BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Spire Missouri, Inc.'s d/b/a Spire Request for Authority to Implement a General Rate Increase for Natural Gas Service Provided in the Company's Missouri Service Areas.	)))))	**Case No. GR-2021-0108**

STAFF REPORT

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through the undersigned counsel, and files its *Staff Report* and states as follows:

1. On November 12, 2021, the Commission issued its *Amended Report and Order* ("Order") and, among other things, directed Staff, Spire Missouri, and OPC to provide 60-day status reports of the progress in Staff's completion of its audit and determination that Spire Missouri is in compliance with the USOA requirements for capitalized overheads. The Order further directs that the first of these status reports shall be submitted on or before January 17, 2022.

2. On January 14, 2022, Staff filed its *Status Report* in which it noted that Staff's audit was ongoing and included in its *Status Report* a timeline of meetings and events in its audit that was attached Appendix A.

3. Since the filing of its *Status Report*, Staff has continued to meet and complete its audit. Staff is now providing the Commission with the results of its audit and a list of recommendations:[1]

1) Spire shall increase the New Growth Support department's capital transfer rate to ** ████ **.

2) Spire shall conduct new time studies of the New Growth Support department every four years or as often as changes to the business environment warrant.

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[1] The full results of Staff's audit and recommendations is attached and incorporated herein.

3) Spire's future time studies of the New Growth Support department shall consider a two-week period reasonably selected from each quarter of the year.

4) Spire shall increase the Engineering Design department's capital transfer rate to ** [redacted] **.

5) Spire shall conduct an analysis of cancelled work orders every four years or as often as changes to the business environment warrant to maintain the Engineering Design department's capital transfer rate.

6) Spire shall cease capitalizing training costs unless it can demonstrate that the conditions specified in the USOA are applicable.

7) Spire shall continue with its current methodology of using operation departmental direct charges to distribute operation departmental overheads to capital.

8) Spire shall continue with its current methodology to capitalize supervisory costs.

9) Spire shall capitalize employee benefits by applying the composite ratio of capital and removal labor to total labor.

10) Spire shall capitalize the insurance premiums of its worker's compensation and general liability policies based on the results of its Insurance Use Study, with Staff's recommended modifications.

11) Spire shall cease capitalizing the insurance premiums of its Directors & Officers, Fiduciary, and Cyber Liability policies.

12) Spire shall continue to charge all insurance premiums for its property insurance to O&M.

13) Spire shall begin capitalizing a portion of the deductibles paid for worker's compensation claims as calculated in Spire's Use Study.

14) Spire shall maintain documentation to show the methodology to capitalize worker's compensation claim deductibles result in each work order bearing its equitable proportion of such costs.

15) Spire shall begin capitalizing a portion of the deductibles paid for general liability claims as calculated in Spire's Use Study.

16) Spire shall maintain documentation to show the methodology to capitalize general liability claim deductibles result in each work order bearing its equitable proportion of such costs.

17) Spire shall capitalize A&G labor with the transfer rates recommended by PwC, increased for seasonality.

18) Spire shall engage PwC to conduct studies of two additional time periods during the remainder of Spire's fiscal year 2022.

19) Spire shall capitalize costs in Account 921 as found in Spire's study of IT costs, without adjustments for diversity in practice or targeted departmental adjustments.

20) Spire shall make no accounting entries for overhead costs capitalized from June 1, 2021, through December 22, 2021, as a result of this audit, as those costs will be evaluated in future rate proceedings.

21) Spire shall defer the cost of its non-operational A&G overheads to a regulatory asset beginning on December 23, 2021. The deferred costs are to be quantified by applying the rate recommended by the PwC, plus a general adder for seasonality, to the A&G overhead costs incurred since December 23, 2021.

22) Spire shall record an adjusting entry to the deferred overhead costs in order to reflect the annual results of PwC's time studies, when the results are known.

23) Spire shall maintain documentation of the calculation of costs deferred so that they may be sufficiently audited in Spire's next general rate case.

24) Spire shall be required to maintain records of overheads allocated to work orders, the relationship to construction of such overhead costs, and the basis of distribution of the capitalized overheads.

WHEREFORE, Staff submits this *Staff Report*, consistent with the Commission's *Amended Report and Order* issued on November 12, 2021, for the Commission's information and consideration.

Respectfully Submitted,

/s/ Jamie S. Myers
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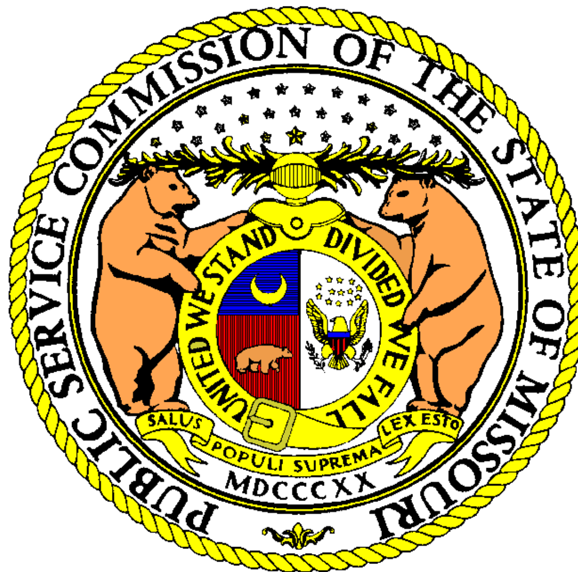
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via e-mail on counsel for the parties of record to this case on this 18th day of March, 2022.

/s/ Jamie S. Myers

MISSOURI PUBLIC SERVICE COMMISSION

STAFF REPORT



SPIRE MISSOURI INC., d/b/a SPIRE

CASE NO. GR-2021-0108

MARCH 18, 2022

** Denotes Confidential Information **

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STAFF REPORT
SPIRE MISSOURI INC., d/b/a SPIRE
CASE NO. GR-2021-0108

INTRODUCTION

In its *Amended Report and Order* ("Order"), filed November 12, 2021 in Case No. GR-2021-0108, the Missouri Public Service Commission ("Commission") outlined a course of action to resolve a dispute regarding Spire Missouri Inc., d/b/a Spire's ("Spire" or "Spire Missouri") capitalization of overhead costs. The Commission decided that Spire had not met its burden to show compliance with the Federal Energy Regulatory Commission's ("FERC") Uniform System of Accounts ("USOA") and ordered "Spire Missouri to cease recovery of capitalized non-operational overhead costs in plant, going forward, until Spire Missouri's compliance with the USOA is shown."[1] Once Spire has shown compliance, the Commission allowed for changes to Spire's overhead allocations to be reflected in future Infrastructure Safety Replacement Surcharge ("ISRS") filings or Spire Missouri's subsequent rate case.[2] The Commission instructed Staff to develop deliverables needed for Spire to show its compliance with the USOA and noted that The Office of the Public Counsel ("OPC") may confer with Staff in the development of the deliverables. The Commission also ordered Staff, Spire Missouri, and OPC to provide 60 day status reports on the progress of Staff's completion of its audit of overhead cost requirements.

During the pendency of Case No. GR-2021-0108, Staff and OPC performed simultaneous, but separate, audits of Spire's overhead capitalization processes. Since the audits were separate, Staff and OPC's findings and recommendations for the Commission were somewhat different. Staff's audit did not attempt to form positive or negative findings regarding the prudency of Spire's overhead costs, the prudency of management's decisions to expense or capitalize a particular cost, or findings related to a potential cross-subsidy embedded in the allocation of overheads. Instead, Staff's rate case audit attempted to apply the guidance and criteria set forth in the USOA to Spire's accounting methodologies by seeking support for the relationship of overhead costs to construction. In general, the USOA allows for the capitalization of overhead costs so long as

[1] See Schedule 1, excerpt of *Amended Report and Order*, Case No. GR-2021-0108.
[2] Spire Missouri's ISRS filing, Case No. GO-2022-0171, is being processed concurrently with this audit.

1) the overheads are reasonably applicable to construction and 2) the nature and quantity of overheads can be identified by FERC plant account.

