

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

Conference on Enforcement Policy)

Docket No. AD07-13-000

REPORT ON ENFORCEMENT



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

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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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Appendix A EPAct 2005 Civil Penalty Enforcement Actions

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I. Introduction

On August 8, 2005, the Energy Policy Act of 2005 (EPAAct 2005)¹ went into effect, altering the regulatory role of the Federal Energy Regulatory Commission (Commission). Among other things, EPAAct 2005 increased the Commission's maximum civil penalty authority to \$1 million per day per violation, expanded the scope of the statutory provisions to which civil penalty authority applies, and gave the Commission express jurisdiction to prohibit energy market manipulation and to enforce reliability standards for the bulk transmission system.

Congress acted in light of claims of price manipulation during the Western energy crisis of 2000-2001. EPAAct 2005 not only included stronger civil and criminal penalties to provide deterrents to violations, but also enacted a broad ban on market manipulation, and included provisions to increase transparency in energy markets. Taken together,

¹ Energy Policy Act of 2005, P.L. No. 109-58, 119 Stat. 594 (2005).

these changes in the Commission's authority in EAct 2005 expanded the Commission's reach in competitive energy markets and placed increased emphasis on monitoring natural gas and electricity markets. By granting the Commission the ability to assess substantial civil penalties for virtually all violations of the Federal Power Act (FPA),² the Natural Gas Act (NGA),³ and the Natural Gas Policy Act of 1978 (NGPA),⁴ Congress gave the Commission an important additional tool to enforce all of the statutes, orders, rules, and regulations it administers, and thus enhanced the Commission's existing enforcement and compliance activities.

In 2007, the Commission put the precepts of the October 2005 Policy Statement on Enforcement⁵ into practical effect. Since January 2007, the Commission has issued twelve orders approving settlements that provide for payment of civil penalties under EAct 2005, many of which resulted from self-reported violations. The Commission also has issued two orders to show cause why civil penalties should not be imposed for alleged market manipulation. Taken together, these orders illustrate the types of

² 16 U.S.C. § 791a *et seq.* (2000).

³ 15 U.S.C. § 771 *et seq.* (2000).

⁴ 15 U.S.C. § 3301 *et seq.* (2000).

⁵ *Enforcement of Statutes, Orders, Rules, and Regulations*, 113 FERC ¶ 61,068 (2005).

violations for which penalties are appropriate, and the broad range of remedies available to the Commission.

To provide context for the Conference on Enforcement Policy scheduled for November 16, 2007, staff is releasing this report, the purpose of which is to offer insights into the evolution of the Commission's enforcement program, and to show how the Commission uses its enforcement tools to encourage companies to develop effective compliance programs and to deter and punish misconduct. Staff also provides information on the process by which the Office of Enforcement handles self-reported violations, investigation of suspected violations, audits of compliance by regulated entities, and oversight of energy markets.⁶

All information obtained in connection with an investigation by the Commission's Enforcement staff is non-public unless the Commission acts affirmatively to make it public, such as by issuing an order.⁷ Because of the non-public nature of enforcement activity, this report presents necessarily general information on staff's internal processes and investigations over the past two years to demonstrate that under the current

⁶ Enforcement staff acts under the direction of the Commission and pursuant to delegated authority to conduct investigations under the Commission's rules related to investigations. 18 C.F.R. § 375.314; 18 C.F.R. Part 1b (2007).

⁷ 18 C.F.R. § 1b.9 (2007).

enforcement program allegations of violations are pursued in a balanced manner, prosecutorial discretion is exercised in appropriate circumstances, and the Commission strikes the appropriate balance between firm and fair.

II. EPAAct 2005 Implementation

A. Background

The Commission oversees aspects of the electric, natural gas, hydroelectric, and oil pipeline industries in the United States as authorized by administering the FPA, NGA, NGPA, and the Interstate Commerce Act (ICA).⁸ In administering these statutes, the Commission has a number of enforcement tools at its disposal, including civil penalties, disgorgement, and the ability to condition, suspend, or revoke market-based rate authority, certificate authority, or other authorizations.⁹ The Commission's power to fashion equitable remedies such as disgorgement of unjust profits is especially effective in offering relief to those who are harmed by an entity's misconduct.¹⁰

⁸ *Interstate Commerce Act*, 49 App. U.S.C. § 1, *et seq.* (2000).

⁹ 113 FERC ¶ 61,068 at P 4.

¹⁰ *See Coastal Oil & Gas Corp. v. FERC*, 782 F.2d 1249, 1253 (5th Cir. 1986); *Consolidated Gas Transmission Corp. v. FERC*, 771 F.2d 1536, 1549 (D.C. Cir. 1985); *Gulf Oil Corporation v. FPC*, 563 F.2d 588, 608 (3rd Cir. 1977), *cert. denied*, 434 U.S. 1062, *reh'g denied*, 435 U.S. 981 (1978); *Mesa Petroleum Co. v. FERC*, 441 F.2d 182,

(continued...)

With respect to civil penalties, prior to EPOA 2005, the Commission could assess civil penalties of up to \$11,000 per day per violation for violations relating to Part I and sections 211-214 of Part II of the FPA,¹¹ and \$5,500 per day per violation for violations relating to the NGPA.¹² While all of the other remedial tools were available, the Commission lacked civil penalty authority for matters arising under the other sections of Part II of the FPA and under any sections of the NGA.¹³ This limited the Commission's ability to address and deter violations of many of the statutes, rules, and regulations it administers.

