

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



2020 REPORT ON ENFORCEMENT

Docket No. AD07-13-014

Prepared by Staff of the

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

NOVEMBER 19, 2020



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

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INTRODUCTION

The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) is issuing this report as directed by the Commission in its Revised Policy Statement on Enforcement.¹ This report informs the public and the regulated community of Enforcement's activities during Fiscal Year 2020 (FY2020),² including an overview of, and statistics reflecting, the activities of the three divisions within Enforcement: Division of Investigations (DOI), Division of Audits and Accounting (DAA), and Division of Analytics and Surveillance (DAS).

Enforcement recognizes the importance of informing the public of the activities of its staff, and prepares this report with that objective in mind. Most of the information the public receives about Enforcement's activities comes from public Commission orders approving settlements, orders to show cause, publicly released staff reports, and audit reports. This report summarizes the status and resolution of various matters that were public in FY2020. However, not all of Enforcement's activities result in public actions by the Commission. Like reports in previous years, the FY2020 report provides the public with more information regarding the nature of non-public Enforcement activities, such as investigations that are closed without action, self-reported violations, and examples of surveillance inquiries initiated by DAS that are terminated short of opening an investigation. This report also highlights Enforcement's work administering the audit and accounting programs, and performing surveillance and analysis of conduct in wholesale natural gas and electric markets. In addition, DAA points out a number of areas to help companies enhance compliance programs.

While Enforcement continued its typical investigations, audits, and surveillance activities in FY2020, it also took steps to help regulated entities manage their potential enforcement and compliance-related obligations in response to the unprecedented COVID-19 pandemic. On April 2, 2020, then Chairman Neil Chatterjee announced proactive steps by the Commission to help regulated entities in this regard. In accordance with then Chairman Chatterjee's announcement, Enforcement staff provided several accommodations to regulated entities, including:

- Working with the subjects of continuing non-public investigations and audits, and entities with continuing compliance obligations associated with completed enforcement cases, to provide flexibility with discovery-related or other deadlines through July 31, 2020;
- Suspending the initiation of new audits until July 31, 2020; and

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

² The Commission's fiscal year begins October 1 and ends September 30 of the following year. FY2020, the subject of this report, begins on October 1, 2019 and ends on September 30, 2020.

- Postponing contacting entities regarding surveillance inquiries, except those involving market behavior that could result in significant risk of harm to the market.

In addition, the Commission allowed entities to delay for 60 days the submission of self-reports that involved inadvertent errors producing no significant harm to the markets, ratepayers or other market participants. The Commission also issued an extension to June 1, 2020 for the filing of Form Nos. 60, 61 and 552, as well as Electric Quarterly Reports (EQRs).

OFFICE OF ENFORCEMENT PRIORITIES

The Commission's current Strategic Plan sets forth a mission to account for significant changes in energy supply due to a number of factors, such as the increased availability of domestic natural gas and the emergence and growth of new energy technologies. As the Strategic Plan notes, both the nation's energy infrastructure and energy markets must adapt to these changes to ensure that consumers have access to economically efficient, safe, reliable, and secure energy at a reasonable cost.³ The Strategic Plan identifies three primary goals to fulfill this mission: (1) ensure just and reasonable rates, terms, and conditions; (2) promote safe, reliable, and secure infrastructure; and (3) support the mission through organizational excellence. To further those goals and assist the Commission in its obligation to oversee regulated markets, Enforcement gathers information about market rules, market participants, and market behavior through its investigations, audits and surveillance. Enforcement also gathers information regarding energy infrastructure, as appropriate. Each of the divisions continues to work to bring entities into compliance with applicable statutes, Commission rules, orders, regulations, and tariff provisions.

In FY2020, Enforcement's priorities continued to focus on matters involving:

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

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

³ The Federal Energy Regulatory Commission, Strategic Plan FY 2018-2022 (Sept. 2018) (Strategic Plan), *available at* <https://www.ferc.gov/about/strat-docs/strat-plan.asp>.

remediating misconduct involving the greatest harm to the public, where there may be significant gain to the violator or loss to the victims.

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

In FY2020, DOI staff opened six new investigations, while bringing eight pending investigations to closure without further action. Additionally, during the fiscal year, staff negotiated three settlements totaling \$553,376, which included \$437,500 in civil penalties and \$115,876 in disgorgement.⁴ Two of these Commission-approved settlements also included provisions in which the subjects agreed to enhance their compliance programs and periodically report back to Enforcement regarding the results of those compliance enhancements.

In FY2020, DAA completed ten audits of public utility, natural gas, oil, and Regional Transmission Organization (RTO) / Independent System Operator (ISO) companies covering a wide array of topics. The audits resulted in 51 findings of noncompliance and 199 recommendations for corrective action, the majority of which were implemented within six months, and directed \$98.4 million in refunds and other recoveries. Additionally, during the fiscal year, DAA acted through the Chief Accountant's delegated authority or advised on 441 proceedings, including acting on 104 accounting filings requesting approval of a proposed accounting treatment or financial reporting matter, and assisting with 337 rate, pipeline certificate, merger and acquisition, and debt and security issuance proceedings before the Commission. Also, in FY2020 the Commission received EQR submittals from nearly 2,800 entities each quarter. DAA assessed whether sellers had timely complied with the requirements set forth in the multiple orders surrounding EQR filings and, through automated validations, whether the data was accurate and reliable. DAA also administered and oversaw compliance with the regulations concerning FERC Form Nos. 1, 1-F, 2, 2-A, 3-Q (gas and electric), 6, 6-Q, 60 and FERC-61. During FY2020, the Commission received approximately 2,500 such financial form submittals. DAA also assisted the Commission in the process of adopting eXtensible Business Reporting Language (XBRL) as the standard for filing financial forms.

In FY2020, DAS surveillance staff identified and reviewed numerous instances of potential misconduct, some of which resulted in DAS opening a surveillance inquiry, or an in-depth review of a market participant's conduct, in order to determine whether to recommend an investigation. During the fiscal year, natural gas surveillance screens produced approximately 10,594 screen trips which resulted in 26 natural gas surveillance inquiries and no referrals to DOI for investigation. Electric surveillance screens produced approximately 399,755 screen trips which resulted in 39 electric surveillance inquiries and five referrals to DOI for investigation. In total, DAS closed 28 electric surveillance inquiries with no referral and, as of the end of the fiscal year, continued its analytic work on six. DAS worked and provided analytical support on approximately 50 investigations with DOI. This year, DAS also became responsible for conducting market-based

⁴ A table of FY2020 Civil Penalty Enforcement Actions is attached as Appendix B to this report.

rate *ex post* analyses. During FY2020, DAS staff reviewed over 2.6 million market-based rate transactions filed through the Commission's EQRs by 187 sellers of wholesale energy.

DIVISION OF INVESTIGATIONS

A. Overview

This section of the report provides details on DOI's current investigative processes and practices in order to give the energy industry, energy bar, and public added insight on investigations and to provide investigative subjects general guidance on what to expect during an investigation.

DOI staff conducts investigations of potential violations of the statutes, regulations, rules, orders, and tariffs administered by the Commission. DOI staff learns of potential violations from multiple sources, including referrals from other program offices within the Commission and other divisions within Enforcement; referrals from ISOs/RTOs in organized markets or their market monitoring units; referrals from other agencies; self-reports; calls to the Enforcement Hotline; whistleblowers; and information gathered in other investigations. After learning of a potential violation, DOI staff evaluates whether to open an investigation based on the factors outlined in the Commission's Revised Policy Statement on Enforcement.⁵

If, after opening an investigation, and gathering and reviewing relevant facts, DOI staff finds no violation or finds that a violation should not be subject to sanctions, DOI staff closes the investigation without action and so informs the subject.⁶ Most of DOI staff's investigations are closed without further action.⁷ On the other hand, if DOI staff finds that a violation occurred that warrants sanctions, it provides the subject with its preliminary findings, either orally, in writing, or both. The subject then has the opportunity to respond to staff's preliminary findings with any additional information or defenses. This stage presents an important opportunity for the subject to supplement factual information or to point out its views and theories of the case. Where warranted,

⁵ Revised Policy Statement, 123 FERC ¶ 61,156 at P 25.

⁶ Of the eight investigations DOI closed in FY2020, it closed six of them either because staff found no violation or because there was not enough evidence to conclude that a violation had occurred. In addition, DOI closed two investigations where DOI's view was that violations existed but concluded that sanctions were not warranted due to certain mitigating circumstances.

⁷ In some circumstances, while DOI has determined that an investigation should be terminated, it has also identified broader market issues that may warrant attention. For example, the investigation may expose vague or ambiguous market rules that appear to undermine, distort, or otherwise inject uncertainty into market performance and participant obligations. To address these types of issues, Enforcement has a process whereby staff can share its concerns about existing tariffs, market rules, or business practice manuals with senior management in Enforcement and the Commission's Office of Energy Market Regulation (OEMR), Office of the General Counsel (OGC), and Office of Energy Policy and Innovation (OEPI) and explain how the issues may be resulting in poor or inefficient market outcomes.

staff conducts additional fact-finding after reviewing a subject's response and may modify its findings based on the response and further fact-finding.

If, after reviewing the subject's response to the preliminary findings and conducting supplemental fact-finding, DOI staff continues to conclude that violations occurred and that the violations warrant sanctions, it consults with OE management and then seeks authority from the Commission to enter into settlement negotiations with the subject.⁸ This request for settlement authority describes the facts and law that led to staff's determination, recommends a range of settlement terms and penalty analysis under the Commission's Penalty Guidelines, and attaches the subject's preliminary findings response(s). If the Commission grants settlement authority, staff seeks negotiated resolutions within the Commission provided settlement authority range and terms. Settlements are sought with terms that will transparently inform the regulated industry about what conduct constitutes the violation. If an agreement is reached between Enforcement and the subject, it will be submitted to the Commission for approval. If the settlement agreement is approved, the Commission issues a public order that typically states why the settlement serves the public interest and attaches the executed settlement agreement. In FY2020, Enforcement staff resolved three investigations via settlements approved by the Commission: (1) an energy services company's violation of the ISO New England Inc. (ISO-NE) Tariff; (2) an energy generation company's violation of the ISO-NE Tariff and the Commission's market behavior regulations (18 C.F.R. §§ 35.41(a) and (b)); and (3) a violation of the California Independent System Operator (CAISO) Tariff and a NERC Reliability Standard.⁹ These settlements are described more fully below in DOI Section C.

If a settlement cannot be reached, and Enforcement intends to recommend issuance of an order to show cause (OSC) to the Commission, staff will provide the subject with notice and an opportunity to respond pursuant to section 1b.19 of the Commission's regulations. After reviewing this response, staff, if it continues to believe violations have occurred, drafts an Enforcement Staff Report and Recommendation, which includes its findings of fact and conclusions of law regarding the investigation, as well as its recommendation to issue an OSC. Following review and approval by OE management, this report and the subject's response to the section 1b.19 notice are then submitted to the Commission for a vote on the OSC. If the Commission concurs with staff's recommendation, it issues an OSC in a public docket directing the subject to explain why it did not commit a violation and why penalties and disgorgement are not warranted. The subject has an opportunity to respond to the OSC, and Enforcement staff may reply to the subject's response. The Commission's issuance of an OSC triggers the Commission's *ex parte* and separation of functions rules, because it initiates a contested on-the-record proceeding, with Enforcement and subjects as participants and the Commission as a neutral adjudicator.¹⁰ The Commission therefore issues a public notice designating Enforcement as "non-decisional," with the exception of the

⁸ Investigative subjects are free to raise and explore potential resolution of an investigation, including through settlement, at any time during an investigation.

⁹ The Commission's regulations can be found at www.ecfr.gov.

¹⁰ See 18 C.F.R. §§ 2201, 2202 (2020) (outlining the Commission's rules governing off-the-record communications and separation of functions). See also 5 U.S.C. § 554(d) (2014).

specific Enforcement staff designated as “decisional,” who had no prior involvement in the underlying investigation.

After considering the factual record and legal arguments submitted by the subject and Enforcement, the Commission issues a decision, which will take different forms depending on the relevant statute. Under the Natural Gas Act (NGA) and under a default process under the Federal Power Act (FPA), the Commission can either rule on the pleadings or set the matter for hearing before an Administrative Law Judge (ALJ), assuming genuine issues of material fact exist. In matters set for an ALJ hearing, the ALJ holds a hearing and issues an initial decision, which is followed by a final Commission decision that can be appealed to an appropriate United States court of appeals. Alternatively, if a civil penalty is proposed in an FPA matter, a subject can elect a process different from the ALJ route described above. A subject has 30 days following the OSC issuance in which to affirmatively elect a penalty assessment by the Commission followed by “review de novo” of the assessment before a district court. If such an election is made, the Commission follows its OSC paper hearing procedures but determines whether a violation occurred and, if so, assesses penalties through an order. If the subject does not pay the civil penalty within 60 days of the penalty assessment, the Commission is required by statute to file an action in district court for an order affirming the civil penalty. As of the end of FY2020, staff is litigating four such actions in federal court (one of which was filed this year), seeking to enforce the Commission’s combined assessment of more than \$89 million in penalties and disgorgement. Two NGA-related proceedings remain pending before the Commission as of the end of the fiscal year.¹¹

B. Significant Matters

DOI staff spent substantial time in FY2020 preparing briefs, reports, and other public filings related to litigation in federal courts and administrative proceedings before the Commission. In addition, staff filed a complaint in federal court in California seeking to enforce a penalty assessment made by the Commission as well as the disgorgement of unjust profits assessed in the OSC proceeding.

DOI staff now represents the Commission in four litigation matters in United States district courts. Currently pending at the Commission is one NGA-related OSC proceeding and one NGA trial-type proceeding, in which the respondent’s motion for rehearing is under consideration.

As of the end of FY2020, a total of approximately \$79 million in civil penalties and \$10.2 million in disgorgement of unjust profits, plus interest, remains pending in the federal court matters.

1. District Court Litigation

Over the past seven years, Enforcement has filed nine enforcement actions in district courts across the country, including four that are still pending. In those proceedings, district courts have issued rulings to address a variety of procedural and substantive legal issues, including: (1)

¹¹ For a more detailed discussion of the processes by which Enforcement conducts and concludes investigations, *see* Revised Policy Statement, 123 FERC ¶ 61,156 at PP 23-40.

whether the Commission has five years from the date of the violation or from the date it assesses civil penalties for the violation to file an action in district court to enforce the assessed penalties; (2) whether the Commission's civil actions seeking to enforce its penalty assessments should follow the Federal Rules of Civil Procedure; (3) the sufficiency of the Commission's notice of fraud and deceptive conduct pleadings; (4) what constitutes individual culpability under the FPA; (5) particular activity that establishes manipulation; and (6) what evidence satisfies the scienter requirement under Section 222 of the FPA. In addition, in FY2020, a United States court of appeals issued an opinion on the construction and application of the federal statute of limitations to FPA civil penalty actions, as discussed below.

In FY2020, Enforcement staff continued litigating four matters in United States district courts to enforce the Commission's penalty assessments under the FPA. Those district court litigation matters were:

a) FERC v. Silkman, et al., No. 1:16cv00205 (D. Maine)

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

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

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

On January 29, 2018, upon agreement of the parties, the Maine District Court ordered summary judgment briefing on the applicability of the statute of limitations. Briefing on the cross-motions for summary judgment was completed on April 20, 2018. On January 4, 2019, the Maine District Court issued an order finding that the Commission's action was not time-barred; therefore, the Commission's motion was granted and Respondents' motion was denied. Respondents

subsequently sought certification of the Maine District Court's decision to the First Circuit Court of Appeals. Following briefing of the matter, the Maine District Court denied Respondents' motion for certification on June 26, 2019.

On August 23, 2019, the Maine District Court issued a Final Pretrial Order setting dates for the trial and various pre-trial matters. On August 27, 2019, the Commission filed a motion to strike Respondents' expert, Thomas Welch, which was denied on December 2, 2019. On December 24, 2019, Respondents moved to withdraw their jury demand. On January 14, 2020, the Commission filed a response consenting to Respondents' withdrawal of their jury demand, withdrawing its own jury demand, and requesting a conference with the Court to discuss changes to the scheduling order necessitated by the parties' withdrawals of their jury demands. The Maine District Court issued an amended final pretrial order following a January 28, 2020 telephone conference with the parties. Since February 2020, the parties have been engaging in mediation before a magistrate judge and, as reflected in the Court's September 25, 2020 minute order, a tentative settlement has been reached, pending review and approval by the Commission.

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

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

On July 31, 2015, Enforcement staff filed a petition in the United States District Court for the Eastern District of Virginia (EDVA) to enforce the Commission's Order. Following briefing, the EDVA held that the Defendants are entitled to a trial *de novo* under section 31(d)(3) of the FPA. The Commission filed an amended complaint on January 29, 2018, and Defendants moved to dismiss in part on February 28, 2018, based on statute of limitations grounds. On September 24, 2018, the court found that the Commission had met the statute of limitations established in 28 U.S.C. § 2462, but authorized Defendants to seek interlocutory appeal. On October 4, 2018, Defendants petitioned the United States Court of Appeals for the Fourth Circuit to review the order, and the Commission did not oppose the appeal. The Fourth Circuit granted the petition for review on November 5, 2018. Following briefing, the Fourth Circuit scheduled oral argument for December 11, 2019.

On February 11, 2020, the Fourth Circuit issued an opinion affirming the District Court and endorsing the Commission's construction and application of the statute of limitations to civil penalty actions arising under section 31 of the FPA. In upholding the District Court's opinion, the

Fourth Circuit recognized that “Congress plainly conditioned FERC’s right to bring an action in federal district court on the occurrence of a number of statutorily-mandated events,” and that “[o]nly upon satisfaction of these requirements . . . did § 2462’s statutory limitations period for filing suit commence.” *Federal Energy Regulatory Commission v. Powhatan Energy Fund, LLC*, 949 F.3d 891, 899 (4th Cir. 2020). The Fourth Circuit remanded the case to the District Court, underscoring the importance of enforcement to the Commission’s regulatory mission: “the FPA delegates responsibility to FERC to regulate the interstate wholesale market for electricity, and to ensure that all rates charged in that market are ‘just and reasonable.’ Given the tangible harms visited on consumers by fraudulent conduct in the energy markets, Congress realized that tasking FERC with monitoring those markets is not enough—FERC must have the tools to act when markets fail, and it must use those tools to ensure that customers pay only just and reasonable rates.” *Id.* at 904 (internal citations omitted).

The Fourth Circuit denied Defendants’ rehearing request and issued its mandate to the District Court on April 17, 2020. Upon Defendants’ determination not to seek review of the Fourth Circuit’s opinion in the Supreme Court, and following a stay of cases during the COVID-19 pandemic, the District Court held a pretrial conference on October 22, 2020, and, on October 23, 2020, issued an order setting a deadline for written discovery requests.

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

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

The Commission also found that Coaltrain violated section 35.41(b) of the Commission’s regulations by making false and misleading statements and material omissions in Coaltrain’s communications with Enforcement staff during the investigation in order to conceal the existence of relevant documents. The Commission ordered Coaltrain, jointly and severally with its co-owners Peter Jones and Shawn Sheehan, to disgorge \$4,121,894 in unjust profits, plus interest. It also imposed civil penalties of \$26 million on Coaltrain, \$5 million each on Peter Jones and Shawn Sheehan, \$1 million on Robert Jones, and \$500,000 each on Jeff Miller and Jack Wells.

On July 27, 2016, Enforcement staff filed a petition in the United States District Court for the Southern District of Ohio to enforce the Commission’s Order. The Respondents filed motions to

dismiss or transfer, which were denied by order of the court on March 30, 2018. Discovery commenced shortly thereafter and concluded in November 2019. Initial expert reports were exchanged by both sides on September 19, 2019, with rebuttal expert reports exchanged on November 18, 2019. The parties conducted a two-day mediation in October 2019 with a private mediator but reached an impasse regarding a potential settlement. Summary judgment briefing was completed in March 2020. No trial date has been scheduled.

d) FERC v. Vitol Inc. and Federico Corteggiano, No. 2:20-CV-00040-KJM-AC (E.D. Cal.)

On October 25, 2019, in Docket No. IN14-4-000, the Commission issued an order assessing civil penalties in which it determined that Vitol Inc. and its trader Federico Corteggiano (collectively, Respondents) violated the Commission’s Anti-Manipulation Rule and section 222 of the FPA by selling physical power at a loss in October and November 2013 in the CAISO day ahead market for the purpose of eliminating congestion costs that they expected to cause losses on Vitol’s Congestion Revenue Rights (CRR) positions. The Commission assessed a penalty of \$1,515,738 against Vitol and \$1,000,000 against Corteggiano. The Commission also ordered Vitol to disgorge \$1,227,143 in unjust profits, plus interest. Respondents failed to pay the assessed amounts within the sixty-day period provided by the statute.

On January 6, 2020, Enforcement filed a complaint in the United States District Court for the Eastern District of California to enforce the penalty assessment order against Respondents. Respondents filed motions to dismiss the complaint on March 6, and Enforcement filed a consolidated opposition to the motions on April 21. Respondents filed their replies to the opposition on June 12. Respondents also filed a motion on April 10, 2020 seeking a stay of discovery pending the Court’s ruling on their motions to dismiss. Enforcement filed its opposition to that motion on May 1 and Respondents filed their reply on May 8. The parties filed a Joint Status Report on May 1, 2020. On May 4, 2020, three energy industry trade associations filed a motion for leave to submit an *amicus curiae* (“friend of the court”) brief. The motion included a proposed brief supporting Respondents’ position that the Commission’s claims are time-barred under the applicable statute of limitations. Enforcement filed a response to the *amicus* motion and proposed brief on June 12, 2020.

On August 27, 2020, the Court held a status conference and hearing on the motions to dismiss and took the motions under advisement.

2. Administrative Proceedings at the Commission

a) Total Gas & Power North America, Inc., et al., Docket No. IN12-17-000

On April 28, 2016, the Commission issued an OSC directing Total Gas & Power North America, Inc. (TGPNA), Aaron Hall, and Therese Tran (collectively, Respondents) to show cause why they should not be found to have violated section 4A of the NGA and the Commission’s Anti-Manipulation Rule by engaging in a scheme to manipulate the price of natural gas at four locations in the southwest United States between June 2009 and June 2012. The OSC further directed TGPNA’s ultimate parent company, Total, S.A. (Total), and TGPNA’s affiliate, Total Gas & Power, Ltd. (TGPL), to show cause why they should not be held liable for the Respondents’ conduct and held jointly and severally liable for their disgorgement and civil penalties based on Total’s and TGPL’s significant control and authority over TGPNA’s daily operations. Finally, the

OSC directed the Respondents to show cause why disgorgement and civil penalties should not be assessed in the following amounts: \$9,180,000 in disgorgement and \$213,600,000 in civil penalties against TGPNA, Total, and TGPL, jointly and severally; \$1,000,000 civil penalty against Hall (jointly and severally with TGPNA, Total, and TGPL), and \$2,000,000 civil penalty against Tran (jointly and severally with TGPNA, Total, and TGPL). This matter is pending before the Commission.

In advance of the OSC, on January 27, 2016, Respondents filed a lawsuit in the United States District Court for the Western District of Texas, challenging (among other things) the Commission's authority to assess penalties for violations of the NGA.¹² After the case was transferred to the United States District Court for the Southern District of Texas, that Court rejected the Respondents' challenge on multiple grounds. The Respondents appealed that dismissal to the United States Court of Appeals for the Fifth Circuit on September 26, 2016, which on June 8, 2017 affirmed the dismissal. The Respondents subsequently sought rehearing in the Fifth Circuit *en banc*, which was denied on August 8, 2017. The Respondents then petitioned the United States Supreme Court for certiorari, which the Court denied on June 18, 2018.

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

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

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

On September 7, 2016, BP moved for modification of the portion of the Commission's Order directing BP to pay the disgorgement to the Texas LIHEAP, alleging that Texas LIHEAP communicated to BP that it was unable to receive such a payment. The Commission responded with two orders. First, on September 8, 2016, the Commission granted rehearing for the limited purpose of further consideration of the matters raised by BP in its motion for rehearing of the July 11, 2016, decision. Second, on September 12, 2016, the Commission issued an order staying the payment directive of the disgorgement order until the Commission issues an order on BP's request

¹² Additional details about this District Court matter and subsequent appeals can be found in the 2018 Staff Report on Enforcement (Docket No. AD07-13-012), *available at* <https://www.ferc.gov/legal/staff-reports/2018/11-15-18-enforcement.pdf>.

for rehearing. On September 9, 2016, BP separately filed a Petition for Review in the United States Court of Appeals for the Fifth Circuit only on the procedural issues ripe for appeal.

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

C. Settlements

In FY2020, the Commission approved three settlement agreements to resolve pending enforcement matters. The settlements totaled \$437,500 in civil penalties and disgorgement of \$115,876. Since 2007, Enforcement has negotiated settlements totaling approximately \$784 million in civil penalties and approximately \$518.1 million in disgorgement.

In 2010, the Commission issued revised Penalty Guidelines.¹³ Under the Penalty Guidelines, an organization’s civil penalty can vary significantly depending on the amount of market harm caused by the violation, the amount of unjust profits, an organization’s efforts to remedy the violation, and other culpability factors, such as senior-level personnel involvement, prior history of violations, compliance programs, self-reporting of the violation, acceptance of responsibility, and cooperation with Enforcement’s investigation. For example, under the Penalty Guidelines, an organization’s culpability score can be reduced to zero through favorable culpability factors, lowering the base penalty by as much as 95 percent.¹⁴

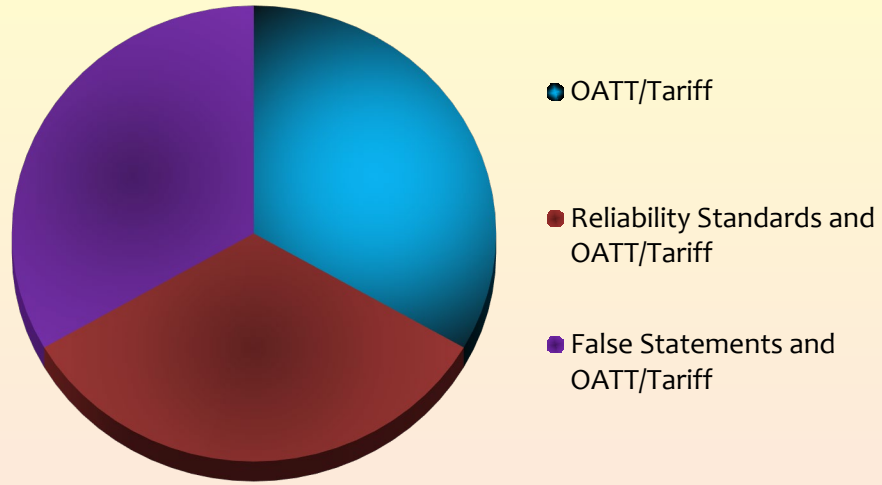
In FY2020, the Commission approved settlement agreements that resolved investigations concerning violations of 18 C.F.R. §§ 35.41(a) and (b), the ISO-NE Tariff, the CAISO Tariff, and a NERC Reliability Standard.