Staff's finding in the rate case was that it was unable to affirm Spire's compliance with the USOA due to the undocumented nature of overhead costs, vague quantifications of the types of overheads capitalized, and failure by Spire Missouri to describe each overhead's relationship to construction activity. Over the course of the rate case, Spire expressed its disagreement with Staff's (and OPC's) conclusions which led to the Commission's creation of an avenue for the parties to continue addressing Spire's compliance with the USOA.

THE USOA

Spire Missouri is required to keep all of its accounts in conformity with the USOA prescribed by FERC.[3] The USOA contains definitions; general instructions; gas plant instructions; operating expense instructions; accounts that comprise the balance sheet, gas plant, and income operating revenues; and operation and maintenance expenses. The following excerpts from the USOA provide pertinent guidance for transactions related to overhead costs:

General Instruction 2; Records:

> A. Each utility shall keep its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit ready identification, analysis, and verification of all facts relevant thereto.
>
> B. The books and records referred to herein include not only accounting records in the limited technical sense, but all other records, such as minute books, stock books, reports, correspondence, memoranda, etc., which may useful in developing the history of or facts regarding any transaction.

General Instruction 9; Distribution of pay and expenses of employees:

> The charges to gas plant, operating expense and other accounts for services and expenses of employees engaged in activities chargeable to various accounts, such as construction, maintenance, and operations, shall be based upon the actual time engaged in the respective classes of work, or in case that method is

[3] 20 CSR 4240-40.040.

impracticable, upon the basis of a study of the time actually engaged during a representative period.

General Instruction 10; Payroll distribution:

Underlying accounting data shall be maintained so that the distribution of the cost of labor charged direct to the various accounts will be readily available. Such underlying data shall permit a reasonably accurate distribution to be made of the cost of labor charged initially to clearing accounts so that the total labor cost may be classified among construction, cost of removal, gas operating functions (manufactured gas production, natural gas production and gathering, products extraction, underground storage, transmission, distribution, etc.), and nonutility operations.

Gas Plant Instruction 3; Components of construction cost:

A. The cost of construction property properly includable in the gas plant accounts shall include, where applicable, the direct and overhead costs as listed and defined hereunder:

…

2. "Labor" includes the pay and expenses of employees of the utility engaged on construction work, and related workmen's compensation insurance, payroll taxes and similar items of expense. It does not include the pay and expenses of employee which are distributed to construction through clearing accounts nor the pay and expenses included in other items hereunder.

…

8. "Injuries and damages" includes expenditures or losses in connection with the construction work on account of injuries to persons and damages to the property of others; also the cost of investigation of and defense against actions for such injuries and damages. Insurance recovered or recoverable on account of compensation paid for injuries to persons incident to construction shall be credited to the account or accounts to which such compensation is charged. Insurance recovered or recoverable on account of property damages incident to construction shall be credited to the account or accounts charged with the cost of the damages.

…

11. "Engineering and supervision" includes the portion of the pay and expenses of engineers, surveyors, draftsmen, inspectors, superintendents and their assistants applicable to construction work.

12. "General administration capitalized" includes the portion of the pay and expenses of the general officers and administrative and general expenses applicable to construction work.

…

14. "Insurance" includes premiums paid or amounts provided or reserved as self-insurance for the protection against loss and damages in connection with construction, by fire or other casualty, injury to or death of persons other than employees, damages to property of other, defalcation of employees and agents, and the non-performance of contractual obligations of others. It does not include workmen's compensation or similar insurance on employees included as "labor" in item 2, above.

…

19. "Training costs". When it is necessary that employees be trained to operate or maintain plant facilities that are being constructed and such facilities are not conventional in nature or are new to the company's operations, these costs may be capitalized as a component of construction cost. Once plant is placed in service, the capitalization of training costs shall cease, and subsequent training costs shall be expensed. (See Operating Expense Instruction 4*; Training Costs*.)

Gas Plant Instruction 4; Overhead construction costs:

A. All overhead construction costs, such as engineering, supervision, general office salaries and expenses, construction engineering and expenses, construction engineering and supervision by others than the accounting utility, law expenses, insurance, injuries and damages, relief and pensions, taxes and interest, shall be charged to particular jobs or units on the basis of the amounts of such overheads reasonably applicable thereto, to the end that each job or unit shall bear its equitable proportion of such costs and that the entire cost of the unit,, both direct and overhead, shall be deducted from the plant accounts at the time the property is retired.

B. As far as practicable, the determination of payroll charges includible in construction overheads shall be based on time card distributions thereof. Where this procedure is impractical, special studies shall be made periodically of the time of supervisory employees devoted to construction activities to the end that only such overhead costs as have a definite relation to construction shall be capitalized. The addition to direct construction costs of arbitrary percentages or amounts to cover assumed overhead costs is not permitted.

C. The record supporting the entries for overhead construction costs shall be so kept as to show the total amount of each overhead for each year, the nature and amount

> of each overhead expenditure charged to each construction work order and to each utility plant account, and the bases of distribution of such costs.

Operating Expense Instruction 4; Training Costs;

> When it is necessary that employees be trained to specifically operate or maintain plant facilities that are being constructed, the related costs shall be accounted for as a current operating and maintenance expense. These expenses shall be charged to the appropriate functional accounts currently as they are incurred. However, when the training costs involved relate to facilities which are not conventional in nature, or are new to the company's operations, then see Gas Plant Instruction 3(19) for accounting.

EFFECTS OF THE AMENDED REPORT AND ORDER

As noted above, the Commission ordered the development of deliverables for Staff to be able to audit source documents and any other documents, "necessary to support all overhead costs and the rationale and basis for overhead allocations…"[4] On November 15, 2021, Staff provided Spire a list of deliverables intended to explore the facets of how Spire accounts for overhead costs as well as documentation of Spire's response to the Commission's Order. Staff's deliverables are attached to this report as Schedule 2.

The Order also stated that any capitalized overheads that are expensed outside of a test year period will not be recoverable. However, the Commission established an allowance for non-operational overheads associated with used and useful plant additions to be posted to a regulatory asset account as of the December 23, 2021 effective date of tariffs. The Commission stated that,

> . . . [t]his will allow changes to indirect overhead allocations to be implemented on a prospective basis in either ISRS filings or Spire Missouri's next rate case… However, this treatment will prevent inclusion of non-operational overhead costs that are ultimately determined to be inappropriate from being included in plant additions recovered through ISRS cases before the resolution of this issue in Spire Missouri's next rate case.[5]

[4] *Amended Report and Order*, Case No. GR-2021-0108, Page 83.
[5] *Amended Report and Order*, Case No. GR-2021-0108, Pages 82 - 83.

To further clarify its intent on overhead cost recovery, the Commission issued an *Order Providing Clarification to Report and Order and Delegating Authority* on November 3, 2021. This Order states, "Spire Missouri plant additions occurring after the true-up period and beginning June 1, 2021, but before the effective date of Spire Missouri's new rates, may include non-operational overheads; however, the Commission is not pre-determining the reasonableness of those costs or whether those costs would be allowed recovery." The Commission further explained in its January 12, 2022, *Order Denying Applications for Rehearing and Providing Clarification*, filed in Case No. GR-2021-0108. In this Order, the Commission stated that, "any non-operational overhead expense included in the regulatory asset that fall outside of the test period of Spire's next rate case shall be considered for recovery during that rate case."

Staff concludes the Commission has ordered the exclusion of non-USOA compliant overheads in the ISRS surcharge and to include expensed overheads appropriately in Spire Missouri's prospective base rates to allow for consideration of overheads that were capitalized under a USOA compliant methodology. Staff believes that the statement above, coupled with the directives outlined in the *Amended Report and Order*, requires Spire to account for overheads by:

- Making no changes to accounting for overhead capitalization until the effective date of rates in Case No. GR-2021-0108. However, the Commission did not predetermine the ratemaking treatment of overheads capitalized from the May 31, 2021 true-up date through the December 23, 2021 effective date of tariffs.
- As of December 23, 2021 Spire shall cease *recovery* of non-operational overheads until compliance with the USOA is shown.
- When Spire has shown its compliance with the USOA, overheads that have a relationship to construction and are found to be related to used and useful capital projects may be included in Spire's ISRS filings or a general rate proceeding.
- Overheads that are shown to be eligible for capitalization and are incurred after December 23, 2021, but have been excluded from recovery in a prior rate proceeding, may be deferred to a regulatory asset for consideration in Spire's next rate proceeding.