In EPOA 2005, Congress extended the Commission's civil penalty authority to all provisions of Part II of the FPA and all provisions of the NGA, including any rule or order issued under these statutes. Congress also increased the maximum per day, per violation penalty amount to \$1,000,000 for violations of the NGA, NGPA, and Part II of

187-88 (D.C. Cir. 1971); *Niagara Mohawk Power Corp. v. FERC*, 379 F.2d 153, 159 (D.C. Cir. 1967).

¹¹ 16 U.S.C. § 823b(c) (2000). The original statutory penalty of \$10,000 was adjusted for inflation by 18 C.F.R. § 385.1602(b) (2003).

¹² 15 U.S.C. § 3414(b)(6)(A)(i). The original statutory penalty of \$5,000 was adjusted for inflation by 18 C.F.R. § 385.1602(a) (2003).

¹³ The Commission also has limited civil penalty and forfeiture authority for oil pipelines under ICA sections 6(10), 20(7), and 41(3), 49 App. U.S.C. §§ 6(10), 20(7), and 41(3) (2000).

the FPA.¹⁴ Moreover, the Commission retains its authority to order disgorgement of unjust profits and has the ability to condition, suspend, or revoke market-based rate authority, certificate authority, or blanket certificate authority. After EAct 2005, the Commission has additional tools to encourage compliance with its statutes, rules, and regulations and to fashion the most appropriate and effective remedies and sanctions for each violation.

B. Assuring Fairness in Enforcement

The Commission has issued a number of orders implementing its new authority under EAct 2005 and has provided guidance to the public on how the new authority will be incorporated into the Commission's enforcement functions. This has been a concerted effort on the part of the Commission to inform the public about the Commission's

¹⁴ Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1284(e), 314 (b)(1)(B), and 314(b)(2), 119 Stat. 594 at 950 and 691 (2005), respectively. Under FPA Part II, the Commission can assess a penalty "of not more than \$1,000,000 for each day that such violation continues." FPA section 316A(b). Under the NGA, the Commission can assess a penalty "of not more than \$1,000,000 per day per violation for as long as the violation continues." NGA section 22(a). Under the NGPA, the Commission can assess a penalty "of not more than \$1,000,000" and "each day of violation shall constitute a separate violation." NGPA section 504(b)(6)(A) and (C). There was no change to the Commission's existing FPA Part I civil penalty authority, under which the Commission can assess civil penalties of up to \$11,000 "for each day that such violation or failure or refusal continues." FPA section 31(c). There was no change to the Commission's ICA remedial authority.

approach to exercising its new authority, and to ensure that the Commission's enforcement actions are fair.

1. **Policy Statement on Enforcement**

On October 20, 2005, the Commission issued its Policy Statement on Enforcement¹⁵ to “provide guidance and regulatory certainty regarding our enforcement of the statutes, orders, rules, and regulations we administer.”¹⁶ The touchstone of the Policy Statement is that the Commission's enforcement will be “firm but fair.”¹⁷ Among other things, the Policy Statement explains how compliance factors into the penalty assessment process. The Commission stressed that in employing its new civil penalty authority, it would consider mitigating factors when determining what remedies are appropriate for a particular violation. While the Commission emphasized that it is seeking “[v]igorous and even-handed enforcement,”¹⁸ it also made it clear that compliance, self-reporting, and cooperation with the Commission are very important. The Commission stated that it would credit an entity for its internal compliance plans and

¹⁵ *See supra* note 5.

¹⁶ *Id.* at P 1.

¹⁷ *Id.* at P 1, 28.

¹⁸ *Id.* at P 17.

self-reporting of violations when determining what, if any, remedy would be appropriate for the violation. Thus, the Policy Statement makes it clear that the Commission continues to value and encourage effective compliance.

2. No-Action Letter Process

On November 18, 2005, the Commission provided an opportunity for regulated entities to seek informal staff advice regarding whether a transaction would be viewed by staff as constituting a violation of certain orders or regulations.¹⁹ In the No-Action Letter Order, the Commission implemented a new procedure, supplementing existing staff consultation opportunities,²⁰ by which an entity may seek informal staff advice whether staff would recommend no action regarding a particular transaction, practice, or situation related to Standards of Conduct for Transmission Providers, the Market Behavior Rules, the Prohibition of Energy Market Manipulation, or Codes of Conduct. To date, staff has provided nine No-Action Letters regarding both electricity and natural gas transactions.

3. Prohibition of Energy Market Manipulation

On January 19, 2006, the Commission issued Order No. 670 adopting rules to

¹⁹ *Interpretive Order Regarding No-Action Letter Process*, 113 FERC ¶ 61,174 at P 1 (Nov. 18, 2005), *modified* 117 FERC ¶ 61,069 (2006).

²⁰ *See* 18 C.F.R. § 388.104 (2007).

implement the provisions of EAct 2005 prohibiting energy market manipulation.²¹

Because EAct 2005 was modeled on section 10(b) of the Securities Exchange Act of 1934,²² the Commission modeled its anti-manipulation rule²³ after SEC Rule 10b-5.²⁴

As the Commission explained, this was done to utilize the decades of precedent in securities litigation and adapt those precedents to the prohibition of market manipulation in wholesale natural gas and electricity markets, assisting market participants in understanding what is expected of them in their market dealings.

4. Codifying Market Behavior Rules

On February 16, 2006, the Commission, following through on the adoption of the new anti-manipulation rules in Order No. 670, rescinded Market Behavior Rules that were no longer necessary.²⁵ Recognizing that EAct 2005 provided a “catch-all” anti-fraud provision, the Commission eliminated duplication and potential confusion about the

²¹ *Prohibition on Energy Market Manipulation*, Order No. 670, 114 FERC ¶ 61,047 at P 2 (Jan. 19, 2006).

