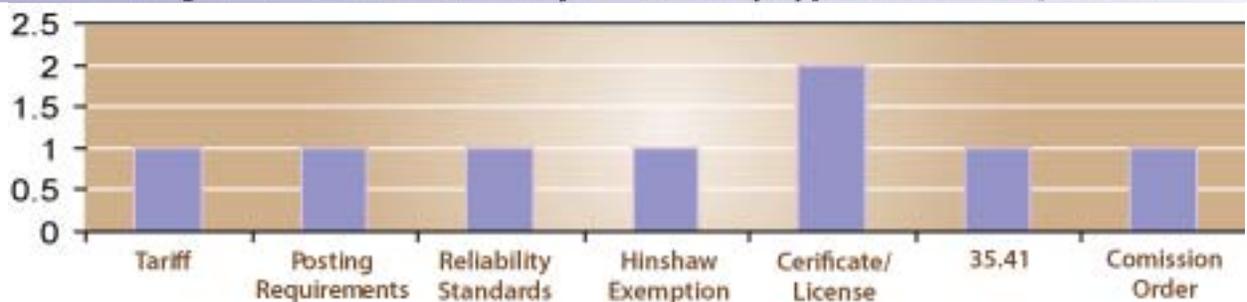
⁵⁹ 18 C.F.R. § 284.13(d)(1) (2007).

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Investigations Without Monetary Remedies By Type Of Violation, FY2008



Investigations Without Monetary Remedies By Type Of Violation, FY2007



software error, the violation was limited in duration, and the company took swift remedial action to correct the error. Further, staff is not aware of any entities that were harmed as a result of the posting violation.

Undue Preference to Affiliates. Staff investigated (1) whether a power company was providing zero-cost firm point-to-point transmission on certain constrained transmission line segments that are available only to entities that serve native or retail load in its own control areas; and (2) whether the power company permitted its supply division to receive unduly preferential access to network transmission capacity in order to implement wholesale sales. Staff concluded that, while the power company's merchant affiliate occasionally wheeled power into its service area at zero-cost, and thereafter out to other locations to the wholesale customer, the supply division properly paid the then currently effective postage-stamp rate for

the entire transmission path within the zone notwithstanding that a zero-rate was reflected for the inbound leg. Second, staff determined that the power company did not give priority to non-native load transactions and discovered that between 2004 and 2006, the only impropriety that occurred resulted from an inadvertent series of wholesale sales totaling 570 MWH over eight hours on one native load day in 2004. The power company had remedied the isolated violation prior to staff's investigation and implemented measures that has prevented similar violations from occurring. Staff determined that no enforcement action was necessary and closed this investigation.

Shipper-Must-Have-Title Violation. This self-report involved a shipper-must-have-title (SMHT) violation. A holding company (Holding Company), which was the parent company of a number of natural gas local distribution companies

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(LDC), entered into a “bridge” contract with a natural gas pipeline company which specified the LDC farthest upstream as the shipper under the contract. The Holding Company determined that it violated the SMHT requirement when gas that was owned by its LDCs, other than the one farthest upstream, was shipped on the “bridge” contract. The contract was used on 94 days to ship a total of 1,221,184 Dth of gas. Staff conducted an investigation that confirmed that the Holding Company had complied with other capacity release requirements. The investigation was closed without pursuit of a penalty because the violation was limited in scope and duration; found, self-reported, and promptly corrected by the Holding Company; and presented no harm to the market.

Standards of Conduct Non-Discrimination Requirement.

Staff conducted an investigation into self-reported violations of the non-discrimination requirements of the Standards of Conduct. The violations occurred when accounting personnel of a pipeline transmitted certain billing and accounting information to their counterparts within marketing affiliates as part of the monthly inter-company accounting reconciliation. In some cases, the pipelines shared information with the marketing affiliates earlier than they shared it with non-affiliated shippers. In others, the accounting information was shared only with the marketing affiliates. Staff’s investigation determined that the information exchange was inadvertent and did not result in providing the marketing affiliates with a commercial advantage, nor did it disadvantage non-affiliated shippers. The companies have adopted improved financial inter-company accounting procedures to facilitate inter-company account reconciliation without engaging in future violations.

Right-of-Way Maintenance. Staff received a self-report from a company that over-mowed in specific pipeline rights-of-way (ROWs) and exceeded the allowed ROW mowing width.

These operations were inconsistent with the Commission’s Plan and Procedures, posted on the Commission website. The company adjusted its current and future mowing operations to comply with the Plan and Procedures on all of its pipeline ROWs. It also submitted a system-wide mowing plan to the Office of Energy Projects (OEP) with a commitment letter stating that it agreed to give OEP prior written notice before deviating from the plan. While recognizing that a violation of the Plan and Procedures could have serious environmental implications, staff found that the relatively minimal duration and quantity of the company’s violations, stemming generally from inadvertent oversight, caused no negative environmental impact, and that the violations did not warrant a penalty accordingly.

E. Settlements

In FY2008, the staff entered into seven settlement agreements that were approved by the Commission, for a total civil penalty payment of \$19.95 million.⁶⁰ In the investigations leading to four of these settlements, staff found violations of the Commission’s capacity release policies.⁶¹ In the other three, one settlement pertained to the violation of section 35.41 of the Commission’s regulations, one dealt with violations of the standards of conduct,⁶² the Commission’s cost allocation procedures,⁶³ and the electric quarterly report filing requirement,⁶⁴ and the last involved network service violations.⁶⁴ In FY2007, staff entered into ten settlement agreements that were approved by the Commission, for a total civil penalty payment of \$32.5 million. The number of settlements and the

60 A table of all the civil penalty settlements that the Commission approved since the enactment of EPAct 2005 is attached to this report as Appendix B.

61 *In re BP Energy Company*, 121 FERC ¶ 61,088 (2007); *In re Constellation NewEnergy – Gas Division, LLC*, 122 FERC ¶ 61,220 (2008); *In re Entergy New Orleans, Inc.*, 122 FERC ¶ 61,219 (2008); *In re MGTC, Inc.*, 121 FERC ¶ 61,087 (2007).

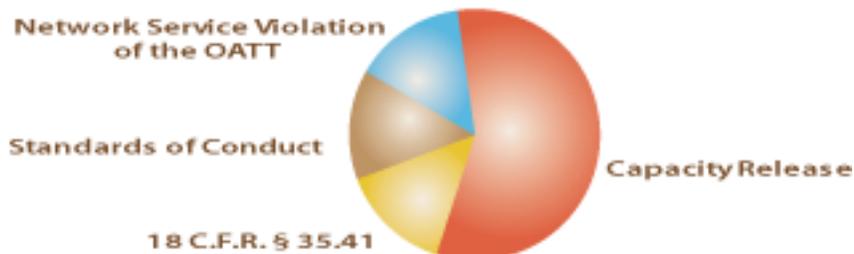
62 *In re Edison Mission*, 123 FERC ¶ 61,170 (2008), *reh’g denied*, 125 FERC ¶ 61,020 (2008).

63 *In re Duquesne Light Company*, 123 FERC ¶ 61,221 (2008).