SPIRE'S HISTORICAL CAPITALIZATION METHODOLOGY

During the GR-2021-0108 rate case, Spire contended that its methodologies for capitalizing overheads was consistent with historical practice and also consistent with industry standards. These are assertions that Staff did not dispute. However, recent events indicate that conforming to the industry's best practices does not satisfy concerns with compliance. Subsequent to the evidentiary hearing in Case No. GR-2021-0108, FERC's Office of Enforcement released a 2021 Report on Enforcement (*see* Schedule 3) on November 18, 2021 in FERC Docket No. AD07-13-015. In its report, the Division of Audits and Accounting ("DAA") states:

> 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, including entities that have not yet been audited, to prevent noncompliance, thereby avoiding potential enforcement 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.

Pages 48, 49, and 54 of the same report go on to identify docket numbers containing concerns in the electric and natural gas industry regarding capitalizing overheads, particularly without proper time studies used as a basis for allocation. In several of the dockets cited in the document, the DAA recommended that the utility engage a third party to review overhead labor and the overall relationship to construction.

To account for costs, Spire's current methodology uses projects to collect labor costs and other expenditures over the course of Spire's business activities. When the projects are established, they are assigned a corresponding FERC account that will be charged with the costs collected by the project. The FERC accounts assigned to each project generally fall into three categories; balance

sheet (e.g. FERC Account 107 – Work in progress), income statement (e.g. FERC Account 892 – Maintenance of Services), or Clearing (e.g. FERC Account 184.3 – Tools). Costs that are accumulated in income statement or balance sheet projects are considered direct costs and are not included in the scope of this audit, except to the extent that direct costs are used to allocate costs contained in clearing-type projects. A majority of clearing costs are distributed from clearing accounts to balance sheet and income statement accounts by using the proportion of labor costs that were directly booked to projects. For example, if direct-charged labor from the Distribution Construction and Maintenance department is charged 70% to income statement accounts and 30% to balance sheet accounts, the overhead charges from that same department (labor and non-labor) contained in clearing accounts will be redistributed using the same proportion.

When costs are booked to projects, they are classified using Spire's direct cost elements to record the nature of the cost. The direct costs that are charged to projects destined for income statement accounts maintain their cost element identity through the accounting process and are identifiable in the general ledger. On the contrary, direct costs that are charged to projects destined for balance sheet accounts are consolidated into higher level buckets during the unitization process. After a work order is completed, the total capital costs are moved from Account 107 – Construction work in progress to Account 106 – Construction completed but not classified. Next, Spire's unitization process distributes the costs held in Account 106 to the 300 – 399 FERC plant accounts. During the journey from Account 107 to the FERC plant accounts, the cost elements associated with the direct charges are lost through consolidations to a higher-level "charge type".

Additionally, costs that are charged to clearing-type projects lose their direct cost elements during the overhead allocation process. While the general ledger will show direct cost elements entering the various clearing accounts, Spire uses allocation software that condenses the large number of direct cost elements into a smaller number of indirect cost elements when costs are allocated to the income statement and balance sheet. Furthermore, the indirect cost elements allocated to FERC Account 107 – Construction work in progress are lost when they too are condensed into "charge types" before plant is unitized into the FERC 300 – 399 plant accounts. As such, plant-in-service cannot be reported with the more granular cost elements, but with

the generalized charge type labels. The inputs and outputs of the total process is illustrated in Schedule 4 of this report.

For cost sources that do not have a substantial amount of direct charges, allocations using a proportional redistribution based on direct charges would be problematic. In some instances Spire has established capitalization percentages based on time studies and/or institutional knowledge to assign costs to expense and capital accounts. In other instances, costs without related direct charges (e.g. office supplies) are booked to expense and subsequently transferred to capital using a transfer rate tied to the overall proportion of direct labor charges.

During Staff's audit in Case No. GR-2021-0108, it became clear that Staff did not have an understanding of the processes and accounting codes used in Spire's allocation methodology. During this post-rate case audit, Staff discussed with Spire how to establish an audit trail in a rate proceeding and learned that several sources were needed to follow a cost from its incurrence to its final destination in a FERC account. As the process is currently, the audit trail of any particular overhead cost begins with the direct cost element charged to the clearing accounts of the general ledger, is consolidated into an indirect cost element in Spire's Profitability and Cost Management ("PCM") allocation software, and if the cost is capital in nature, it is then grouped into charge types in Spire's PowerPlan software, which allocates charge types among FERC plant accounts. To fully follow the audit trail of a cost from incurrence to rate base account, the general ledger, mapping of PCM software's cost grouping, PCM subledger records, departmental overhead allocators, project attributes, mapping of PowerPlan's charge type grouping, and each capital work order's authorization sheet is required. Even with all of the above data, Staff is not confident a cost could be isolated and identified in any particular FERC plant account without confirmation and/or guidance from Spire. However, Spire illustrated how Staff could audit cost elements that are capitalized to each current work order by requesting the output of its PCM allocation software.

IDENTIFICATION AND QUANTIFICATION OF OVERHEAD COSTS

As noted above, Staff provided Spire its deliverables on November 15, 2021. Over the following months, Spire provided responses to Staff's deliverables in the form of verbal discussions,

presentations, reports, and files containing supporting data. The additional information obtained during this time enabled Staff to present more informed conclusions and recommendations.

The first of Staff's deliverables focused on refining and quantifying the overheads that were "non-operational" which were explicitly identified in the Order as non-recoverable costs. Spire responded by classifying its overhead costs into 10 "buckets" and labeling each bucket as operational and non-operational. While actual costs will fluctuate, Spire identified the GR-2021-0108 test year cost to approximate the magnitude of each overhead type. Spire's summary of the definition and quantification of non-operational overheads follows:

**

		Original (From DR250.1)			Refined Estimate of Disputed Overheads		
	Type of Overhead	Spire Missouri East Capital	Spire Missouri West Capital	Total	Spire Missouri East Capital	Spire Missouri West Capital	Total
Operational	New Growth Support	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Operational	Engineering Design Capitalized Portion	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Operational	Operations Departmental Clearings	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Operational	Supervision	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Operational	Operations Support	[illegible]	[illegible]	[illegible]	-	-	-
Operational	Construction Misc	[illegible]	[illegible]	[illegible]	-	-	-
Operational	Transportation and Equipment	[illegible]	[illegible]	[illegible]	-	-	-
Operational	Transportation and Equipment (Capitalized Depreciation)	[illegible]	[illegible]	[illegible]	-	-	-
Applicable to Both	Transfers to Construction - Benefits	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Non-Operational	Transfers to Construction - General Overheads	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

**

Spire provided information about the type of costs represented in each overhead bucket and how the costs were refined to the scope of the continuing audit. After reviewing the information provided and holding conferences with Spire, Staff agrees with Spire's characterization of its overheads and the buckets of overheads that warrant further examination as they are presented

above. With regard to the Order, Staff agrees that Administrative and General ("A&G") costs, including administrative salaries and the related benefits that follow, qualify as non-operational overheads that are not allowed to be recovered until compliance with the USOA is shown. This conclusion is consistent with Staff's characterization of non-operational overheads as overheads that are *not* direct costs and *not* related to field work. For the overhead buckets that remained in the scope of the post-rate case audit, Spire provided additional documentation, explanations, and examples of what the costs are and how they are capitalized.

Staff notes that item 264 of the Findings of Fact in the Order identifies the Engineering Design and New Growth Support overhead buckets as non-operational. However, the information and support provided by Spire convinces Staff that labeling these particular departments is not a black and white exercise. For example, these departments engage in corporate-type activities in that they work to gain new customers as well as plan and design the distribution system as a whole but they also participate in field-type activities such as site visits, drawing existing and proposed infrastructure for work orders, and working to obtain permits for specific projects. As described below, Spire provided pertinent information about the departments that convinces Staff that even if it is determined that these buckets are non-operational, the capitalization methodology Spire employs is USOA compliant.