The charts below illustrate the types of violations settled in the last five fiscal years, Fiscal Years 2016-2020. Some settlements concerned multiple types of violations.

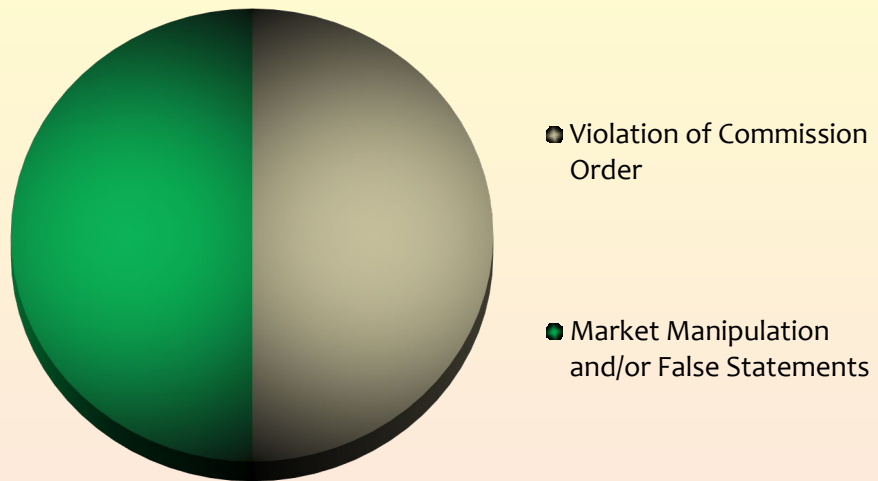
¹³ *Revised Policy Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines), available at <https://www.ferc.gov/whats-new/comm-meet/2010/091610/M-1.pdf>.

¹⁴ *Id.* P 109.

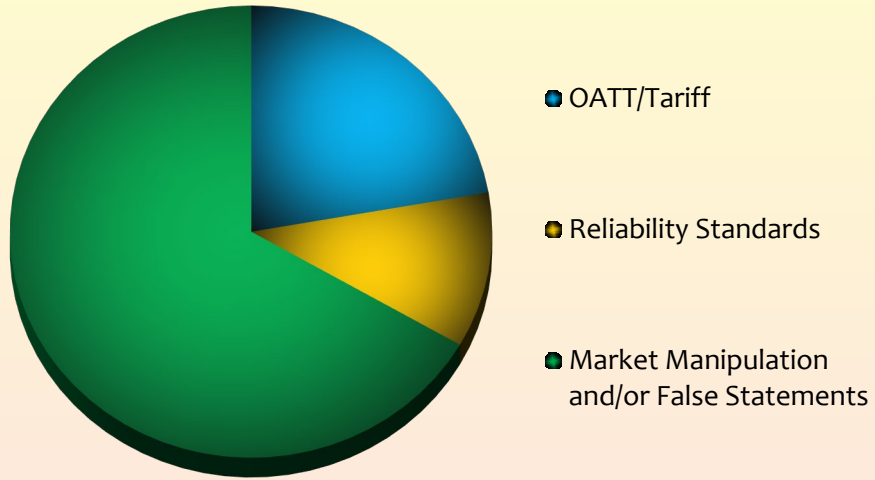
Types of Violations Settled, FY2020



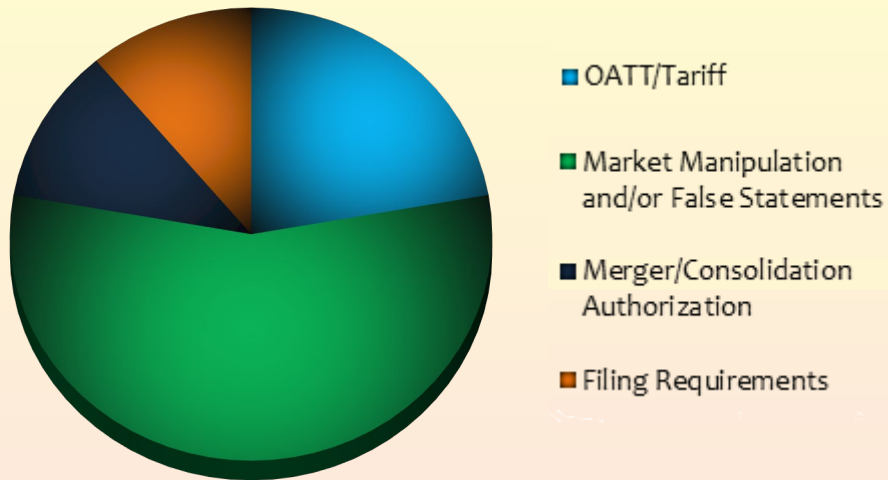
Types of Violations Settled, FY2019

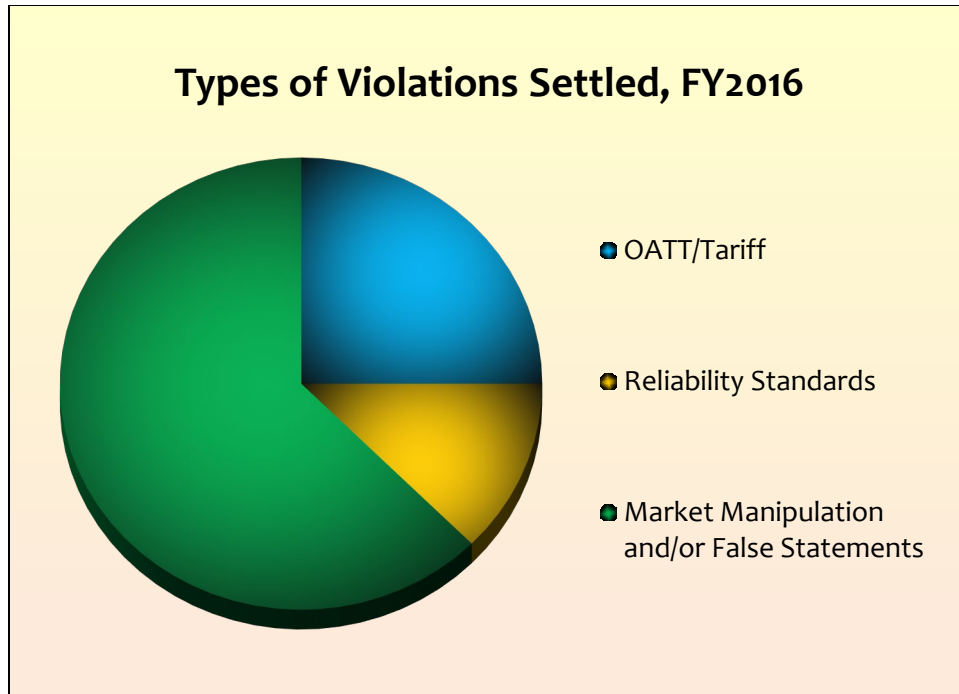


Types of Violations Settled, FY2018



Types of Violations Settled, FY2017





The Commission approved the following settlement agreements in FY2020:

Emera Energy Incorporated, Docket No. IN20-2-000

On January 10, 2020, the Commission issued an order approving the settlement of Enforcement’s investigation of Emera Energy Incorporated (Emera) regarding the company’s use of Fuel Price Adjustments in the ISO-NE market. Enforcement’s investigation found that Emera submitted Fuel Price Adjustments that did not reflect an arm’s length fuel purchase transaction in contravention of ISO-NE Tariff Market Rule 1, Appendix A § III.A.3.4(b). The company self-reported that in some instances where no natural gas was available for sale at the relevant pricing node on the Intercontinental Exchange (ICE), Emera’s gas desk would generate a price for natural gas and post it to ICE for the purpose of creating a benchmark for Emera’s power desk to use when requesting Fuel Price Adjustments from ISO-NE. Staff found that Emera’s prices did not accurately reflect market prices on some occasions. Under the terms of the settlement, Emera admitted to the facts, but neither admitted nor denied the violation. Emera agreed to pay a civil penalty of \$5,000 and disgorgement of \$14,120.

Exelon Generation Company, LLC, Docket No. IN20-3-000

On January 10, 2020, the Commission issued an order approving the settlement of Enforcement’s investigation of Exelon Generation Company, LLC (Exelon) regarding the company’s submission of data to ISO-NE. Enforcement’s investigation found that Exelon violated 18 C.F.R. §§ 35.41(a) and (b) and ISO-NE Tariff Market Rule 1 § III.1.7.20(b) and Tariff § III.13.6.1.1.2, when it erroneously reported the type and quantity of fuel it needed to start up the company’s Mystic 7 generating unit. This error caused Exelon to be overcompensated when the

unit was dispatched for reliability purposes. Under the terms of the settlement, Exelon admitted the facts and violation. Exelon agreed to pay a civil penalty of \$32,500 and disgorgement of \$101,756, and to submit to a two-year annual compliance reporting requirement.

Calpine Corporation, Docket No. IN17-1-000

On November 1, 2019, the Commission issued an order approving a settlement between Enforcement, Texas Reliability Entity, Inc. (Texas RE), NERC, and Calpine Corporation (Calpine), regarding Enforcement's investigation into whether Calpine violated Reliability Standard PRC-005-1 R2, related to protection system maintenance and testing, as well as CAISO Tariff section 9.3.10.3.1, related to forced outages. Enforcement's investigation found 215 instances of noncompliance with PRC-005-1 R2 for either failing to perform a battery test, failing to retain testing records, or creating falsified testing records. Enforcement concluded that seventy-nine of the 215 instances involved falsified records. Enforcement further found two violations of CAISO Tariff section 9.3.10.3.1 because Enforcement found that employees were aware that a generator was unable to run but did not report an outage to CAISO. Under the terms of the settlement, Calpine admitted to the facts, but neither admitted nor denied the violations. Calpine agreed to pay a civil penalty totaling \$400,000, to follow a detailed mitigation plan, and to submit annual compliance monitoring reports for two years, with a potential one-year extension at Enforcement's discretion.

D. Self-Reports

Over the previous five fiscal years (Fiscal Years 2016-20), staff received approximately 650 self-reports. The vast majority of those self-reports were concluded without further enforcement action because, among several factors, there was no material harm (or the reporting companies already had agreed to remedy any harms) and the companies had taken appropriate corrective measures (including appropriate curative filings), both to remedy the violation and to avoid future violations through enhancements to their compliance programs.

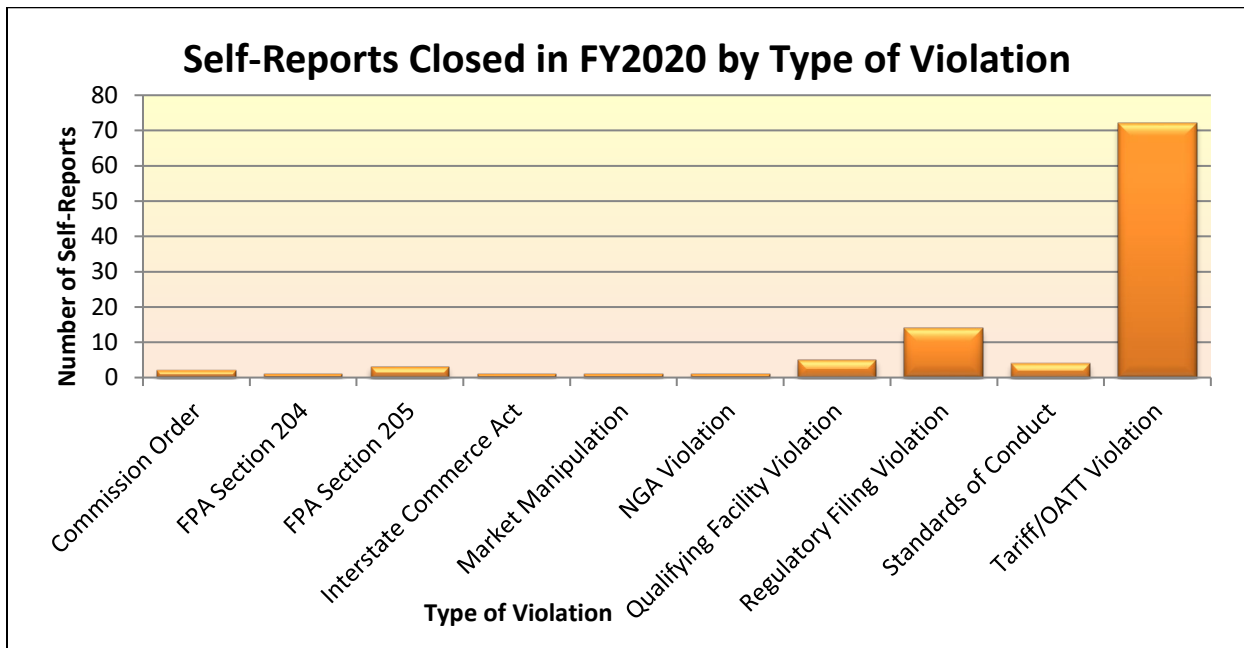
1. Statistics on Self-Reports

In FY2020, staff received 126 new self-reports from a variety of market participants, including public utilities, natural gas companies, generators, and ISOs/RTOs. The majority of these self-reports (71) were from ISOs/RTOs and involved relatively minor violations of tariff provisions. Staff closed 105 self-reports in FY2020, 23 of which were carried over from the previous fiscal year. Of the self-reports received in FY2020, 44 remained pending at the end of the fiscal year.

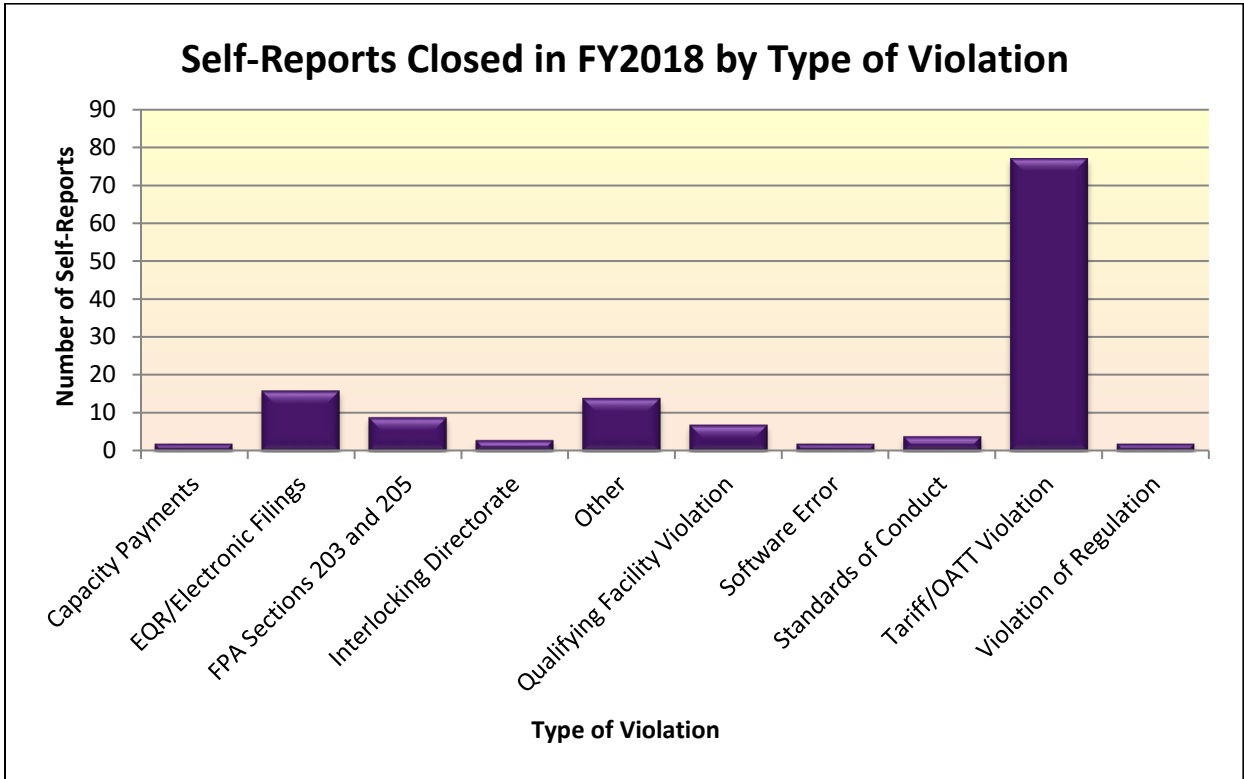
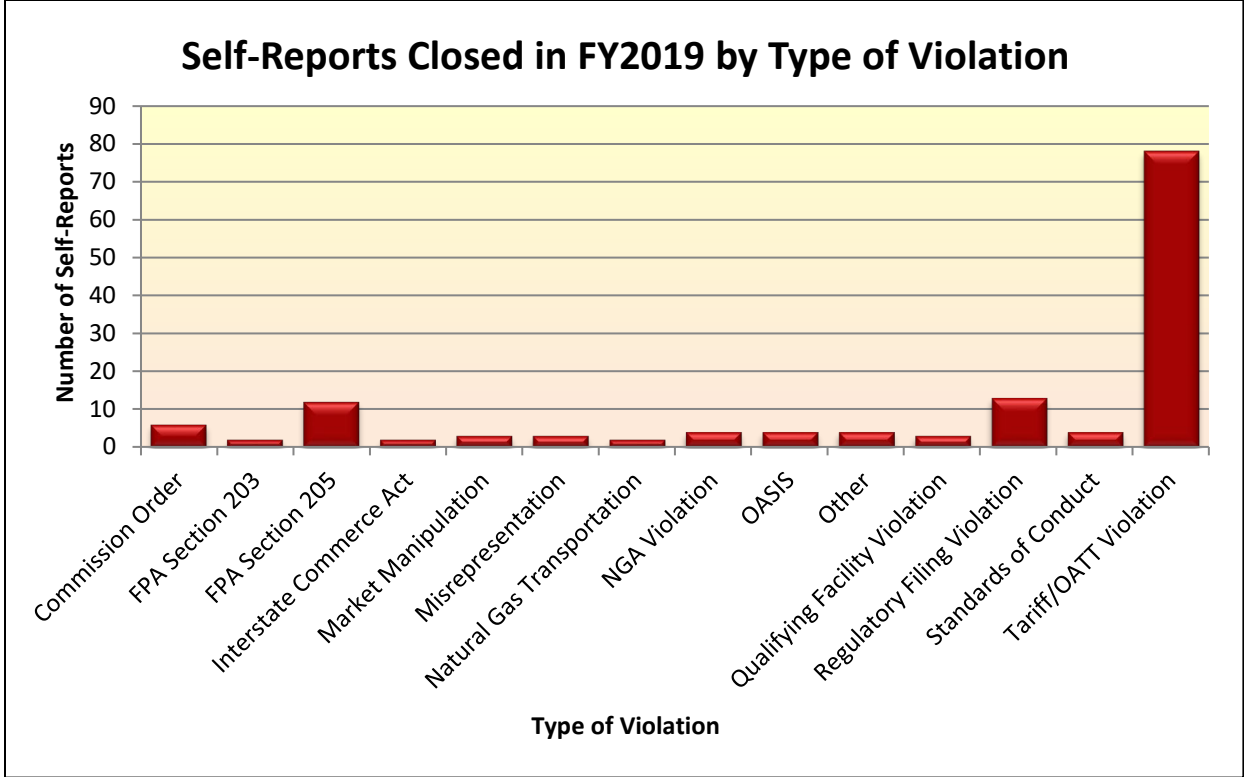
The Penalty Guidelines emphasize the importance of self-reporting by providing credit that can significantly mitigate penalties if a self-report is made.¹⁵ Staff continues to encourage the submission of self-reports and views self-reports as showing a company's commitment to compliance.

¹⁵ Revised Penalty Guidelines, 132 FERC ¶ 61,216 at P 127.

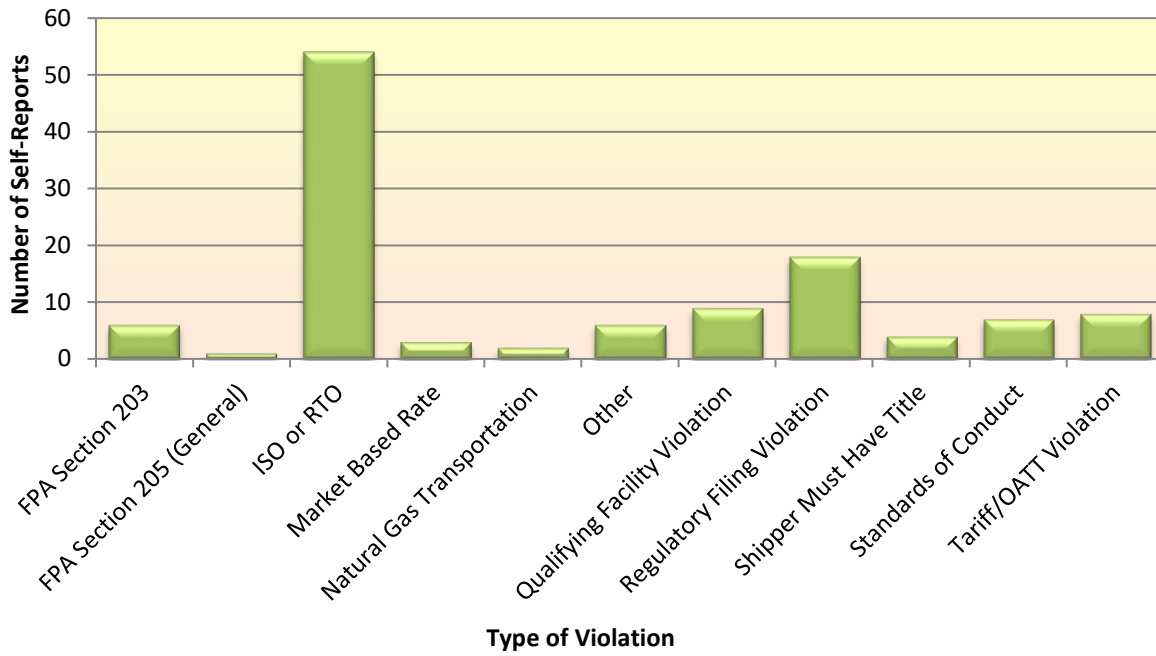
The following charts depict the types of violations for which staff received self-reports from Fiscal Years 2016 through 2020.¹⁶ Some self-reports include more than one type of violation.



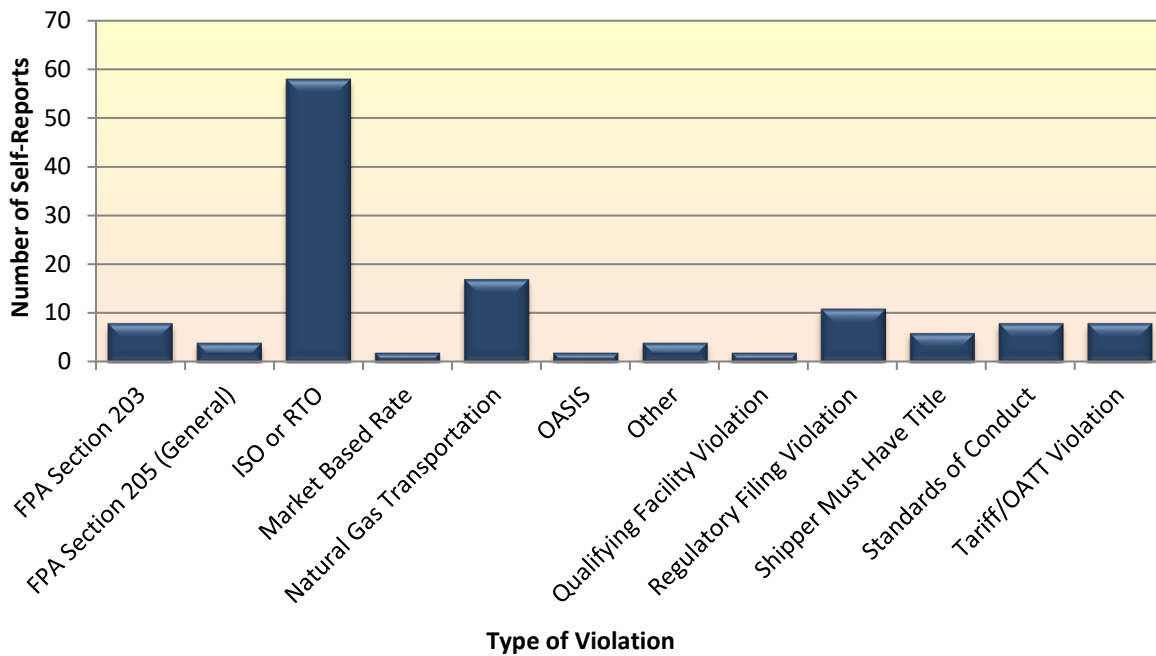
¹⁶ Consistent with the FY2018 and FY2019 Annual Reports, the FY2020 Self-Reports Closed chart includes the substantive violation reported by an ISO/RTO and replaces the ISO/RTO category used in previous years.



Self-Reports Closed in FY2017 by Type of Violation



Self-Reports Closed in FY2016 by Type of Violation



2. Illustrative Self-Reports Closed with No Action

In a continuing effort to promote transparency while encouraging the compliance efforts of regulated entities, Enforcement presents the following illustrative examples of self-reports that DOI staff closed in FY2020 without conversion to an investigation. In determining whether to close a self-report or open an investigation, staff considers the factors set forth in the Commission's Revised Policy Statement on Enforcement.¹⁷ As examples, in FY2020 several ISOs/RTOs and market participants reported minor tariff and reporting violations, two market participants reported potential market manipulation, three public utilities reported standards of conduct violations, and several companies reported notice and regulatory filing violations resulting from inadvertent oversight or changes in ownership. The illustrative summaries below are intended to provide guidance to the public and to regulated entities as to why staff chose not to pursue an investigation or enforcement action, while preserving the non-public nature of the self-reports.

Tariff/OATT Violation (Electric). A utility self-reported that, due to a clerical error, it inadvertently failed to acquire the full amount of replacement capacity needed to cover the obligation of a capacity resource that had been prematurely retired. As a result, the utility received the retired unit's full capacity payment even though it did not have the full equivalent amount of replacement capacity available. Immediately upon learning of the violation, the utility timely alerted both the relevant ISO/RTO and DOI, offered to resettle the overpayment, and fully cooperated with both the ISO/RTO and DOI staff in returning the overpayment. Because of the inadvertent nature of the violation, the small amount of the overpayment, and the company's strong efforts to timely resettle the overpayment, staff closed this self-report without further action.