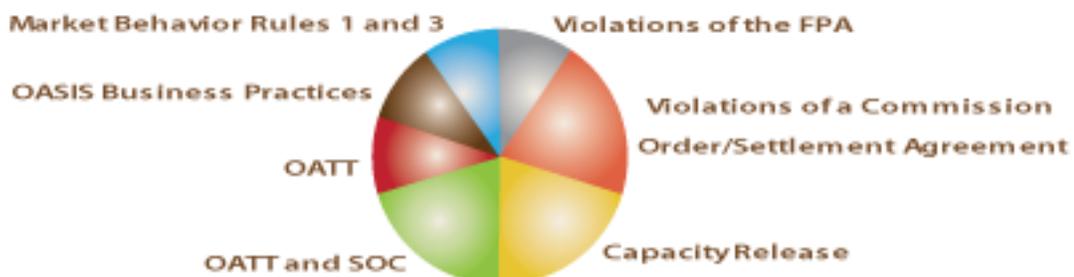
64 *In re Otter Tail Power Company*, 123 FERC ¶ 61,213 (2008).

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SETTLEMENTS BY TYPE OF VIOLATION, FY2008



SETTLEMENTS BY TYPE OF VIOLATION, FY2007



nature of the violations found in these settlements for fiscal years 2007 and 2008 are graphically depicted in the charts above.

As noted, four of these settlements involved self-reported violations of different aspects of the Commission’s capacity release requirements. The range of civil penalty amounts for capacity-release-related violations is wide; the civil penalty amounts in the settlement agreements with Constellation NewEnergy’s Gas Division (CNE) and BP Energy Company (BP) were far larger than those with Entergy New Orleans, Inc. (Entergy) and MGTC, Inc. (MGTC). As described below, the variation is due to the Commission’s consideration of the civil penalty factors listed in the 2005 Policy Statement.

BP agreed to pay a \$7 million civil penalty and be subject to compliance monitoring for numerous violations of the competitive bidding regulations, shipper-must-have-title requirement, and prohibition on buy/sell arrangements. The

investigation leading to this settlement revealed violations involving thousands of individual transactions in 2005 and 2006, stemming from BP’s management of customers’ capacity rights on interstate natural gas pipeline and storage facilities. The most serious of BP’s violations involved a practice known as “flipping,” which evidences a deliberate strategy for evading Commission regulations that require posting and competitive bidding for discounted long-term releases of capacity. The Commission noted that this practice is “particularly serious in nature” and “warrants a substantial civil penalty.”⁶⁵

Similarly, CNE agreed to pay a \$5 million civil penalty, disgorge nearly \$1.9 million, and be subject to compliance monitoring for its numerous violations of the posting and bidding requirements for released capacity, the shipper-must-have-title requirement, and the prohibition on buy-sell transactions.⁶⁶ Staff’s investigation confirmed thousands of

⁶⁵ *In re BP Energy Company*, 121 FERC ¶ 61,088 (2007).

⁶⁶ *In re Constellation NewEnergy – Gas Division, LLC*, 122 FERC ¶ 61,220 (2008).

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individual transactions in 2005-2007, on 13 interstate natural gas pipelines and storage facilities. CNE's violations also included "flipping" transactions.

The other two capacity-release-related settlements implicated violations of the shipper-must-have-title requirement only, without any flipping violations, and resulted in much smaller civil penalty payments. Entergy agreed to pay a \$400,000 civil penalty and be subject to compliance monitoring.⁶⁷ Entergy violated the shipper-must-have-title requirement since January 1999, by transporting, on no-notice service, gas to which its supplier held title. Likewise, MGTC, Inc. agreed to pay a \$300,000 civil penalty and be subject to compliance monitoring violations of the shipper-must-have-title requirement.⁶⁸ MGTC violated the shipper-must-have-title requirement transporting gas owned by third parties on interstate pipeline capacity held by MGTC. In both of these cases, the Commission found no unjust profits or demonstrated harm to other market participants.

In two of the orders approving settlement issued by the Commission in 2008, staff included as a settlement requirement the establishment of stronger, more effective compliance programs by the company. In these two settlements, Duquesne Light Company (Duquesne) and Edison Mission, staff determined that the companies violated the Commission's statutes, orders, rules, or regulations and the companies agreed to designate no less than a specified dollar amount to develop a comprehensive compliance plan. In the Duquesne settlement, Duquesne agreed to pay a civil penalty of \$250,000 and to designate at least \$1 million to developing a comprehensive regulatory compliance program.⁶⁹ In the Edison Mission settlement order, Edison Mission agreed to pay a \$7 million civil penalty and to designate at least \$2 million to developing a comprehensive compliance program

for violations of section 35.41(b) of the Commission's regulations.

The Commission also approved a settlement with Otter Tail Power Company (Otter Tail) that resolved alleged network transmission service violations of the Midwest Independent Transmission System Operator's OATT. In this order approving settlement, Otter Tail agreed to disgorge \$546,832 in profits, plus interest. The conduct at issue in this settlement occurred prior to the enactment of EPA Act 2005, and therefore, civil penalties for the violations were not available. Additionally, staff did not seek to impose a compliance monitoring plan on Otter Tail, because the Midwest ISO's member utilities no longer schedule transmission within the system.⁷⁰

F. Proceedings after Orders To Show Cause Have Issued

In addition to staff's investigations and review of self-reports, DOI staff also serves as the Enforcement litigation staff for matters in which investigations are closed with findings of violations, but which could not be settled. In those situations, DOI staff must prosecute the alleged violations to the Commission or before an administrative law judge (ALJ) if the Commission orders a hearing to proceed before an ALJ, and in some instances, in the courts. In the prior fiscal year, on July 26, 2007, the Commission issued two orders that resulted in continued enforcement activity during FY2008, (1) *Amaranth Advisors LLC*, 120 FERC ¶ 61,085 (2007) and (2) *Energy Transfer Partners, L.P.*, 120 FERC ¶ 61,086 (2007).

1. Amaranth Advisors LLC

Since the 2007 Enforcement Report was issued, Enforcement litigation staff has been engaged in the Amaranth case both in the courts and in the proceeding before the

⁶⁷ *In re Entergy New Orleans, Inc.*, 122 FERC ¶ 61,219 (2008).

⁶⁸ *In re MGTC, Inc.*, 121 FERC ¶ 61,087 (2007).

⁶⁹ *In re Duquesne Light Company*, 123 FERC ¶ 61,221 (2008).

⁷⁰ *In re Otter Tail Power Company*, 123 FERC ¶ 61,213 (2008).