NEW GROWTH SUPPORT

The first bucket, New Growth Support, represents the labor and cost of the upfront work required to design, budget, approve, and permit a new construction project. The capitalization of those costs uses a constant capital transfer rate of ** ████ ** to allocate all costs (primarily labor) incurred by the New Growth Support department to construction work in progress. The current transfer rate was established by a study of time recorded by that department's employees during the month of March 2019. After the transfer rate was established, Spire has annually reevaluated the need to change the rate by assessing substantial changes in the business environment.

Subsequent to the Commission's Order, Spire initiated a new time study for the New Growth Support department that examined time during January 31, 2021 through February 22, 2021. The results of the study supports a capitalization rate of ** ████ ** going-forward. Staff recommends

that at the conclusion of this audit, Spire increase the transfer rate to ** ** for the New Growth Support cost center. Staff also recommends this department's time should be restudied every four years or as changes to the business environment warrants. Furthermore, Staff believes that a transfer rate based on annual data rather than a small window of the year will take into account any effects of the seasonality of construction. As such, Staff recommends that future time studies should consider a two-week period reasonably selected from each quarter of the year.

ENGINEERING DESIGN

The second bucket, Engineering Design, contains the labor and cost of designing new infrastructure and maintaining records of existing infrastructure and right-of-way information. The capitalization of Engineering Design costs uses a constant capital transfer rate of ** ** to allocate all costs (primarily labor) incurred by the Engineering Design department to construction work in progress. The ** ** of departmental costs booked to income statement accounts represents the time and costs driven by work orders that are ultimately cancelled and removed from the balance sheet (i.e. expensed). Spire provided data showing the percentage of work orders cancelled over recent years but stated that historically, the data did not capture all work order activity, so the percentage rate was adjusted to reflect the knowledge of the business. Staff notes that the data provided in the rate case does not support an ** ** capitalization rate and learned through discussion that the rate has not been updated in at least a decade. As such, the continued use of an ** ** transfer rate appears to be arbitrary.

However, in response to the Commission's Order, Spire updated its analysis of the Engineering Design department and found that a new capitalization rate of ** ** is supported. Staff recommends that at the conclusion of this audit, Spire increase the transfer rate to ** ** for the Engineering Design cost center. Staff further recommends the analysis should recur every four years or as changes to the business environment warrants.

OPERATIONS DEPARTMENTAL CLEARINGS

The next bucket, Operations Departmental Clearings, captures non-productive time (e.g. paid time off, shop time, standby, training, etc.) and shop costs incurred by operations employees.

The majority of the costs in this bucket is driven by employees during the normal course of business but are not attributable to a productive activity. One of the costs in this bucket is related to training, which the USOA clearly prohibits from being capitalized unless certain conditions are met. As such, Staff recommends that unless Spire can demonstrate that those conditions are applicable, all training costs should be allocated exclusively to the income statement. With the exception of training costs, the USOA does not offer explicit guidance on how to account for non-productive time charged to clearing accounts. For the remaining non-productive employee costs, Staff recommends continuation of Spire's current practice, which uses the amounts tied to productive activities (direct charges) to allocate the non-productive costs of the same group of employees. Staff posits that this methodology is allowed by the USOA's General Instruction 10, payroll allocation. This Instruction states:

> Underlying accounting data shall be maintained so that the distribution of the cost of labor charged direct to the various accounts will be readily available. Such underlying data shall permit a reasonably accurate distribution to be made of the cost of labor charged initially to clearing accounts so that the total labor cost may be classified among construction, cost of removal, gas operating functions (manufactured gas production, natural gas production and gathering, products extraction, underground storage, transmission, distribution, etc.), and nonutility operations.

While Staff believes that this Instruction allows for the use of operation departmental direct labor to distribute operation departmental non-productive costs, Staff does not believe the applicability of this USOA guidance extends to the distribution of A&G labor and other corporate costs.

SUPERVISION

The Supervision overhead bucket represents the time and costs of Spire's Field Distribution supervisors who directly support employees who are working on capital and O&M projects. To determine the relationship to construction of the Supervisory bucket, Spire engaged PricewaterhouseCoopers ("PwC") to conduct time studies for labor costs. PwC's labor studies were finalized March 8, 2022. PwC selected a sample of supervisory employees that represented 68% of all employees in the scope of the study and collected information about the nature of each individual's work activity over the two week period of January 17, 2022 through

January 28, 2022. PwC analysts categorized the time recorded into capital and O&M hours and found that the results of its analysis approximated the results of Spire's existing methodology. As such, Staff recommends the continuation of Spire's current accounting methodology for Supervisory overheads. The PwC report on Supervisory labor is attached to this report as Confidential Schedule 5.

OPERATIONS SUPPORT, CONSTRUCTION MISC., AND TRANSPORTATION

Through conversations with Spire and a review of additional support, Staff determined that the overheads in the Operations Support, Construction Misc., and Transportation buckets are not in dispute because they have a low audit-risk and/or are closely related to field work. As such, they were excluded from the scope of this post-rate case audit.

GENERAL OVERHEADS – BENEFITS

Going forward, Spire recommends calculating a transfer rate to apply to Account 926 – Employee Benefits. The calculation produces a percentage representative of the amount of employee benefits applicable to capital by dividing capital and removal payroll by total payroll. Staff notes that the outcome of this audit and the PwC studies will be reflected in the numerator of the calculation and finds Spire's recommendation appropriate and recommends this method be implemented going forward.

GENERAL OVERHEADS – INSURANCE

After the Commission issued its Order, Spire initiated internal studies of the non-labor portions of A&G overheads. Spire provided updates and preliminary results of these studies to Staff as they became available. Spire's Use Studies were finalized on February 23, 2022.

Spire's internally conducted Use Studies examined the capital nature of insurance premiums as well as injuries and damages claims with any resulting insurance proceeds. Historically, Spire applied its general overhead transfer rate to the insurance premiums booked to FERC Account 925. This methodology applied a general rate (the general rate was based on labor and contractor costs) to all insurance policies charged to Spire, except for property insurance. After the Commission's

Order, Spire conducted a Use Study to quantify the amount of insurance premiums that were attributable to construction activity. To do so, it formed a "synthetic" construction company that was based on Spire's construction experience and worked with an insurance broker to estimate what insurance premiums would be for a standalone company that constructed assets for a gas distribution utility. Spire's analysis formed an estimate of the insurance premium costs the proxy company would incur for the following types of insurance:

- Property
- Excess Liability
- Directors & Officers
- Fiduciary Insurance
- Cyber Liability
- Worker's Compensation

Spire's analysis compares the estimated premiums for the standalone construction company to Spire's actual costs during fiscal year 2021. The comparison yields a percentage that is intended to represent the portion of Spire's actual premiums that are driven by construction activity.

Staff finds that in the attempt to carve out construction activity from its overall operations, Spire has created a reasonable estimate of the amount of its general liability and worker's compensation (including the 2nd injury fund) coverage that is related to construction and recommends a ** [redacted] ** transfer rate for these policies. However, Spire's analysis creates an "apples-to-oranges" comparison for the other types of insurance policies because Spire loses comparability to the synthetic construction company due to different purposes for the construction activity. While Spire constructs and retains assets to distribute natural gas, the proxy company constructs inventory for resale. The purpose of each company affects the relationship between insurance premiums and construction which leads to an uneven comparison. For example, Spire has historically excluded property insurance from capitalization presumably because very little of Spire's covered property is construction work-in-progress, so the premiums have a negligible relationship to construction. However, the assets of a company that exist for the sole purpose of constructing assets for others would have a much different ratio of assets under construction to total property.

As mentioned above, Staff finds that Spire's analysis of a proxy construction company quantifies the relationship of its insurance for excess liability and worker's compensation to construction but does not indicate a relationship for all other types of insurance premiums. Staff also notes that the USOA does not specify the remaining types of insurance as construction cost components. As such, Staff recommends that Spire's remaining insurance costs should not be capitalized.