Tariff/OATT Violation (Electric). A demand response services company self-reported that some of its demand response customers were registered as using Behind-The-Meter (BTM) generators in an ISO/RTO's Emergency Demand Response Program (EDRP) despite the fact that those BTM generators may not have met applicable Environmental Protection Agency (EPA) requirements. The violation was the result of miscommunication during a period of staffing changes that resulted in the registration of customers that used BTM generators that may have met past EPA requirements, but did not meet current, more stringent EPA requirements. To remedy the potential violation, the company self-reported the issue to its ISO/RTO and Enforcement and provided the ISO/RTO with a list of names of affected customers, updated its procedures to include additional screening and regulatory reviews, revised its software system to maintain documentation of all BTM eligibility determinations, and updated related procedures and trainings. Staff closed this self-report without further action based on several factors, including the steps the company took to remedy the potential violation and the fact that the harm caused by the alleged violation, if any, was likely minimal.

Tariff/OATT Violation (Electric). An energy management services company self-reported an inadvertent tariff violation for failing to meet an ISO/RTO's "must offer" obligation for a single day. The company submitted energy bids on behalf of a capacity resource into the ISO/RTO's market portal via an automated software application and several of the bids were rejected. The company took several corrective actions as a result of this issue, including creating a tool to

¹⁷ Revised Policy Statement, 123 FERC ¶ 61,156 at P 25.

automatically attempt to resubmit failed offers and enlarging the team who receives the bid rejection notices. Additionally, the company contacted the ISO/RTO to alert it to the issue. Staff closed this self-report without further action based on several factors, including the inadvertent nature of the violation, the lack of known market impact or harm, and the remedial steps taken by the company.

Tariff/OATT Violation (Electric). An electric cooperative self-reported its submission of incorrect operating capacity data for four of its generators in possible violation of the relevant ISO/RTO tariff. After discovering the violations, the entity implemented process improvements that included revising its offer template form in ways designed to prevent a reoccurrence and developing a process for improving coordination between the relevant units in the organization when submitting the data. Staff closed this self-report without further action based on several factors, including the inadvertent nature of the violations and the lack of market harm.

Tariff/OATT Violation (Electric). An investor-owned utility self-reported that it inadvertently failed to undesignate a network resource prior to selling the resource's energy to a third party. Because the utility did not undesignate the power prior to selling it, the energy could not be called upon to meet the utility's network load on a non-interruptible basis as required by the utility's Open Access Transmission Tariffs (OATT). This failure to undesignate was a result of ongoing IT troubleshooting for an unrelated issue on the IT systems used to undesignate network resources. The utility took several steps to remedy the violation, including working to correct the issue and restore the automatic undesignation ability in the system. Further, the utility is expanding the number of personnel with application-level knowledge of the undesignating program so that additional employees are capable of addressing issues in the future. Staff closed this self-report without further action based on several factors, including the lack of market harm and the steps taken by the utility to remedy the violation.

Tariff/OATT Violation (Electric). An investor-owned wholesale power generator operating a multi-turbine wind farm self-reported that it had failed to timely file derate outage reports in connection with two unplanned outages of multiple turbines that occurred within 90 minutes of each other on the same date in 2019, in violation of the relevant ISO/RTO tariff. The ISO/RTO tariff required that such reports be filed within 30 minutes of an outage when a facility's "available output" is reduced by at least 10 percent if the reduction is greater than 5 MW. The day after the events, the company began an investigation and identified the causes of the violations. The company corrected its software and provided training to the responsible employee. In addition, the company modified its reporting procedures in connection with derate outages. Staff determined that the company did not obtain any financial benefit from these violations and that there was no harm to the market or third parties. For these reasons, and because the company acted quickly to address the violations, staff closed this self-report without further action.

Tariff/OATT Violation (Electric). An independent power producer self-reported that it submitted inaccurate data with its energy market offers for several of its generation resources. The inaccurate data affected its offer prices and related to the resources' heat rate, fuel prices, start-up costs, and other costs associated with the offers. Staff determined that the violations were inadvertent and resulted in little or no market impact. The company paid penalties to the ISO/RTO for the violations that had a market impact, as required under the ISO/RTO tariff. The company also corrected, on a prospective basis, all of the errors that led to the inaccurate data

submissions. In addition, it implemented new policies to highlight the importance of utilizing the most up-to-date operational parameters in its offers and provided training to relevant employees on this topic. For these reasons, staff closed this self-report without further action.

Tariff/OATT Violation (Electric). A public utility self-reported that it utilized an incorrect depreciation rate for certain software assets in calculating its annual transmission revenue requirement. The utility corrected the depreciation rate and refunded customers for the over-collected depreciation. Staff also determined that the company was unlikely to repeat the error. For these reasons, staff closed the self-report without further action.

Tariff/OATT Violation (ISOs/RTOs). Multiple ISOs/RTOs in organized markets self-reported what staff determined upon factual review to be relatively minor violations of their tariffs, resulting from either software or human error. Such errors included: failing to maintain confidentiality of market participant project documents; failing to conceal the identity of interconnection customers in public documents; failing to publish bid data for certain resources; the incorrect inclusion or exclusion of costs in a manner inconsistent with the tariff; failure to clear supplemental reserves in the real time market; software errors that created the potential for incorrect market participant compensation; missing deadlines for informational filings; data adjustment errors that resulted in inaccurate modeling inputs; and miscalculating credit requirements for market participants. The ISOs/RTOs also reported certain other potential errors stemming from alleged ambiguity in their tariffs or mistakes in implementing tariff provisions. In all such instances, the violations were inadvertent, resulted in minimal harm, and were promptly and effectively remedied to mitigate the harm and prevent future violations. Accordingly, staff closed these self-reports without further action.

Regulatory Filing Violation (Certificates of Public Convenience and Necessity). A natural gas company self-reported that it failed to obtain certain environmental clearance documents required for a disposal pipeline project. The error occurred because the company did not consult with the relevant environmental offices following completion of the company's environmental analysis for the project. After discovering the omission, the company gathered information to determine how the failure to consult occurred, arranged for consultations with the relevant agencies, and addressed the lapses that resulted in the failure to complete the consultations. The company's parent company also conducted a refresher training session on the requirements governing jurisdictional natural gas project construction. Enforcement staff consulted with Office of Energy Projects (OEP) staff and determined that OEP was not aware of any other noncompliance issues related to the company. Because the violation appeared to be an anomaly and the company took steps to correct the violation, staff closed this self-report without further action.

Regulatory Filing Violation (Electric Quarterly Reports). A hydroelectric company self-reported that it had mistakenly failed to submit EQRs at any point in the unit's history. The company had incorrectly concluded that it did not need to submit EQRs because the Power Purchase Agreements under which it sold the unit's output had been filed with, and approved by, the Commission in the mid-1980s, before there was an EQR requirement. The company determined that a violation occurred while doing due diligence in conjunction with an ownership transaction. Notwithstanding the length of the violation, staff closed the matter without further action based on several factors, including the good faith nature of the mistake and the lack of any

economic harm. In addition, the company worked with DAA staff to bring the company into compliance.

Regulatory Filing Violation (Failure to Request Category 1 Seller Status). An entity that owns a wind-powered generation facility self-reported that it failed to file (1) a request for Category 1 Seller status after it qualified for that status and (2) two prior triennial updated market power analyses by the filing deadlines. Upon learning of the oversight, the entity filed a request for designation as a Category 1 Seller with the Commission. Enforcement determined that the oversights were inadvertent, there was no market harm, and the entity retained counsel to coordinate its future filing obligations and updated its compliance program to ensure that all aspects of its market-based rate requirements are addressed. For these reasons, staff closed this self-report without further action.

Regulatory Filing Violation (FERC Form No. 552). A manufacturing company that engaged in natural gas transactions self-reported that it failed to submit FERC Form No. 552 (Annual Report of Natural Gas Transactions) for 2017 and 2018 in violation of section 260.401 of the Commission's regulations. Pursuant to this regulation, unless otherwise exempted, each natural gas market participant, i.e. any buyer or seller that engaged in physical natural gas transactions the previous calendar year, must prepare and file with the Commission a Form No. 552, which addresses its natural gas transactions. The form must be filed by May 1 for the previous calendar year. Given what Enforcement determined to be the relatively limited nature of the violation and the fact that it caused no discernable harm, staff closed the matter without further action and referred the company to OEPI, which assisted with the submission of the missing forms for the years in question, thereby bringing the company into compliance.

Regulatory Filing Violation (FERC Form No. 556). The owner of a biomass anaerobic digester facility self-reported its failure to self-certify this project as a Qualifying Facility (QF) before it began making wholesale power sales in violation of section 205 of the FPA. To remedy this violation, the owner submitted a FERC Form No. 556 to certify the project as a QF and sought a declaratory order waiving its time value refund obligation. When the declaratory order was denied, the company, consistent with Commission precedent, paid the time value refunds it owed on the revenues collected from sales made during the period that the facility was without QF status. Because the violation was inadvertent and refunds were paid, staff closed this self-report without further action.

Regulatory Filing Violation (FERC Form No. 561). The owner of two public utilities self-reported that the Form No. 561 filings (Annual Interlocking Directorate Reports) it filed in 2017 for four individuals deemed officers or directors of the utilities were in error because the utilities did not have officers or directors. The company uncovered the error in the process of attempting to belatedly file Form No. 561 filings for 2018 and 2019. The error resulted from miscommunication between counsel from different law firms. The company represented to staff that, going forward, all compliance matters will be tracked and routed through a single point of contact in order to avoid similar mistakes. The company also enhanced its compliance training program to include Commission regulations, including interlocking directorates. For these and other reasons, including the lack of economic harm, staff closed the self-report without further action.

Qualifying Facility Violation (Unauthorized Power Sales – One Mile Rule). A solar company self-reported its failure to self-certify 44 projects as QFs before these projects began making wholesale power sales in violation of section 205 of the FPA. Though the projects at issue each had a net power production capacity of 1 MW or less, they were not exempt from affirmatively obtaining QF status because they were located at the same site as another project (i.e. within one mile) and the combined production capacity of these projects exceeded the 1 MW threshold for exemption from QF certification (“One Mile Rule”). *See* 18 C.F.R. § 292.204(a)(1)-(a)(2). The company was unaware of the Commission’s One Mile Rule as it developed these projects. To remedy this violation, the company submitted FERC Form No. 556 filings to certify each of the projects as a QF. Though the company recognized its obligation to make time value refunds, it sought a declaratory order to decrease the amount owed. When this was denied, the company, consistent with Commission precedent, paid time value refunds on the revenues collected from sales made during the period that the projects were without QF status. For these reasons, and because the company took steps to prevent recurrence, staff closed this self-report without further action.

OASIS Posting Violation. A public utility self-reported that it failed to include in its list of current designated network resources on the Open Access Same-Time Information System (OASIS) a hydro generator that provided designated capacity to the utility pursuant to a Public Utility Regulatory Policies Act (PURPA) sales agreement. The omission was a violation of section 37.6(e)(1)(vi) of the Commission’s regulations, which requires transmission providers to post a list of their current designated network resources on OASIS. The company discovered the error during the course of renewing the sales agreement with the resource. Staff concluded that the error was inadvertent, was promptly corrected by the company when discovered, and did not result in any economic harm. Based on these and other factors, staff closed the self-report with no further action.

Standards of Conduct Violation (Initial Training). An investor-owned utility self-reported that several contract employees had not received their required Standards of Conduct training within 30 days of beginning work, as required by section 358.8(c)(1) of the Commission’s regulations. Upon identifying the violation, the utility immediately provided the required training to the affected employees and changed its internal training tracking procedures to ensure this oversight would not reoccur. In addition, the utility now removes IT system access for any employee who does not complete the required training within the required 30-day window. For these reasons, staff closed this self-report without further action.

FPA Section 204 Violation (Failure to Obtain Prior Approval for Intercompany Loan). A public utility self-reported that it failed to seek Commission approval before obtaining an intercompany loan from an affiliate in violation of section 204 of the FPA. The intercompany loan was the second such loan, and at the time of the first loan the company was not a public utility and thus not subject to FPA section 204. In between the first and second loans, the company became a public utility subject to the prior approval requirements of section 204. After discovering the violation, the company immediately investigated the circumstances, self-reported the violation, sought guidance whether it should make a belated section 204 filing, provided training to the relevant employees on the requirements of FPA section 204, and updated its compliance

manual. Staff closed this self-report without further action for several reasons, including staff's determination that the violation was isolated, inadvertent, had little practical effect, and caused no economic harm.

FPA Section 205 Violation (Failure to File Various Agreements). A public utility self-reported that it failed to file agreements subject to section 205 of the FPA before providing jurisdictional service under those agreements. Upon learning that it had provided service under one of these agreements before filing it with the Commission, the company retained outside counsel to review its filing practices to determine if there were additional agreements that it failed to timely file. That review determined that the company had failed to file a total of 16 agreements. The company then self-reported these violations and paid all time value refunds that were owed for selling power without Commission authorization. In light of the fact that the company remedied its violations by submitting corrective filings, paid all applicable time value refunds, cooperated with staff in reporting the details of the violations, and took measures to enhance its compliance function, staff closed this self-report without further action.

FPA Section 205 Violation and Regulatory Filing Violation (Failure to File Certain Agreements). An energy company self-reported that it failed to file certain agreements in violation of Section 205 of the FPA and various Commission filing requirements outlined in Part 35 of the Commission's regulations. Specifically, the company failed to timely file seven agreements dealing with matters that potentially fell within the Commission's jurisdiction. After a comprehensive review and internal investigation, the company took the necessary steps to come into full compliance by making the required filings. Many of the agreements involved small dollar amounts that had not been converted to formal writings or were related to transactions where it was unclear whether FPA Section 205 applied. Given the lack of any significant economic harm, the company's voluntary undertaking of a large-scale internal investigation, and the company's substantial efforts to remedy the violations, staff closed this self-report without further action.

Interstate Commerce Act Violation (Disclosure of Confidential Information). A natural gas liquids pipeline self-reported that it had inadvertently disclosed confidential shipper information in violation of section 15(13) of the Interstate Commerce Act, which prohibits common carrier product pipelines from disclosing information relating to the "nature, kind, quantity, destination, consignee, or routing" of the products being transported without the shipper's consent. *See* 49 U.S.C. app. § 15(13) (1988). The pipeline failed to remove an employee from an email distribution list for an "inventory report" after he had been transferred from the pipeline to a shipper-affiliate of the pipeline. As a result, the employee continued to receive the report, which included information concerning the inventory positions and shipments of all shippers serviced by the pipeline. Although the employee continued to receive the inventory report for 15 months, he stated that he routinely discarded the inventory report and had never looked at or accessed the information it contained. After discovering the violation, the pipeline instituted new procedures that required that pipeline employees be removed from all distribution lists and be denied access to all applications upon their transfer to any pipeline affiliate. Among several factors considered in staff's decision to close this self-report without further action were the fact that the disclosure of the inventory report was inadvertent and did not result in harm to any third-party and the steps the company took to prevent future violations.

Interstate Commerce Act Violation (Failure to Seek Tariff). A pipeline company was the owner and operator of an existing fully certificated pipeline with a valid tariff in place with the Commission. In 2017, the company added a small lateral line that provided service to a single manufacturing facility under the same terms of service as the previously existing pipeline. The company did not appreciate that the lateral line required its own independent tariff. Immediately upon learning of the error, the company informed OEMR staff and made the requisite filings. Staff closed this self-report without further action based on several factors, including the lack of market harm and the company's efforts to remedy the violation promptly after its discovery.

Market-Based Rate Authority Violation. A public utility self-reported that it commenced providing an ISO/RTO with ancillary regulation services, along with capacity, reserves and *de minimis* energy supplies, almost three months prior to its application for market-based rate (MBR) authority. The entity was subsequently granted MBR authority and refunded the full amount of the payment in excess of its costs. For these reasons, and because the violation was inadvertent, staff closed this self-report without further action.

NGA Section 7 Violations (Gas). An interstate gas pipeline with NGA Section 7(c) blanket certificate authority failed to provide notice of interconnection to a gas distribution facility already served by a local distribution company (LDC) in violation of 18 C.F.R. § 157.211(a)(2)(i). The pipeline mistakenly believed that the gas distribution facility did not have access to a gas supply. The pipeline also failed to conduct an environmental review in violation of 18 C.F.R. § 157.206 because it erroneously believed that the required environmental reviews had been performed by the gas distribution facility. Upon discovering these violations, the pipeline ceased project construction and reported the violations to OEP and OE. The pipeline subsequently late-filed the appropriate notice filing and completed the necessary environmental reviews. The pipeline also made various improvements in its processes to ensure future compliance, including additional training, expanded distribution of procedures and mandatory approvals, and increased auditing. Among several factors considered in staff's decision to close this self-report without further action were the isolated nature of the violations, the fact that the violations were promptly reported and remediated, and the lack of economic or environmental harm.

Natural Gas Transportation Violation (Prohibition on Buy/Sell Transactions). A public utility self-reported that two natural gas affiliates (Affiliate A and Affiliate B) engaged in several purchases and sales of natural gas between them in violation of the Commission's prohibition against buy/sell transactions. In the transactions, Affiliate A purchased natural gas from Affiliate B, shipped the gas using Affiliate A's pipeline capacity, and resold the gas that was not used for electric generation back to Affiliate B at a downstream location. The transactions at issue occurred on five flow days over one week and involved small quantities of natural gas originally sourced for power plant consumption that turned out to be unneeded. The transactions occurred because an employee of Affiliate B mistakenly believed that the public utility's longstanding rule against buy/sell transactions (which mirrors the Commission's prohibition) had been changed in a way that allowed for the transactions. After only five days, a separate employee of Affiliate B expressed concerns about such transactions to a supervisor who barred any additional transactions and contacted the public utility's compliance and legal departments that same day. No harm resulted from these buy/sell transactions because Affiliate A was not using its capacity to benefit Affiliate B, which was only Affiliate A's agent and had no financial interest in the transactions or

the shipment of the gas. For these reasons, and because the company took steps to prevent future violations, staff closed this self-report without further action.

Market Manipulation (Offsetting Virtual Trades). A privately held energy trading firm self-reported that two of its subsidiaries took offsetting virtual trading positions at the same location in the same hour. The firm explained that traders from its various subsidiaries are able to see one another's cleared positions, but they enter their trades independently for their own business purpose. For a single hour on a single date, a trader from one subsidiary submitted an INC offer of 100 MW, and a trader from another subsidiary submitted a set of DEC bids for the same location. The INC trade cleared in full and the DEC trade cleared in part, resulting in a net short position of 87.7 MW and a 13.3 MW "wash." The trading firm's compliance software identified the issue, but because of the timing of the trades, it was unable to undo them. The trading firm immediately self-reported the issue and has since implemented structural improvements to ensure that the problem cannot reoccur. Among several factors considered in staff's decision to close this self-report without further action were the isolated and inadvertent nature of the violation and the lack of economic harm.

E. Investigations

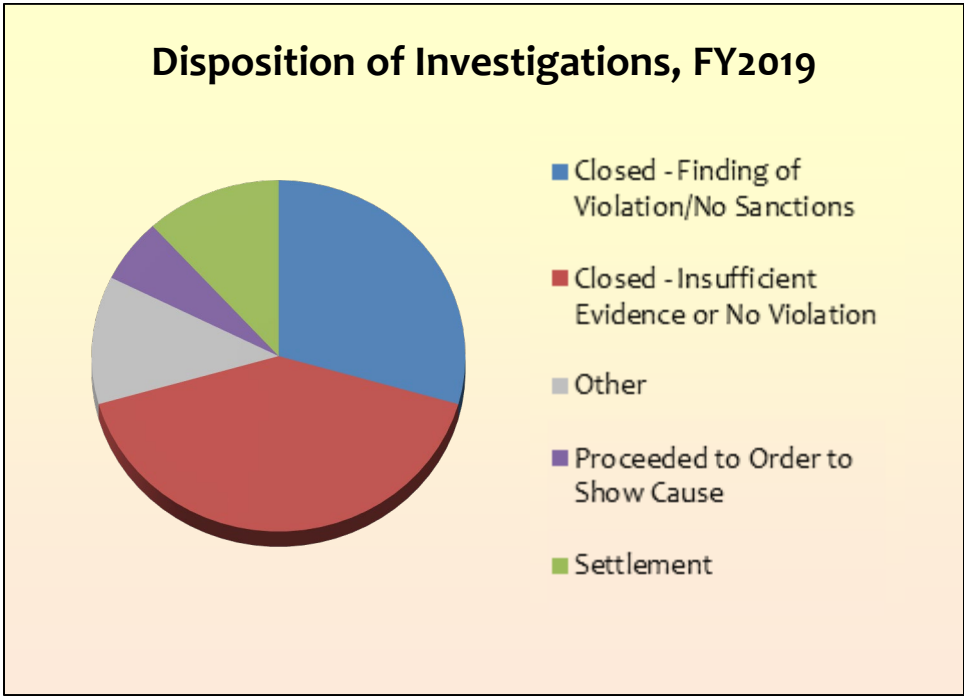
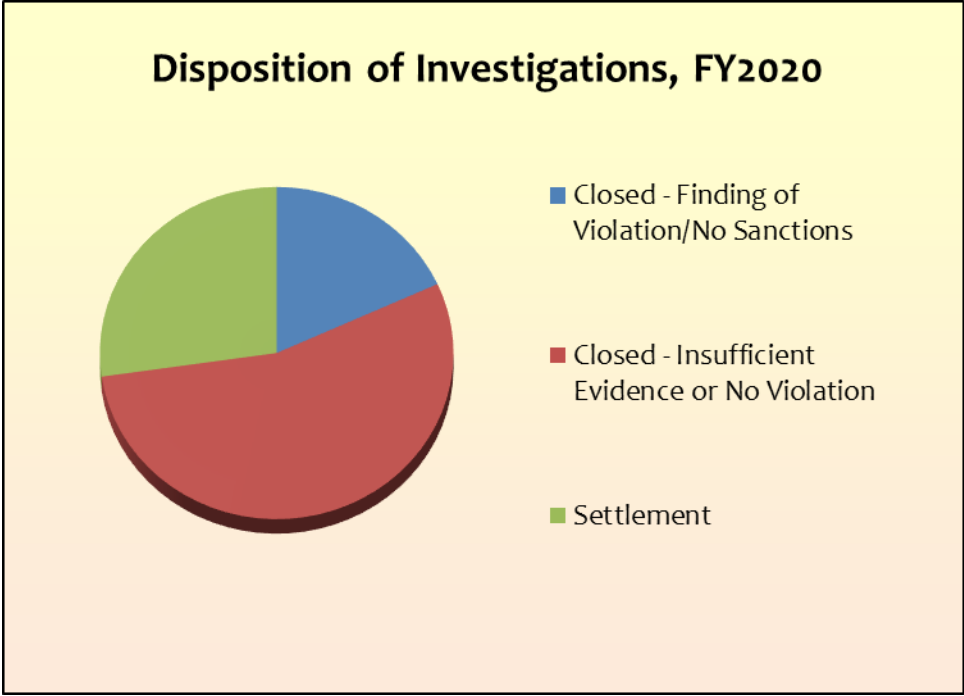
In FY2020, DOI staff opened six new investigations, as compared with 12 investigations opened in FY2019. The majority of these investigations arose from referrals by ISO/RTO market monitors and Enforcement's DAS. Additional investigations stemmed from referrals by ISOs/RTOs, self-reports, and the Enforcement Hotline. In addition to cases closed through settlement, staff closed eight investigations without further action in FY2020, as compared to 14 investigations closed without further action in FY2019. In addition to closing these investigations during the fiscal year, DOI staff closed several Market Monitoring Unit (MMU) referrals following inquiries into and analyses of the referred conduct and alleged violations. These matters, discussed in DOI Section F below, were closed without being converted into investigations.

1. Statistics on Investigations

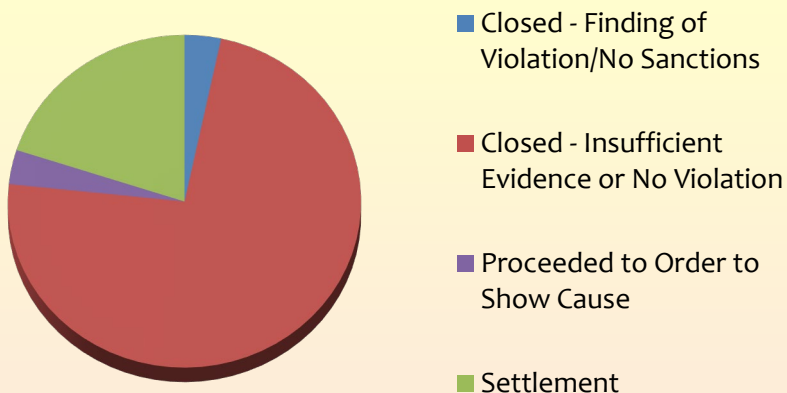
Of the six investigations staff opened this fiscal year (some of which involved more than one type of potential violation or multiple subjects), six involved potential market manipulation, six involved potential tariff violations, and four involved potential misrepresentations prohibited by the Commission's market behavior rules. The six investigations involved a wide range of additional issues, including allegations of generators' failures to meet offer requirements in ISOs/RTOs, demand response, and generator interconnection issues.

Of the eight investigations closed, six were closed because staff concluded that the evidence did not support finding a violation. In two other investigations, staff concluded that a violation was found but staff did not pursue a sanction. The eight closings were in addition to the three investigations closed pursuant to settlements that staff reached with subjects. The Commission-approved settlements in these investigations are summarized above in DOI Section C and listed in Appendix B. Illustrative examples of investigations closed without enforcement action are discussed below.

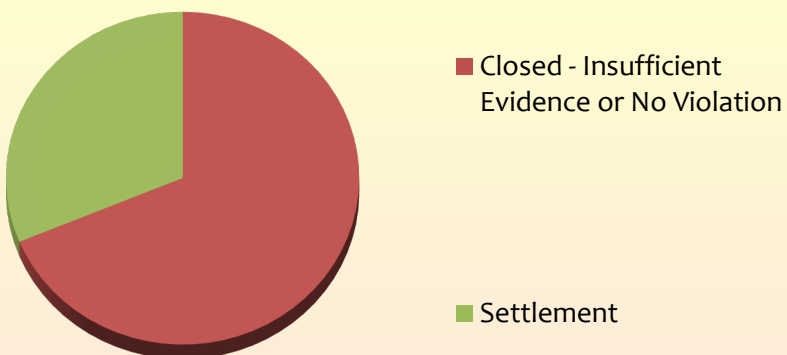
The following charts show the year-by-year disposition of investigations that closed over the past five years (FY2016-2020) and the aggregate disposition of investigations that closed from fiscal years 2010 through 2020.