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Commission. This case, arising out of a Commission Order To Show Cause and Notice of Proposed Penalties issued on July 26, 2007, is the first application of the Commission's new Anti-Manipulation Rule that stems from new authority granted to the Commission in EPCRA 2005.⁷¹ On July 17, 2008, the Commission issued an order that (1) denied respondents' motions for summary disposition; (2) set the case for hearing; (3) expanded upon prior Commission interpretations of its Anti-Manipulation Rule; and, (4) gave guidance on how the Commission may approach order to show cause proceedings on enforcement matters.⁷²

2. Energy Transfer Partners, L.P.; and Oasis Pipeline, L.P.

Enforcement litigation staff has also been engaged in the *Energy Transfer Partners, L.P. (ETP)* proceeding and the

Oasis Pipeline, L.P. (Oasis Pipeline) proceeding.⁷³ These cases arose from a Commission Order to Show Cause issued on July 26, 2007. The *ETP* proceeding involves alleged manipulation of wholesale gas prices over a multi-month period.⁷⁴ The *Oasis Pipeline* proceeding involves alleged undue discrimination by an intrastate pipeline providing service under section 311 of the Natural Gas Policy Act of 1978 (NGPA). *ETP* filed an expedited request for rehearing and stay of the Commission's Order To Show Cause and Notice of Proposed Penalties on August 27, 2007 and on October 9, 2007, *ETP* filed an answer to the Order to Show Cause. The Commission issued an order on December 20, 2007 denying *ETP*'s expedited request for rehearing and stay and addressing future aspects of the Commission's civil penalty procedures under the FPA, NGPA, and NGA.⁷⁵ On May 15, 2008, the Commission determined that a hearing is necessary to resolve disputed issues.⁷⁶

⁷¹ In the courts, Enforcement litigation staff responded to two preliminary injunction efforts. On December 10, 2007, the District Court for the District of Columbia denied Hunter's motion for a preliminary injunction. *Hunter v. FERC*, 527 F. Supp. 2d 9 (D.D.C. 2007). On November 1, 2007, the District Court for the Southern District of New York denied the Amaranth entities' motions for preliminary injunctions. *CFTC v. Amaranth*, No. 07-6682, (S.D.N.Y. Nov. 1, 2007). Also in 2008, the court dismissed *Hunter v. FERC*. *Hunter v. FERC*, 569 F. Supp. 2d 12 (D.D.C. 2008). Enforcement litigation staff supported the efforts of the Commission's Office of the Solicitor in opposing the efforts by some respondents to seek stays of the Commission's proceedings in the United States Court of Appeals for the District of Columbia Circuit. The Court of Appeals did not stay the Commission's proceedings. *Amaranth L.L.C. v. FERC*, 2007 U.S. App. LEXIS 29247 (D.C. Cir. Dec. 13, 2007). The petitions for review and appeal on the merits in the appellate cases arising from the *Hunter v. FERC* and Commission decisions are still pending.

⁷² *Amaranth Advisors LLC*, 124 FERC ¶ 61,050 (2008).

⁷³ In the courts, Enforcement litigation staff supported the efforts of the Commission's Office of the Solicitor in responding to a petition for review that *ETP* filed on December 27, 2007, in the United States Court of Appeals for the Fifth Circuit. *ETP* sought review of Commission orders denying *ETP*'s request to terminate proceedings or to initiate proceedings in a United States District Court in lieu of proceedings at the agency. This petition for review was denied for lack of finality. *Energy Transfer Partners L.P. v. FERC*, No. 07-6102 (5th Cir. March 17, 2008). Subsequently, *ETP* filed on August 8, 2008, a second petition for review in the same Court of Appeals for review of Commission orders setting this matter for a hearing before a Commission ALJ. This second petition is still pending.

⁷⁴ The alleged violations occurred before the effective date of the Anti-Manipulation Rule, and therefore, the alleged violations were of the former Market Behavior Rule 2.

⁷⁵ *Energy Transfer Partners, L.P.*, 121 FERC ¶ 61,282 (2007).

⁷⁶ *Energy Transfer Partners, L.P.*, 123 FERC ¶ 61,168 (2008).

V. Division of Audits Activities

The Division of Audits (DOA) within the Office of Enforcement helps ensure compliance with the Commission's statutes, rules, regulations, and orders by conducting a wide array of audits of jurisdictional entities. In order to provide transparency to the audit process, the commencement of these audits and the resulting audit reports are publicly available in the Commission's eLibrary system. Audits that are predominantly financial in nature are designated with "FA" docket numbers while non-financial audits are designated with "PA" docket numbers. Additional information regarding the audit process is available on the Commission's website.⁷⁷

In FY2008, DOA completed 60 audits of public utilities and natural gas pipeline and storage companies. Of these audits, 39 were classified as financial audits and focused on compliance with the Public Utility Holding Company Act of 2005 (PUHCA 2005), rate issues, fuel clauses, merger conditions, affiliate relationships, and various Commission reporting requirements. The remaining 21 audits were non-financial audits and addressed open access transmission tariffs, interconnection rules, gas tariffs, Open Access Same-time Information System (OASIS) and gas website posting, standards of conduct, blanket authorizations, filing requirements, and regulations of the Commission.

These 60 audits resulted in 156 recommendations for corrective action and included \$1 million in recoveries from accounting and billing adjustments and \$8.7 million in reductions to utility plant. DOA also required the implementation of compliance plans to ensure adherence to Commission policies and procedures, including requirements to conduct training and periodic audits. DOA tracks all audit recommendations to ensure that they are ultimately implemented.

In addition to the docketed workload above, DOA participated in conjunction with the OER as an observer on eight audits of users, owners, and operators of the bulk electric system, which were conducted by REs throughout the country. DOA and OER's role on these audits as observers was to gain an understanding of the audit process used by the REs and engage in discussions with the RE audit team members, which usually included a participant from NERC, to examine lessons learned about audit processes, methods, and techniques.

A. Summary of Audit Results

The results of some of the major categories of audits completed in FY2008 are as follows:

PUHCA 2005. DOA initiated and completed an audit of Exelon Corporation, FA08-4-000, to determine its compliance with the Commission's regulations relating to accounting, recordkeeping, and reporting requirements for holding companies and service companies. The audit resulted in several findings of improper accounting for costs, the use of an account not authorized in the Uniform System of Accounts, and errors in the reporting in Form No. 60. In addition to correcting the accounting and reporting errors and adopting improved procedures, audit staff recommended the company include time value of money related to several findings in its next annual formula rate update filing.

Financial Services Trading Companies. DOA completed three audits of financial services trading companies to determine compliance with adherence to the standards announced in the Policy Statement on Natural Gas and Electric Price Indices, 104 FERC ¶ 61,121 (2003) (Policy Statement)

⁷⁷ The Office of Enforcement Audit Process is available through this link: <http://www.ferc.gov/enforcement/audits/audit-process.pdf>.

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among other things.⁷⁸ In two of the audits, audit staff found the companies had not complied with selected standards in the Policy Statement identified by the Commission to obtain “safe harbor” status. Specifically, the findings involved the standards relating to annual independent auditor review and posting of a code of conduct. In all three audits, audit staff found mistakes, inaccuracies, and missing or inconsistent data in the companies’ EQR filings. The audit reports generally recommended the companies improve internal procedures and correct and refile the EQR.