²² 15 U.S.C. § 78j(b) (2000).

²³ 18 C.F.R. Part 1c (2007).

²⁴ 17 C.F.R. § 240.10b-5 (2007).

²⁵ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 114 FERC ¶ 61,165 (2006) (electric sales); *Amendments to Codes of Conduct for Unbundled Sales Service and for Persons Holding Blanket Marketing Certificates*, Order No. 673, FERC Stats. & Regs. ¶ 31,207 (2006) (natural gas sales).

behavior expected of market participants by prospectively rescinding the previous prohibition on manipulation.²⁶ The result is one uniform and clear standard for market manipulation in Order No. 670 against which all entities will be judged. At the same time, the Commission codified certain Market Behavior Rules that remained important, such as the requirement to follow organized market rules and not to make false or misleading statements to the Commission.²⁷

5. Procedures for Contested Audits

On February 17, 2006, the Commission issued Order No. 675 to expand procedural protections for certain persons subject to non-financial audits who dispute findings or proposed remedies in draft audit reports.²⁸ The enhanced procedures, including under certain circumstances trial-type procedures, are comparable to those available in financial audits. In addition, the Commission discussed the role of audits in

²⁶ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *reh'g denied*, 107 FERC 61,175 (2004) (electric sales); *Amendments to Blanket Sales Certificates*, Order No. 644, 105 FERC ¶ 61,217 (2003), *reh'g denied*, 107 FERC ¶ 61,174 (2004) (natural gas sales).

²⁷ *Conditions for Public Utility Market-Based Rate Authorization Holders*, Order No. 674, FERC Stats. & Regs. ¶ 31,208 (2006) (codification of Market Behavior Rules 1, 3, 4, and 5 for electric market-based rate sellers).

²⁸ *Procedures for Disposition of Contested Audit Matters*, Order No. 675, FERC Stats. & Regs. ¶ 31,209, *order on reh'g*, Order No. 675-A, FERC Stats. & Regs. ¶ 31,217 (2006).

the Commission's enforcement program.

6. Process for Assessing Civil Penalties

On December 21, 2006, the Commission issued an administrative statement providing a comprehensive review of the statutory requirements associated with the imposition of civil penalties under Parts I and II of the FPA, the NGA, and the NGPA.²⁹ Each statute is somewhat different, and the Commission outlined the process it would follow in assessing civil penalties under each of the statutes. The Penalty Process Order not only sets forth the penalty assessment process, but also explains the rights of the party against whom the Commission may propose to assess a penalty, and explains the administrative and judicial procedures to be provided in each case.³⁰

III. Division of Investigations Activities

EPAAct 2005 increased both the Commission's jurisdiction and its penalty authority, thereby increasing the importance of the Commission's enforcement program.

²⁹ *Statement of Administrative Policy Regarding the Process for Assessing Civil Penalties*, 117 FERC ¶ 61,317 (Dec. 21, 2006) (Penalty Process Order).

³⁰ Certain aspects of the procedures for assessing civil penalties have been challenged by Energy Transfer Partners, L.P. (ETP), in an on-going order to show cause and penalty assessment matter in Docket No. IN06-3-002. That matter is currently pending before the Commission.

Given the scope and reach of the Commission's enforcement authority, it is important for the public to have an understanding of how the Office of Enforcement's (OE) Division of Investigations (DOI) resolves self-reported violations and initiates and pursues investigations of possible violations.

The Commission's regulations allow Enforcement staff to conduct investigations relating to any matter subject to the Commission's jurisdiction.³¹ The DOI staff initiates investigations from information received through a variety of sources, both internal and external. Internally, DOI may receive information through OE's Division of Audits, OE's Division of Energy Market Oversight, other Commission offices, or from the Commission itself. Indeed, DOI may be the source of an investigation based upon information learned, for example, in the course of another investigation. Externally, DOI may receive information from a self-report, the Enforcement Hotline, a referral from a Market Monitoring Unit for an Independent System Operator or Regional Transmission Organization, a tip, a complaint, or a referral from another government agency. All

³¹ 18 C.F.R. §§ 1b.3 and 375.314 (2007). Under the Commission's regulations governing investigations, DOI staff can conduct a preliminary investigation or, if compulsory process is required, seek an order from the Commission commencing a formal investigation. *See* 18 C.F.R. §§ 1b.5 and 1b.6 (2007). Except for the subpoena authority available to staff in a formal investigation, preliminary and formal investigations are handled in the same manner.

information and documentation received during an investigation, as well as the existence of an investigation, is treated as non-public; under the regulations as noted, only the Commission can authorize the public disclosure of the existence of an investigation or information obtained during an investigation.³²

A. Exercise of Prosecutorial Discretion

1. Prior to Beginning an Investigation

Prior to beginning an investigation, DOI reviews the information received regarding the potential violations or suspicious activity. In many instances, DOI consults publicly or commercially available sources of data or Commission staff experts to gain a better understanding of events surrounding the activity being reviewed. In some situations, this review provides an explanation of the activity or otherwise indicates that no further inquiry is needed. Indeed, in many circumstances companies are never contacted or informed that there was an allegation that the company had engaged in improper activity.³³

In other situations, DOI contacts the entity involved in the alleged violation or

³² 18 C.F.R. § 1b.9 (2007).