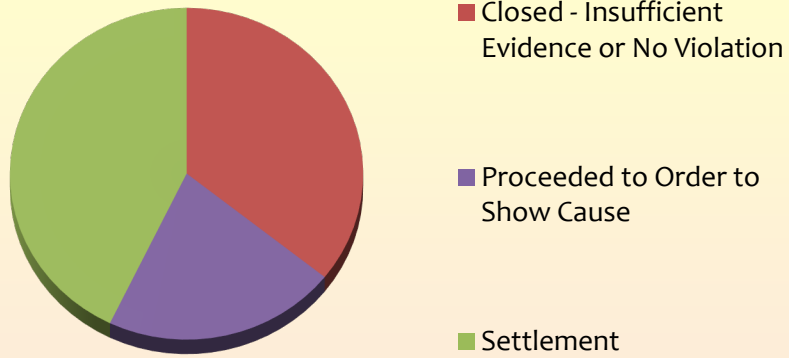
Disposition of Investigations, FY2018



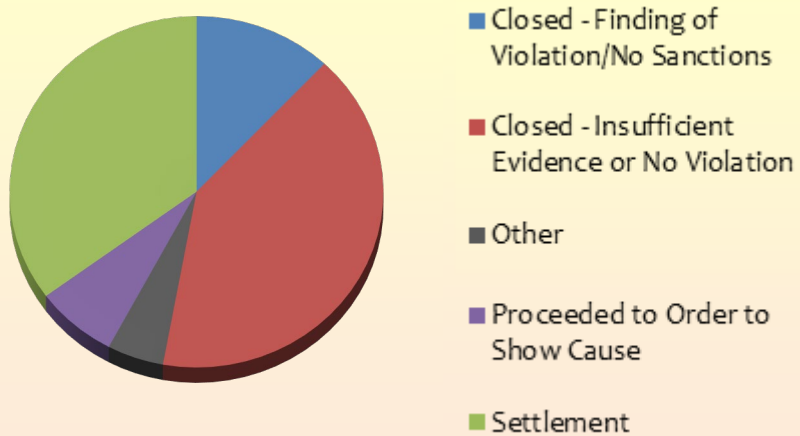
Disposition of Investigations, FY2017



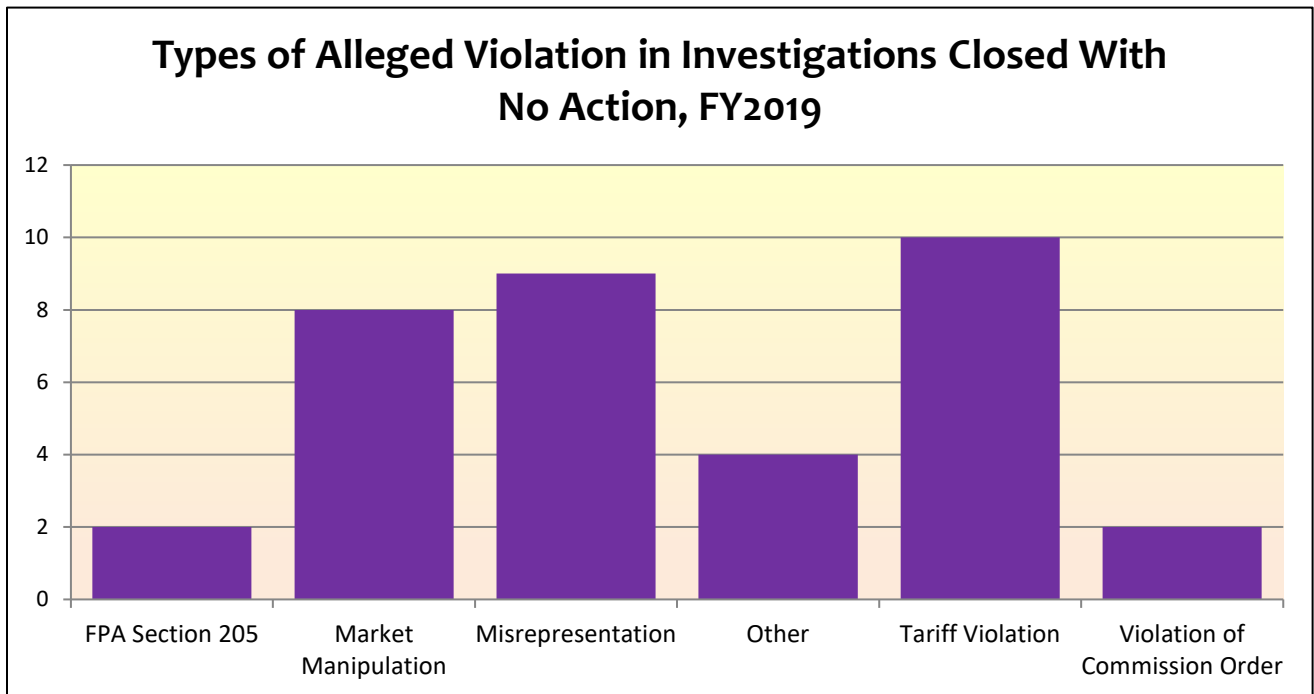
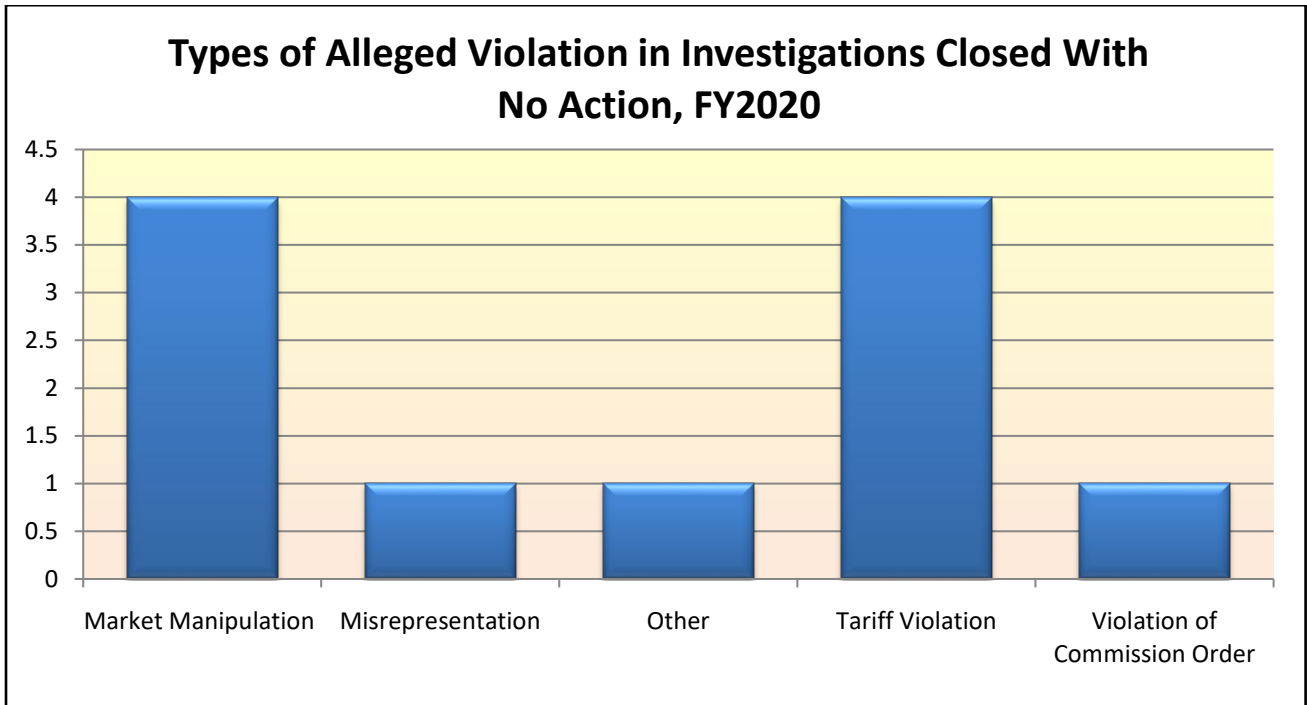
Disposition of Investigations, FY2016



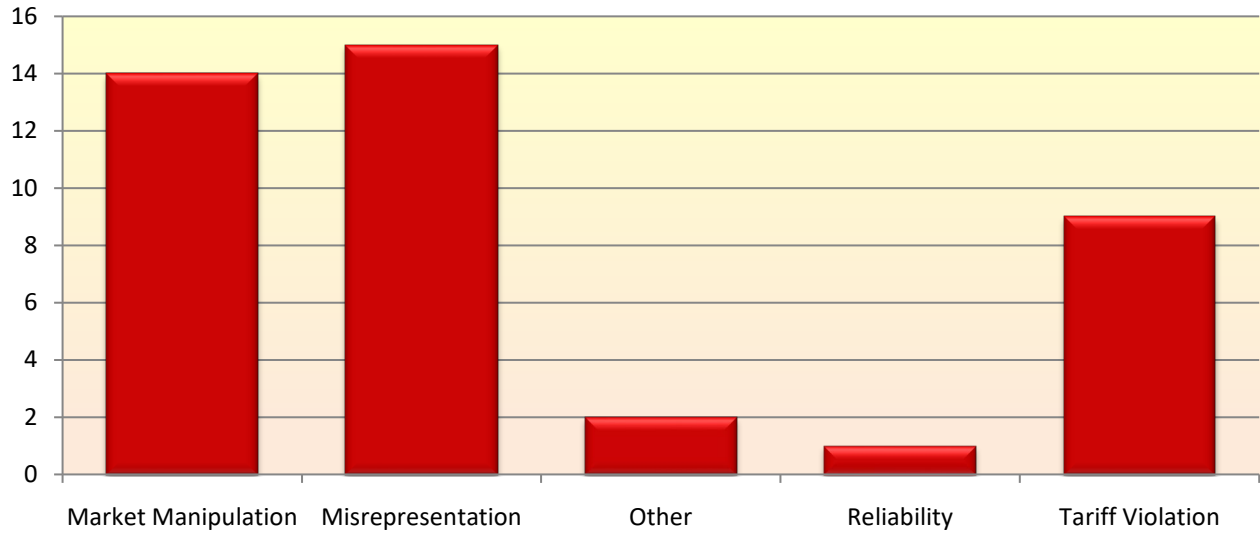
Disposition of Investigations, FY2010 - FY2020



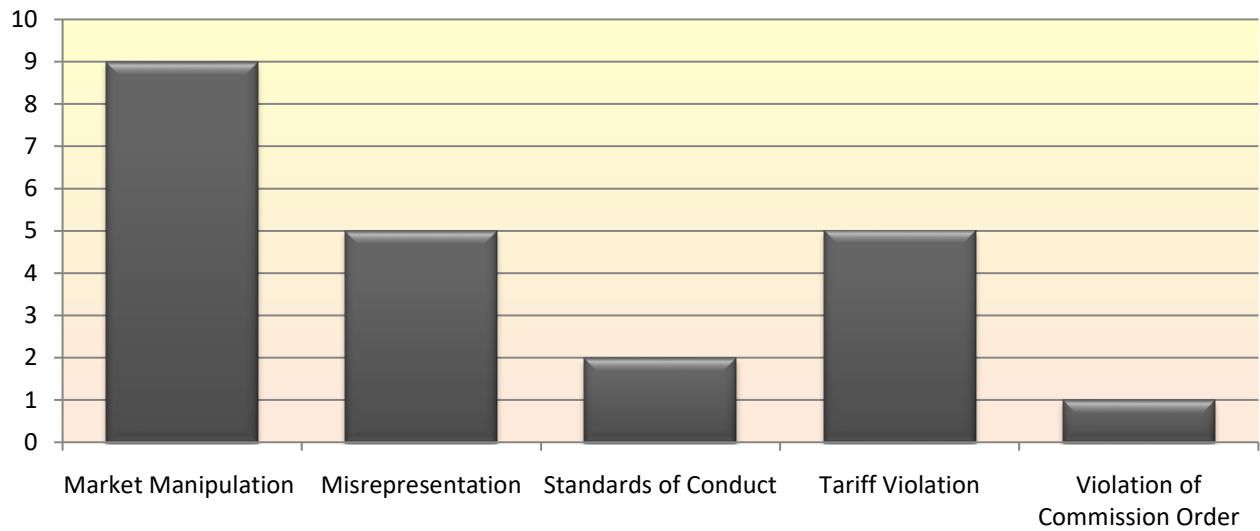
The following charts summarize the nature of the conduct at issue for those investigations that were closed without action in Fiscal Years 2016-2020.



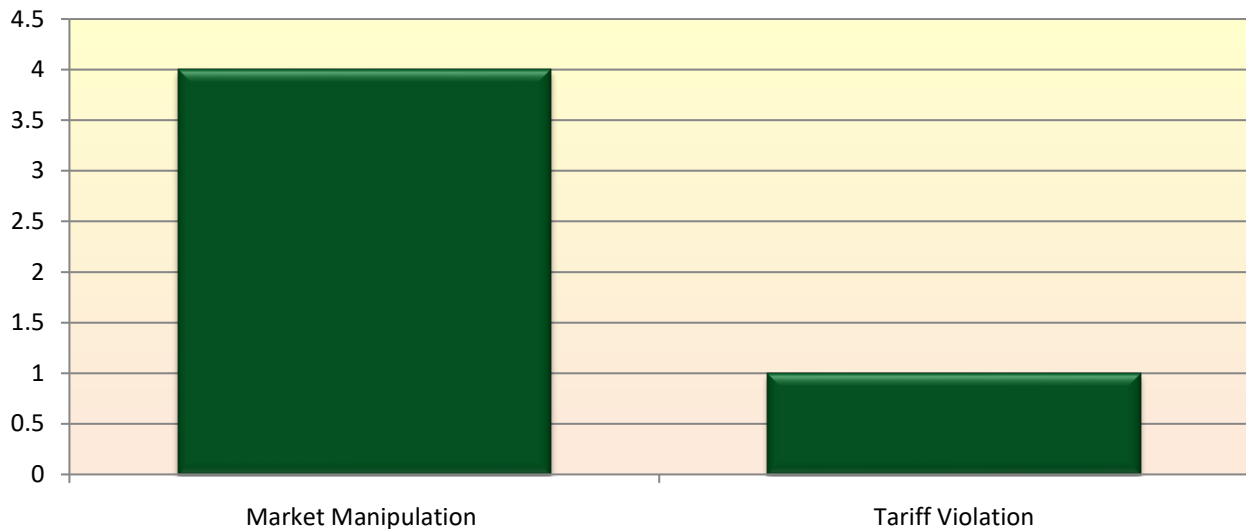
Types of Alleged Violation in Investigations Closed With No Action, FY2018



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



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



2. Illustrative Investigations Closed with No Action

The following summaries of investigations that Enforcement closed without action in FY2020 are intended to provide guidance to the public while preserving the non-public nature of DOI's investigations.

Market Manipulation (Electric). Following a referral from Enforcement's DAS, staff opened an investigation into whether a generator violated the Commission's Anti-Manipulation Rule by offering its units into the New York Independent System Operator's (NYISO) day-ahead market in a way that was intended to target Day-Ahead Marginal Assurance Payments, a type of uplift payment. During the course of the investigation, staff reviewed and analyzed the generator's offering data, contemporaneous communications between the generator and NYISO, and other relevant data and information. Based on this, staff concluded that there was insufficient evidence of an intent to target the payments and closed the investigation without further action.

Market Manipulation (Electric). Following a referral from the CAISO market monitor, staff opened an investigation of a power marketer and scheduling coordinator to determine whether the company had violated the Commission's Anti-Manipulation Rule by partially accepting real-time market awards from the Hour-Ahead Scheduling Process (HASP) with the intent to suppress real-time prices and benefit its intertie transactions. Staff determined that the company took partial acceptances under a variety of circumstances for different legitimate reasons and did not identify evidence supporting a theory of market manipulation. For these reasons, staff closed the investigation without further action.

Violation of Certificate of Public Convenience and Necessity (Gas). Based upon information provided by OEP, staff opened an investigation into whether a natural gas company failed to obtain

advance landowner authorization for a right-of-way (ROW) variance during the construction of a natural gas pipeline in violation of a Commission Certificate Order. Staff determined that the landowner ambiguously and informally requested that the company access the landowner's off-ROW property to perform the work that the company ultimately used the variance to complete. For this reason, staff closed the investigation without further action.

Tariff Violation (Electric). Following a notification from the NYISO market monitor and a referral from Enforcement's DAS, staff opened an investigation into whether an electric generating company submitted inaccurate Variable Operations & Maintenance (VOM) costs in reference levels for two of its generating units and energy and ancillary services offers for a third unit that was not physically capable of performing due to an alleged unreported, pre-existing outage. Based on staff's review and analysis of market data and information from NYISO and its market monitor, staff determined the VOM costs were accurate and appropriate and that the outage resulted from technical issues that were unexpected. Therefore, staff closed the investigation because the evidence did not indicate that the company had violated the Commission's regulations or the NYISO Tariff.

Tariff Violation (Electric-Hydro). Following a referral from the ISO-NE market monitor, staff opened an investigation to determine whether a generating company submitted offers indicating its units could follow dispatch instructions even though they could not. Specifically, the referral raised the possibility that the company had improperly registered hydropower resources as non-intermittent resources, even though they were in fact intermittent. The market monitor believed that this may have explained why the resources failed to follow dispatch instructions and also meant that the company was not entitled to the Real-Time Economic Net Commitment Period Compensation payments it received. After analyzing the available information, staff concluded that the company had not misrepresented the resources as non-intermittent to ISO-NE because in the instances in which the resources did not follow dispatch instructions, they were within the tolerance band applicable to non-intermittent resources. Staff also determined that the resources' offer and dispatch behaviors did not affect the reliability of ISO-NE's transmission grid. Staff therefore closed the investigation with no further action.

Market Manipulation and Tariff Violation (Electric-Wind). Following a referral from the Southwest Power Pool (SPP) market monitor, staff opened an investigation to determine whether a wind resource's asset owners (who each owned a separate portion of the resource's output) potentially: (1) engaged in a manipulative scheme to exchange output data when responding to SPP's dispatch signals in order to raise the Locational Marginal Price (LMP) at the wind resource's settlement location; and/or (2) violated SPP Tariff provisions on following dispatch instructions. The SPP market monitor had observed that, in certain intervals, when the higher-priced output of Asset Owner A was given a dispatch signal to reduce output, the reduction was instead made by the lower-priced output of Asset Owner B. The SPP market monitor alleged that by keeping the output the same on Asset Owner A's portion of the resource, LMPs were set higher than they would have been absent this behavior and Asset Owner B was artificially removing its lower-priced supply from the market. Staff determined that the behavior observed by the market monitor resulted from an inadvertent flaw in the automated allocation methodology software developed to allocate the wind resource's output between the two asset owners. At the time that the market monitor observed this behavior, the wind resource's operator (who had developed the allocation methodology software) had already identified the flaw and was working with the asset owners on

a potential fix. Staff concluded that both asset owners intended for the allocation methodology to properly allocate the wind resource's real-time output in accordance with a Power Purchase Agreement between them while respecting SPP's curtailment instructions. Staff also concluded that the offers submitted by both asset owners for their respective portions of the output were appropriate and not coordinated. Finally, staff concluded that the conduct was relatively isolated and that there was no financial incentive for Asset Owner A to engage in this conduct because it was economically harmed by it. For these reasons, staff closed the investigation without further action.

Market Manipulation and Tariff Violation (Electric). Staff opened an investigation following a utility's self-report that a generating unit submitted cost-based offers for a one-month period that misrepresented fuel type and fuel costs to PJM. Staff investigated the factual accuracy and timeline of events and the methodology used to re-credit PJM for excess credits that the unit received as a result of the inaccurate offers. Staff also investigated whether the inaccurate offers violated: (1) the duty of candor and accuracy in communications with ISOs/RTOs; (2) the PJM Tariff and Operating Agreement, and (3) the Commission's Anti-Manipulation Rule. Based on witness interviews and its review and analysis of data request responses from the company, PJM, and the PJM market monitor, staff determined that the erroneous cost-based offers were inadvertent and that the company accurately resettled with PJM for the excess credits. For these reasons, staff closed this investigation without further action.

F. MMU Referrals

ISO and RTO MMUs perform a critical function surveilling organized electric markets to detect potential violations, including market manipulation, anticompetitive behavior, and tariff noncompliance. As the Commission has recognized, "effective market monitoring requires close collaboration between the [MMUs], RTOs, ISOs, and [Enforcement]."¹⁸ This collaboration occurs formally, through certain reporting requirements set forth in Commission regulations, as well as informally, through regular dialogue with Enforcement. Both types of collaboration facilitate a high level of situational awareness among Enforcement staff and ensure a robust knowledge base for investigations. In an effort to promote transparency and provide guidance to regulated entities and MMUs, this section highlights the MMUs' functions, describes the types of conduct MMUs monitor and refer to Enforcement, and provides illustrative examples of MMU referrals that Enforcement closed in FY2020 as initial inquiries without conversion to an investigation.

By regulation, MMUs are required "to make a non-public referral to the Commission in all instances where the [MMU] has reason to believe that a Market Violation has occurred."¹⁹ This referral requirement applies to potential "misconduct by the RTO or ISO, as well as by a market

¹⁸ *Southwest Power Pool, Inc.*, 137 FERC ¶ 61,046, at P 20 (2011).

¹⁹ 18 C.F.R. § 35.28(g)(3)(iv)(A) (2020). A Market Violation is a violation of a tariff, Commission order, rule or regulation, market manipulation, or inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies. *Id.* § 35.28(b)(8).

participant.”²⁰ The Commission has not prescribed a specific level of detail or length for referrals. However, they must be (1) non-public, (2) in writing, and (3) addressed to the head of Enforcement with copies to the heads of OEMR and OGC.²¹ In addition, they must include: (1) “sufficient credible information to warrant further investigation by the Commission;” (2) the names and contact information for suspected violators; (3) the dates of the alleged violations and whether the behavior is ongoing; (4) the rule, regulation, or tariff provisions allegedly violated; (5) the specific conduct that allegedly constitutes the violation; (6) the consequences to the market; (7) if the referral includes allegations of manipulation, a description of the alleged manipulative effect; and (8) any other information the MMU wishes to include.²² There is also a continuing obligation to update referrals with any information the MMU learns that is “related to the referral.”²³ After receiving a referral, Enforcement conducts an inquiry into the alleged conduct and determines whether to open a full investigation.

To help facilitate these regulatory requirements, Enforcement assigns staff to serve as liaisons with the MMUs for each RTO or ISO as well as with the RTO and ISO itself. MMUs refer a wide range of potential violations – both in terms of type and seriousness. Examples of referrals illustrating this broad range include: (1) referral of JP Morgan Ventures Energy Corporation for potential manipulation and tariff violations related to allegedly abusive bidding practices in CAISO and the Midcontinent Independent System Operator (MISO);²⁴ (2) referral of Westar Energy for potential violations of SPP Tariff and Commission regulations for allegedly submitting inaccurate cost inputs in its mitigated energy offers;²⁵ and (3) referral of Etracom LLC for an alleged cross-market manipulation scheme in CAISO.²⁶

²⁰ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 125 FERC ¶ 61,071, at P 311 (2008).

²¹ 18 C.F.R. § 35.28(g)(3)(iv)(B)-(C) (2020).

²² *Id.* § 35.28(g)(3)(iv)(D).

²³ *Id.* § 35.28(g)(3)(iv)(E). Separate and apart from this referral requirement, MMUs also must “[i]dentify and notify [Enforcement] of instances in which a market participant’s or [ISO’s/RTO’s] behavior may require investigation, including, but not limited to, suspected Market Violations.” 18 C.F.R. § 35.28(g)(3)(ii)(C) (2020). These notifications are more informal, can be made orally or in writing, and do not require the documentation involved in a referral.

²⁴ *In Re Make-Whole Payments and Related Bidding Strategies*, 144 FERC ¶ 61,068 (2013) (approving settlement agreement that included a \$285 million civil penalty and \$125 million in disgorgement in which the company neither admitted nor denied the violations).

²⁵ *Westar Energy, Inc.*, 160 FERC ¶ 61,025 (2017) (approving settlement agreement that included a civil penalty of \$180,000 and an admission to the violations).

²⁶ *Etracom LLC*, 155 FERC ¶ 61,284 (2016) (Order Assessing Penalties) (Etracom). Etracom ultimately settled with Enforcement. *See Etracom LLC*, 163 FERC ¶ 61,022 (2018) (approving settlement agreement that included a civil penalty of \$1.9 million in which the company neither admitted nor denied the violations).

1. Statistics on MMU Referrals

In FY2020, staff received 13 new MMU referrals. Of these referrals (some of which involved more than one type of violation or multiple subjects), eight involved potential market manipulation, seven involved potential tariff violations, and four involved potential misrepresentations prohibited by the Commission's market behavior rules. Three of these MMU referrals were the sources for investigations opened this fiscal year. Enforcement also received one supplemental referral of an entity that was already being investigated for the alleged conduct described in the referral. As such, this supplemental referral was rolled into that existing investigation. Of the MMU referrals received in FY2020, six remained pending at the end of the fiscal year.

DOI staff elected not to open full investigations of six MMU referrals in FY2020, two of which were carried over from the previous fiscal year. These referrals were analyzed and closed as inquiries. Of these referrals (some of which involved more than one type of alleged violation or multiple subjects), three involved potential market manipulation, six involved potential tariff violations, and five involved potential misrepresentations prohibited by the Commission's market behavior rules.

Of the six MMU referrals that staff did not convert to full investigations, three were closed without further action because staff concluded that the evidence did not support finding a violation. In the three other MMU referrals, while staff determined a violation was found, staff did not pursue a sanction.

2. Illustrative MMU Referrals Closed with No Action

Enforcement presents the following illustrative examples of MMU referral inquiries that DOI staff closed in FY2020 without conversion to an investigation. In determining whether to open an investigation based on an MMU referral, staff considers the factors set forth in the Commission's Revised Policy Statement on Enforcement.²⁷ The illustrative summaries below are intended to provide guidance to the public and to regulated entities as to why staff chose not to pursue an investigation or enforcement action, while preserving the non-public nature of the MMU referral.

Market Manipulation. Following a referral from PJM's MMU, staff analyzed whether a generator and its fuel supplier engaged in alleged manipulative conduct when the generator submitted cost-based offers on certain cold weather days in early 2019 that incorporated "penalty" gas rates (rates increased by adders for unauthorized use). Following the referral, staff discussed the matter with the companies and the MMU. Staff did not identify information suggesting that the fuel supplier misrepresented its ability to deliver gas, or that the generator misrepresented its ability to obtain sufficient gas for its units to run if the units had been dispatched on the relevant days. For these reasons, staff closed this MMU referral without further action.

Tariff Violation. Following a referral from NYISO's MMU, staff analyzed whether multiple market participants allegedly violated the NYISO Tariff when their Generating Turbine (GT) unit(s) failed to adequately perform in response to start signals on certain days in 2018 and 2019.

²⁷ Revised Policy Statement, 123 FERC ¶ 61,156 at P 25.

Following the referral, staff discussed the matter with the primary alleged offender and obtained information regarding the causes of each instance in which the GT units failed to adequately perform. Staff determined that the conduct did not appear to have harmed the market or to have been willful. For these reasons, staff closed this MMU referral without further action.

Tariff Violation. Following a referral from NYISO’s MMU, staff analyzed whether two nuclear power plant generators allegedly violated the NYISO Tariff by failing to bid into the day-ahead market at the generators’ qualified Installed Capacity (ICAP) on certain days in 2018 and 2019. NYISO assessed sanctions against each generator for this conduct before the matters were referred to staff. Staff determined that the violations did not appear to have been willful. For example, one of the generators did not bid at ICAP due to process errors that caused the generator to fail to update its bids after mechanical issues were resolved. The generator subsequently updated its check lists to prevent this issue from reoccurring. For these reasons, and because NYISO had already assessed a penalty for this conduct, staff closed this MMU referral without further action.