Blanket Authorizations for Mergers, Acquisitions, and other Transactions. DOA completed an audit of Capital Research and Management Company, FA07-2-000, to evaluate its compliance with the Commission’s regulations under 18 C.F.R. § 33.1(c) (2007), which governs blanket authorizations for mergers, acquisitions, and other transactions subject to section 203 of the Federal Power Act. Audit staff’s review determined that the company failed to file with the Commission schedules that detailed its securities holdings of Commission jurisdictional companies as required by a previously issued Commission order. The audit report recommended the company file the schedules it should have reported up to that time and establish procedures to ensure accurate filing going forward.

Fuel Adjustment Clause. DOA completed an audit of Kansas City Power & Light Company, PA06-6-000, focusing on a variety of objectives. The audit resulted in refunds to wholesale fuel adjustment clause customers for insurance proceeds received for replacement power. The company also was directed to make correcting entries to increase accumulated

depreciation by \$8.7 million related to five combustion turbines to reduce utility plant to the appropriate level, reclassify costs related to parking natural gas from Account 165 to Account 174, and reverse allowance for funds used during construction improperly accrued on certain operating expenses and the cost of unused uranium. Finally, the company was directed to adjust its procedures and conduct periodic sweeps to ensure non-public transmission information is not available to its marketing affiliate employees.

Market-based Rate Authorizations. DOA completed two audits of companies’ compliance with the requirements of their market-based rate authorizations.⁷⁹ The audit found both companies committed errors reporting transactions in the EQR including misreporting cost-based sales as market-based or vice versa. One of the companies failed to report booked-out transactions and numerous bilateral transactions. Further, that company incorrectly reported its system lambda in its Form No. 714 and misallocated the time of one of its employees. Recommendations included remedying the reporting errors and refiling the reports and improving or establishing procedures and conducting training to ensure future compliance.

OATT. DOA completed three audits focusing on companies’ compliance with their OATT.⁸⁰ One audit report identified four areas of noncompliance including: failure to file amendments with the Commission to grandfathered contracts, deficiencies in reporting transactional and contractual information in the EQR, deficiencies with posted transmission paths, and deficiencies in reservation information on OASIS. Both of

⁷⁸ *J. Aron & Company*, Docket No. FA07-43-000 (Dec. 7, 2007), *Morgan Stanley Capital Group Inc.*, Docket No. FA08-1-000 (July 31, 2008), and *Merrill Lynch Commodities Inc.*, Docket No. FA08-2-000 (July 31, 2008).

⁷⁹ *Pinnacle West Capital Corporation*, Docket No. PA08-4-000 (Sept. 5, 2008), and *Aquila, Inc.*, Docket No. PA08-5-000 (Sept. 5, 2008).

⁸⁰ *Portland General Electric Company*, Docket No. PA06-9-000 (July 16, 2008), *Puget Sound Energy*, Docket No. PA07-1-000 (July 16, 2008), and *Avista Corporation*, Docket No. PA07-2-000 (July 16, 2008).

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the remaining audits found non-compliance with the OATT. Both companies had instances of non-compliance related to the implicit unreserved use of transmission service from the company's system to Mid-Columbia. Both companies also used the transmission capacity reserved for Mid-Columbia designated network resources to deliver non-designated economy energy purchases. In addition to these areas of non-compliance, one of the audits included another finding related to the use of network service to facilitate buy-sell arrangements. The other audit included another finding related to instances of non-compliance with the Standards of Conduct related to the discussion of non-public transmission outage information. Recommendations included creating procedures to avoid future noncompliance, conducting future internal audits, conducting additional training, and remedying filing deficiencies.

OASIS. DOA completed a series of audits involving companies' compliance with all relevant OASIS requirements associated with the modifications from Order No. 890.⁸¹ Audit staff observed a number of compliance issues in the audits completed to-date. These include irregularities with the posting of designated network resources, various issues related to the posting of performance metrics, issues related to the posting of transmission reserve margin, and inadequacies with the narrative postings related to available transmission capability, among others. In each instance, the audit report recommended correction of the posting deficiency.

Reliability. DOA and OER staff participated as observers on eight non-docketed "reliability observation audits" conducted

by the REs of the users, owners, and operators of the bulk electric system throughout the United States. The REs carried out the audits on behalf of NERC to evaluate compliance with reliability standards mandated through the EPAct 2005. As observers, DOA and OER participated on the RE audits to obtain an understanding of the audit processes, methods, and techniques for verifying compliance with the reliability standards. At the conclusion of the audits, DOA and OER met with the RE audit team members and the NERC staff who participated on each of the audits and shared ideas about audit processes, methods, and techniques.

B. Referrals to Investigations

During FY2008, DOA referred several areas of potential non-compliance arising from a single audit to DOI for further investigation. As is its practice, upon referral of an audit to DOI, DOA designated audit staff from the original audit team to work with DOI in order to provide continuity as the audit transitioned into an investigation and facilitated the completion of the investigation.

Also during FY2008, DOI closed two investigations that it initiated based on referrals from DOA. Descriptions of these two audits and the resulting investigations follow:

DOA initiated an audit of Otter Tail Power Company, PA05-68-000, to determine, among other things, whether the company's transmission practices were in compliance with the Commission's rules, regulations and tariff requirements. The findings of the audit were referred to DOI. The investigation (IN08-6-000) concurred that the company committed two tariff violations: (1) the improper use of network service to import energy that was used to facilitate off-system sales, and (2) the improper use of transmission service that provided a curtailment priority superior to that appropriate in certain

⁸¹ The OASIS audits consisted of 29 audits (PA08-8-000 through PA08-27-000 and PA08-29-000 through PA08-37-000). Audits completed during FY2008 include PA08-8-000 through PA08-17-000, PA08-20-000, and PA08-23-000.

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instances. To resolve the issues, the company agreed to disgorge \$546,832 in profits, plus interest. Civil penalties were not available because the conduct at issue occurred prior to EPAAct 2005.⁸²

DOA initiated an audit of Duquesne Light Company, PA06-1-000, to address whether the company (1) was in compliance with standards of conduct and OASIS requirements; (2) its transmission practices were in compliance with applicable Commission rules and regulations as well as applicable open access transmission tariffs; and (3) the wholesale electricity marketing unit was in compliance with its market-based rate authority. The findings of the audit were referred to DOI. The investigation (IN07-27-000) concurred that the company violated the Commission's cost allocation procedures; the Commission's EQR filing requirements; and several aspects of the Commission's regulations concerning the Standards of Conduct and OASIS posting requirements, among other things. To resolve the issues, the company agreed to pay a \$250,000 civil penalty, and develop and implement a comprehensive regulatory compliance program at a minimum cost of \$1 million, among other things.⁸³

C. Audit Improvements

As noted in the Revised Policy Statement, in an effort to increase the transparency of the audit process, Enforcement's audit staff began to include in final audit reports a section detailing the methodology used to test compliance in each major area within the scope of the audit, thereby enabling companies to be better informed and prepared in the event

of a similar audit of their operations.⁸⁴ The Revised Policy Statement discussed DOA's adoption in its final audit reports of an expanded Scope and Methodology section and provided an example from a recently issued final audit report. DOA has continued the use of the expanded Scope and Methodology section in audit reports issued since that time.