GENERAL OVERHEADS – WORKER'S COMPENSATION AND INJURIES AND DAMAGES CLAIMS

In addition to analyzing insurance premiums for a relationship to construction, Spire evaluated its injuries and damages claims for a relationship to construction as allowed by the USOA in item 8 of the Plant Instruction 3. Staff's testimony in the GR-2021-0108 rate case was that Spire recorded claims to construction work in progress but recorded any resulting insurance proceeds to the income statement, which had an inflationary effect on earnings.[6] Spire has demonstrated that Staff's assertion is not correct and that Spire historically has recorded all claims to an accrued injuries and damages reserve, which is 100% O&M.

To establish a relationship of worker's compensation costs to construction, Spire separated the number of claims that were recorded in fiscal year 2021 by department, and applied each department's capital labor ratio to the claim count. The analysis yielded a percentage of total claims that were related to capital labor. Claim count was used in the analysis instead of claim dollars because of the extensive time lag in between a claim's origin and the claim's disposition. The departmental labor capital ratio was used under the assumption that the type of employee activity drives, or at least relates to, worker's compensation claim activity. Staff supports Spire's recommended methodology with the caveat that going forward, Spire maintain documentation to show the methodology is capitalizing workman's compensation claims such that each work order bears its equitable proportion of such costs.

Similar to worker's compensation claims, Spire analyzed the capital nature of the general liability claims it experienced in fiscal year 2021. These claims were also categorized by department to find the percentage of claims that were capital in nature based on each department's capital labor

[6] Exhibit No. 140, Young Surrebuttal Testimony, page 15.

ratio. This is also a cost that Spire has historically accrued to the income statement. The analysis of general liability claims similarly uses the assumption that the type of employee activity drives, or at least has a relationship with, general liability claim activity. With the same rationale as discussed for worker's compensation claims, Staff supports Spire's recommended methodology with the caveat that going forward, Spire maintain documentation to show the methodology is capitalizing general liability claims such that each work order bears its equitable proportion of such costs.

GENERAL OVERHEADS – ADMINISTRATIVE AND GENERAL LABOR

To determine the relationship to construction of A&G salaries, Spire engaged PwC to conduct time studies of labor costs. PwC applied its experience with labor capitalization studies to Spire's A&G labor and issued a recommended A&G transfer rate for each of Spire's departments. PwC's labor studies were finalized March 8, 2022. In its analysis, PwC selected a sample of A&G employees that represented 19% of all employees in the scope of the study and collected information about the nature of each individual's work activity during the week of December 13, 2021 and the week of January 10, 2022. PwC analysts categorized the time recorded into capital and O&M hours and found that during the sample periods, capital activity composed a weighted average of ** [redacted] ** of all A&G activity.

Spire recommended several adjustments to PwC's results to calculate what it believes to be a more representative A&G labor transfer rate. Some of Spire's recommended adjustments are to allow for a diversity in practice regarding capitalization of A&G costs. Spire indicated to Staff that in areas with a diversity in industry practices, the PwC results show the most conservative transfer rates that PwC is able to support without the consent of Spire's regulators. In particular, Spire recommends increasing the labor transfer rates of the ** [redacted] ** departments to reflect the capital nature of the time incurred by those employees. Staff has evaluated Spire's recommendations for these departments and finds that Spire's arguments do not sufficiently link the A&G labor to Spire's construction. Additionally, the report issued by FERC's DAA indicates that industry practices may be too diverse, which is why the DAA is attempting to

"…increase awareness of these concerns and facilitate compliance efforts." Staff does not recommend increasing the transfer rates of these departments to recognize a diversity in practice.

In addition to Spire's recommended adjustments to reflect a diversity in practice, Spire recommends increasing the transfer rates of specific departments to capture seasonal fluctuations that are not reflected in PwC's results. Spire recommends increasing the transfer rates of the ** ██████████ ** to reflect construction related activity that were not captured in the two weeks that were studied. Staff finds these adjustments unnecessary as the PwC report described follow-up conversations to address this concern and explicitly addressed the seasonality of these departments. Staff does not recommend increasing the transfer rates of these departments.

In addition to targeted adjustments for seasonality, Spire recommends an "across the board" increase of up to ** ██ ** to PwC's recommended transfer rates to address the overall seasonality impacts of the PwC study. The PwC report recognizes that establishing a transfer rate based on labor recorded in winter may not produce results reflective of the entire year, and recommends that transfer rate be updated by PwC through a study of two additional two-week periods during the remainder of Spire's fiscal year 2022. Spire recommends updating the study as recommended by PwC, and making a "true-up" adjustment to the costs deferred to the overhead regulatory asset when the annual study is final. Spire argues that increasing the initial transfer rate will reduce the impact of the true-up adjustment when the annual study is final. Staff agrees that incorporating labor studied during warmer months will likely increase the composite transfer rate and finds that up to a ** ██ ** increase to the overall transfer rate is reasonable.

In summary, Staff recommends that PwC conduct further studies of A&G labor recorded during two additional two-week periods during the remainder of fiscal year 2022 to update the PwC A&G labor study and Spire record a true-up entry to reflect the final results of an annualized study. In the interim, Staff recommends Spire capitalize A&G costs at the rate produced by the PwC study as adjusted for the overall seasonality markup. The PwC report on A&G labor is attached as Confidential Schedule 6 and the departmental transfer rates recommended by the PwC are attached to this report as Confidential Schedule 7.

GENERAL OVERHEADS – OFFICE SUPPLIES AND EXPENSES

This portion of Spire's overheads is attributable to the FERC Account 921 – Office Supplies and Expenses. Costs booked to this account are primarily the cost of licensing and supporting Spire's software programs, as well as other costs incurred by A&G employees. Spire recommends setting a capital transfer rate for the software-driven costs by recognizing the relationship between various software programs and construction. For example, Spire's PowerPlan software would be assigned a 100% relationship to construction while Spire's customer-facing software is assigned a 0% relationship. Other software relationships are prorated by using the results of PwC's studies of capital A&G labor. Spire then weights the relationship of IT costs to construction by the amount of each software's original cost to find a composite capital allocator for IT non-labor costs. Spire also recommends capitalizing the employee-related costs in Account 921 by combining the transfer rates in PwC's supervisory and A&G labor analyses.

In general, Staff is not opposed to Spire's recommendation of a capitalization methodology related to IT costs and employee expenses in Account 921. However, Spire's recommended transfer rates are adjusted to reflect the diversity in practice and the targeted seasonality components discussed above, which Staff does not support. Staff recommends that the IT and employee cost transfer rates should be implemented as calculated by Spire, except for the inclusion of diversity in practice and targeted seasonality adjustments (not to be confused with the general markup of up to** ███ **).

RECORD KEEPING REQUIREMENTS

The remaining USOA guidance Staff evaluated in the post-rate case audit comes from Plant Instruction 4(C), which is as follows:

> The record supporting the entries for overhead construction costs shall be so kept as to show the total amount of *each* overhead for *each* year, the nature and amount of *each* overhead expenditure charged to *each* construction work order and to *each* utility plant account, and the bases of distribution of such costs. [Emphasis added.]

During the GR-2021-0108 rate case, Staff's audit focused on finding the nature and quantity of overhead costs in rate base and asserted that Spire was unable to comply with this particular portion

of the USOA. Staff supported its argument by explaining how the cost elements Spire uses to record the nature and quantity of overheads are lost during the capital and allocation accounting processes. To date, Spire has not presented any recommendations for changes to its recordkeeping to show compliance with this portion of the USOA as it believes that the reporting requirements are met. While Staff does not agree, Staff believes that a Commission Order forcing compliance with the explicit language in this accounting instruction could be administratively burdensome without providing a commiserate level of ratepayer protection.

During this post-rate case audit, Spire has demonstrated that it can provide detailed reports from its PCM software showing the overhead costs, by cost element and by work order, that were charged to construction work in progress during any given period. It has also demonstrated that if it is requested by an auditor, documentation can be created to trace a cost from Spire's clearing accounts to plant-in-service. Staff finds it may be more appropriate to use a case-by-case basis to enforce further record keeping requirements in regards to capitalized overheads by recognizing paragraph 4 of 20 CSR 4240-40.040, which states:

> In prescribing this system of accounts the commission does not commit itself to the approval or acceptance of any item set out in any account, for the purpose of fixing rates or in determining other matters before the commission. This rule shall not be construed as waiving any recordkeeping requirement in effect prior to 1994. Thus, the Commission may deviate from the USOA where it believes appropriate without the need for a formal waiver or variance.