G. Enforcement Hotline

DOI staff fields calls and other inquiries made to the Enforcement Hotline (Hotline).²⁸ The Hotline is a means for people, anonymously if preferred, to inform Enforcement staff of potential violations of statutes, Commission rules, orders, regulations, and tariff provisions. When staff receives information concerning possible violations, such as allegations of market manipulation, abuse of an affiliate relationship, or violation of a tariff or order, staff researches the issue presented and often consults other members of the Commission’s staff with expertise in the subject matter of the inquiry. In some cases, Hotline calls lead to the opening of investigations by DOI.

In FY2020, Enforcement received 145 Hotline calls and inquiries, 141 of which promptly were resolved within the fiscal year either through advice provided by staff, because the caller stopped responding to staff’s communications, or because the matter was already pending before the Commission and so staff could not discuss it with the caller. Staff also closed five Hotline matters that had been pending from the previous year. Of the Hotline calls received in FY2020, four remained pending at the end of the fiscal year.

Every year, a significant percentage of the Hotline calls and inquiries relate to subjects outside of the Commission’s jurisdiction or contested matters pending before the Commission. DOI staff resolves these matters by advising the callers where they may find the information they need or directing them to the appropriate Commission office or docketed proceeding.

H. Other Matters

In addition to its investigative work, DOI staff worked on other important matters in FY2020, including:

²⁸ See 18 C.F.R. § 1b.21 (2020).

Collaboration with Other Commission Offices. DOI staff regularly coordinates with other Commission program offices regarding potential enforcement matters. This includes working closely with OEP and OGC on pipeline certificate and hydroelectric licensing matters to ensure compliance with statutory and regulatory obligations, as well as the terms and conditions of pipeline certificates and hydroelectric licenses and exemptions. In addition, DOI staff works closely with OGC, OEMR, and OEPI regarding late filings submitted under sections 203 or 205 of the FPA. Staff also works closely with OGC and OEMR on evaluating refund reports related to the late filings. OGC and OEMR regularly consult with DOI staff when a qualifying facility submits a request for a declaratory order and/or a request for waivers of various provisions of Part 292 of the Commission’s regulations related to small power production and cogeneration under PURPA. Regulated entities can submit questions to the Compliance Help Desk to reduce their risk of subsequent findings of noncompliance and potential enforcement actions. Finally, OGC and OEMR confer with DOI staff for pre-filing meetings and/or regarding requests involving the Standards of Conduct under Order No. 717 or Affiliate Restrictions under Order No. 697.

Hydropower Compliance. OEP’s Division of Hydropower Administration and Compliance (DHAC) has authority over hydropower compliance matters until such matters are referred to Enforcement. DOI staff provided significant input and advice to DHAC regarding three projects involving dam safety and other violations within DHAC’s authority during FY2020.

No-Action Letters. Enforcement is one of several offices within the Commission that is jointly responsible for processing requests seeking a determination whether staff would recommend enforcement action against the requestor if it pursued particular transactions or practices. The “No-Action Letter” can be a useful tool for entities subject to the Commission’s authority to reduce the risk of failing to comply with the statutes the Commission administers, the orders, rules or regulations thereunder, or Commission-approved tariffs.²⁹ Commission staff is generally available to confer on a pre-filing basis for possible “No-Action Letter” requests.

Reliability Coordinator. As part of its cooperation with other program offices, Enforcement has a designated Reliability Coordinator who is a member of DOI staff. In addition to serving a leadership role in inquiries or investigations involving reliability of the Bulk-Power System, the Reliability Coordinator serves as a team member on reliability-related matters including NERC and Regional Reliability Entity filings (e.g., Notices of Penalty, changes to NERC Rules, amending or retiring Reliability Standards, NERC Five-Year Assessments, and similar periodic filings). Enforcement’s Reliability Coordinator also makes presentations to NERC and at Regional Entity meetings, such as those of the Member Representative, Operating, and Planning Committees.

²⁹ See *Interpretive Order Modifying No-Action Letter Process and Reviewing Other Mechanisms for Obtaining Guidance*, 123 FERC ¶ 61,157 (2008).

DIVISION OF AUDITS AND ACCOUNTING

A. Overview

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

DAA's audit program supports the Commission's strategic objectives through public risk-based audits. DAA performs various types of audits that respond to the needs of the Commission, public, and industry, and advises the Commission on compliance and other matters. The audit program serves as a resource for the Commission to examine risk areas within the regulated industries and inform the Commission's actions regarding rates, tariffs, financial and operational transparency, policy initiatives, law, reliability, and other areas in the electric, natural gas, and oil industries. DAA audits also provide jurisdictional entities an opportunity to work with audit staff to evaluate and improve their overall compliance, and to identify potential areas of noncompliance before they escalate. For the Commission's regulated industries, DAA's publicly issued audit commencement letters and audit reports provide insight into and valuable guidance on areas of emphasis and concern.

DAA's accounting program is a vital component of the Commission's strategic goal of establishing just and reasonable cost of service rates, terms, and conditions by: (1) overseeing the accounting and reporting of financial information affecting cost of service rates; (2) acting as the focal point for interpretive guidance concerning the Commission's financial accounting and reporting rules, orders, regulations, and statutes; and (3) advising the Commission and industry on accounting and other financial issues. The accounting program facilitates the consistent reporting of financial information and ensures that an entity's operations are reported in a manner that most appropriately supports ratemaking analysis. DAA's accounting program also provides accounting expertise to the Commission's other program offices and assists in the development of Commission policies and proposed rulemakings to ensure these initiatives properly consider and evaluate the related accounting and financial issues.

DAA's forms administration and compliance program supports the Commission's responsibility to ensure just and reasonable rates, terms, and conditions for consumers. DAA administers, analyzes, and ensures compliance with the filing requirements of EQRs and various Commission forms. The EQRs and Commission forms provide valuable information to the public, external shareholders, and the Commission and support the development of regulatory strategies that focus on the competitiveness and efficiency of wholesale energy markets. DAA conducts outreach to and communication with the public regarding these compliance programs, with the goal of ensuring that all parties comply with the Commission's filing requirements.

B. Outreach and Guidance

DAA's programs, through their outreach and guidance, inform the industry, the public, and others about what constitutes effective compliance, accountability, and transparency. The goal of DAA's outreach is to provide jurisdictional entities with ample opportunity to achieve compliance and avoid noncompliance that may result in harm to jurisdictional customers and energy markets. DAA regularly hosts EQR user group meetings to conduct outreach with the filing community. DAA also actively engages in regular industry outreach with trade associations, such as the Interstate Natural Gas Association of America (INGAA), Edison Electric Institute (EEI), Association of Oil Pipe Lines (AOPL), and Natural Gas Supply Association (NGSA), and encourages interested parties to contact DAA with any inquiries or concerns. As a result of such interactions, DAA considers opportunities to enhance the efficiency, transparency, and effectiveness of its audit, accounting, and forms administration and compliance programs. DAA also engages with state regulators and the public accounting firms that audit and certify jurisdictional entities' financial reports. Such industry outreach contributes to DAA's analysis of accounting trends affecting jurisdictional entities and issuances of accounting guidance by the Chief Accountant. For example, in FY2020, guidance was issued for accounting for implementation costs incurred in a cloud computing arrangement in Docket No. AI20-1-000; accounting for cumulative-effect adjustments to retained earnings relating to the Financial Accounting Standards Board's (FASB) accounting standard on credit losses in Docket No. AI20-2-000; and accounting for pipeline testing costs incurred to comply with new federal safety standards in Docket No. AI20-3-000, all three of which are discussed in greater detail in part F below. DAA also continues to provide formal accounting guidance in response to accounting requests filed with the Commission. Informal accounting guidance may be requested and obtained from DAA via email (accountinginquiries@ferc.gov) and phone ((202) 502-8877). Informal guidance on all other compliance matters may be obtained through the Compliance Help Desk.³⁰

C. Compliance

1. Compliance Programs

It is imperative that companies establish and maintain effective compliance programs. Such programs should foster a culture of compliance that begins at the executive level and permeates throughout the organization. Effective compliance programs increase the likelihood that jurisdictional companies will understand and follow the Commission's rules, regulations, and orders, as well as their own tariff provisions, both in letter and spirit. However, since each company is unique in terms of size, region, organizational structure, and other relevant characteristics, no two compliance programs are alike. Each company must tailor its program to the specific challenges it faces. Notwithstanding these differences, DAA has found that the strongest compliance programs include:

- A proactive program that:

³⁰ Information about the Commission's Compliance Help Desk is available at www.ferc.gov/contact-us/compliance-help-desk.asp.

- Equips staff and management with sufficient training, education, tools, and other resources to detect issues in a timely manner to correct or prevent noncompliance;
- Provides effective lines of communication and notifies staff of standards through well-publicized policies and procedures;
- Stays abreast of compliance trends by reviewing Commission orders and audit reports, and evolves based on these trends and other developments in the industry.
- The active involvement of senior management to provide a tangible demonstration of “tone-from-the-top” as well as the allocation of funds necessary for such programs.
- A designated compliance officer and compliance committee, charged with development and oversight of compliance activities and metrics that assess program effectiveness.
- The active involvement of internal audit and monitoring functions to routinely assess compliance with tariff provisions and Commission rules, orders, and regulations, to foster a strong and sustainable culture of commitment to compliance on an enterprise-wide basis.
- A policy and culture of seeking guidance from the Commission as necessary to ensure compliance, including an effective process to self-report noncompliance identified through internal oversight activities.

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

2. Timely Remedy of Noncompliance

Equally important to a robust compliance program is the timely remedy of noncompliance. Although an effective compliance program will often prevent noncompliance with Commission rules, regulations, and orders, any instances of noncompliance should be addressed immediately. Timely implementation of audit recommendations helps maximize their impact, demonstrates commitment to compliance, and supports fair, competitive markets. DAA tracks every audit recommendation it makes, and works with each company until all recommendations have been fully implemented. Further, the Commission’s FY2018-2022 Strategic Plan encourages strong compliance programs and places emphasis on timely implementation of corrective actions within six months of audit completion.³¹ In FY2020, 98 percent of DAA’s audit recommendations were implemented within six months.

3. Compliance Alerts

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

³¹ See Strategic Plan, *supra* note 3, at 7 (Objective 1.2: Performance Measure).

actions. To assist jurisdictional entities in gaining a better understanding of a particular topic, examples of docket number(s) of one or more recent audit reports or Commission orders dealing with the various topics are provided in the discussions below so that jurisdictional entities may review the more recent findings by DAA in audit reports or by the Commission in orders related to a particular topic area.

Allocated Labor. Companies have charged labor and labor-related costs to construction projects without using an appropriate cost allocation method or time tracking process to ensure capitalized labor costs have a definite relation to construction. Specifically, DAA has observed that allocation methods were not properly designed, nor were the allocation results sufficiently monitored to ensure that costs charged were appropriately allocated to capital projects when employees: (1) performed activities that only supported the operations of the existing infrastructure; (2) spent a portion of their time performing construction-related activities and a portion on other jurisdictional activities; or (3) performed activities supporting both jurisdictional and non-jurisdictional activities. (FA19-3-000, PA16-4-000, PA16-2-000).

Allowance for Funds Used During Construction (AFUDC). Recent audit activity has shown deficiencies in how jurisdictional entities have calculated AFUDC, resulting in excessive accruals. Short-term debt is regarded as the first source of funding construction activities in the AFUDC calculation, and the short-term debt rate is derived using an estimate of the cost of short-term debt for the current year. DAA has found instances where a company used commitment fees associated with lines of credit in the calculation of the short-term or the long-term debt rate. Under Order No. 561, Commission approval is required to include such fees as part of the AFUDC short-term rate derivation (PA18-2-000) or the cost of long-term debt calculation (FA19-3-000). Moreover, when a credit facility is established to create liquidity for the company's general purpose needs, the associated commitment fees resemble a banking charge to support a company's utility operations as a whole, and the commitment fees should be excluded from the cost of short-term debt (PA18-1-000) or the cost of long-term debt (FA19-3-000) when calculating AFUDC.

Other common findings related to AFUDC during audits include:

- Failure to exclude goodwill-related equity from the equity component of the AFUDC rate (PA10-13-000);
- Computing AFUDC on contract retention and other noncash accruals (FA19-3-000, FA17-6-000);
- Compounding AFUDC more frequently than semi-annually (AC12-53-000);
- Improperly using monthly equity and long-term debt balances instead of prior-year-end balances in computing the AFUDC rate (FA17-1-000, PA18-2-000);
- Improperly including Account 216.1, Unappropriated Undistributed Subsidiary Earnings, and Account 219, Accumulated Other Comprehensive Income, balances as part of the equity component of the AFUDC formula (FA18-2-000, FA18-3-000, PA18-1-000, PA18-2-000);
- Employing the net-of-tax approach when performing AFUDC calculations (AC18-63-000);

- Improper inclusion in the short-term debt rate of interest recorded on transmission and interconnection study advances received from customers (PA18-1-000); and
- Improperly using an AFUDC methodology not prescribed by the Commission that results in capitalized AFUDC above the maximum permitted by the Commission's regulations (FA19-6-000, PA16-4-000).

Formula Rate Matters. A focal point of DAA's formula rate audits continues to be compliance with the Commission's accounting and FERC Form No. 1 (Annual Report of Major Electric Utilities, Licensees and Others), requirements for costs that are included in formula rate recovery mechanisms used to determine billings to wholesale customers. DAA notes that certain areas of noncompliance could have been prevented with more effective coordination between jurisdictional entities' accounting and rate staffs to prevent the recovery of costs that should have been excluded from the formula rate. Additionally, formula rate audits in recent years have identified patterns of noncompliance in the following areas:

- Revenue Credits – Public utilities understated the revenue credits that were used to reduce the revenue requirements of their transmission formula rates by improperly excluding certain transmission-related revenues. (FA17-2-000 (pole attachment revenue), FA18-3-000 (rent from affiliate)).
- Income Tax Overpayments – Public utilities have incorrectly recorded in Account 165, Prepayments, income tax overpayments for which they elected to receive a refund and not have such overpayments applied to a future tax year's obligation. This has led to excess recoveries through formula rate billings. These costs are properly recorded in Account 146, Accounts Receivable from Associated Companies, or Account 143, Other Accounts Receivable, as appropriate. (FA17-4-000, FA13-1-000).
- Excess Accumulated Deferred Income Taxes (ADIT) – To address the tax effects of the Tax Cuts and Jobs Act of 2017 (TCJA), public utilities adjusted ADIT balances to reflect the change in the effective corporate tax rate from 35 percent to 21 percent. Under certain formula rate tariffs, public utilities were required to make adjustments to neutralize the rate base impacts of these TCJA adjustments to ADIT balances. Audit staff found instances where utilities removed balances from the ADIT accounts but did not make the necessary adjustments to keep rate base neutral. This led to rate base being overstated and wholesale transmission customers being overbilled. (FA18-3-000).
- Storm Damage – Public utilities have collected excess storm damage amounts from wholesale customers by either recovering estimates that did not reflect actual experience or recovering both estimated and actual storm damage expenses. (FA15-5-000, FA15-6-000, FA16-4-000).
- Investment Tax Credits (ITCs) – Public utilities have improperly accounted for ITCs associated with utility plant as income tax prepayments in Account 165. ITCs are generated as a result of investments made in utility plant. DAA found instances in which tax credits were used to reduce taxable income, but not all of the ITCs were used at once and resulted in an ITC carry-forward. DAA found that ITC carry-forwards were recorded in an incorrect account and factored into formula rate billings, leading to customer overbillings. (FA15-8-000).

- **Internal Merger Costs** – Public utilities have included merger-related transaction costs in operating expense accounts, contrary to the long-standing Commission policy that such costs be recorded in non-operating expense accounts. This accounting resulted in companies misrepresenting utility operating income and expenses reported in their FERC Form No. 1. In addition, public utilities subject to hold-harmless commitments have incorrectly recovered merger-related transaction and transition costs, including internal labor costs, in rates. Public utilities should obtain Commission approval to recover such costs and otherwise should have appropriate controls and procedures to ensure that the costs are tracked and excluded from formula rates. (PA18-3-000, FA18-3-000, FA17-1-000, FA16-3-000, PL15-3-000, FA14-10-000).
- **Asset Retirement Obligations (ARO)** – Public utilities included ARO amounts in formula rates without explicit Commission approval, including the asset component that increases rate base, the depreciation expense related to the asset, and the accretion expense related to the liability. (PA18-1-000, PA18-2-000, FA13-1-000).
- **Commitment Fees** – Public utilities improperly recorded commitment fees associated with lines of credit in Account 165, Prepayments, which led to excess recoveries through formula rate billings. (FA15-5-000, FA15-6-000, FA15-7-000).
- **Formula Rate Errors** – Public utilities’ transmission formula rate calculations contained errors, omissions, and miscalculations related to various accounts. Some accounts that should have been added were incorrectly subtracted. In other instances, the formula pulled information from the wrong FERC Form No. 1 line. Finally, there were instances where items specifically excluded by formula rate protocols were included in the formula rate. (FA15-6-000).
- **Regulatory Assets** – Public utilities included amortized regulatory assets in formula rate calculations without first obtaining the required Commission approval for recovery of the regulatory asset. (PA18-3-000).
- **Administrative and General (A&G) Expenses** – Most audits find that public utilities recorded non-operating expenses and functional operating and maintenance expenses in A&G expense accounts, leading to inappropriate inclusion of such costs in revenue requirements produced by their formula rates. Examples of these costs include: employment discrimination settlement payments, lobbying expenses, charitable contributions, storm damage to distribution systems, and payments of penalties. (FA19-2-000, FA19-3-000, FA19-7-000, FA18-3-000, FA17-1-000).
- **Unused Inventory and Equipment** – Public utilities included in the cost of construction projects the cost of materials, supplies, and equipment purchased for the project, without removing the cost of items ultimately unused in whole or in part. (FA13-3-000).
- **Electric Vehicle (EV) Charging Stations** – Public utilities included EV charging stations as part of general plant, even though the EV charging stations serve a distribution function. (FA19-3-000).

Transmission Rate Incentives. The Commission has granted many public utilities transmission incentive rate treatments as a means of promoting and developing a more efficient and robust

transmission system. Recent audit activity has found that effective procedures and controls were lacking to ensure full compliance with the conditions of Commission orders approving transmission incentive rate treatments. In particular, projects that did not qualify for the transmission incentive to include construction work in progress in rate base were inappropriately including it. DAA believes more robust procedures and controls to ensure compliance with the application of transmission incentive rate treatments could have prevented noncompliance in this area. (FA16-1-000).

Open Access Transmission Tariffs. An essential goal of open access is to support efficient and competitive markets. On recent OATT audits, DAA noted instances where company actions did not support this goal due to noncompliance with OATT terms and conditions. Specifically, DAA identified issues relating to transmission function employees procuring transmission service at the request of market function employees in violation of the independent functioning requirement (PA18-1-000); improper use of network transmission service and secondary network transmission service (PA18-1-000, PA18-2-000); improper sales from designated network resources (PA17-7-000); transmission capacity not released in accordance with Commission-approved tariffs (PA13-4-000); inaccurate available transmission capacity data posted on OASIS (PA17-7-000); transmission service provided to customers under expired transmission service agreements (PA13-6-000); and improper submissions outside of OASIS of the termination of network resources (PA18-1-000)

Data Reporting by ISO/RTO Market Participants. In recent audits, DAA identified instances when market participants did not submit accurate data to the ISOs/RTOs (PA17-5-000, PA17-3-000, PA15-5-000). Inaccurate data submitted by market participants weakens the ISOs'/RTOs' ability to operate effective and efficient energy markets. For example, DAA identified instances when market participants submitted generation resource offers that did not reflect the actual known physical capabilities and characteristics of the resources. This affected the ability of the ISOs/RTOs to optimize dispatch in order to reflect the actual marginal cost of energy and to manage transmission congestion. DAA encourages all market participants to have adequate controls in place to ensure accurate, complete, and timely data are submitted to the ISOs/RTOs.

Natural Gas Accounting and Tariff Matters. Natural gas audits have evaluated compliance with the Commission's accounting and FERC Form No. 2 (Annual Report of Major Natural Gas Companies), reporting requirements to ensure that transparent and accurate data is reported for use by all stakeholders in developing and monitoring rates. The audits also covered the administration and application of transportation services and rates among customers in accordance with approved gas tariffs. In recent natural gas audits, DAA has found noncompliance in the following areas:

- Gas Tariff – Natural gas pipelines did not comply with the Commission's gas tariff procedures, specifically with regard to: (1) using the method specified in the tariff for valuing system gas activities (PA16-2-000, PA13-5-000); (2) enforcing stipulations in operational balancing agreements to manage and monitor gas imbalance activities between interstate and intrastate pipelines (PA16-4-000); (3) updating their tariffs to fully reflect the Commission's reservation charge crediting policy³² for force majeure and non-force

³² *Natural Gas Supply Ass'n*, 135 FERC ¶ 61,055, *order on reh'g*, 137 FERC ¶ 61,051 (2011).

majeure events (PA16-4-000); and (4) penalty revenues collected from offending shippers and refunded to non-offending shippers (FA18-2-000).

- Accounting – Natural gas pipelines did not comply with Commission accounting requirements, specifically with regard to: certain activities pertaining to system gas accounting (FA19-6-000, PA16-2-000); penalty revenues assessed to noncompliant shippers (PA16-4-000, PA10-3-000); shipper imbalances and cash-outs (FA19-6-000, FA15-1-000, PA13-5-000, PA10-3-000); lost and unaccounted-for gas (FA19-6-000, FA15-1-000, PA16-4-000, PA13-5-000); and fuel used in compressor stations (FA15-1-000). Other common areas of DAA-identified noncompliance included: (1) use of AFUDC rates above the maximum allowed rate (FA19-6-000, PA16-4-000); (2) improper derivation of certain components included in the AFUDC rate (FA19-6-000, FA13-7-000); (3) accrual of AFUDC on unpaid amounts and non-eligible construction costs (FA13-9-000, FA12-4-000); (4) misclassification of non-operating expenses associated with donations, fines, and employment discrimination compromise settlements (FA19-6-000, FA15-16-000), or with penalties and lobbying activities (PA13-5-000, FA13-7-000, FA12-4-000), or membership dues (FA19-6-000, FA18-2-000); (5) misclassification of operating expenses as general and administrative expenses (PA16-2-000, PA16-4-000); (6) improper allocation of shared service costs (PA16-2-000); and (7) application of cost allocation methodologies absent a time study or other supporting records (PA16-2-000, FA15-16-000).
- Reporting – FERC Form No. 2 reporting was inaccurate, incomplete, and omitted required information and footnote disclosures required for various schedules supporting the financial reporting (FA18-2-000, FA17-6-000). Other reporting matters pertained to unfiled nonconforming service agreements and cash management agreements (FA17-6-000).

Oil Pipelines (Page 700). An essential part of oil pipeline audits is an examination of the accounting and operating data included on page 700 of the FERC Form No. 6 (Annual Cost of Service-Based Analysis Schedule). This Schedule requires each oil pipeline company to report its total annual cost of service (as calculated under the Order No. 154-B methodology), operating revenues, and throughput in barrels and barrel-miles for the current and previous reporting year. The amounts reflected on page 700 represent only interstate service (i.e., Commission-jurisdictional) amounts, while the rest of the FERC Form No. 6 includes both interstate and intrastate amounts. The information reported on page 700 is used by the Commission and interested parties to evaluate interstate pipeline rates and facilitate the Commission’s review of the five-year index.³³ Recent oil pipeline audits have identified accounting errors that impacted the

³³ Page 700 is used as a preliminary screening tool for shippers and other stakeholders to gauge whether an oil pipeline’s cost of service substantially diverges from revenues generated by its rates. The Commission also uses the expense and barrel-mile data from this page to support the Commission’s determination of its proposed oil pipeline transportation rate index adjustment for a five-year, forward looking period. The next five-year index will be based on the Commission’s evaluation of the increase in costs, on a dollar per barrel-mile basis from 2014 to 2019, as reflected on page 700 in oil pipelines’ filings, and will become effective in 2021.

accuracy of amounts reported on page 700, including: incorrect determination of interstate revenues and expenses and designating intrastate amounts as interstate (FA18-1-000, FA16-7-000); misclassification of carrier and noncarrier property, and of charitable donations, fines/penalties, lobbying activities, and affiliate transaction mark-ups as operating rather than non-operating expenses (FA18-1-000; FA16-6-000, FA16-7-000); use of the consolidated rather than the equity method of accounting for investments in joint ventures and subsidiary companies (FA16-5-000); and use of depreciation rates not approved by the Commission (FA18-1-000). DAA also found that some companies were not conducting depreciation studies as required, leading to depreciation rates not aligning with the actual service lives of the plants, and ultimately to asset groups with negative book balances (FA16-5-000).

Nuclear Decommissioning Trust Funds. The Commission’s regulations concerning nuclear decommissioning trust funds require public utilities owning nuclear power plants to file annual trust fund reports. Recent audits have identified public utilities that failed to submit annual decommissioning trust fund reports (PA13-5-000), or clearly distinguish Commission-jurisdictional from non-jurisdictional monies held in the funds, and accurately report the amount of Commission-jurisdictional money in the trusts (PA13-15-000, FA15-6-000, FA15-7-000).

Consolidation. Commission accounting regulations require the equity method of accounting for all investments in subsidiaries. Recent audits continued to find jurisdictional companies incorrectly using the consolidation method of accounting for subsidiaries instead of the equity method. As a result, improper amounts were included in formula rate billings (PA14-2-000). Entities must seek a waiver from the Commission to use the consolidation method for an investment in a subsidiary.

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

D. Audit Matters

DAA’s audits are public, risk-based, and cover a variety of audit scope areas. The entities selected for an audit are not typically suspected of any wrongdoing. DAA consults with other divisions within Enforcement and other Commission program offices to inform DAA’s risk-based methodology for selecting audit scope areas and audit candidates. DAA is not limited in the types of audits it conducts; rather, it responds to the needs and priorities of the Commission and the industry. Individual audits may contain multiple and different scope areas, but every audit includes a review of the audited entity’s internal compliance program.

DAA’s public audit reports detail each audit’s scope, methodology, findings of noncompliance, and corrective recommendations, with the expectation that all jurisdictional entities will use this information to be better informed, avoid noncompliance, and improve operational performance. Although not all audits result in findings of noncompliance, when they do, timely implementation of the audit report’s corrective recommendations is expected. Timely

implementation demonstrates an entity's commitment to improving compliance with the Commission's regulations and precedents and to reducing the risk of future noncompliance.