The expanded Scope and Methodology section may, if necessary, include clarification of the scope of the audit. It generally begins by describing the documents and data reviewed in preparation for the audit such as financial forms, filings with the Commission, reports filed with the Commission or posted to the company's website, and publicly available material, among other resources. Following that is a description of general and specific testing completed by audit staff. The section describing specific testing is organized by audit objective to provide a clearer understanding of the testing done relative to that objective. Where audit staff samples data, audit staff will include a short description of the sampling method. Where audit staff interviews company staff, interviewees will be identified by business unit or job title, as appropriate.

Prior to adoption of this new policy, a report of no audit findings that required corrective action consisted of a letter of a few pages. To increase the transparency of the work completed on these audits, when audit staff issues a report with no findings, audit staff now issues an abbreviated final audit report containing a conclusion; a description of the audited entity; if appropriate, any additional background information applicable to the audit objective; a brief overview of the audit objectives; and the Scope and Methodology section. In this way, DOA is attempting to provide interested persons with a better understanding of the scope and breadth of the work undertaken.

⁸² *In re Otter Tail Power Co.*, 123 FERC ¶ 61,213 (2008); see also discussion *supra* section IV.E.

⁸³ *In re Duquesne Light Co.*, 123 FERC ¶ 61,221 (2008); see also discussion *supra* section IV.E.

⁸⁴ Revised Policy Statement on Enforcement at P 18.

VI. Division of Energy Market Oversight Activities

The Division of Energy Market Oversight (DEMO) within the Office of Enforcement is responsible for overseeing the nation's natural gas and electric power markets and related energy and financial markets, identifying problems and opportunities for those markets, reporting its findings and recommendations to the Commission and, where appropriate, to the public, and proposing policy options and regulatory strategies for addressing the issues identified.

DEMO conducts daily oversight of these markets, through regularly scheduled morning meetings, as well as research and analysis throughout the day. DEMO researches the possible causes of anomalous market activity identified. In the event the anomalous market activity cannot be attributed to supply and demand fundamentals, DEMO refers the matter to DOI for further investigation. DEMO staff provides technical advice and support to DOI, particularly in investigations of potential market manipulation.

DEMO staff provides information about market activity and insights about energy markets to the Commission and the public. The staff does this through presentations at open Commission meetings and other public conferences, material posted on an Oversight Website and briefings for industry and foreign delegations.

A. Presentations at Commission and Other Public Meetings

DEMO makes periodic informational presentations at regular Commission meetings. These include an annual State of the Markets Report, assessments of the just past and upcoming summer and winter seasons, and ad hoc reports. In FY2008, the following reports were presented at Commission meetings: *2007 Winter Energy Market Assessment*, October

18, 2007; *2007 State of the Markets Report*, March 20, 2008; *2008 Summer Energy and Reliability Market Assessment*, May 15, 2008; *Increasing Costs in Electric Markets*, June 19, 2008.

During FY2008, Enforcement was responsible for organizing and participating in the Commission's July 1, 2008 conference entitled "Review of Wholesale Electricity Markets." Each of the RTOs and ISOs were represented at the conference by the CEO and Market Monitor. DEMO provided information on non-RTO/ISO markets in a presentation entitled *Electric Power Markets in the West and Southeast*.

B. Oversight Website

DEMO maintains an Oversight website which was originally launched in January 2007. The website provides descriptions, statistical information and extensive graphical presentations about energy markets. The site is organized around a national electric overview and ten electricity market regions, a national natural gas overview, five natural gas market regions and gas trading, and other markets. The other markets include coal, emissions, financial, liquefied natural gas, and oil markets. Most of the material on the site is updated monthly, some is updated on an annual basis, and a few items are updated daily. The website also provides access to DEMO's public presentations, mentioned above and regional Snapshot Reports.

The Snapshot Reports are produced on a monthly basis and consist of a compilation of charts posted on the Oversight website in the form of five regional reports and a national report. The Snapshot Reports also contain charts created specifically for the state calls, discussed below, that highlight a current market issue or at the request of participants on the calls.

Division of Energy Market Oversight Activities

C. Domestic and Foreign Delegation Briefings

DEMO hosts a variety of domestic and foreign delegations of regulators and industry participants interested in energy markets and how staff monitors them. Most of the briefings take place in the Market Monitoring Center. During FY2008, DEMO briefed three Congressional delegations, seven groups of state commissioners and six industry delegations. The greatest number of briefings was to foreign delegations. DEMO hosted 17 delegations of regulatory and industry representatives from Brazil, Canada, China, Japan, Latin America, Latvia, Kazakhstan, Mexico and Russia and groups including representatives from several Asian and African countries. Each briefing was tailored to the particular interests of the visiting delegation.

D. Research in Market Oversight Program

The Research in Market Oversight (RIMO) program offers participants the opportunity to spend a week with the DEMO staff researching issues of interest to the participants. In FY2008, DEMO hosted three RIMO programs: with the Environmental Protection Agency's Program Development Branch and its Emissions Monitoring Branch, which included a review of a time series analysis of fuel and emissions prices, research on the growth of financial players in the emissions markets and historical trends in allowance transfers; with the Missouri Public Service Commission economics staff which focused on the underlying forces that create market volatility, market distortions and market manipulation; and, with the Chairman of Ireland's Commission on Energy Regulation.

E. Monthly Conference Calls With State Energy Officials

Once a month, DEMO hosts five one hour conference calls specifically designed for the Northeast, Mid-Atlantic, Southeast, Midwest and Western states. In FY2008,

energy agency staff representing up to 28 states and including a few state regulatory commissioners have participated in the monthly calls. The discussions have provided valuable information and a sharing of local energy developments for both the DEMO staff as well as the state agency participants. The list of participants wishing to be included in the invitation to participate in the calls increases monthly.

F. RTO/ISO Market Monitors

DEMO's Market Monitoring Relations Branch (MMRB) communicates on a regular basis with the RTO/ISO Market Monitoring Units.⁸⁵ In addition to almost daily routine contacts, DEMO has several structured interactions with RTO/ISO Market Monitors including semi-annual meetings with all of the Market Monitors and regularly scheduled monthly meetings between the DEMO staff and individual Market Monitors. The MMRB also organizes annual presentations by Market Monitors of the State of the Markets Reports for the benefit of the Commission and its staff.

G. Market Monitoring Center (MMC)

Much of DEMO's oversight and research takes place in the MMC. The MMC is an energy market information resource center that gives staff access to a variety of powerful commercially available information services. These services, many of which are the same used by energy traders, provide a broad range of data pertaining to energy markets. Real-time data is acquired via a high-speed communication link to the Internet and powerful PC workstations. High-end software applications and services provide staff volumes of historic data required to monitor and analyze energy market events. During FY2008, DEMO upgraded the hardware in the MMC and added two new software services.

⁸⁵ Of course, the MMRB staff adheres at all times to the Commission's rules on *ex parte* contacts. See *Elec. Power Supply Ass'n v. FERC*, 391 F.3d 1255 (D.C. Cir. 2004).