³³ If the violation is self-reported, of course, DOI staff discusses the nature of the violation with the company in the course of receiving the self-report.

suspicious activity to obtain information first-hand. Often this information assists DOI in learning about the events and determining what happened and what role different persons played in the events, which enables DOI to determine whether an investigation is warranted. Not all such matters are opened as investigations. On the other hand, there are instances in which DOI proceeds immediately with an investigation and sends data requests to obtain information and documents to review.

Deciding how to resolve a matter or whether to initiate an investigation involves the exercise of prosecutorial discretion. Among the factors taken into account are the following:

- Nature and seriousness of the alleged violation
- Nature and extent of the harm, if any
- Efforts made to remedy the violation
- Whether, if known, the alleged violations were widespread or isolated
- Whether, if known, the alleged violations were willful or inadvertent
- Importance of documenting and remedying the potential violation to advance Commission policy objectives
- Likelihood of the conduct reoccurring
- Amount of detail in the allegation or suspicion of wrongdoing
- Likelihood that staff could assemble a legally and factually sufficient case
- Compliance history of the alleged wrongdoer
- Staff resources

2. Prosecutorial Discretion in Practice—Self-Reports

Illustrative of the exercise of prosecutorial discretion in deciding when to begin an

investigation is the fact that 37 of the 74 self-reports of violations received since October 2005 have been closed without conducting an investigation or imposing a sanction. Five self-reports are still in the initial stage of review. Of the 32 self-reports for which investigations were opened, eight were closed without further action, 12 were settled with the payment of civil penalties, and 12 are still pending as investigations.



DOI reviews each self-report to determine whether the matter is of sufficient gravity to open an investigation, or whether the matter may be disposed of with correction and compliance. Often, DOI staff determines that the self-reported matter is a violation of a minor nature and does not warrant an investigation, such as where the company brings its conduct into compliance and/or voluntarily undertakes increased internal procedures, training, and oversight to prevent the reoccurrence of the misconduct. In these situations, staff resolves the self-report without considering civil penalties or monetary sanctions. However, even minor violations could merit further

investigation if DOI is unable to determine if the company fully intends to bring its conduct into compliance and undertake enhanced internal procedures, training, and oversight, as may be necessary to prevent the reoccurrence of the violation. Examples of first-time self-reported violations which were closed with no action include:

- Incidental disclosure of confidential information in violation of the Standards of Conduct where no use was made of the information
- Failure to update or post organizational charts as required by the Standards of Conduct
- Failure to file interlocking position/Form 561 filings³⁴
- Failure to comply with provisions of a prior settlement
- Minor violations related to market-based rate authorizations
- Failure to make certain filings required by the regulations
- Failure to post required information on websites or OASIS

The types of self-reported violations resolved without the need for an investigation are graphically illustrated below:

³⁴ The filing requirements for authority to hold certain interlocking positions, found in 18 C.F.R. Part 45 (2007), arise from section 305 of the FPA, 16 U.S.C. § 825d (2000). Civil penalty authority does not extend to the provisions of section 305 of the FPA. 16 U.S.C. § 825o-1, *amended by* Energy Policy Act of 2005, Pub. L. No. 109-58, § 1284(e), 119 Stat. 594, 980 (2005).

Self-reports Without Monetary Remedies by Type of Violation



It is important to recognize, however, that not every violation falling into one of these categories means that an investigation will not be opened or that a sanction will not be imposed. Rather, in these instances, staff determined that the total circumstances warranted not proceeding with an investigation. In other instances, the particular facts may warrant opening an investigation to confirm the information provided in the self-report and to obtain additional information concerning the scope, seriousness, and effect of the violations. In that regard, the way a company presents a self-report can materially assist Enforcement staff in deciding whether the matter can be closed on the basis of corrective actions taken or whether the matter warrants opening an investigation.

Enforcement staff's experience since the issuance of the Policy Statement is that a good self-report will give staff prompt notice that the company is reviewing a compliance problem, and an expected timeframe for a full report on the matter. While the time to complete a review may vary depending on the nature and complexity of the issues, and

whether the company performs its review using company personnel or bringing in outside counsel or consultants, in good self-reports the company keeps Enforcement staff timely apprised of the progress made.

Enforcement staff finds it helpful if the self-report is submitted in writing, along with copies of documents relevant to the matter being reported and sufficient information for Enforcement staff to understand the circumstances of how and why the violation occurred, along with the identity of the key personnel involved in the violation. Good self-reports also detail the steps taken to cure the violation and to prevent any recurrence. In addition to the written report, Enforcement staff finds that an in-person meeting to discuss the reported violations is a valuable way of informing staff and giving staff an opportunity to explore the facts.

Enforcement staff also learns of possible violations through the Enforcement Hotline. The Hotline provides a confidential means for any person to bring information concerning violations to the attention of Enforcement staff. DOI staff will review the information received through the Hotline, similar to the review staff conducts in the case of a self-reported violation. In some instances, DOI staff resolves the Hotline matter without recommending any sanction, even where a violation has occurred. If the information points to a violation of sufficient gravity, however, DOI staff will conduct an investigation of the matter reported. For example, the show cause proceeding against Energy Transfer Partners pending before the Commission began as the result of a Hotline

call.³⁵

B. Investigation Process

In instances when DOI staff opens an investigation, whether pursuant to a self-report or otherwise, the Commission is notified and DOI staff pursues the facts through normal discovery methods of data requests, document production, interviews, and depositions. The time required will, of course, depend on many factors, including the complexity of the facts and the type of alleged violations. During this process, DOI staff stays in contact with those being investigated. Typically in the course of an investigation staff and the company will meet on one or more occasions to discuss the matters being investigated and the relevant facts, data, and analysis. Ultimately, staff may determine that no violation occurred, or may conclude that the evidence is insufficient to warrant further investigation, or that based on all of the circumstances no further action is warranted. If so, staff notifies the company that the investigation is closed, and discusses with or otherwise advises the Commission of its decision.