In FY2020, DAA completed ten audits of public utility, natural gas, oil, and RTO companies covering a wide array of topics. The audits resulted in 51 findings of noncompliance, 199 recommendations for corrective action, and directed approximately \$98.4 million in refunds and other recoveries. Specifically, DAA directed \$13.6 million to be refunded to jurisdictional customers and prevented approximately \$84.8 million from being inappropriately amortized and collected through future rates. These refunds and other recoveries addressed DAA findings concerning, among other subjects, the improper application of merger-related costs; lobbying, charitable donation, membership dues, and employment discrimination settlement costs; accounting for production-related or distribution-related expenses as general or transmission-related expenses; pending income tax and insurance premium refunds being treated as prepayments; and the regulatory AFUDC formula. Audit recommendations also directed improvements to the audited companies' internal accounting processes and procedures, financial reporting for accuracy and transparency, web site postings, and efficiency of operations. Collectively, these refunds and recommendations prevented unjust charges in jurisdictional rates, and provided procedural and process enhancements that benefit ratepayers and market participants. The audits summarized below were completed in FY2020 and provide a sample of DAA findings and results. Further samples are contained in prior years' enforcement reports. The complete audit reports are publicly available in the Commission's eLibrary system.³⁴

DAA's FY2020 audits were affected by the COVID-19 pandemic. Recognizing the challenges the pandemic created for jurisdictional entities, DAA communicated to such entities its willingness to be flexible as needed, and relaxed some of its audit requirements to reduce the burden on companies. These changes included extending the time to respond to data requests and draft audit reports, deferring commencement of several audits planned for FY2020, and halting audit travel. Therefore, several audits planned for FY2020 completion will not conclude until FY2021, and some audits scheduled for FY2020 commencement have been deferred to a future date.

1. Formula Rates

Michigan Electric Transmission Company (METC) – Docket No. FA19-7-000. At METC, DAA evaluated compliance with: (1) the approved terms, rates, and conditions of METC's transmission formula rate as provided in Attachment O of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff; (2) the accounting requirements of the Uniform System of Accounts Prescribed for Public Utilities and Licensees in 18 C.F.R. Part 101 (Uniform System of Accounts (Public Utilities)); (3) the reporting requirements of FERC Form No. 1 under 18 C.F.R. § 141.1; and (4) the preservation of records requirements under 18 C.F.R. Part 125.³⁵ The audit identified six findings and 18 recommendations that required METC to take corrective action. The company did not contest the six findings and agreed to implement the 18 recommendations. The six findings covered the following areas: (1) recording lobbying costs

³⁴ The Commission's eLibrary system can be accessed at elibrary.ferc.gov.

³⁵ *Michigan Electric Transmission Co.*, Docket No. FA19-7-000 (July 2, 2020) (delegated letter order).

associated with pensions in Account 926, Employee Pensions and Benefits, instead of the correct Account 426.4, Expenditures for Certain Civic, Political and Related Activities, thereby overstating METC's wholesale transmission revenue requirement; (2) recording settlement costs relating to resolving employment discrimination claims in operating expense accounts contrary to Accounting Release AR-12; (3) not assigning any engineering and supervision (E&S) costs to abandoned transmission construction projects but, instead, improperly reallocating the E&S costs associated with abandoned projects to ongoing transmission projects and accruing AFUDC on these reallocated amounts; (4) inappropriately accounting for a donation as an operating expense, leading to amounts being improperly included in METC's formula rate mechanism and customer billings; (5) failing to use the income statement and using only balance sheet accounts to record Asset Retirement Obligations (AROs) relating to METC's utility plant assets; and (6) not reporting certain required information on select pages of the FERC Form No. 1. As a result of the audit, METC made refunds to wholesale transmission customers and revised its accounting policies and procedures in identified areas of noncompliance.

San Diego Gas & Electric Company (SDG&E) – Docket No. FA19-3-000. At SDG&E, DAA evaluated compliance with: (1) SDG&E's formula rate transmission owner tariff; (2) the accounting requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Part 101; (3) the reporting requirements of the FERC Form No. 1 under 18 C.F.R. § 141.1; and (4) preservation of records requirements under 18 C.F.R. Part 125.³⁶ The audit identified 11 findings and 55 recommendations that required SDG&E to take corrective action. The company accepted the 11 findings and 55 recommendations. The 11 findings covered the following areas: (1) an inappropriate method of calculating AFUDC involving the improper inclusion of unpaid contract retention accruals in the Construction Work in Progress (CWIP) balance, and of unamortized debt discounts and losses on reacquired debt in the determination of the long-term debt balance, resulting in over accrued AFUDC in the CWIP and utility plant accounts and overbilled wholesale transmission customers; (2) with respect to upfront and quarterly commitment fees on a revolving line of credit not established in conjunction with acquisition of any debt, improperly accounting for the upfront commitment fees in Account 182.3, Other Regulatory Assets, and the quarterly commitment fees in Account 923, Outside Services Employed, and improperly including amortization of the upfront commitment fees in the calculation of long-term debt interest expense used to compute the AFUDC rate; (3) capitalizing overhead costs to Account 107, Construction Work in Progress – Electric, using an allocation method that was not based on the actual time employees engaged in construction activities or on a representative time study; (4) improperly accounting for electric vehicle (EV) charging station distribution assets in accounts that were wholesale transmission formula rate inputs; (5) improperly recording state and federal regulatory commission expenses in Account 566, Miscellaneous Transmission Expenses, and 923, Outside Services Employed, rather than in correct Account 928, Regulatory Commission Expenses; (6) recording the costs of operating substations that supported both distribution and transmission operations solely to transmission operations; (7) improperly recording charitable donations and lobbying expenses in accounts that were wholesale transmission formula rate inputs; (8) improperly recording external consultant fees incurred to support general services not applicable to a particular operating function – here, information technology systems supporting all operating functions – in an account 100 percent charged as a cost of transmission service (Account 560),

³⁶ *San Diego Gas & Electric Co.*, Docket No. FA19-3-000 (July 30, 2020) (delegated letter order).

rather than in correct Account 923, Outside Services Employed, which was allocated 18 percent to transmission and 82 percent to distribution, and failing to retain documentation supporting recording a portion of such costs in Account 107, Construction Work in Progress-Electric; (9) not filing all tariff records, as required, in eTariff – specifically, improperly omitting Attachment 2, SDG&E’s Formula Rate Spreadsheet; (10) premature destruction or loss of records documenting an asset’s cost – here, a \$200,000 charge in Account 154, Plant Materials and Operating Supplies, listed as a core deposit for reels of cable, where neither the cable nor any documentation relating to the transaction was found; and (11) not filing proposed journal entries for the purchase of electric plant within six months of the transaction’s occurrence, as required by 18 C.F.R. Part 101, Electric Plant Instruction No. 5(A) and Account 102, Electric Plant Purchased or Sold. As a result of the audit, SDG&E made refunds to wholesale transmission customers and revised its accounting policies and procedures in identified areas of noncompliance.

MidAmerican Energy Company (MEC) – Docket No. FA19-2-000. At MEC, DAA evaluated compliance with: (1) the approved terms, rates, and conditions of MEC’s transmission formula rate mechanism provided in Attachment O of MISO’s Open Access Transmission, Energy and Operating Reserve Markets Tariff and other jurisdictional rates on file with the Commission; (2) the accounting requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Part 101; (3) the reporting requirements of the FERC Form No. 1 and Supplemental Form 3-Q under 18 C.F.R. § 141.1; and (4) preservation of records requirements under 18 C.F.R. Part 125.³⁷ The audit identified one finding and four recommendations that required MEC to take corrective action. The company accepted the one finding and four recommendations. The one finding covered the following area: improper recording of costs relating to settlement of an employee discrimination claim in Account 920, Administrative and General Salaries, instead of correct Account 426.5, Other Deductions, as required by Accounting Release AR-12. As a result of the audit, MEC made refunds to wholesale transmission customers and revised its accounting policies and procedures in the identified area of noncompliance.

2. Gas Tariff & Accounting

National Fuel Gas Supply Corporation (National Fuel) – Docket No. FA19-6-000. At National Fuel, DAA evaluated compliance with: (1) accounting requirements of the Uniform System of Accounts Prescribed for Natural Gas Companies under 18 C.F.R. Part 201; (2) reporting requirements of the FERC Form No. 2 under 18 C.F.R. § 260.1; and (3) selected provisions of National Fuel’s FERC Gas Tariff (Tariff).³⁸ The audit identified five findings and 19 recommendations that required National Fuel to take corrective action. The company did not contest the five findings and 19 recommendations. The five findings covered the following areas: (1) use of an inappropriate method of calculating AFUDC that only considered a portion of the short-term debt borrowed in the month such debt was incurred and that incorrectly applied the annual AFUDC rate it calculated to the period March through February of each year, rather than January through December, as specified in the Commission’s regulations, causing AFUDC to exceed the maximum permitted in years when short-term debt was outstanding for the entire year;

³⁷ *MidAmerican Energy Co.*, Docket No. FA19-2-000 (July, 2, 2020) (delegated letter order).

³⁸ *National Fuel Gas Supply Corp.*, Docket No. FA19-6-000 (July 15, 2020) (delegated letter order).

(2) improperly recording certain non-operating expenses, including charitable contributions, penalties, and lobbying costs, in operating expense accounts and improperly capitalizing membership dues and lobbying expenses as costs of construction; thereby overstating operating expenses and plant in service; (3) with respect to valuation of system gas, improperly valuing certain system gas activities at 90 percent, rather than 100 percent, of the cash-out index, resulting in understating the balance of gas owed to system gas, as well as various operating expense accounts used to record system gas activities under the fixed asset method, and improperly calculating the October 2018 production monthly index price, resulting in an erroneously high price and overpayment of a non-affiliated shipper when cashing out its balance; (4) improperly recording amounts for lost-and-unaccounted-for-gas (LAUF) and also for gas used by underground storage compressor stations in transmission – rather than the correct production and gas storage – expense accounts, and recording the cost of gas purchased to replace system gas encroachments in the incorrect production gas supply expense account, thereby reducing the transparency of these gas activities reported in the FERC Form No. 2; and (5) improperly netting shipper imbalance payables and receivables in Account 174, Miscellaneous Current and Accrued Assets, and netting imbalance cash-out settlement losses and gains in Account 495, Other Gas Revenues, and Account 182.3, Other Regulatory Assets, reducing the transparency of these gas activities reported in the FERC Form No. 2. As a result of the audit, National Fuel updated its accounting policies and procedures in areas of noncompliance, submitted corrected FERC Form No. 2 filings, and removed from its plant or operating expense accounts certain improperly recorded expenses, thereby preventing amounts from potentially being inappropriately collected through future rates.

3. Oil Tariff & Accounting

ONEOK NGL Pipeline, L.L.C. (ONEOK NGL) – Docket No. FA18-1-000. At ONEOK NGL, DAA evaluated compliance with Commission regulations for oil pipeline companies in 18 C.F.R. Parts 340-357, including: (1) the Uniform System of Accounts in 18 C.F.R. Part 352; (2) preservation of records requirements in 18 C.F.R. Part 356; (3) FERC Form No. 6 financial reporting requirements in 18 C.F.R. Part 357; and (4) select portions of ONEOK NGL's FERC transportation tariffs.³⁹ The audit identified six findings and 19 recommendations that required ONEOK NGL to take corrective action. The company did not contest the six findings and 19 recommendations. The six findings covered the following areas: (1) incorrectly calculating and reporting on Page 700 of FERC Form No. 6 the following: (a) depreciation expense, which was based on the market value of certain acquired assets rather than the assets' book value, as required by Commission regulations; (b) AFUDC depreciation, overstated because of improper inputs, such as unrelated amortization amounts and other items that duplicated amounts recorded in carrier property upon the completion of construction; and (c) rate base reported on line 5a of Page 700 of FERC Form No. 6, which incorrectly included the cost of carrier property under construction (i.e., CWIP), when only the cost of carrier property in service is to be reported; (2) improperly recording certain inactive and abandoned pipeline assets as carrier property in Account 30, Carrier Property; (3) transporting product on FERC jurisdictional gathering lines without nominations, contrary to ONEOK NGL's FERC Tariff No. 9, Item No. 45; (4) improperly charging and accounting for transportation revenues on its North Line at interstate, rather than the required intrastate, rates, thereby overcharging for these deliveries and overstating interstate transportation revenues; (5)

³⁹ *ONEOK NGL Pipeline, L.L.C.*, Docket No. FA18-1-000 (Jan. 9, 2020) (delegated letter order).

improperly recording revenue for the lease of a pipeline asset owned by its affiliate as rental revenue of its own; and (6) applying to carrier property assets depreciation rates that were not approved by and on file with the Commission, resulting in overstated depreciation and misreported amounts on Page 700 of FERC Form No. 6. As a result of the audit, ONEOK NGL restated its 2015-2018 FERC Form No. 6 filings and strengthened its accounting, reporting, and tariff implementation policies and procedures relating to the identified findings.

4. Electric Tariff & Accounting

Public Service Company of New Mexico (PNM) – Docket No. PA18-1-000. At PNM, DAA evaluated compliance with: (1) the terms, conditions, and rates of its OATT, including its transmission formula rate mechanism as provided in Attachment H of its OATT and other jurisdictional rates on file with the Commission; (2) the accounting requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Part 101; (3) the reporting requirements of the FERC Form No. 1 and Supplemental Form 3-Q under 18 C.F.R. § 141.1; (4) the regulations regarding OASIS prescribed in 18 C.F.R. Part 37; (5) the requirements of its MBR authorizations and the MBR regulations under 18 C.F.R. Part 35, Subpart H and the EQR filing regulations under 18 C.F.R. § 35.10b; and (6) the regulations governing nuclear plant decommissioning trust funds prescribed in 18 C.F.R. Part 35, Subpart E.⁴⁰ The audit identified 11 findings and 35 recommendations that required PNM to take corrective action. The company did not contest the 11 findings and 35 recommendations. The 11 findings covered the following areas: (1) upon its wholesale power marketing function employees' request, PNM's transmission function employees procured point-to-point (PTP) transmission service on certain paths for the marketing function, contrary to the Commission's Independent Functioning Rule; (2) incorrectly using estimated, rather than actual, transmission costs to price certain cost-based energy sales, resulting in overcharging a transmission customer; (3) PNM's transmission function improperly allowed its marketing function to use secondary network transmission service, rather than requiring that it use PTP transmission service, to deliver energy outside of PNM's control area, contrary to PNM's OATT; (4) improperly allowing network customers to submit terminations of network resources outside of OASIS, rather than through OASIS as required by Commission Order No. 676-H; (5) PNM did not obtain Commission approval, as required, in advance of recovering asset retirement obligation (ARO) costs in its transmission formula rate calculations, and also did not file its accounting entries with the Commission, as required, to reclassify approximately \$37 million from Account 108, Accumulated Provision for Depreciation of Electric Utility Plant (Major Only), to Account 435, Extraordinary Deductions; (6) PNM used deficient methods of calculating its AFUDC rate, causing it to collect AFUDC in excess of the maximum permitted by the Commission's regulations, in that PNM: (a) improperly included in its short-term debt rate the interest recorded on transmission and interconnection study advances paid to PNM; (b) incorrectly included unappropriated, undistributed subsidiary earnings as part of the equity component; and (c) incorrectly combined the costs of all debt issuances, rather than individually computing the costs of each debt issuance, to determine the weighted cost of long-term debt; (7) improperly accounting for upfront and quarterly commitment fees, paid for a credit facility, in Accounts 428, Amortization of Debt Discount and Expense, and 431, Other Interest Expense, respectively, rather

⁴⁰ *Public Service Co. of New Mexico*, Docket No. PA18-1-000 (July 7, 2020) (delegated letter order).

than in correct Account 930.2, Miscellaneous General Expenses; (8) improperly accounting for electric generating station remediation expenses as a general expense, in Account 930.2, Miscellaneous General Expenses, rather than as production-related expenses appropriately recorded in Account 506, Miscellaneous Steam Power Expenses (Major Only); (9) the improper posting on OASIS of certain transmission schedules associated with PNM's transmission and marketing functions as non-affiliated, rather than affiliated, transactions; (10) not executing transmission service agreements governing 15 non-affiliated transmission capacity reassignments prior to commencing the reassigned transmission service, contrary to section 23.1(b) of PNM's OATT, and not reporting these reassignments in EQR filings; and (11) reporting errors in EQR filings, including the improper reporting of cost-based power sales and unreported capacity reassignments. As a result of the audit, PNM made refunds to wholesale transmission customers and revised its accounting, reporting, and tariff-implementation policies and procedures in the identified area of noncompliance.

National Grid USA (National Grid) – Docket No. FA16-2-000. At National Grid, DAA evaluated compliance with: (1) cross-subsidization restrictions on affiliate transactions under 18 C.F.R. Part 35; (2) accounting, recordkeeping, and reporting requirements under 18 C.F.R. Part 366; (3) preservation of records requirements for holding companies and service companies under 18 C.F.R. Part 368; and (4) the Uniform System of Accounts for Centralized Service Companies under 18 C.F.R. Part 367. The audit also evaluated the associated public utilities' compliance with the Commission's accounting requirements for transactions with associated companies under 18 C.F.R. Part 101 and the applicable reporting requirements in the FERC Form No. 1, under 18 C.F.R. Part 141.⁴¹ The audit identified seven findings and 32 recommendations that required National Grid to take corrective action. The company did not contest the seven findings and 32 recommendations. The seven findings covered the following areas: (1) National Grid's two centralized service companies used improper composite depreciation rates to determine depreciation expense accrued on certain property, thereby accruing depreciation expense at rates not consistent with Commission accounting rules, which was then allocated and billed to their public utility affiliates and passed on through transmission formula rates to transmission customers; (2) the two centralized service companies did not consistently apply their documented cost allocation methods, nor timely update their general ledger system to reflect changes in the allocation percentages actually used to bill affiliates, leading to the over-allocation of costs to certain National Grid public utility subsidiaries; (3) the primary centralized service company improperly accounted for and allocated to public utility subsidiaries the lobbying component of industry association membership dues, which was improperly included in wholesale transmission rates; (4) the primary centralized service company improperly recorded donations in Account 921, Office Supplies and Expenses, and Account 930.2, Miscellaneous General Expenses, instead of correct Account 426.1, Donations; amounts recorded in Accounts 921 and 930.2 (including the donations) were allocated to, among others, National Grid's public utility subsidiaries, which recorded the amounts in the same Accounts 921 and 930.2, with some of the public utility subsidiaries improperly including the donation amounts in their transmission formula rates and transmission customer billing rates; (5) the same service company improperly accounted for various administrative and general (A&G) expenses in its books and records, misstating certain A&G accounts billed to the public utility subsidiaries, resulting in FERC Form No. 1 misreporting

⁴¹ *National Grid USA*, Docket No. FA16-2-000 (Nov. 15, 2019) (delegated letter order).

by the public utilities; (6) the public utility subsidiaries did not follow the instructions on page 429, Transactions with Associated (Affiliated) Companies, of their FERC Form No. 1 filings – in particular each: (a) reported on page 429 all costs billed between it and its affiliates, contrary to the instructions that require companies to report only non-power goods and services; (b) did not identify the specific non-power goods and services provided to and received from its respective affiliates; (c) did not explain in a footnote the allocation processes used by its affiliated central service companies, as required by the instructions; and (d) did not have coordination between the FERC Form No. 1 and FERC Form No. 60 reporting staffs – resulting in reporting inaccurate and incomplete information for transactions with associated companies; and (7) the two centralized service companies did not complete the FERC Form No. 60 reports filed during the audit period in accordance with all of the form’s general and specific schedule instructions, instead permitting deficiencies relating to (a) disclosure of the methods used to allocate costs to affiliates on Schedule XXI – Methods of Allocation and (b) adherence with various other schedule and page instructions. As a result of the audit, National Grid or its public utility subsidiaries made refunds to wholesale transmission customers and revised the accounting and reporting policies and procedures in the identified areas of noncompliance.

5. Mergers & Acquisitions

Exelon Corporation (Exelon) – Docket No. PA18-3-000. At Exelon, DAA evaluated whether Exelon and its public utility subsidiaries (collectively the Companies) complied with the conditions established in the Commission's November 20, 2014 order authorizing the merger of Exelon and Pepco Holdings, Inc (PHI). The audit also evaluated the Companies’ compliance with: (1) the tariff requirements governing their Commission-jurisdictional rates; (2) the accounting requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Part 101; and (3) the financial reporting requirements in 18 C.F.R. Part 141, focusing primarily on the transactions and costs associated with the merger.⁴² The audit identified four findings of noncompliance and made 17 recommendations for corrective action. The company did not contest the four findings and 17 recommendations. The four findings covered the following areas: (1) Exelon’s subsidiary Baltimore Gas & Electric (BG&E) improperly included the amortization of merger-related regulatory assets approved by the Maryland Public Service Commission in wholesale transmission rates, contrary to the conditions established in the Commission’s merger orders; (2) certain of the Companies improperly included merger-related costs in their transmission formula rate allocators, resulting in overstating their wholesale transmission revenue requirements; (3) merger commitment costs for the Exelon and PHI merger were improperly included in the Companies’ transmission revenue requirements; and (4) several of the Companies improperly recorded the amortization of certain regulatory assets and improperly included the amortization of the regulatory assets in their wholesale transmission formula rates without obtaining the required Commission approval to recover the regulatory assets. As a result of the audit, the Companies made refunds to wholesale transmission customers and revised their accounting policies and procedures in identified areas of noncompliance.

⁴² *Exelon Corp.*, Docket No. PA18-3-000 (Nov. 21, 2019) (delegated letter order).

6. No Audit Findings of Noncompliance

Louisville Gas and Electric Company and Kentucky Utilities Company (LG&E/KU) – Docket No. PA19-4-000. At LG&E/KU, DAA evaluated compliance with: (1) the approved terms, conditions, and rates of LG&E/KU’s OATT; and (2) the regulations regarding OASIS prescribed in 18 C.F.R. Part 37.⁴³ The audit resulted in no findings or recommendations that required LG&E/KU to take corrective action at this time. Audit staff reached this conclusion on the performance of audit steps outlined in the scope and methodology section of the audit report, review of material LG&E/KU provided in response to audit staff’s data requests and onsite visits, interviews with LG&E/KU employees, and a review of publicly available documents.

NYISO – Docket No. PA19-1-000. At NYISO, DAA evaluated compliance with: (1) provisions of the NYISO Tariff, business practices, corporate bylaws, policies, and codes of conduct related to its market administration obligations; (2) provisions of its Market Administration and Control Area Services Tariff (MST); (3) provisions of select agreements, including foundation agreements, service agreements, and interconnection study agreements; and (4) Order Nos. 825 and 831, and other relevant Commission orders.⁴⁴ The audit resulted in no findings or recommendations that required NYISO to take corrective action at this time. Audit staff reached this conclusion based on performance of the audit steps outlined in the scope and methodology section of the audit report, including an examination of materials provided by NYISO in response to data requests, on-site visits, interviews with NYISO employees, and review of publicly available documents.

E. Pending Contested Audit Matters

Dominion Energy Transmission, Inc. (DETI) – FA15-16-000. At DETI, DAA evaluated compliance with: (1) its FERC Gas tariff; (2) the accounting requirements of the Uniform System of Accounts (Natural Gas), under 18 C.F.R. Part 201; and (3) the reporting requirements of the FERC Form No. 2, under 18 C.F.R. § 260.1.⁴⁵ The audit identified six findings and 24 recommendations that required DETI to take corrective action. On September 27, 2017, DETI notified DAA that it accepted five of the six findings and intended to contest one finding. As a result of the accepted findings, incorrectly accounted for expenses were reclassified to accounts not used in the development of future cost of service rates.

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

⁴³ *Louisville Gas and Electric Co. and Kentucky Utilities Co.*, Docket No. PA19-4-000 (Feb. 21, 2020) (delegated letter order). Audit staff did not evaluate LG&E/KU’s compliance with the accounting requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Part 101, or the reporting requirements of the FERC Form No. 1 and Supplemental Form 3-Q under 18 C.F.R. section 141.1.

⁴⁴ *New York Independent System Operator, Inc.*, Docket No. PA19-1-000 (July 7, 2020) (delegated letter order).

⁴⁵ *Dominion Energy Transmission, Inc.*, Docket No. FA15-16-000 (Nov. 8, 2017) (delegated letter order).

AFUDC rate as required by the Commission's accounting requirements. DETI elected to have a paper hearing under the procedures in 18 C.F.R. Part 158. Initial and reply memoranda have been filed by interested entities. This matter is pending before the Commission.

F. Accounting Matters

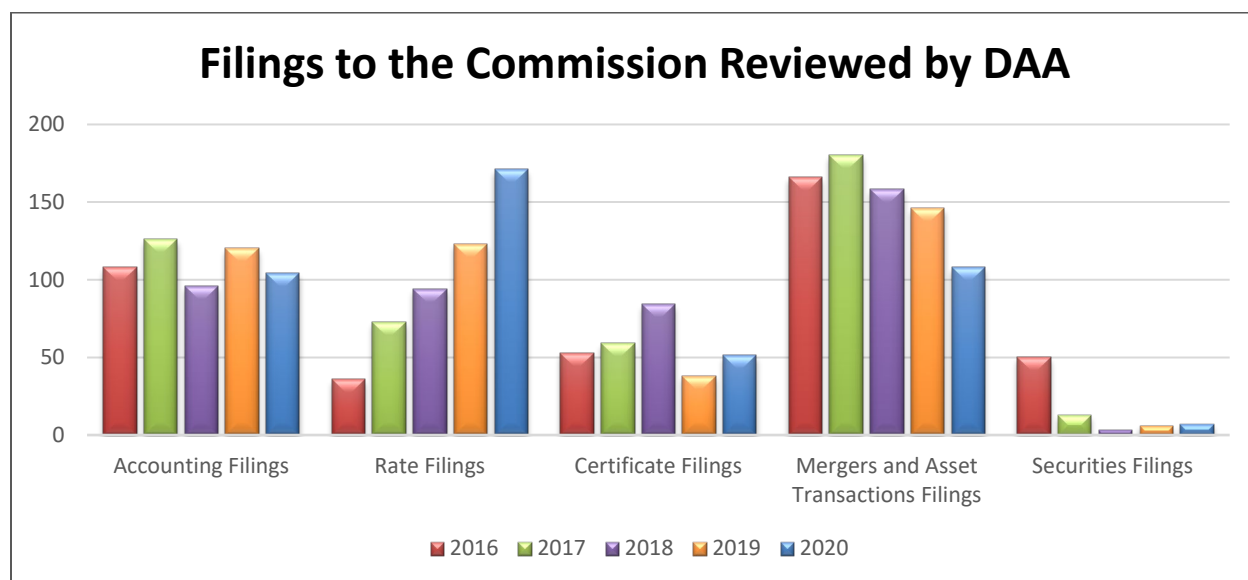
DAA administers the Commission's accounting programs established for the electric, natural gas, and oil industries as vital components of the Commission's strategy of setting just and reasonable cost-of-service rates. The foundation of the Commission's accounting programs is the Uniform Systems of Accounts codified in the Commission's regulations for public utilities and licensees, centralized service companies, natural gas companies, and oil pipeline companies. In addition, the Commission issues accounting rulings relating to specific transactions and applications through orders and Chief Accountant guidance letters based upon a consistent application of the Uniform Systems of Accounts. This body of accounting regulations, orders, and guidance letters comprises the Commission's accounting requirements and promotes consistent, transparent, and useful accounting information for the Commission and other stakeholders to set and monitor cost-of-service rates. DAA enables the Commission to achieve its strategic goal of setting just and reasonable rates through carefully considering and applying the Commission's ratemaking policies, past Commission actions, industry trends, and external factors (e.g., economic, environmental, and technological changes, and mandates from other regulatory bodies) that impact the industries under the Commission's jurisdiction.