VII. Division of Financial Regulation Activities

The Division of Financial Regulation (DFR) performs two primary functions: forms administration and data collection, and regulatory accounting. These efforts support the Commission's market monitoring activities, the development and monitoring of cost-based rates, and the Commission's enforcement efforts by requiring that important financial and market information is recorded in a useful form and is transparent to the Commission and the public. DFR administers, analyzes, and ensures compliance with the filing requirements for EQR and the FERC financial forms and reporting requirements for natural gas pipelines, public utilities and licensees, oil pipeline carriers, and centralized service companies.⁸⁶ DFR also houses the Chief Accountant of the Commission, who is tasked with, among other things, ensuring that companies comply with the Commission's Uniform System of Accounts and their books and records are kept in a format that is useful to the Commission and the industry for ensuring that rates remain just and reasonable.

⁸⁶ Currently, DFR administers the following: FERC Form No. 1 (Annual Report of Major Electric Utilities, Licensees and Others) (18 C.F.R. § 141.1 (2008)); FERC Form No. 1-F (Annual Report of Nonmajor Public Utilities, and Others) (18 C.F.R. § 141.2 (2008)); FERC Form No. 2 (Annual Report for Major Natural Gas Companies) (18 C.F.R. § 260.1 (2008)); FERC Form No. 2-A (Annual Report of Nonmajor Natural Gas Companies) (18 C.F.R. § 260.2 (2008)); FERC Form No. 552 (Annual Report of Natural Gas Transactions) (18 C.F.R. § 260.401 (2008)); FERC Form No. 3-Q (referring to quarterly filings of FERC Form Nos. 1, 1-F, 2, and 2-A for the first, second and third quarters) (18 C.F.R. § 141.400 (2008)); FERC Form No. 6 (Annual Report of Oil Pipeline Companies) (18 C.F.R. § 357.2 (2008)); FERC Form No. 6-Q (referring to quarterly filings of FERC Form No. 6 for the first, second and third quarters) (18 C.F.R. § 357.4 (2008)); FERC Form No. 60 (Annual Report of Centralized Service Companies) (18 C.F.R. § 366.23(a)(1) (2008)); FERC-61 Narrative Description of Service Company Functions (18 C.F.R. § 366.23(a)(2) (2008)); and, FERC-730 Reports of Transmission Investment Activity (18 C.F.R. § 35.35(h) (2008)).

A. Forms Administration and Data Collection

1. Electric Quarterly Reports

On April 25, 2002, the Commission issued Order No. 2001, a final rule requiring public utilities to file EQRs summarizing data about their currently effective contracts and wholesale power sales made during each calendar quarter.⁸⁷ EQR data is public and is made available for use on the Commission's website. Although the primary purpose of requiring public utilities to file EQRs is to satisfy the FPA section 205(c) requirement to have rates on file in a convenient form and place, EQRs are also helpful in monitoring the market. For example, EQRs play a critical role in the Commission's oversight of the market-based rate program, which relies on the dual requirement of an *ex ante* finding of the absence of market power and sufficient post-approval reporting requirements, including the EQR.

DFR reviews over 1,200 EQR filings each quarter for accuracy and completeness. DFR staff determines whether sellers have timely complied with the requirements set forth in Order No. 2001 and whether that data is accurate and reliable. To accomplish this task, DFR develops software tools to identify abnormalities in the data. Once identified, DFR contacts filers to determine whether the data is correct and, if not, assists filers in revising their EQRs to come into compliance with Commission requirements. During FY2008, DFR contacted over 300 filers regarding issues with their EQRs. The vast majority of these issues were resolved and, as appropriate, the EQRs were revised to address concerns.

⁸⁷ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043, FERC Stats. & Regs. ¶ 31,127 (2002), *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074 (2002), *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342 (2002).

When necessary, DFR advises the Commission on remedial action to be taken in response to uncorrected EQR deficiencies. The Commission revoked the market-based rate authorization of two sellers for failure to timely file their EQRs.⁸⁸ The Commission also notified two companies of the Commission's intent to revoke their market-based rate authority for failure to file their EQRs.⁸⁹

The uses of EQR data are wide and varied. EQR data is particularly useful in monitoring markets for indications that market power is being exercised. On an ongoing basis, DFR analyzes price, volume, and contract data to determine whether reported sales indicate that a seller may be charging excessive rates. Transactions that are outside expected ranges, as defined by the market, are investigated. Sellers that routinely charge high market-based rate prices relative to other sellers are identified and their sales scrutinized.

In addition, DFR extracts price information from the EQRs to assist in corroborating or refuting evidence submitted by sellers seeking to obtain or retain market-based rate authority. For example, this price information can be a critical factor in performing a Delivered Price Test,⁹⁰ which only considers supplies from sellers that are selling power near the market price. DFR has also used EQR data to assist the Commission in addressing on-the-record protests claiming inadequate supplies in the Northwest. EQR data is also used by DFR to determine whether sellers are complying with mitigation measures that limit the price a seller may lawfully charge (e.g., \$400 rate cap in California). This monitoring of reported transactions helps ensure that rates continue to be just and reasonable.

DFR continually assesses EQR data for new ways to support the Commission's market monitoring program. In DFR's ongoing efforts to utilize EQR data in a manner that

supports the Commission's market monitoring function, the division validates price and volume information reported by market indices.⁹¹ Because these indices are used in setting prices for power sales (e.g., affiliate transactions), it is important that the prices reported can be validated and any unreliable indices identified. Accordingly, DFR is comparing the price and volume information provided in EQRs to the price and volume information reported by indices.

DFR also uses EQR data to provide critical information regarding market trends such as the volume of physical transactions in a particular market compared to the volume of financial transactions, prices for short-term sales versus long-term sales, and long-term contracting by qualifying facilities. Currently, DFR is also accumulating data on the reassignment of transmission capacity. This information will provide the Commission with important information regarding its policy of removing price caps on transmission reassignments and what effect, if any, that policy has on developing a market for such reassignments.

2. Annual and Quarterly Financial Reports

The Commission requires companies subject to its jurisdiction to submit annual and quarterly financial reports. The Commission uses these financial reports for a variety of purposes, including establishing cost-based rates. The Commission, as well as the industry, also uses the data reported in the financial reports to consider whether existing rates continue to be just and reasonable. Accordingly, the accuracy of financial reports is an important aspect of monitoring the markets.

On an ongoing basis, DFR provides expert advice to filers seeking assistance with regard to the data required to be filed by the Commission. In this regard, DFR provides essential information on the Commission's website, including

88 See *Electric Quarterly Reports; Dunhill Power, L.P.*, Docket No. ER02-2001-007, (May 23, 2008) (unpublished notice).

89 *Electric Quarterly Reports; Solaro Energy Corporation*, 124 FERC ¶ 61,242 (2008).

90 The Delivered Price Test is a market power analysis tool used by the Commission in determining whether a seller possesses market power.

91 Currently, DFR is the process of evaluating the following price indices: Bloomberg L.P., Intercontinental Exchange, Inc. (10x), Platts.