If staff reaches the conclusion that a violation occurred, staff shares its views, including both the relevant facts and its legal theories, with the company. This may be

³⁵ See *Energy Transfer Partners, L.P.*, 120 FERC ¶ 61,086 (2007).

done either orally or in writing, and staff will provide the company with an opportunity to respond and to furnish staff with any additional relevant information before staff confirms its conclusion.³⁶ This exchange can result in new and relevant information being provided to staff, upon which staff may reconsider its view of the matter. In some situations, this process has resulted in staff closing an investigation without seeking sanctions, or substantially altering staff's position with respect to the appropriate sanction.

In short, DOI staff candidly discloses its theory of the case and makes every effort to be sure it has all the facts and has considered the company's views fully before staff makes any recommendation. Where DOI staff reaches a conclusion that a violation has occurred but the company continues to maintain that there is no violation, the company may be given the opportunity to make a submission directly to the Commission prior to action being taken against the company.³⁷ Only after completing a full exchange of facts and views with the company does staff recommend that the Commission issue an order to show cause.

³⁶ A company can submit statements and documents at any time during the course of an investigation to explain its position or to provide information relevant to the matter under investigation. 18 C.F.R. § 1b.18 (2007).

³⁷ 18 C.F.R. § 1b.19 (2007).

Staff keeps the Commission apprised of the progress of investigations and settlement negotiations. Settlement negotiations with staff provide the company with still another opportunity to make its views known and may involve several meetings. When staff and the company are able to agree in principle on the terms of the settlement, staff prepares a stipulation and consent agreement, but receives input from the company. The settlement is then submitted to the Commission for approval.

C. Disposition of Investigations Since October 2005

Since October of 2005, Enforcement staff has closed or completed action on 64 investigations.³⁸ Of the 64 investigations, 47 were closed without any action taken, that is, without sanctions. In 25 instances, there was insufficient evidence of a violation, and in the remaining 22 instances staff found a violation but closed the matter without a sanction. Of the remaining investigations, 15 have resulted in 13 settlements³⁹ involving the payment of civil penalties or other monetary remedies, the filing of compliance plans,

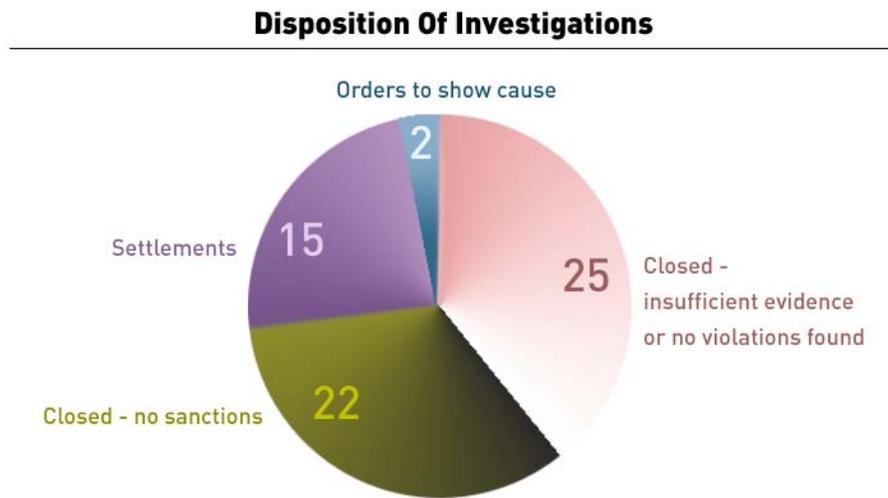
³⁸ Enforcement staff is committed to prompt action on matters it investigates. Approximately 75 percent of investigations are completed within one year. Twenty of the 64 investigations were self-reports that were converted into investigations and ultimately settled or closed with no action.

³⁹ The order accepting the settlement in *In Re Entergy, Inc.*, 118 FERC ¶ 61,027 (2007), resolved three separate investigations of violations self-reported by Entergy.

and other remedial steps,⁴⁰ and two investigations have resulted in show cause orders.⁴¹

It is significant that more than 70 percent of OE's investigations have not resulted in penalties, even though in almost half of those investigations staff found a violation. Staff frequently exercises judgment to resolve more minor infractions with voluntary compliance measures rather than penalties.

The following table summarizes the investigations closed since October 2005:



⁴⁰ Twelve of the settlements since October 2005 include civil penalties resulting from EAct 2005 authority. These settlements are listed on Appendix A. The other settlement in this period is a settlement of a hydroelectric matter under FPA Part I civil penalty authority, *AmerenUE*, 117 FERC ¶ 61,001 (2006).

⁴¹ *Amaranth Advisors LLC*, 120 FERC ¶ 61,085 (2007); *Energy Transfer Partners, L.P.*, 120 FERC ¶ 61,086 (2007).

Matters investigated by staff but closed without action fall into many categories. Some are allegations of a serious nature, such as market manipulation, but are investigations in which staff concludes no manipulation occurred. In others, there is insufficient evidence to proceed, or ambiguity as to the requirement which was allegedly violated. Other investigations present issues where significant Commission goals or policies are not implicated and no demonstrable harm occurred. In such investigations, staff frequently closes investigations after action by the company to remedy the violation and to take steps to assure future compliance.