Staff recommends that going-forward, Spire shall be required to maintain records of overheads allocated to work orders, the relationship to construction of such overhead costs, and the basis of distribution of the capitalized overheads. In this recommendation, the definition of "records" should follow the USOA's General Instruction 2, paragraph B which states:

> The books and records referred to herein include not only accounting records in the limited technical sense, but all other records, such as minute books, stock books, reports, correspondence, memoranda, etc., which may useful in developing the history of or facts regarding any transaction.

CONCLUSION

Staff offers the following summary of Staff's recommendations to the Commission. At the conclusion of this audit, Staff recommends:

1) Spire shall increase the New Growth Support department's capital transfer rate to ** [redacted] **.
2) Spire shall conduct new time studies of the New Growth Support department every four years or as often as changes to the business environment warrant.
3) Spire's future time studies of the New Growth Support department shall consider a two-week period reasonably selected from each quarter of the year.
4) Spire shall increase the Engineering Design department's capital transfer rate to ** [redacted] **.
5) Spire shall conduct an analysis of cancelled work orders every four years or as often as changes to the business environment warrant to maintain the Engineering Design department's capital transfer rate.
6) Spire shall cease capitalizing training costs unless it can demonstrate that the conditions specified in the USOA are applicable.
7) Spire shall continue with its current methodology of using operation departmental direct charges to distribute operation departmental overheads to capital.
8) Spire shall continue with its current methodology to capitalize supervisory costs.
9) Spire shall capitalize employee benefits by applying the composite ratio of capital and removal labor to total labor.
10) Spire shall capitalize the insurance premiums of its worker's compensation and general liability policies based on the results of its Insurance Use Study, with Staff's recommended modifications.
11) Spire shall cease capitalizing the insurance premiums of its Directors & Officers, Fiduciary, and Cyber Liability policies.
12) Spire shall continue to charge all insurance premiums for its property insurance to O&M.
13) Spire shall begin capitalizing a portion of the deductibles paid for worker's compensation claims as calculated in Spire's Use Study.
14) Spire shall maintain documentation to show the methodology to capitalize worker's compensation claim deductibles result in each work order bearing its equitable proportion of such costs.

15) Spire shall begin capitalizing a portion of the deductibles paid for general liability claims as calculated in Spire's Use Study.

16) Spire shall maintain documentation to show the methodology to capitalize general liability claim deductibles result in each work order bearing its equitable proportion of such costs.

17) Spire shall capitalize A&G labor with the transfer rates recommended by PwC, increased for seasonality.

18) Spire shall engage PwC to conduct studies of two additional time periods during the remainder of Spire's fiscal year 2022.

19) Spire shall capitalize costs in Account 921 as found in Spire's study of IT costs, without adjustments for diversity in practice or targeted departmental adjustments.

20) Spire shall make no accounting entries for overhead costs capitalized from June 1, 2021, through December 22, 2021, as a result of this audit, as those costs will be evaluated in future rate proceedings.

21) Spire shall defer the cost of its non-operational A&G overheads to a regulatory asset beginning on December 23, 2021. The deferred costs are to be quantified by applying the rate recommended by the PwC, plus a general adder for seasonality, to the A&G overhead costs incurred since December 23, 2021.

22) Spire shall record an adjusting entry to the deferred overhead costs in order to reflect the annual results of PwC's time studies, when the results are known.

23) Spire shall maintain documentation of the calculation of costs deferred so that they may be sufficiently audited in Spire's next general rate case.

24) Spire shall be required to maintain records of overheads allocated to work orders, the relationship to construction of such overhead costs, and the basis of distribution of the capitalized overheads.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Spire Missouri Inc.'s d/b/a Spire Request for Authority to Implement a General Rate Increase for Natural Gas Service Provided in the Company's Missouri Service Areas	)))))	Case No. GR-2021-0108

AFFIDAVIT OF MATTHEW R. YOUNG

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

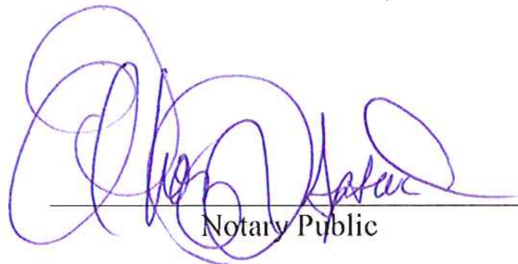
COMES NOW MATTHEW R. YOUNG, and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Report;* and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

MATTHEW R. YOUNG

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Jackson, State of Missouri, at my office in Kansas City, on this 15th day of March, 2022.



Notary Public

EBONEY JACKSON-SPOTWOOD
My Commission Expires
April 8, 2023
Clay County
Commission #19865798

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Spire Missouri Inc.'s d/b/a Spire Request for Authority to Implement a General Rate Increase for Natural Gas Service Provided in the Company's Missouri Service Areas	)))))	**File No. GR-2021-0108** Tracking No. YG-2021-0133

AMENDED REPORT AND ORDER

Issue Date: November 12, 2021

Effective Date: November 22, 2021

Findings of Fact regarding Capitalized Overheads – Issue 15

239. Capitalized overheads are costs that are indirectly related to a capital project that the utility has elected to capitalize rather than to expense (e.g. engineering, legal work, insurance, taxes, interest, etc.).[302]

240. In recent ISRS cases OPC has raised a concern about the amount of overheads. The issue was deferred to this rate case.[303]

241. As a subsidiary of a publicly traded corporation, Spire Missouri follows accounting methods prescribed by Generally Accepted Accounting Principles (GAAP) and as a gas utility regulated by Missouri, Spire Missouri must also follow the accounting methods prescribed by the FERC USOA.[304]

242. While some costs are clearly either expenses or capital expenditures in nature, Spire Missouri has discretion to assign many costs as it chooses.[305]

243. Without Spire Missouri completing the special study of the supervisor timecard distributions, described in USOA Gas Plan Instructions, Section 4(B), there is no way to determine an appropriate capital transfer rate, based on the USOA requirements.[306]

244. A consequence of the single-issue ratemaking nature of the ISRS is that it creates an incentive to maximize the overhead costs charged to ISRS eligible work orders.[307]

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[302] Ex. 125, Young rebuttal, pp. 1-2.
[303] ISRS cases, File Nos.GO-2019-0356 and GO-2019-0357.
[304] Ex. 101, Staff Cost of Service Report, p. 31, lns. 2-5.
[305] Ex. 101, Staff Cost of Service Report, p. 31, lns. 8-9.
[306] Tr. Vol. 10, p. 161, lns. 16 – 24.
[307] Ex. 125, Young rebuttal, p. 3, lns. 6-8.

245. Spire Missouri applies the same capital transfer rate to injuries and damages insurance, nearly the entire office supplies account, and directors and officers insurance despite the varying relationship of those costs to construction.[308]

246. Removing the capitalized Administrative and General overheads and instead treating those costs as expenses would increase the revenue requirement by nearly $115 million; about $50 million attributable to General Overheads, and the remaining $65 million to Employee Benefit and Pension Costs.[309]

247. Staff has not made any adjustment in its proposed cost of service to transfer capitalized overhead costs to expense.[310]

248. Spire Missouri provided a copy of the general ledger as its transaction level support for all of its capitalized overhead costs.[311]

249. Spire Missouri did not produce specific time reporting or cost studies supporting its capitalized overheads as required by the USOA to support that its overhead policy and procedure have a definite relationship to construction and are eligible to be capitalized.[312]

250. It would be impossible to estimate an impact on customers without performing the overhead cost study. It could lead to a rate increase, decrease, or no material change. Spire Missouri recommends the results of any study to determine the relationship of overhead costs to construction projects be brought forward in the filing of

[308] Ex. 140, Young surrebuttal, p. 16, lns. 14-16.
[309] Ex. 17, Krick surrebuttal, p. 7, lns. 6-15.
[310] Tr. Vol. 10, 146, lns. 16-25.
[311] Ex. 17, Krick surrebuttal, p. 9, lns. 3-5.
[312] Ex. 203, Schallenberg direct, p. 24, lns. 12-19.