A substantial part of DAA's accounting workload involves coordination across various Commission program offices to provide regulatory accounting analysis on various types of filings made by jurisdictional entities. DAA provides accounting expertise to Commission program offices in developing Commission policies and rulemakings to ensure these initiatives fully consider and evaluate accounting and financial issues affecting jurisdictional entities. DAA also holds pre-filing meetings with jurisdictional entities to inform them of relevant accounting requirements prior to making a filing with the Commission. To best serve the Commission and other stakeholders in these capacities, DAA monitors and participates in projects initiated by the FASB, Securities and Exchange Commission (SEC), Internal Revenue Service (IRS), and International Accounting Standards Board (IASB) that may impact the Commission or its jurisdictional entities.

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

1. Overview of FY2020 Filings Reviewed by DAA

In FY2020, DAA advised and acted on 441 proceedings at the Commission covering various accounting matters with cost-of-service rate implications, such as accounting for mergers and divestitures, asset transactions, early plant retirements, AFUDC, pensions and other post-retirement benefits, and income taxes. These proceedings included requests for declaratory orders, natural gas certificate applications, merger and acquisition applications, electric and natural gas rate filings, applications for issuance of securities, and requests for accounting approval. In many of these cases, DAA served in an advisory role to other program offices in identifying and analyzing the accounting implications of those requests. Over the past five years, DAA has reviewed over 2,000 Commission proceedings to ensure proper accounting is followed and to advise the Commission of potential rate impacts.



2. Requests for Approval of the Chief Accountant

In FY2020, DAA acted through the Chief Accountant’s delegated authority on 104 accounting filings requesting approval of a proposed accounting treatment or financial reporting matter.⁴⁶ The topics covered in these filings addressed various issues within the Commission’s accounting and financial reporting requirements for electric, natural gas, and oil pipeline entities. Of note in FY2020 was a continued high volume of accounting filings related to asset acquisitions similar to FY2019. There was also a notable increase in the number of filings related to accounting policy. These accounting requests related to the accounting for leased property, such as generation and transmission facilities, AFUDC waiver requests, updates on the pre-commercial test period for

⁴⁶ The accounting filings are docketed in the Commission’s eLibrary with the “AC” docket prefix (for requests for approval by the Chief Accountant, “AC Dockets”) and “AI” docket prefix (for requests for interpretations by the Chief Accountant, “AI Dockets”).

authorized projects, accounting issues relating to the Tax Cuts and Jobs Act of 2017, and a proposed change in accounting method relating to financial instruments.

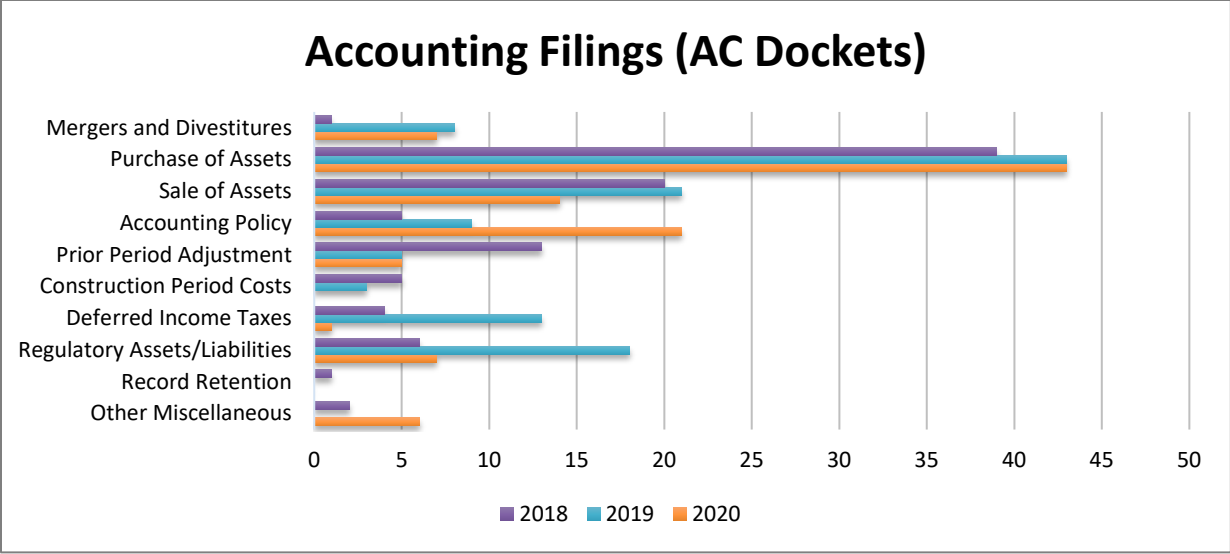
The Chief Accountant issued two guidance letters to address certain Accounting Standards Updates (ASU) and new Accounting Standards Codifications (ASC) issued by FASB. The areas affected by the ASUs during FY2020 included accounting for costs of implementing cloud computing arrangements (ASU 2018-15)⁴⁷ and accounting for current expected credit losses (ASU 2016-13).⁴⁸ The Chief Accountant also issued one guidance letter to address accounting for pipeline testing costs, as it relates to compliance with the Pipeline and Hazardous Materials Safety Administration’s final rule.⁴⁹ These guidance letters are discussed in further detail below.

The Chief Accountant continues to receive accounting requests from jurisdictional entities to make prior period adjustments. For ASUs and new ASCs that require a prior period adjustment and may affect the regulatory accounting of jurisdictional entities, the Commission’s accounting regulations require that entities file a request with the Commission and receive approval before using Account 439, Adjustments to Retained Earnings, for public utilities and licensees, centralized service companies, and natural gas companies, and Account 705, Prior Period Adjustments to Beginning Retained Income Account, for oil pipeline companies. In reviewing filings related to these accounts, DAA staff considers the changes to retained earnings as a result of the prior period adjustments and their effects on each entity’s capital structure. The Chief Accountant letter orders that grant approval to use Account 439 (or Account 705) are not intended to influence the outcome of any rate treatment established for the accounting adjustments. DAA encourages companies making such filings to include all relevant historical evidence and analyses to support the adjustments.

⁴⁷ See FASB Accounting Standards Update No. 2018-15, Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer’s Accounting for Fees Paid in a Cloud Computing Arrangement (August 2018).

⁴⁸ See FASB Accounting Standards Update No. 2016-13, Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments (June 2016).

⁴⁹ *Safety of Gas Transmission Pipelines: Maximum Allowable Operating Pressure Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments*, 84 Fed. Reg. 52180 (Oct. 1, 2019) (codified at 49 C.F.R. Part 192).



3. Rate Proceedings

In FY2020, DAA participated in 171 rate proceedings that continued to predominately involve electric formula rate proceedings, but also included natural gas and oil rate proceedings. DAA worked with other Commission program offices to discuss various accounting and financial issues and their effects on rates. Since many electric and natural gas rates are derived from accounting information in the FERC Form Nos. 1 and 2, DAA sought to ensure that accounting information in the rate proceedings was presented consistently with the Commission’s requirements. DAA also worked with other program offices to enhance the transparency of financial information affecting formula rates so that all stakeholders had an opportunity to review the costs included in rates. Recurring areas of emphasis in DAA’s review of rate filings during FY2020 included stranded costs associated with early plant retirements, asset retirement obligations, pensions and postretirement benefits other than pensions, taxes, capital structure and cost of service considerations, and allocation of expenses to production, transmission, and distribution.

4. Certificate Proceedings

In FY2020, DAA reviewed 51 natural gas pipeline certificate applications seeking various Commission authorizations, including to: construct, own, and operate new pipeline facilities; acquire pipeline facilities; abandon pipeline facilities in place, by removal, or by sale; and establish initial recourse rates for new pipeline service. DAA continued to work with other Commission program offices to assist in the development of just and reasonable rates by reviewing construction costs and other items used to determine initial recourse rates, including operation and maintenance expenses, depreciation, taxes, and overall rate of return. In reviewing such information during FY2020, DAA’s focus continued to be whether applicants followed Commission accounting requirements related to asset abandonment, construction, AFUDC, contributions in aid of construction, regulatory assets and liabilities, leases, and system gas.

5. Merger and Acquisition Proceedings

In FY2020, DAA reviewed 108 applications from public utilities under section 203 of the FPA, consisting of a combination of merger and divestiture transactions, and asset acquisition and sales transactions. The accounting review for merger transactions entails examining proposed accounting for costs to execute the transaction, costs to achieve integration and synergies, purchase accounting adjustments to assets and liabilities, and goodwill. DAA examines whether the accounting is consistent with any hold-harmless or other rate requirements discussed in a merger order. DAA also reviews accounting entries to determine that they provide enough transparency to the Commission and all interested parties for evaluating the impact on rates. For asset acquisition and sales transactions, staff conducts accounting reviews to examine whether applicants properly accounted for the purchase and sale of plant assets consistent with Commission regulations. The review focuses on whether jurisdictional entities maintain the appropriate original cost and historical accumulated depreciation of acquired utility plant and properly record acquisition premiums or discounts and gains or losses. DAA also consistently reminded jurisdictional entities to file accounting entries timely, within six months of a finalized merger or asset transaction, in accordance with Electric Plant Instruction No. 5 and the requirements of Account No. 102, Electric Plant Purchased or Sold.

6. Debt and Security Issuance Proceedings

In FY2020, DAA reviewed seven public utility security issuance applications. Section 204(a) of the FPA requires jurisdictional entities to receive Commission authorization before issuing securities or assuming liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person. In reviewing filings under section 204, the Commission evaluates an applicant's viability based on a review of financial statements submitted with the application, the applicant's interest coverage ratio, debt maturities, and cash-flow projections. DAA's review of debt and security applications provides critical analysis that helps prevent public utilities from borrowing excessive amounts of money and inappropriately using the proceeds to finance non-utility businesses without demonstration of the ability for repayment. This also ensures that future issuances of debt are consistent with the public interest.

7. Accounting Inquiries

In FY2020, DAA responded to 105 accounting inquiries from jurisdictional entities and other stakeholders on various accounting and financial topics. Accounting inquiries are made through the Compliance Help Desk, the Accounting Inquiries phone line and email, or directly to DAA staff. A large number of accounting inquiries during FY2020 sought accounting and financial reporting direction on capitalization of various costs, taxes, and functional classifications of plant. DAA responds to these accounting inquiries by providing informal accounting and financial reporting guidance based on Commission precedent and regulations, in addition to instructing individuals how to find documents and regulations using the Commission's eLibrary system⁵⁰ and Title 18 of the Code of Federal Regulations. Such informal accounting and financial reporting

⁵⁰ The Commission's eLibrary system can be accessed at elibrary.ferc.gov.

guidance is not binding on the Commission, and cannot grant waiver of a Commission regulation or order.

8. Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement

On December 20, 2019, the Chief Accountant issued accounting guidance in Docket No. AI20-1-000 relating to accounting for implementation costs incurred in a cloud computing arrangement that is a service contract. The accounting guidance was issued in response to multiple inquiries from industry participants regarding clarification on how to apply ASU No. 2018-15, *Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer's Accounting for Fees Paid in a Cloud Computing Arrangement*, within the framework and regulatory intent of the Commission's existing accounting requirements. ASU No. 2018-15 aligns the accounting for costs incurred to implement a cloud computing arrangement that is a service contract with pre-existing guidance on capitalizing costs associated with developing or obtaining internal-use software. ASU No. 2018-15 requires capitalized implementation costs to be reported on the balance sheet in the same line item as any prepayment of the service fees for the associated cloud computing arrangements, and related amortization expense to be reported in the same expense line item on the income statement as the expense for the service fees of the associated cloud computing arrangement.

The Chief Accountant's guidance letter permits jurisdictional entities to capitalize and amortize certain implementation costs, provided that entities adhere to the regulations of plant construction costs set forth under Part 101, Part 201, and Part 367 of the Commission's regulations.⁵¹ Staff assessed that jurisdictional entities have historically determined capitalizable internal-use software costs in a manner consistent with the requirements of ASC 350-40, which is an acceptable approach for accounting and financial reporting to the Commission. Comparably, implementation costs related to cloud computing arrangements are similar to the costs incurred to develop internal-use software and should therefore be accounted for on a similar basis. Accordingly, it is appropriate for jurisdictional entities to determine capitalized implementation costs related to cloud computing consistent with ASC 350-40. Examples of implementation costs that may be capitalized include upfront costs to integrate with on-premise software, coding, configuration, and customization. Service fees and other non-capital costs for the cloud computing arrangement are generally recorded as an expense.

⁵¹ See 18 C.F.R. Part 101, Electric Plant Instructions No. 3 (Components of Construction) and No. 4 (Overhead Construction Costs) (2020); 18 C.F.R. Part 201, Gas Plant Instructions No. 3 (Components of Construction) and No. 4 (Overhead Construction Costs) (2020); 18 C.F.R. Part 367, Service Company Property Instructions No. 367.51 (Components of Construction) and No. 367.52 (Overhead Construction Costs) (2020).

9. Accounting for Cumulative-Effect Adjustments to Retained Earnings Related to Credit Loss Measurement Methodology

On May 7, 2020, the Chief Accountant issued accounting guidance in Docket No. AI20-2-000 relating to accounting for cumulative-effect adjustments to retained earnings as it relates to implementing the FASB's accounting standard on credit losses. FASB issued ASU No. 2016-13, which adds FASB Accounting Standards Codification, Topic 326, *Measurement of Credit Losses on Financial Instruments*, to require companies to change the method of measuring credit losses, including uncollectible accounts receivable, from an incurred loss basis to a current expected credit loss (CECL) basis. ASU No. 2016-13 is required to be applied through a cumulative-effect adjustment to retained earnings as of the beginning of the first reporting period in which the guidance is effective. Staff has found that the Commission's Uniform System of Accounts accommodates recognition of expected credit losses on accounts receivable for jurisdictional public utilities and licensees, natural gas companies, oil pipeline companies, and centralized service companies. The Chief Accountant determined that the method of measuring expected credit losses under ASU No. 2016-13 is a reasonable methodology and is acceptable for Commission financial accounting and reporting purposes. To the extent a jurisdictional entity determines that a cumulative adjustment to its beginning retained earnings account is necessary to implement ASU No. 2016-13, the entity is authorized to make such an adjustment, and is relieved of the requirement to seek Commission approval to do so.⁵²

10. Accounting for Pipeline Testing Costs

On June 23, 2020, the Chief Accountant issued accounting guidance in Docket No. AI20-3-000 relating to accounting for pipeline testing costs incurred to comply with new federal safety standards. The accounting guidance was issued in response to multiple inquiries from jurisdictional entities seeking clarification on how to apply the new Pipeline and Hazardous Materials Safety Administration's (PHMSA) final rule (PHMSA Final Rule) to existing accounting instructions under Accounting Release No. 8 (AR-8), *Hydrostatic Testing of Gas Main and Pipelines*. The PHMSA Final Rule addresses, among other items, the safety of gas transmission pipelines, including actions an operator must take to reconfirm the maximum allowable operating pressure (MAOP) of natural gas pipelines not yet tested using the new federal safety regulations.⁵³ In AR-8, the Chief Accountant provided accounting guidance to allow capitalization of certain pipeline retesting costs necessary to comply with specific requirements under USAS B31.8 (1968 ed.)⁵⁴, which became federal standards under the Natural Gas Pipeline

⁵² See 18 C.F.R. Parts 101, 201, 367 (Account 439, Adjustments to Retained Earnings) and Part 352 (Account 705, Prior Period Adjustments to Beginning Retained Earnings Account) (2020).

⁵³ *Safety of Gas Transmission Pipelines: Maximum Allowable Operating Pressure Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments*, 84 Fed. Reg. 52,180 (Oct. 1, 2019) (codified at 49 C.F.R. Part 192).

⁵⁴ See USA Standard Code for Pressure Piping – Gas Transmission and Distribution Piping Systems, USAS B31.8 (1968 ed.).

Safety Act passed by Congress in 1968.⁵⁵ Here, the Chief Accountant guidance letter permits first-time and one-time retesting costs, relating to the PHMSA Final Rule and subsequent regulatory pipeline safety standards, to be capitalized. However, pipeline testing costs incurred under a planned maintenance program should be recorded as maintenance expense in the period incurred, consistent with the Commission's accounting regulations and precedents.⁵⁶

11. COVID-19 Pandemic Response

Consistent with Commission wide efforts to address industry concerns regarding the impact of the COVID-19 pandemic on company financial and operational activities, the Chief Accountant promptly issued three letter orders under delegated authority relating to the pandemic, and advised on one Commission order, in response to specific financial accounting relief requests. In Docket No. AC20-81-000, San Diego Gas & Electric Company (SDG&E) requested expedited approval of a 12-month waiver to modify its existing AFUDC rate calculation in response to the COVID-19 emergency. SD&E represented that it had not historically held a significant amount of cash and cash equivalents, but in response to the COVID-19 emergency, it might need to build significant short-term debt and cash reserves to preserve liquidity as an offset to potential capital market limitations from resulting financial market volatility, or in the event that it faces unexpected cash flow demands. SDG&E proposed to use a methodology for calculating its AFUDC that would enable it to exclude certain portions of its short-term debt from its AFUDC rate calculation, limited to a specific floor. The Chief Accountant approved SDG&E's waiver request, stating that it would allow the company to obtain the needed liquidity to respond to the COVID-19 emergency without having an unduly adverse impact on the company's AFUDC rate.

In Docket No. AC20-127-000, industry trade organizations EEI, INGAA, and the American Gas Association (AGA) (collectively, the Associations) requested, on behalf of their member companies, expedited approval of a 12-month waiver of certain provisions of Parts 101 and 201 of the Commission's regulations⁵⁷ in order for their member companies to modify their existing AFUDC rate calculations, beginning March 2020, in response to the COVID-19 pandemic. The Associations represented that their member companies were experiencing reductions in customer load/demand, particularly for the commercial and industrial sectors, and many member companies committed to working with state regulators to suspend service shutoffs for non-payment during the pandemic emergency. As a result, the member companies might experience cash flow constraints requiring increased interim financing capability, including the potential issuance of significant amounts of short-term debt. The Associations proposed that member companies be allowed to compute the AFUDC rate for the 12-month period starting with March 2020 using each company's simple average of the actual historical short-term debt balances for 2019, instead of current period short-term debt balances, leaving all other aspects of the AFUDC formula

⁵⁵ Natural Gas Pipeline Safety Act of 1968, Public Law 90-481, 82 Stat. 720, codified, as subsequently amended, at 49 U.S.C. 60101 *et seq.* (2018).

⁵⁶ See Docket No. AI05-1-000, Order on Accounting for Pipeline Assessment Costs (June 30, 2005); *see also* 18 C.F.R. Part 201, Gas Operating Expense Instruction No. 2, Maintenance (2020).

⁵⁷ See 18 C.F.R. Part 101, Electric Plant Instruction No. 3(17) and Part 201, Gas Plant Instruction No. 3(17) (2020).

unchanged. On June 30, 2020, the Commission issued an order granting the Associations' temporary waiver request, stating that the member companies' need to maintain liquidity and improve financing flexibility during this unique state of emergency warranted an exception to the AFUDC rate computation, and that the approved proposal would ensure removal from the AFUDC rate calculation of any distorting effects of temporary increases in the amount of current period short-term debt. In addition to granting the temporary waiver for the Associations' member companies, the Commission extended the 12-month waiver, beginning March 1, 2020, to all jurisdictional entities subject to the Commission's accounting regulations whether or not they are a member of the Associations, stating that such a waiver could provide companies with needed liquidity to address the COVID-19 emergency.

In Docket Nos. AC20-126-000 and AC20-130-000, the Chief Accountant responded to requests made by Plains Pipeline, L.P. and Rocky Mountain Pipeline System LLC, respectively, to recognize a goodwill impairment loss. The companies represented that their respective parent companies' market capitalizations declined significantly during the first quarter of 2020 as a result of the collapse of oil prices driven by both the decrease in demand caused by the COVID-19 pandemic and excess supply resulting in expected decreases in future cash flows for certain assets. The companies stated that the uncertainty related to oil demand would continue to have a significant impact on the investment and operating plans of their primary customers, and that these events constituted a triggering event requiring performance of impairment tests as of March 31, 2020. Based on the results of the impairment tests, the companies recognized goodwill impairment losses for their entire goodwill balances. The Chief Accountant found that the recordation of goodwill impairment was appropriate since the companies demonstrated that the goodwill impairment loss was material and unusual in nature.⁵⁸

12. Commission Order No. 864 Compliance

On November 21, 2019, the Commission issued Order No. 864,⁵⁹ a final rule which requires public utility transmission providers with transmission formula rates under an OATT, a transmission owner tariff, or a rate schedule to revise those transmission formula rates to account for any changes caused by the Tax Cuts and Jobs Act of 2017.⁶⁰ The Tax Cuts and Jobs Act, among other things, reduced the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018. This tax rate reduction resulted in a reduction in Accumulated Deferred Income Tax (ADIT) assets and liabilities on the books of most public utilities. Accordingly, public utilities are required to adjust their ADIT assets and ADIT liabilities to reflect the effect of the

⁵⁸ See 18 C.F.R. Part 352 (2020).

⁵⁹ *Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 169 FERC ¶ 61,139 (2019), *order on reh'g and clarification*, Order No. 864-A, 171 FERC ¶ 61,033 (2020).

⁶⁰ An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act).

change in tax rates in the period that the change is enacted.⁶¹ Furthermore, as a result of the federal income tax rate reduction, a portion of an ADIT liability that was previously collected from customers will no longer be due from public utilities to the IRS and is considered excess ADIT. Conversely, for public utilities that have an ADIT asset, the federal income tax rate reduction will result in a reduction to the ADIT asset, or deficient ADIT.

To adequately evaluate adjustments made to ADIT, Order No. 864 requires public utilities with transmission formula rates to make a filing demonstrating compliance with the final rule. A public utility can demonstrate that its formula rate already meets the requirements specified in the final rule, or it can make revisions to its formula rate to include: a mechanism to deduct any excess ADIT from or add any deficient ADIT to rate base; incorporate a mechanism to decrease or increase the income tax allowance by any amortized excess or deficient ADIT, respectively; and incorporate a new permanent worksheet that will annually track the information related to excess or deficient ADIT. Since issuance of the final rule, the Commission has received nearly 100 compliance filings to date. DAA has actively supported the other program offices in the overall review and assessment of each compliance filing. DAA has provided its expertise to ensure, among other things, that public utilities properly remeasure ADIT accounts to establish the excess or deficient ADIT, record a regulatory asset (Account 182.3) associated with deficient ADIT or a regulatory liability (Account 254) associated with excess ADIT,⁶² properly account for the amortization of excess or deficient ADIT, and support adequate amortization periods for the return or recovery of excess or deficient ADIT, respectively.

G. Forms Administration and Compliance

DAA staff administers and ensures compliance with certain Commission filing requirements. The Commission requires companies subject to its jurisdiction to submit financial statements, operational data, and annual and quarterly reports regarding jurisdictional sales. It uses these reports for various analyses, such as evaluations of whether existing rates continue to be just and reasonable. Other government agencies and industry participants also use them for a variety of business purposes.

1. Electric Quarterly Reports

Section 205 of the FPA, 16 U.S.C. § 824d (2018), and Part 35 of the Commission's regulations, 18 C.F.R. Part 35 (2020), require, among other things, that all rates, terms, and conditions of jurisdictional service be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements to require public utilities, including power marketers, to file EQRs summarizing the contractual terms and conditions in their

⁶¹ See 18 C.F.R. §§ 35.24 and 154.305 (2020); see also *Regulations Implementing Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes*, Order No. 144, FERC Stats. & Regs. ¶ 30,254 (1981) (cross-referenced at 18 FERC ¶ 61,163), *order on reh'g*, Order No. 144-A, FERC Stats. & Regs. ¶ 30,340 (1982) (cross referenced at 15 FERC ¶ 61,142).

⁶² See Docket No. AI93-5-000, *Accounting for Income Taxes*, (Apr. 23, 1993).

agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and providing transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.⁶³

In FY2020, the Commission received EQR submittals from nearly 2,800 entities each quarter. DAA assesses whether sellers have timely complied with the requirements set forth in the multiple orders surrounding EQR filings and, through automated validations, whether the data was accurate and reliable. DAA also reviews EQR issues that arise during audits and submits candidate entities that do not timely file their EQRs to OEMR for possible revocation of MBR authority. DAA held two EQR user group meetings in FY2020 to conduct outreach with the filing community and to discuss potential system improvements and enhancements. At the December 4, 2019 user group meeting, participants attended in person and via webcast/phone. The September 23, 2020 user group meeting was fully virtual with all participants attending via webcast. During FY2020, staff also updated the EQR Frequently Asked Questions (FAQ)⁶⁴, made updates to the EQR website, and provided additional assistance to filers. On June 18, 2020, in Docket No. RM01-8-000, the Commission revised its EQR reporting requirements to require time zone information to be reported in connection with transmission capacity reassignments and clarified information that should be reported in the EQR with respect to ancillary services, including Black Start, and certain tariff-related information.⁶⁵

2. eForms Refresh Project

On April 16, 2015, the Commission directed Commission staff to begin the process of replacing its electronic filing format used for many of the forms submitted by industry, as the current filing software is no longer supported.⁶⁶ The eForms refresh project included FERC Form Nos. 1, 1-F, 3-Q (electric), 2, 2-A, 3-Q (natural gas), 6, 6-Q, 60, and 714 (collectively, Commission Forms). On June 20, 2019, the Commission issued a final rule adopting XBRL as the standard for

⁶³ *Revised Public Utility Filing Requirements*, Order No. 2001, 99 FERC ¶ 61,107, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, 125 FERC ¶ 61,103 (2008).

⁶⁴ See Electric Quarterly Report Frequently Asked Questions, *available at* <https://www.ferc.gov/about/what-ferc/frequently-asked-questions-faqs/frequently-asked-questions-electric-quarterly>.

⁶⁵ *Revisions to Electric Quarterly Report Filing Process*, 171 FERC ¶ 61,214, *order denying reh'g*, 172 FERC ¶ 61,141 (2020).

⁶⁶ *Electronic Filing Protocols for Commission Forms*, 151 FERC ¶ 61,025 (2015).

filing these forms.⁶⁷ In March 2020, the Commission held a virtual staff-led technical conference via webcast to discuss the use of XBRL for filing the Commission Forms. On July 17, 2020, the Commission issued an order adopting the final XBRL taxonomy, protocols, implementation guide, and other supporting documents. The Commission also established an implementation schedule for filing the Commission Forms using the XBRL process.⁶⁸ In particular, the schedule required these forms to be submitted using the XBRL process starting with the third quarter of 2021 filings for FERC Form Nos. 3-Q (electric), 3-Q (natural gas), and 6-Q and indicated that all of the other Commission Forms due subsequent to the third quarter of 2021 must be submitted using the XBRL process.