Division of Financial Regulation Activities

contact information for more specific questions. DFR also has developed software to check data submitted by filers for inconsistencies and errors. To the extent data abnormalities are uncovered, DFR contacts filers to resolve these issues and ensure that the data on file is accurate and complete.

During FY2008, over 300 filers submitted annual financial reports as well as quarterly financial reports. DFR contacted about 70 filers regarding issues with their submittals. Issues have been resolved for about 60 of the submissions and staff is working to resolve issues with the remaining 10 submittals. The vast majority of these issues were resolved and, as appropriate, the EQRs were revised to address concerns.

B. Regulatory Accounting

FERC requires that electric utilities, natural gas 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. DFR develops and maintains uniform regulations and requirements for accounting, financial reporting, and preservation of records. In addition, DFR advises the Commission on current accounting issues affecting jurisdictional industries and reviews Exposure Drafts and other publications of the Financial Accounting Standards Board for items that may impact the Commission or jurisdictional entities. DFR provides expert accounting advice to the electric, gas, and oil industries with regard to meeting the Commission's accounting requirements. DFR also reviews the proposed accounting submissions from entities in certificate and merger and acquisition proceedings.

1. Help Desk and Outreach

DFR responds on a daily basis to questions raised by jurisdictional entities and industry stakeholders and consultants.

These inquiries are directed to DFR from the Commission's Compliance Help Desk, the Office of External Affairs, the Enforcement Hotline, other offices within the Commission or directly from interested parties. In responding to more than 100 such questions during FY2008, DFR provided informal staff advice on all aspects of the Commission's accounting, financial reporting, and record retention regulations.

Additionally, DFR oversees accounting liaison activities with the Financial Accounting Standards Board and industry groups such as Edison Electric Institute, American Gas Association, Interstate Natural Gas Association of America, and Association of Oil Pipelines. Through meetings with industry groups and jurisdictional entities and responding to inquiries, DFR helps provide regulatory certainty on accounting and reporting matters and thereby reduce regulatory risk to the energy companies regulated by the Commission.

2. Requests for Approval of the Chief Accountant

DFR reviews and responds to all requests for approval of the Chief Accountant. The requests span the breadth of the Commission's accounting and reporting requirements and regulations for electric, natural gas and oil, and centralized service companies and may involve anything from routine filings requiring approval to unique topics involving issues of first impression, items of questionable interpretation, or implementation of new or evolving generally accepted accounting principles. During FY2008, DFR responded to roughly 175 such requests.

3. Certificate Proceedings

In FY2008, DFR reviewed natural gas pipeline certificate applications for embedded accounting issues in pipeline construction, purchase, and abandonment

transactions. DFR is responsible for identifying deficiencies in proposed accounting and recommending appropriate corrections. DFR's review of accounting in certificate filings provides greater certainty to pipelines by providing upfront guidance on accounting entries prior to the pipeline seeking Commission approval.

4. Merger and Acquisition Proceedings

DFR reviews all merger and acquisition filings made under section 203 of the FPA, to ensure that the proposed accounting is in conformance with the Commission's regulations. As part of this process, DFR provides accounting and reporting language in the orders that address any potential accounting concerns raised in the application. During FY2008, DFR reviewed 125 merger and acquisition filings.

5. Rate Proceedings

DFR provides accounting insight and support to electric and natural gas rate filings before the Commission. These filings may involve a whole host of issues requiring accounting input including allowance for funds used during construction, construction work in progress recovery in rate base, recovery of pre-commercial costs, cost allocations, and taxes. During FY2008, DFR participated in about 30 such filings.

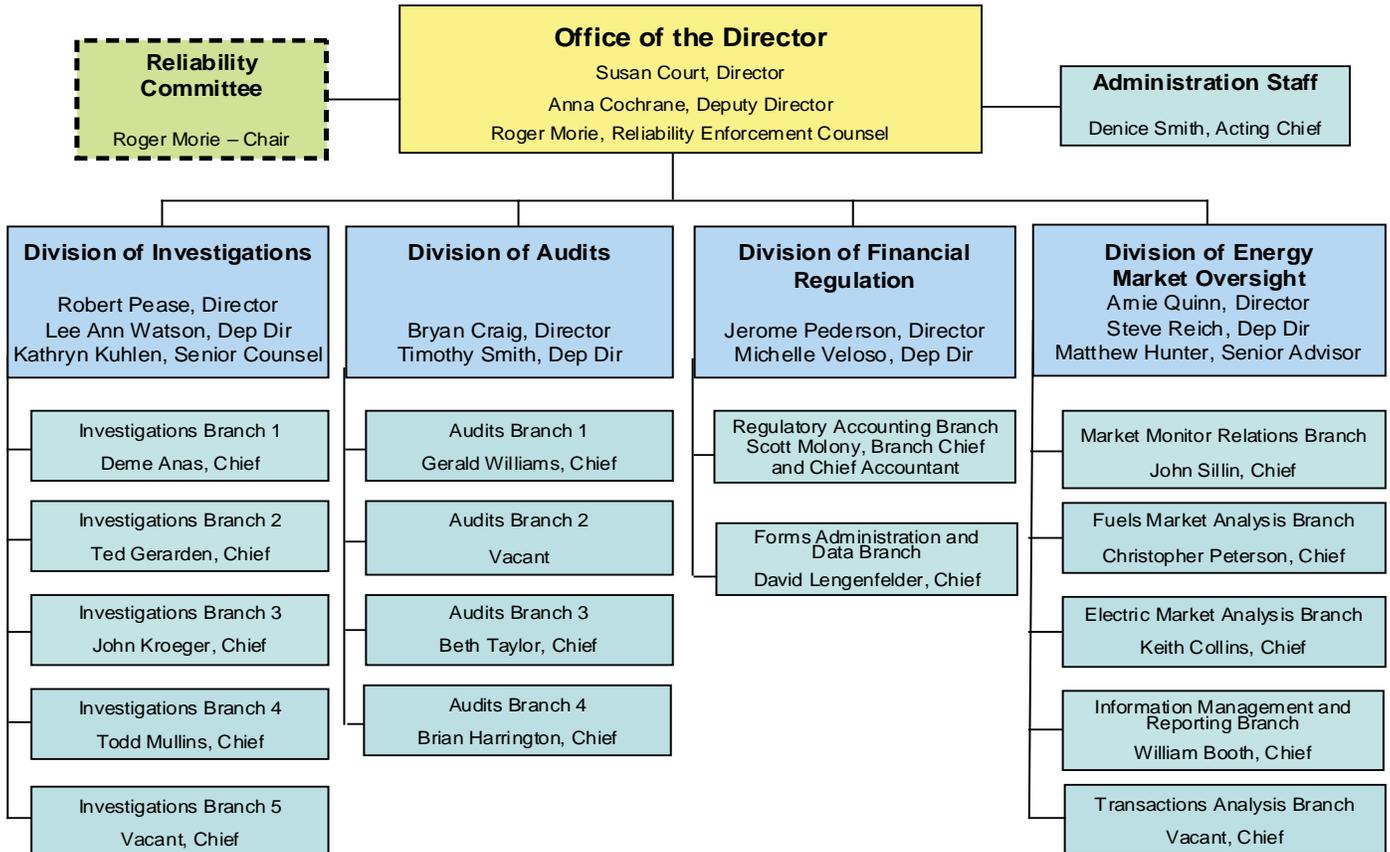
VIII. Conclusion

As discussed in this report, the Commission's Office of Enforcement promotes compliance with the Commission's statutes, orders, rules and regulations by assisting in the development of Commission rules and policies that are clear, identifying instances of potential non-compliance, and recommending remedial actions to the Commission, where appropriate. Also, as demonstrated by the statistics provided in this report, staff often exercises prosecutorial discretion in an effort to encourage the development of strong internal compliance programs and self-reporting.