the next rate case, and any changes to indirect overhead allocations be implemented on a prospective basis during that future case when establishing rates.[313]

251. A retrospective order removing capitalized overhead amounts back to October 1, 2019, as initially proposed by OPC would result in a write-off of overhead costs capitalized to plant-in-service during the test year of approximately $87 million.[314]

252. Labor that is direct charged to a construction project is not considered an overhead.[315]

253. Spire Missouri's time reporting system allows each employee to code their time directly to a capital project, an income statement-related activity, or a clearing account.[316]

254. Instead of conducting studies of the time charged to clearing accounts by its employees, Spire Missouri uses the direct labor charges as the basis of distributing overhead payroll costs.[317]

255. In September 1988, the National Association of Regulatory Utility Commissioners (NARUC) issued "Interpretation of Uniform System of Accounts for Electric and Gas Utilities." Interpretation No. 59 answers questions regarding the methods used for the capitalization of administrative and general expenses, specifically the use of proportional direct charges.[318]

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[313] Ex. 17, Krick surrebuttal, pp. 10-11.
[314] Ex. 17, Krick surrebuttal, p. 12, lns. 7-9.
[315] Ex. 140, Young surrebuttal, p. 17, lns. 1-2.
[316] Ex. 140, Young surrebuttal, p. 17, lns. 2-3.
[317] Ex. 140, Young surrebuttal, p. 17, lns. 8-10.
[318] Ex. 140, Young surrebuttal, pp. 17-18.

256. NARUC endorses the use of the incremental cost method which identifies a relationship of a capital cost to construction by proving the cost would not have been incurred if the construction was not undertaken.[319]

257. Spire Missouri has relied exclusively on an arbitrary relationship between direct and indirect labor to account for overhead payroll costs, and the related payroll benefits that follow payroll.[320]

258. Spire Missouri uses a concept called 'cost elements' to charge work orders. Those cost elements are lost by the time construction-work-in-process is unitized to the FERC plant accounts.[321]

259. Spire Missouri does not keep records sufficient to show each overhead cost in its utility plant account and also has not provided support to show the bases used to distribute its overheads.[322]

260. It is not reasonable to assume the time devoted to capital projects of field employee supervisors and their supervisors is dictated by the field employee direct labor charged to the same capital projects. Therefore, Spire Missouri has not provided support for its indirect labor assigned to capitalized overheads.[323]

261. The label "non-operational overhead costs" is one of three capital cost categories presented by Spire Missouri and represents costs that are not direct charges and not related to field operations.[324]

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[319] Ex. 140, Young surrebuttal, p. 18, lns. 5-8.
[320] Ex. 140, Young surrebuttal, p. 19, lns. 1-6.
[321] Ex. 140, Young surrebuttal, p. 19, lns. 11-14.
[322] Ex. 140, Young surrebuttal, p. 19, lns. 14-16.
[323] Tr. Vol. 10, p. 149, lns. 2-19.
[324] Ex. 140, Young surrebuttal, p. 21, lns. 3-5.

262. Staff's definition of non-operational overhead costs is derived from the direct testimony of Spire Missouri's witness, Krick in File Nos. GO-2019-0356 and GO-2019-0357.[325]

263. Non-operational overhead costs are employee benefits, shared services and administrative and general expenses.[326]

264. Non-operational overheads include engineering, the corporate engineering function, new growth support and other corporate type costs.[327]

265. Spire Services Inc.'s costs allocated to capitalized overheads are a subset of non-operational overhead costs.[328]

266. Non-operational overhead costs would be almost the entire list of overhead costs listed by OPC witness, Schallenberg in his direct testimony, Schedule RES-D-4.[329]

267. For Staff to be able to audit and determine Spire Missouri's compliance with the USOA, Spire Missouri would need to provide records of its plant accounts identifying the nature and amount of each overhead cost. The Staff would also require documentation to support the basis of the relationship the cost has to each construction project.[330]

268. OPC proposes a tracker be authorized to ensure that Spire Missouri's general overhead is not allowed to be over-recovered by transferring overheads to construction by an amount causing overhead expense to be less than the amount included in base rates in this case.[331]

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[325] Tr. Vol. 10, p. 162-163.
[326] Tr. Vol. 10, p. 162-163.
[327] Tr. Vol. 10, p. 163, lns. 16-24.
[328] Tr. Vol. 10, p. 164, lns. 3-6.
[329] Tr. Vol. 10, p. 164-165.
[330] Tr. Vol. 10, p. 165, lns. 7-18.
[331] Ex. 203, Schallenberg direct, p. 25, lns. 19-21.

269. Staff's proposal envisions that it, Spire Missouri and OPC would provide status reports to the Commission as Spire Missouri provides documents that can be audited by Staff and can demonstrate Spire Missouri's compliance with the USOA and then implement the new capitalized overhead process in Spire Missouri's next rate case.[332]

270. Staff does not include a recommendation that disallowed overhead costs be captured in a tracker mechanism as expenses to be included Spire Missouri's next rate case.[333]

Conclusions of Law regarding Capitalized Overheads – Issue 15

PP. The USOA Gas Plant Instruction, section 4, provides (in pertinent part):

4. Overhead construction costs.

> A. All overhead construction costs . . . shall be charged to particular jobs . . . on the basis of the amounts of such overheads reasonably applicable thereto, to the end that each job or unit shall bear its equitable proportion of such costs . . .
>
> B. As far as practicable, the determination of pay roll charges includible in construction overheads shall be based on time card distributions thereof. Where . . . impractical, special studies shall be made periodically of the time of supervisory employees devoted to construction activities to the end that only such overhead costs as have a definite relation to construction shall be capitalized. The addition to direct construction costs of arbitrary percentages or amounts to cover assumed overhead costs is not permitted.
>
> C. The record supporting the entries for overhead construction costs shall be so kept as to show the total amount of each overhead for each year, the nature and amount of each overhead expenditure charged to each construction work order and to each utility plant account, and the bases of distribution of such costs.

[332] Tr. Vol. 10, p. 153, lns.7-21.
[333] Tr. Vol. 10, p. 155, lns. 2-7.

QQ. The USOA provides a list of costs that are eligible for capitalization in Gas Plant Instruction 3, and limits the indirect costs eligible for capitalization to an appropriate amount in Gas Plant Instruction 4.[334]

RR. Spire Missouri is not in compliance with Gas Plant Instructions 3(A)(3) treatment of injuries and damages by posting losses to construction accounts and related insurance proceeds to expense accounts.[335]

SS. Spire Missouri is not in compliance with Gas Plant Instructions 3(A)(19) eligibility requirements for training costs when it includes generic training to construction accounts.[336]

TT. Gas Plant Instruction 4(A) limits overhead construction costs to appropriate amounts by requiring the overheads "shall be charged to particular jobs or units on the basis of the amounts of such overheads reasonably applicable thereto, to the end that each job or unit shall bear its equitable proportion of such costs . . ."[337]

UU. Gas Plant Instruction 4(C) requires records of construction work orders and utility plant accounts to be maintained so that the total amount of each overhead, the nature and quantity of each overhead that is charged to each work order and each plant account, as well as the basis of distributing the overhead costs, can be shown.[338]

VV. Gas Plant Instruction 4(B) requires the use of time card distributions as a basis of assigning overhead payroll to construction.[339]

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[334] Ex. 140, Young surrebuttal, p. 14, lns. 20-22.
[335] Ex. 140, Young surrebuttal, p. 15, lns. 7-14.
[336] Ex. 140, Young surrebuttal, p. 15, lns. 15-21.
[337] Ex. 140, Young surrebuttal, p. 16, lns. 6-9.
[338] Ex. 140, Young surrebuttal, p. 19, lns. 7-11.
[339] Ex. 140, Young surrebuttal, p. 17, lns. 6-7.

WW. Gas Plant Instruction 4(B) states that the indirect payroll of supervisors should be capitalized “to the end that only such overhead costs as have a definite relation to construction shall be capitalized.”[340]

XX. Gas Plant Instruction 4(B) prohibits the use of arbitrary percentages to cover assumed overhead payroll costs.[341]

Decision regarding Capitalized Overheads – Issue 15

The Commission finds that Spire Missouri is not properly capitalizing overheads. Spire Missouri’s cost elements, which it uses to charge work orders, are lost by the time construction-work-in-process is unitized to the FERC plant accounts. Without those cost elements, the Commission cannot find the record support for entries for overhead construction costs required by the USOA Gas Plant Instruction 4(C). Therefore, the Commission has no choice but to find that Spire Missouri has failed to meet its burden that it is in compliance with USOA Gas Plant Instructions and properly capitalizing overheads.