3. Financial Forms

DAA administers and oversees compliance with FERC Form Nos. 1, 1-F, 2, 2-A, 3-Q (gas and electric), 6, 6-Q, 60 and FERC-61. During FY2020, the Commission received approximately 2,500 financial forms submittals. On March 13, 2020 and April 2, 2020, in response to the National Emergency declared concerning COVID-19, the Commission issued notices extending the filing deadlines for certain Commission forms (including EQR submittals) for filing entities that were unable to meet the deadline due to steps they took to meet the emergency conditions.⁶⁹ In August 2020, the Commission also provided relief to parties needing extensions of time to file certain Commission forms as a result of emergency conditions in the Gulf Coast area of the United States caused by Hurricane Laura. Specifically, the Commission extended until September 30, 2020, certain deadlines for filing Commission forms.⁷⁰

⁶⁷ *Revisions to the Filing Process for Commission Forms*, Order No. 859, 167 FERC ¶ 61,241 (2019).

⁶⁸ *Revisions to the Filing Process for Commission Forms, Order on Technical Conference*, 172 FERC ¶ 61,059 (2020).

⁶⁹ *Notice Granting Extension of Time*, Docket No. AD20-11-000 (Mar. 19, 2020); *Notice Granting Extension of Time*, Docket No. AD20-11-000, *et al.* (Apr. 2, 2020).

⁷⁰ *Notice Granting Extension of Time*, Docket No. AD20-6-000 (Aug. 28, 2020).

DIVISION OF ANALYTICS AND SURVEILLANCE

A. Overview

The Division of Analytics and Surveillance (DAS) develops surveillance tools, conducts surveillance, and analyzes transactional and market data to detect potential manipulation, anticompetitive behavior, and other anomalous activities in the energy markets. DAS focuses on: (1) natural gas surveillance; (2) electric surveillance; and (3) analytics for reviewing market participant behavior. The analysts and economists in DAS identify market participants whose conduct may potentially call for investigation or further Commission action. They do this not only by conducting surveillance and inquiries of the natural gas and electric markets, but also by reviewing market monitor referrals⁷¹ and Hotline complaints against the non-public data available to the Commission. This internal review process reduces burden on the industry by resolving some matters without the need for investigation. When an investigation is opened, DAS staff participates in investigations with attorneys from DOI, providing detailed transactional analyses, market event analyses, and subject matter expertise.

To perform these functions, access to high quality, relevant, and timely data is essential. Since the creation of DAS in 2012, the Commission has been enhancing its data collection through orders, agreements, and subscription services in a manner designed to minimize burden on market participants. In Order No. 760, the Commission directed the ISOs/RTOs to provide, on an ongoing basis and in a format consistent with how the data is collected in each market, critical information on market bids, offers, and market outcomes.⁷² On average, the Commission receives, on a non-public basis, approximately eight gigabytes of data in more than 1,380 tables each day from the six organized markets combined. Each ISO/RTO database is different, and DAS is responsible for understanding the particular nuances of each database and preparing them for use in surveillance screens and analyses.

Similarly, pursuant to Order No. 771,⁷³ the Commission gained access to the electronic tags (eTags) used to schedule the transmission of electric power interchange transactions in jurisdictional wholesale markets by requiring that each covered eTag identify the Commission as a party authorized to review its contents. The Commission has access to approximately 11 million eTags and gains access to approximately 5,000 new eTags each day. The Commission also routinely receives non-public physical electric and natural gas market data from the ICE and a subset of the Large Trader Report from the Commodity Futures Trading Commission (CFTC) through a Memorandum of Understanding. DAS staff continue to use these data sources, EQR data, and data from a variety of subscription-based services, extensively.

⁷¹ Specific examples of this review of market monitor referrals are included in DOI Section F.2. of this report under “Illustrative MMU Referrals Closed with No Action.”

⁷² *Enhancement of Electricity Market Surveillance and Analysis through Ongoing Electronic Delivery of Data from Regional Transmission Organizations and Independent System Operators*, Order No. 760, 139 FERC ¶ 61,053 (2012).

⁷³ *Availability of E-Tag Information to Commission Staff*, Order No. 771, 141 FERC ¶ 61,235 (2012).

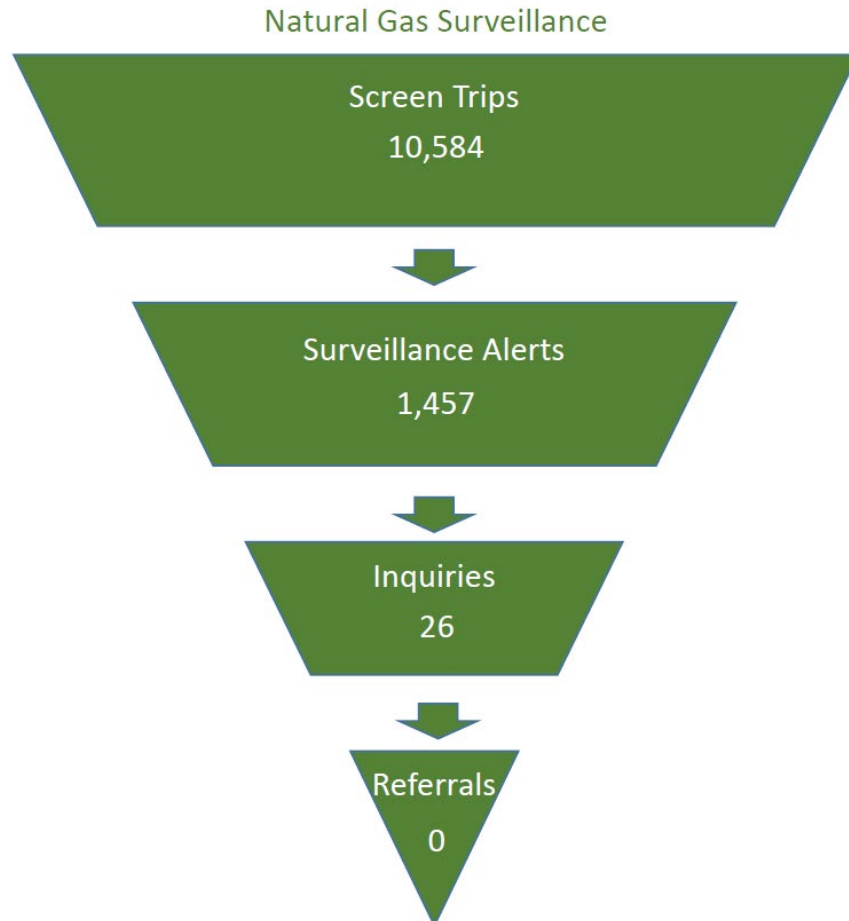
B. Surveillance

As part of its surveillance function, DAS develops, refines, and implements surveillance tools and algorithmic screens to perform continuous surveillance and analysis of market participant behavior, economic incentives, operations, and price formation, both in the natural gas and electricity markets. In the context of surveillance, DAS seeks to: (1) detect anomalous activities in the markets; and (2) identify potential investigative subjects. When a surveillance screen trips, staff conducts a series of analyses to gain information about the activity that caused it. First, staff evaluates the activity using available market data and information to determine whether there is a fundamentals-based explanation for the activity. Most often, staff finds such an explanation. However, when the follow-up analyses fail to explain the screen trip or surveillance alert, staff performs a more in-depth review of the conduct, which may involve contacting the market participant to request additional information and discuss the conduct at issue. Staff classifies this enhanced review as the opening of a surveillance inquiry. If, after conducting a surveillance inquiry, staff is still concerned that there is a potential violation, it will recommend that DOI open an investigation into the matter.

1. Natural Gas

DAS conducts surveillance and analysis of the physical natural gas markets to detect potential manipulation and anti-competitive behavior. Automated natural gas screens cover the majority of physical and financial trading hubs in the United States, monitoring daily and monthly markets. These screens and data feeds alert staff to anomalous market conditions and market participant actions based on a review of supply, demand, pipeline utilization, operational notices, and physical and financial trading. Asset-based screens evaluate natural gas trading around infrastructure, including natural gas storage, pipeline capacity, and electric generation. In addition, DAS uses Large Trader Report data from the CFTC to weigh potential financial incentives that might encourage a market participant to engage in a manipulative scheme.

In FY2020, natural gas surveillance screens produced approximately 10,594 screen trips. Staff reviewed these automated screen trips, compared the conduct that triggered the screen trips to conduct at other hubs, and evaluated whether a fundamentals or physical asset-based explanation existed for the activity. DAS also reviewed other observed anomalous market outcomes for potential concern. In FY2020, staff reviewed and dismissed most of the screen trips as consistent with concurrent conditions. Where concerns remained, staff classified specific screen trips and market activity as “surveillance alerts.” Staff documented 1,457 surveillance alerts that ranged in severity from low to high concern. When concerns persisted through more thorough review, DAS opened a surveillance inquiry, a more in-depth staff review of the specific trading behavior, which in some cases involves contacting market participants for additional information or to discuss the conduct at issue. In FY2020, DAS conducted 26 such natural gas surveillance inquiries. DAS closed all of those inquiries with no further action and did not refer any to DOI for investigation.

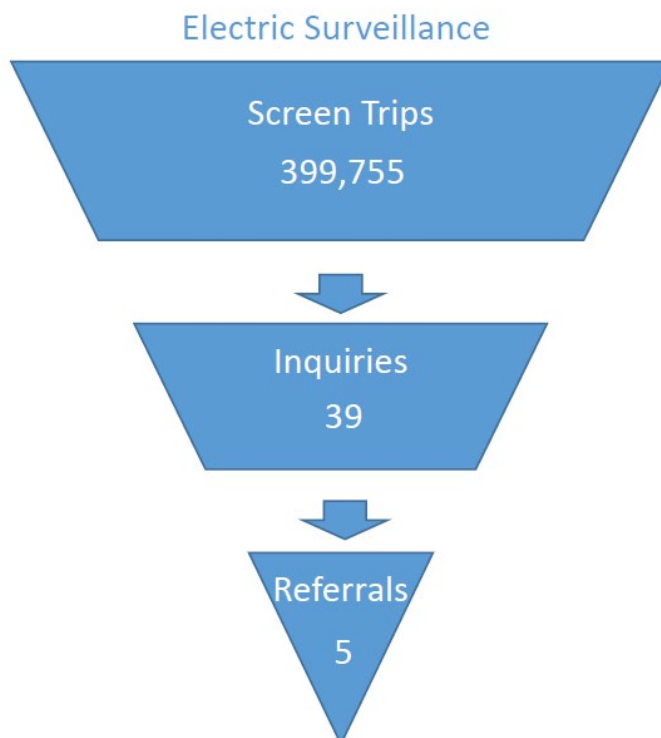


2. Electricity

DAS accesses data from a variety of sources to screen for anomalies and potentially manipulative behavior in the ISOs/RTOs and bilateral wholesale electricity markets. During FY2020, staff ran monthly and weekly screens to identify patterns by monitoring the interactions between bids and cleared physical and financially settled electricity products. In particular, these screens identify financial transmission rights and swap-futures that settle against nodes that are affected by transmission constraints where market participants also trade virtuals, generate electricity, purchase electricity, or move power between Balancing Authorities.

During the fiscal year, staff continued to refine its processes for screening to detect: (1) uneconomic virtual transactions by node, zone, and constraint; (2) potential day ahead and real time market congestion manipulation that would benefit financial transmission rights (FTRs), synthetic real time FTRs, swap-futures positions for physical load and generation portfolios; (3) anomalies in physical offer patterns, particularly in non-price based parameters; (4) abnormal out-of-market payments; (5) irregularities in capacity market sell offers; and (6) loss making physical fixed-price offer strategies in bilateral electricity markets. DAS also continued to bolster its tools to view patterns of behavior on a portfolio basis, across Balancing Authority borders and jurisdictional commodities.

Each month during FY2020, DAS ran and reviewed 84 electric surveillance screens; monthly, hourly and intra-hour sub-screens; and reports for over 38,000 hub and pricing nodes within the six ISOs/RTOs. Additionally, DAS screened non-ISO/RTO markets and cross-ISO/RTO portfolio trades for potential manipulation. In reviewing screen trips and, in some cases, after communicating with the ISO/RTO MMUs, DAS identified 39 instances of market behavior that required further analysis through a surveillance inquiry. Of the 39 electric surveillance inquiries, five were referred to DOI for investigation, 28 were closed with no referral, and six remain open with DAS staff continuing its analytic work.



3. Illustrative DAS Surveillance Inquiries Closed with No Referral

Market Manipulation (Gas). DAS natural gas surveillance screens identified a market participant selling at low prices and with moderate market concentration in bidweek trading at a hub in the West for a few bidweeks, while holding large short financial basis positions. This created short exposure to next-month bidweek indices such as Platts Inside FERC Gas Market Report (IFERC). Staff contacted the market participant, who explained that: (1) the participant needed to sell gas acquired under a long-term contract; (2) the financial positions hedged this gas, transport capacity, and storage capacity for the prompt month and out several forward months; and (3) the short index exposure from physical trading provided a hedge against a negative price blowout from pipeline curtailments. After staff reviewed additional information provided by the market participant and verified the explanations provided, DAS closed the surveillance inquiry with no referral to DOI.

Market Manipulation (Gas). DAS natural gas surveillance screens identified a producer that bought gas with high market share, losses, and a large long financial basis position during multiple bidweeks at a northeastern hub. Staff was concerned that the company was providing support for its produced gas and financial basis positions. Staff arranged a call with the company, where it explained how its financial basis hedged its pipeline transport to a more premium market, and that the prices at the receipt location were sufficiently low relative to the delivered markets to justify the physical purchases. DAS staff examined the company's trading and verified the explanations provided. Further DAS findings showed that the company's trading temporally aligned with other companies' trading, and that trades occurred in the context of reasonable bid-ask spreads. DAS closed the surveillance inquiry with no referral to DOI.

Market Manipulation (Gas-Electric). DAS evaluated a bidweek trip where a market participant bought at high prices in the middle of bidweek, while it was long basis futures. Staff also observed the market participant actively trading in associated power futures at the time of this concerning physical gas purchases. DAS contacted the market participant, who stated that these purchases were part of a spark spread strategy and that the gas purchases were supported by index gas premiums at the time of purchase. After staff examination of the additional information provided, market heat rates, and financial product trading, DAS closed the inquiry without referral to DOI.

Market Manipulation (Gas). DAS natural gas surveillance screens identified a market participant purchasing at a few hubs in the West at some of the highest prices of the hubs' bidweek trading. The participant also held large long financial basis positions and short index future positions; these financial positions created long exposure to next-month bidweek indices like IFERC at these locations, and these positions would benefit from higher physical trading prices. Staff discussed these trading behaviors with the market participant, as well as the company's market view on the impact of an anticipated new pipeline. After consideration of the additional information provided, the participant's market view and details of the new pipeline, DAS closed the inquiry without referral to DOI.

Market Manipulation (Electric). Several of DAS' surveillance screens flag virtual bidding behavior that appears uneconomic or otherwise anomalous. In one such screen trip, a market participant had traded virtual load into a leveraged swap-futures position at NYISO Zone A. DAS called the market participant, who described a fuller spread strategy that included the Zone A positions. Additionally, the market participant provided contemporaneous documentation of the fundamental factors (e.g., forecasted vs. expected load) that it considered when making the trades. Because of this explanation and the contemporaneous documentation of the strategy, DAS closed this inquiry without a referral.

Market Manipulation (Electric). DAS staff routinely reviews transmission data (e.g., e-Tags provided under Order No. 771) as part of its screening of interchange transactions. In FY2020, DAS electric surveillance screens flagged a pair of market participants in the non-ISO/RTO West exchanging identical amounts of power during the same market hour, resulting in two market participants paying transmission charges for essentially no flow of power. DAS staff contacted the relevant parties to request additional information about these transactions. These round-trip transactions were the result of two separate bilateral transactions: the first involved the export of carbon-free electricity from a generator to a market participant, ostensibly in exchange for replacement power from an unspecified energy source. In the second transaction, a CAISO load-

serving entity purchased zero-carbon energy from the same market participant involved in the first transaction. A delay in conducting the second transaction led to circular electric scheduling for several months. When the second transaction was finalized, the circular scheduling ceased, and the first market participant exported its carbon-free energy directly to the load-serving entity purchasing it. After verifying and considering the additional information provided by the market participants, DAS staff closed the inquiry without a referral to DOI.

Market Manipulation (Electric). DAS electric surveillance screens identified a market participant who traded virtual supply uneconomically over a two-month period at NYISO Zone G, while also holding a slightly leveraged swap-futures position at that location. Upon closer analysis, staff determined that part of the swap-futures belonged to a different strategy in the market participant's portfolio. The virtual position instead matched a short day ahead swap and a separate, long real time swap position. The market participant had profitably arbitrated a pricing discrepancy between the day ahead and real time futures markets and had no remaining floating price exposure. While staff identified price divergence between day ahead and real time potentially caused by the market participant, that divergence was relatively small and the NYISO Tariff allows for the mitigation of any trading that causes persistent hourly deviations. Accordingly, DAS staff closed the inquiry without a referral to DOI.

C. Analytics

During FY2020, DAS worked on approximately 50 investigations, some of which are discussed above in the DOI section. Many of these investigations involved allegations of manipulation in the Commission-jurisdictional natural gas and electricity markets, or violations of tariff provisions that are intended to foster open, competitive markets. DAS' investigative activities generally include: (1) analyzing companies' portfolios, transactions, and other market actions; (2) identifying patterns of market activity that could indicate potential market manipulation or other violations and time periods in which they may have occurred; (3) assessing market conditions and other contextual information during periods of potential manipulation or other violations; (4) supporting DOI in taking investigative testimony; and (5) calculating the amount of unjust profits and market harm resulting from alleged violations to assist with determining a civil penalty recommendation under the Commission's penalty guidelines. Upon completion of the analytical process, staff develops data-based explanations to inform the structure and substance of further investigation, settlement discussions, and Commission actions. Staff also coordinates internally to refine and develop new screens to detect improper behavior discovered in prior investigations.

D. Market-Based Rate *Ex Post* Analysis

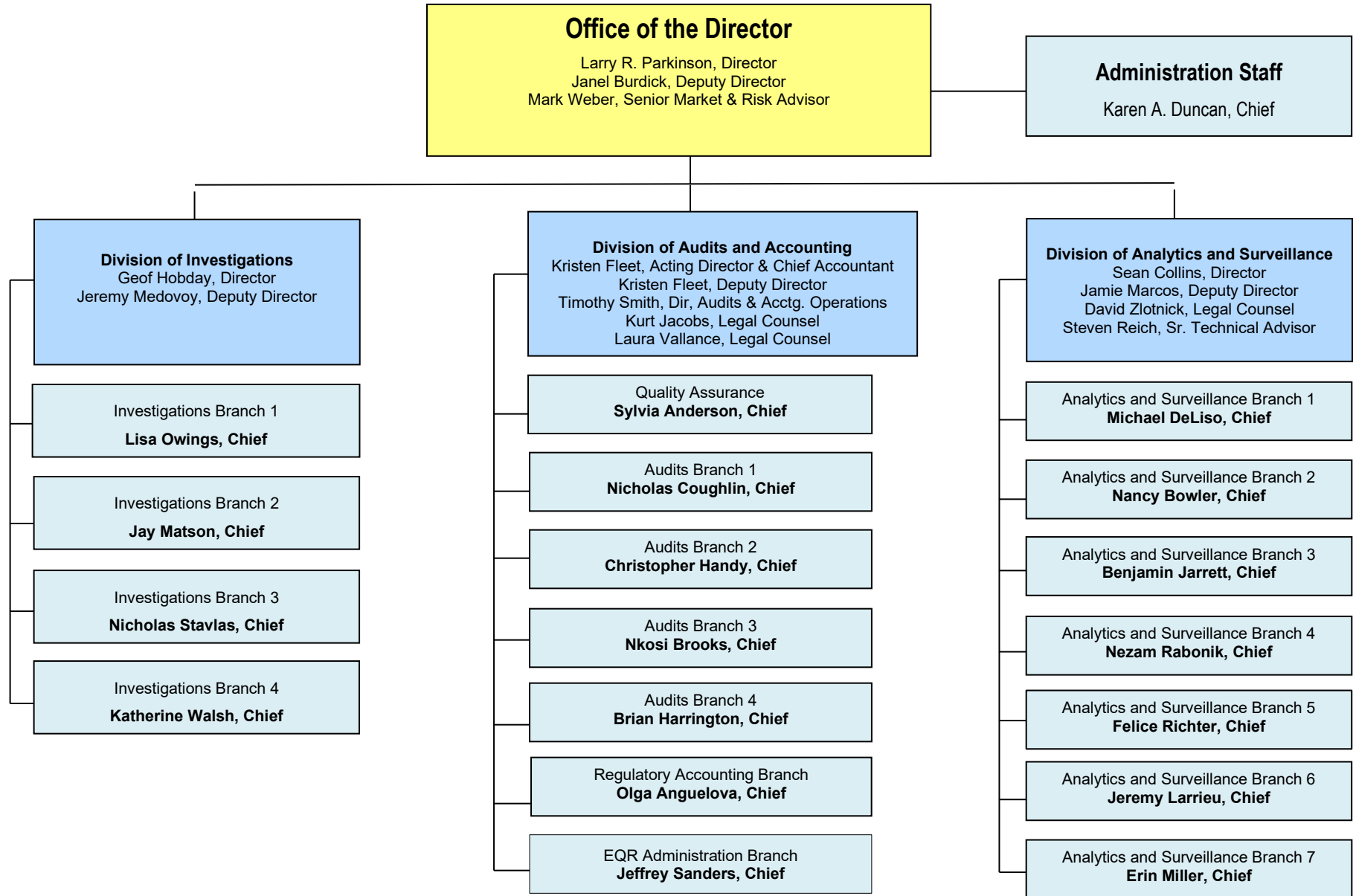
Following the September 2019 realignment of the functions performed by the Division of Energy Market Oversight (DEMO), DAS became responsible for conducting analytical reviews of wholesale electric market-based rate transactions to detect the potential exercise of market power. This *ex-post* analysis was formerly performed by staff assigned to Enforcement's DEMO who are now assigned to DAS. To accomplish this function in FY2020, DAS staff developed, refined, and implemented tools and algorithmic indicators to conduct ongoing analysis of transactional and other market data to ensure that jurisdictional rates remain just and reasonable and not unduly

discriminatory or preferential. This *ex post* analysis evaluated transactions against market fundamentals at the time of execution, with the primary goal of identifying outcomes that may be inconsistent with expectations of a competitive market, and thus an indication of a potential exercise of market power. Once such outcomes were identified, DAS coordinated with other Commission program offices to determine whether to recommend the Commission take action to remedy market power concerns. DAS also used these tools to assist in analyzing applications and filings for market-based rates, public utility mergers, and other docketed proceedings. During FY2020, DAS staff reviewed over 2.6 million market-based rate transactions filed through the Commission's EQRs by 187 sellers of wholesale energy. Staff routinely analyzed the combined results of 17 statistical indicators to detect potential instances of the exercise of market power within 63 geographic regions or market hubs.

E. Data Management

During FY2020, DAS focused on three initiatives to enhance its collection and use of data collected under Order No. 760. First, under an initiative started in FY2019, DAS continued to enhance communication channels with the six ISOs/RTOs. This initiative improved data model design and enhanced responses to Commission analyst inquiries about how to utilize data received under Order No. 760. Second, DAS and FERC IT staff developed a process that uses software to automate data model releases submitted by the ISOs/RTOs. This approach reduced data model development times by 80% and reduced human error sometimes introduced during the data model release process. Additionally, DAS and FERC IT staff invested the time saved in the data model release process to deploy new maintenance enhancements on the Order No. 760 databases, and to develop new post-data model release data quality checks. Finally, in FY2020, DAS launched a data warehouse effort, which aims to simplify analysts' use of Order No. 760 data.

APPENDIX A: OFFICE OF ENFORCEMENT ORGANIZATION CHART (CURRENT)



APPENDIX B: FY2020 CIVIL PENALTY ENFORCEMENT ACTIONS⁷⁴

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
Emera Energy Incorporated, Docket No. IN20-2-000, Order Approving Stipulation and Consent Agreement, 170 FERC ¶ 61,007	\$5,000 civil penalty; \$14,120 disgorgement.	The Commission approved a Stipulation and Consent Agreement between Enforcement and Emera Energy Incorporated (Emera) resolving Enforcement’s investigation into whether the company submitted Fuel Price Adjustments that did not reflect an arm’s length fuel purchase transaction in contravention of ISO-NE Tariff, market Rule 1, Appendix A § III.A.3.4(b). Enforcement found that Emera’s prices did not accurately reflect market prices on some occasions. Under the terms of the settlement, Emera admitted to the facts, but neither admitted nor denied the violation.
Exelon Generation Company, LLC, Docket No. IN20-3-000, Order Approving Stipulation and Consent Agreement, 170 FERC ¶ 61,008	\$32,500 civil penalty; \$101,756 disgorgement.	The Commission approved a Stipulation and Consent Agreement between Enforcement and Exelon Generation Company, LLC (Exelon) resolving Enforcement’s investigation into whether the company submitted erroneous data to ISO-NE. Enforcement’s investigation found that Exelon violated 18 C.F.R. §§ 35.41(a) and (b) and ISO-NE Tariff Market Rule 1 § III.1.7.20(b) and Tariff § III.13.6.1.1.2, when it erroneously reported the type and quantity of fuel it needed to start up the company’s Mystic 7 generating unit. This error caused Exelon to be overcompensated when the unit was dispatched for reliability purposes. Under the terms of the settlement, Exelon admitted the facts and violation.

⁷⁴ A list of all post-EPA 2005 civil penalty orders is available at <http://www.ferc.gov/enforcement/civil-penalties/civil-penalty-action.asp>.

<p>Calpine Corporation, Docket No. IN17-1-000, Order Approving Stipulation and Consent Agreement, 170 FERC ¶ 61,092</p>	<p>\$400,000 civil penalty.</p>	<p>The Commission approved a Stipulation and Consent Agreement between Enforcement, Texas Reliability Entity, Inc. (Texas RE), NERC, and Calpine Corporation (Calpine) resolving Enforcement’s investigation into whether Calpine violated the Reliability Standard for protection systems maintenance and testing, PRC-005-1 R2, as well as CAISO Tariff section 9.3.10.3.1, relating to forced outages, of which 79 instances involved alleged falsified records. Enforcement’s investigation further found 215 instances of noncompliance with PRC-005-1 R2, two of which involved violations of CAISO Tariff section 9.3.10.3.1 because employees were aware that a generator was unable to run but did not report an outage. Under the terms of the settlement, Calpine admitted to the facts, but neither admitted nor denied the violations.</p>
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