For example, in one instance staff investigated whether certain market participants were in violation of the provisions of an organized electricity market tariff. The investigation revealed that the tariff provision was not enforceable as written, although the conduct with which the provision was concerned was undesirable. Enforcement staff brought this to the attention of the organized market operator, which responded by filing a tariff change to solve the problem prospectively. Another example involves a company that operated certain gas facilities in two states in such a way as to fall within the Commission's jurisdiction under the NGA, but the company did not have a certificate of public convenience and necessity. The company made the appropriate filings with the Commission to clarify its jurisdictional status, and staff closed the matter without seeking sanctions.

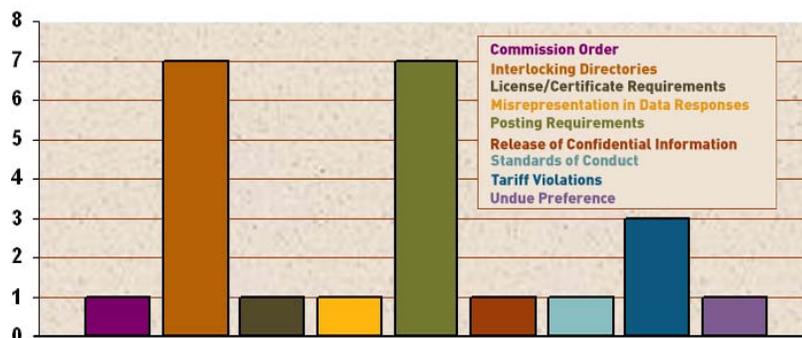
The following are examples of matters which have been investigated and in which

violations have been found, but as to which staff determined not to recommend a penalty:

- Errors by pipelines in posting available capacity on their websites or EBBs
- Disclosure of confidential information in violation of the Standards of Conduct and as to which no adverse use was made of the information
- Failure to update or post organizational charts as required by the Standards of Conduct
- Failure to post required information on websites or OASIS
- Minor violations of tariff, license, or certificate requirements, or of the Standards of Conduct

The distribution of matters where violations were found but resolved without sanctions is shown below:

Investigations Without Monetary Remedies by Type of Violation



Again, it is important to note that just because a violation falls into one of these categories does not automatically mean that every such violation will not warrant a sanction. Rather, the totality of the relevant circumstances must be examined in each situation.

As noted, in most investigations as to which Enforcement staff has sought civil penalties the investigations were resolved by settlement.⁴² Since January 2007, the Commission has issued twelve orders approving stipulations and agreements between Enforcement staff and companies to resolve a wide variety of violations. In most cases the company admitted the violations as part of the settlement. All twelve settlements resulted in the payment of civil penalties, and some also involved disgorgement or other monetary remedies.⁴³ The range of sanctions—from \$300,000 to \$10 million—reflects the wide variety in the type and seriousness of the violations. These investigations also show the Commission’s willingness to approve civil penalty amounts appropriate for the seriousness of the violations yet significantly less than the maximum possible penalties.

Furthermore, the goal of promoting industry compliance is an important factor in the manner in which DOI has approached settlements. All but two of the settlements approved by the Commission included a one or two year compliance plan, to ensure future compliance with the Commission’s rules.⁴⁴

⁴² The Commission has noted that the preferred method of resolving such violations is by settlement. Penalty Process Order at P 2.

⁴³ See Appendix A.

⁴⁴ The two settlements that did not include a compliance plan or report involved one-time matters that did not present a concern that the conduct would be repeated. *In re Gexa Energy, L.L.C.*, 120 FERC ¶ 61,175 (2007), involved unauthorized wholesale sales
(continued...)

Finally, the Commission has issued two orders to show cause why the Commission should not impose substantial civil penalties for alleged violations of the Market Behavior Rules or the prohibition on energy market manipulation. These matters are pending before the Commission, so the final outcomes of these proceedings have yet to be determined. The show cause orders and the proposed civil penalties, however, stand in sharp contrast to the settled cases. Market manipulation, which is alleged to have occurred as a result of intentional actions of the respondents in those cases and with the involvement of senior management, may require more significant action, including the possibility that penalties could be assessed near or at the maximum.

IV. Division of Audits Activities

As with DOI, it is important to understand how Enforcement's audit staff examines the conduct of regulated entities and the role that audits play in encouraging compliance with Commission requirements. The Office of Enforcement's Division of Audits (DOA) is instrumental in promoting industry compliance with Commission requirements. These audits provide the Commission with an objective assessment of

of electricity and failure to seek prior approval of acquisition of assets by another company; the company that committed the violations no longer exists. *In re Columbia Gulf Transmission Company*, 119 FERC ¶ 61,174 (2007), involved a failure to comply with a Commission order to permit an interconnection; the interconnection was built and placed into operation during the course of the investigation.

industry compliance with various aspects of the Commission's rules, regulations, and statutory requirements. DOA plans, conducts, and reports the results of audits of jurisdictional companies in the electric power, natural gas, and oil pipeline industries. Audits vary in type, scope, and objectives, but primarily focus on materially relevant compliance issues associated with significant Commission initiatives.