Appendix A

FERC OFFICE OF ENFORCEMENT

10-22-08



Appendix B

EPAcT 2005 Civil Penalty Enforcement Actions

SUBJECT OF INVESTIGATION AND ORDER AND DATE	TOTAL PAYMENT Civil Penalty, Disgorgement, Other	EXPLANATION OF PAYMENTS (CIVIL PENALTY UNDER THE NGA, FPA, OR NGPA; DISGORGEMENT OF PROFITS; OTHER PAYMENTS) AND COMPLIANCE PLANS
<i>In re Integrys Energy Services, Inc.</i> , 125 FERC ¶ 61,089 (October 24, 2008)	\$800,000 Civil Penalty \$194,506 Disgorgement	Civil penalty, disgorgement, and a 1 year compliance monitoring plan resulting from a self-report for violations of shipper-must-have-title requirements and circumvention of the posting and bidding requirements for released capacity.
<i>In re Enbridge Marketing (U.S.) L.P.</i> , 125 FERC ¶ 61,088 (October 24, 2008)	\$500,000 Civil Penalty	Civil penalty and compliance report resulting from self-reported violations of the shipper-must-have-title requirement.
<i>In re Duquesne Light Company</i> , 123 FERC ¶ 61,221 (May 29, 2008)	\$250,000 Civil Penalty \$1,000,000 Compliance Plan	Civil penalty and at least \$1,000,000 designated for a comprehensive compliance plan for violations of FERC cost allocation procedures, the electric quarterly report filing requirement, and the standards of conduct.
<i>In re Otter Tail Power Company</i> , 123 FERC ¶ 61,213 (May 29, 2008)	\$546,832 Disgorgement	Disgorgement of unjust profits, plus interest for violations of the Midwest ISO's OATT. The conduct at issue occurred prior to the enactment of EPAcT 2005.
<i>In re Edison Mission</i> , 123 FERC ¶ 61,170 (May 19, 2008)	\$7,000,000 Civil Penalty \$2,000,000 Compliance Plan	Civil penalty and at least \$2,000,000 designated for a comprehensive compliance plan for violations of 18 C.F.R. § 35.41(b) (2007), which imposes a duty to provide accurate, factual, and complete information in communications with the Commission upon electric power sellers authorized to engage in sales for resale of electric energy at market based rates.
<i>In re Entergy New Orleans, Inc.</i> , 122 FERC ¶ 61,219 (March 11, 2008)	\$400,000 Civil Penalty	Civil penalty resulting from self-reported violations of the Commission's shipper-must-have-title requirement.
<i>In re Constellation NewEnergy – Gas Division, LLC</i> , 122 FERC ¶ 61,220 (March 11, 2008)	\$5,000,000 Civil Penalty \$1,899,416 Disgorgement	Civil penalty, disgorgement, and a compliance monitoring plan resulting from self-reported violations of the Commission's capacity release policies, including circumvention of the posting and bidding requirements for released capacity, violations of the shipper-must-have-title requirement, and violations of the prohibition on buy-sell transactions.
<i>In re BP Energy Company</i> , 121 FERC ¶ 61,088 (October 25, 2007)	\$7,000,000 Civil Penalty	Civil penalty and compliance monitoring plan resulting from self-reported violations of competitive bidding regulations, shipper-must-have-title requirement, and prohibition on buy/sell arrangements.
<i>In re MGTC, Inc.</i> , 121 FERC ¶ 61,087 (October 25, 2007)	\$300,000 Civil Penalty	Civil penalty and compliance report resulting from self-reported violations of the shipper-must-have-title requirement.
<i>In re Gexa Energy, L.L.C.</i> , 120 FERC ¶ 61,175 (August 21, 2007)	\$500,000 Civil Penalty \$12,481.41 Disgorgement	Civil penalty and disgorgement resulting from a self-report of violations of the FPA.

<i>In re Cleco Power, LLC</i> , 119 FERC ¶ 61,274 (June 12, 2007)	\$2,000,000 Civil Penalty	Civil penalty and a 1-2 year compliance plan resulting from a self-report for a violation of a 2003 Settlement agreement by sharing 9 employees and sharing prohibited market information between different Cleco companies.
<i>In re Columbia Gulf Transmission Company</i> , 119 FERC ¶ 61,174 (May 21, 2007)	\$2,000,000 Civil Penalty	Civil penalty resulting from a Commission referral for a violation of a Commission order to allow installation of a receipt interconnection.
<i>In re Calpine Energy Services, L.P.</i> , 119 FERC ¶ 61,125 (May 9, 2007)	\$4,500,000 Civil Penalty	Civil penalty and a 1-2 year compliance plan resulting from a self-report for violations of shipper-must-have-title requirements.
<i>In re Bangor Gas Company</i> , 118 FERC ¶ 61,186 (March 7, 2007)	\$1,000,000 Civil Penalty	Civil penalty and a 1 year compliance plan resulting from a self-report for violations of shipper-must-have-title requirements.
<i>In re PacifiCorp</i> , 118 FERC ¶ 61,026 (January 18, 2007)	\$10,000,000 Civil Penalty	Civil penalty and a 1 year compliance plan resulting from a self-report for violations of OATT and Standards of Conduct.
<i>In re SCANA Corporation</i> , 118 FERC ¶ 61,028 (January 18, 2007)	\$9,000,000 Civil Penalty \$1,800,000 Disgorgement	Civil penalty, disgorgement, and a 1 year compliance plan resulting from a self-report for violations of OATT.
<i>In re Entergy Services, Inc.</i> , 118 FERC ¶ 61,027 (January 18, 2007)	\$2,000,000 Civil Penalty	Civil penalty and a 1-2 year compliance plan resulting from a self-report for violations of OATT and Standards of Conduct OASIS posting requirements.
<i>In re NorthWestern Corporation</i> , 118 FERC ¶ 61,029 (January 18, 2007)	\$1,000,000 Civil Penalty	Civil penalty and a 2 year compliance plan resulting from a hotline call for violations of Business Practice Standards for OASIS Transactions.
<i>In re NRG Energy, Inc.</i> , 118 FERC ¶ 61,025 (January 18, 2007)	\$500,000 Civil Penalty	Civil penalty and a 1 year compliance plan resulting from a self-report for violations of ISO-NE Market Rule 1 and the Commission's Market Behavior Rules 1 and 3.