A. How the Division of Audits Conducts Audits

DOA staff develops an annual audit plan that identifies the audit topic, overall objectives, and the method of selecting each audit. DOA selects possible audit candidates using a variety of methods, including considering information from a monitoring activity, analysis of information from internally developed screens, obtaining input from program offices and agency officials, and mandates from the Commission. The majority of the audits conducted by the Commission over the past four years were of companies selected without any knowledge or allegation of any specific wrongdoing. DOA's goal is to evaluate whether a jurisdictional company is in compliance with the applicable rules and regulations and, where compliance is deficient, to recommend corrective actions and suggest preventive measures to avoid problems in the future.⁴⁵

⁴⁵ More information on the DOA audit process is posted on the Commission's website at <http://www.ferc.gov/legal/maj-ord-reg/land-docs/order2004/resources/audit->
(continued...)

DOA's approach is proactive, and the audits usually will focus on compliance areas of material interest such as the Open Access Transmission Tariff or the Market-Based Rate Authority requirements.

When DOA selects a company for audit, the Director of OE releases a public commencement letter to the company, describing the purpose and scope of the audit and its authority. Then, using several techniques such as observations, inquiry, site visits, interviews, and testing, DOA staff collects sufficient data to reach findings and conclusions, which may result in staff reporting audit findings and making specific recommendations. DOA staff also analyzes information it gathers from publicly available records. Once the staff has completed its audit fieldwork, it provides the company with a draft audit report and discusses any preliminary findings with the company to ensure that staff's audit report is fair, accurate, complete, and objective. Depending on the circumstances, this may be an iterative process, as DOA staff and the company work through the relevant information to a common understanding of the extent to which the company's compliance may be deficient.

The company then has the opportunity to comment on the draft audit findings and recommendations as well as the facts in the audit report. If the audited company disputes

process.pdf.

any of the findings, it may follow the procedures set forth in the Commission's regulations. Through either a Commission order or delegated authority, the Commission will issue a final audit report with the Commission's findings and the company's response.

While DOA and DOI are separate divisions, they serve complementary functions within the Office of Enforcement. One purpose of the audit process is to ensure and increase compliance with the Commission's rules, regulations, and statutory requirements. Thus, evidence received during an audit that indicates that a violation may have occurred may be shared with DOI for a further review of the facts involved. Depending on the nature of the matter, it may be resolved through the audit, or it may become the subject of a separate investigation.

B. Audits Since October 2005

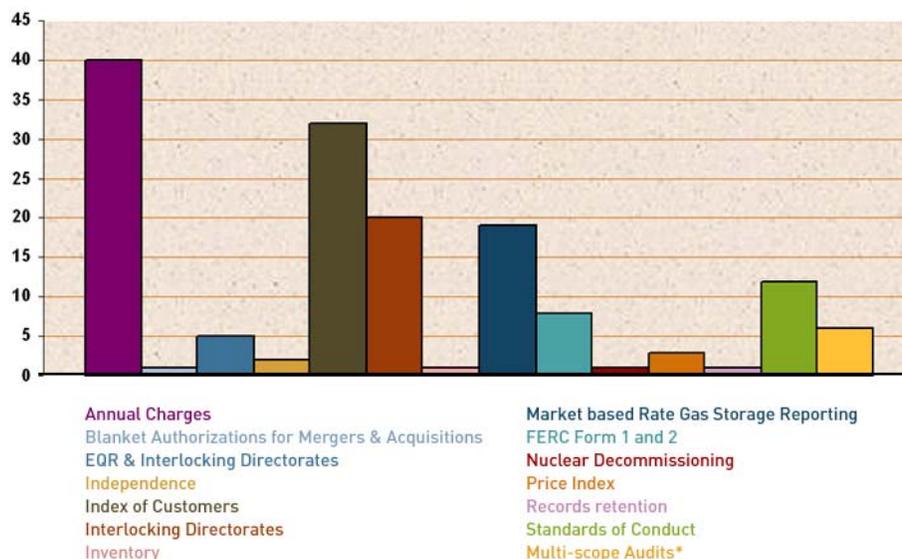
Since October 20, 2005, DOA has completed 151 audits, comprised of 71 financial audits and 80 operational audits. These audits focused on the following topics:

- Multi-scope audits, which included a focus on at least two of these topics: Standards of Conduct, Code of Conduct, Open Access Transmission Tariffs, Fuel Adjustment Clause, Market Based Rate Authority, Electric Quarterly Reporting, and Records Retention
- Annual Charges
- Blanket Authorizations for Mergers and Acquisitions
- Electric Quarterly Reporting
- Independence

- Index of Customers
- Interlocking Directorates
- Inventory Accounting
- Market-based Rate Gas Storage Reporting
- FERC Form Nos. 1 and 2
- Nuclear Decommissioning
- Price Index
- Records Retention

These audits resulted in 319 recommendations to the companies audited and all of the recommendations have been implemented. These recommendations included structural and procedural changes in a variety of matters to improve compliance with Commission requirements.

Distribution of Audits Conducted by Type



Included two or more of the following topics: Standards of Conduct, Code of Conduct, Open Access Transmission Tariffs, Fuel Adjustment Clause, Market Based Rate Authority, Electric Quarterly Reporting, and Records Retention

In addition to the immediate corrective action taken on the audit recommendations, some audits have resulted in stringent compliance plans that required the creation of robust compliance programs. Generally, an audit results in a compliance plan when the recommendations made will be implemented over a long period of time. The purpose of compliance plans is to ensure that the company is focusing on compliance by implementing the recommendations and informing DOA of its progress. DOA tracks the companies' performance with these compliance plans through quarterly compliance reports.

Each compliance plan is unique to the circumstances. Examples of the steps companies have taken as a result of a compliance plan include conducting periodic internal audits related to the areas of noncompliance, refunds, making corrective accounting entries, and filing tariff revisions.

V. Division of Energy Market Oversight Activities

A significant part of the mission of the Office of Enforcement is comprehensive monitoring of energy markets. To that end, OE's Division of Energy Market Oversight (DEMO) operates a Market Monitoring Center with comprehensive and highly interactive capabilities to observe activity in key energy markets.

DEMO staff examines prices in all of the key natural gas and electric markets, both physical and financial, in detail every day. This includes price movements in natural

gas and electricity markets, hubs, and exchanges around the country and the interaction between gas and electric markets for each region of the country. In addition to the primary focus on natural gas and electricity, DEMO staff also monitors prices in related commodity markets, such as coal, oil, emissions allowances, and natural gas outside North America.

The Commission's market monitoring is unique in the combination of data sources it examines. In addition to data that are submitted directly to the Commission, such as the Electric Quarterly Report, DEMO staff collects and compares data that are publicly or commercially available. Some such information is public and available online for free, such as bid, offer, and clearing prices from Regional Transmission Organizations (RTO) or Independent System Operators (ISO). Other information is commercially available transaction data from exchanges or markets or from companies that collect price, transaction, or activity information of various sorts, such as transactions on the New York Mercantile Exchange and the IntercontinentalExchange or pipeline operations data gathered from the postings of interstate gas pipelines.

DEMO staff shares its work within OE and the Commission and also shares data broadly with other regulatory bodies and the public. Some of the staff analyses are posted on the Commission's website for the benefit of the public, including Market Snapshot Reports, periodic State of the Markets Reports, seasonal assessments of energy markets, and a wide variety of reports, analyses, and useful data. In addition to the

review done within OE, DEMO staff works closely with other program offices in the Commission, as well as with other federal agencies, both to help fellow regulators and to obtain useful information from other agencies.

DEMO staff studies price movements in the context of broader market conditions, and highlights price changes that appear to be an aberration or inconsistent with market fundamentals. Price movements without ready explanation are reviewed in greater depth to determine the reason for the movement. Where no explanation is found, OE investigates to determine whether market manipulation may be present. OE oversight of energy markets was the genesis of the show cause order issued by the Commission in the Amaranth matter. In that instance, DEMO staff's market monitoring detected unusual and unexplained patterns in NYMEX pricing.

VI. Conclusion

Enforcement of the statutes, orders, rules, and regulations administered by the Commission continues to focus on encouraging compliance, aided by the recent expansion of the Commission's civil penalty authority. Commission staff focuses on compliance as its goal. To reach that goal and to be consistent with the Commission's policies, prosecutorial discretion is exercised in appropriate cases as part of an overall effort to bring about improved compliance by all companies subject to Commission requirements.

Appendix A

EPAcT 2005 Civil Penalty Enforcement Actions

SUBJECT OF INVESTIGATION AND ORDER AND DATE	TOTAL PAYMENT	EXPLANATION OF PAYMENTS (CIVIL PENALTY UNDER THE NGA, FPA, OR NGPA; DISGORGEMENT OF PROFITS; OTHER PAYMENTS) AND COMPLIANCE PLANS
IN RE BP ENERGY COMPANY, 121 FERC ¶ 61,088 (October 25, 2007)	\$7,000,000	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.
IN RE MGTC, INC., 121 FERC ¶ 61,087 (October 25, 2007)	\$300,000	Civil penalty and compliance report resulting from self-reported violations of the shipper-must-have-title requirement.
IN RE GEXA ENERGY, L.L.C., 120 FERC ¶ 61,175 (August 21, 2007)	\$500,000 \$12,481.41	Civil penalty and disgorgement resulting from a self-report of violations of the FPA.
IN RE CLECO POWER, LLC, ET AL., 119 FERC ¶ 61,274 (June 12, 2007)	\$2,000,000	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 info between different Cleco companies.
IN RE COLUMBIA GULF TRANSMISSION COMPANY, 119 FERC ¶ 61,174 (May 21, 2007)	\$2,000,000	Civil penalty resulting from a Commission referral for a violation of a Commission order to allow installation of a receipt interconnection.
IN RE CALPINE ENERGY SERVICES, L.P., 119 FERC ¶ 61,125 (May 9, 2007)	\$4,500,000	Civil penalty and a 1-2 year compliance plan resulting from a self-report for violations of shipper-must-have-title requirements.
IN RE BANGOR GAS COMPANY, 118 FERC ¶ 61,186 (March 7, 2007)	\$1,000,000	Civil penalty and a 1 year compliance plan resulting from a self-report for violations of shipper-must-have-title requirements.
IN RE PACIFICORP, 118 FERC ¶ 61,026 (January 18, 2007)	\$10,000,000	Civil penalty and a 1 year compliance plan resulting from a self-report for violations of OATT and Standards of Conduct.
IN RE SCANA CORPORATION, 118 FERC ¶ 61,028 (January 18, 2007)	\$9,000,000 \$1,800,000	Civil penalty, disgorgement, and a 1 year compliance plan resulting from a self-report for violations of OATT.
IN RE ENTERGY SERVICES, INC., 118 FERC ¶ 61,027 (January 18, 2007)	\$2,000,000	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.
IN RE NORTHWESTERN CORPORATION, 118 FERC ¶ 61,029 (January 18, 2007)	\$1,000,000	Civil penalty and a 2 year compliance plan resulting from a hotline call for violations of Business Practice Standards for OASIS Transactions.
IN RE NRG ENERGY, INC., 118 FERC ¶ 61,025 (January 18, 2007)	\$500,000	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.