The Commission will order Spire Missouri to cease recovery of capitalized non-operational overhead costs in plant, going forward, until Spire Missouri’s compliance with the USOA is shown. Non-operational overheads associated with plant additions to be recognized as used and useful after the effective date of Spire Missouri’s tariff sheets may be posted to a regulatory asset account. This will allow changes to indirect overhead allocations to be implemented on a prospective basis in either ISRS filings or Spire Missouri’s next rate case. Without Staff’s audit of Spire Missouri’s compliance with the USOA and Spire Missouri’s performing the required study it is not known whether the

[340] Ex. 140, Young surrebuttal, p. 16, lns. 18-20.
[341] Ex. 140, Young surrebuttal, p. 16, lns. 20-21.

impact will lead to a rate increase, decrease or no material change. However, this treatment will prevent inclusion of non-operational overhead costs that are ultimately determined to be inappropriate from being included in plant additions recovered through ISRS cases before the resolution of this issue in Spire Missouri's next rate case.

Staff shall develop a list of deliverables needed from Spire Missouri for it to be able to audit source documents and any other documents necessary to support all overhead costs and the rationale and basis for overhead allocations, to where Staff can determine that Spire Missouri is in compliance with the USOA Plant Instructions capitalized overhead requirements. OPC may confer with Staff in the development of the list of deliverables. Staff, Spire Missouri, and OPC will provide status reports of the progress in Staff's completion of its audit and determination that Spire Missouri is in compliance with the USOA Plant Instruction overhead cost requirements.

The recognition of disallowed capitalized overheads as expenses of Spire Missouri will not be recoverable outside of a rate case test period. The potential recovery of any of the disallowed capitalized non-operational overheads as expenses that remain in the regulatory asset account through the test year, update or true-up period of Spire Missouri's next rate case will be reviewed by the Commission during that rate case. Overhead costs determined to be in compliance with the USOA Plant Instruction requirements shall be included in rate base at the first opportunity, whether in an ISRS case or rate case.

Deliverables

The general intent of each of the following deliverables is to explore three facets of overhead costs; 1) the definition and quantification of non-operational overheads, 2) following an audit trail of overheads from the realization of the cost through projects, cost elements, charge types, unitization, and FERC plant accounts and, 3) the relationship and drivers of overhead costs applicable to construction. The deliverables are:

1) Definition and quantification of the overheads covered under the "non-operational" umbrella as ordered by the Commission.
    a. Supervisory Labor and Supervisory expenses costs allocated through projects.
        i. Documentation and/or illustration of how to distinguish operational (field) supervisory payroll from non-operational (non-field related) supervisory payroll.
    b. Corporate-type costs received by Spire Missouri from Spire Services not recorded in A&G accounts.
    c. General A&G overheads.
    d. Benefit A&G overheads.
    e. Definition of "operational" overheads that may lead to a better definition of "non-operational" overheads.
2) Overheads booked to plant in service through the allocation of projects.
    a. Identification of the projects that allocate overhead costs to construction.
    b. Definition and quantification of what costs are going into projects.
        i. Emphasis on costs originating from non-operational employee reporting.
        ii. Description of the inputs to projects (e.g. hours, dollars, invoices, etc.).
    c. Instructions given to employees on using projects for reporting.
    d. Demonstration of decision making related to the accounting of costs booked to projects.
        i. Documentation/guidance for clearing account accounting.
        ii. Oversight implemented for qualitative and quantitative accuracy of accounting.
        iii. Description of accounting methodology for routine training costs before and after the Commission Order.
    e. Method used to determine the final resting place of costs in clearing accounts that is based on the relationship between cost type and FERC account type (i.e. income statement or balance sheet).
        i. Description of accounting for different types of labor costs (regular, overtime, sick, personal, vacation, holiday, unpaid, other) booked to a project, specifically treatment regarding capitalization or expensing.
        ii. Method used to preserve the nature of costs allocated to construction and O&M to work orders through clearing accounts.

3) Definition of Spire Services functions and each function's relationship to construction benefitting Spire Missouri.
    a. Mapping of how the 16 Spire Services functions described in Spire's direct testimony are grouped in the 10 types of overheads listed in Staff DR 250.1 (aka OPC DR 1040.2).
    b. Identification of any non-Spire Services costs that were included in response to Staff DR 250.1.
    c. Method used to differentiate Spire Services costs from Spire Missouri costs in DR 250.1.
    d. Description of each type of overhead in DR 250.1, including the activities conducted that are related to construction.
    e. Identification of activities underlying the costs in DR 250.1 that are capital in nature but not properly attributable to a specific project. For example, activities conducted by Engineering Design that are not specific to a construction project.
    f. Reconciliation of conflicting information regarding capitalization policy for New Growth Support and Engineering Design in DR 250.1 and DR 252.1. Specifically, DRs state that New Growth has capitalization rates of 100% and 65% and Engineering Design has capitalization rates of 100% and 80%.
    g. Description of when and why costs cannot be allocated to capital and/or O&M based on actual activity and instead require the use of estimated percentages.
    h. Supporting data for the formation of estimated percentages used to allocate costs to capital.
    i. Definition of what costs are captured in the Construction Misc. category.
    j. Method used to differentiate operational (field) transportation costs from non-operational (corporate) transportation costs.
4) Underlying relationship of A&G costs to construction.
    a. Type of employees are represented in the A&G salary costs booked to Accounts 920.000, 920.190 and their involvement with construction.
    b. Type of general office supplies costs recorded in Account 921 and the relationship of those costs to construction.
    c. Accounting for injuries and damages claims. Specifically the determination made to distinguish construction related incidents from all other incidents.
    d. Accounting for injuries and damages insurance proceeds before and after the Commission order.
    e. Identification of each insurance policy and quantification of the amount of related premiums captured under the term "injuries and damages insurance" that is related to construction activities.
    f. Identification and quantification of the amount of other insurance policies booked to account 925 that is for construction related activities, if any.

   g. Type of expenses incurred by directors and recorded in Account 930.300 and the relationship of those costs to construction.

5) Validity of formulas used to capitalize A&G costs.
   a. General rate formula = [(Capital + Removal Payroll) + (Capital + Removal Contractor Spend x 50%)] / (Total Payroll + Total Contractor Payroll – A&G Payroll).
      i. For each account listed in Deliverable #4 (A&G salaries, office supplies, injuries and damages claims and insurance, directors expenses), definition of relationship between the account and contractor payroll.
      ii. Reasoning behind reducing capital contractor costs in numerator by 50%.
      iii. Identify the "total contractor payroll" in the denominator. For example, does the contractor payroll represent temporary employees, operations and construction contractors, corporate consultants, etc.?
      iv. Given the different level of utilization of contractors for construction at Spire East and Spire West, illustration of the impact to capital costs of including contractor payroll in the formula.
   b. Benefit rate formula = (Capital + Removal Payroll) / (Total Payroll – A&G Payroll).
      i. Identification of costs booked to the benefits accounts.
      ii. Method to differentiate between benefits related to operational employees and non-operational employees.
      iii. Confirmation that the benefits base includes benefits earned by all Spire employees, including executives and directors.
      iv. If confirmed, reconciliation between including A&G-related benefits in the amount eligible for capitalization but excluding A&G payroll from the denominator of the benefits rate.
      v. Narrative of how the benefit rate formula is applied to benefits with specific GAAP accounting and ratemaking treatment, specifically the non-service cost portion of pension expense and accrued SERP costs.
      vi. Reason for including contractor payroll in the general rate but not in the benefits rate.
      vii. Differentiation of how the level of contractor involvement with construction at Spire West and Spire East drive employee benefits at different rates.

6) Documentation of changes caused by Commission Order.
   a. Includes changes to charging a cost that was booked to a clearing account before the Commission order but should be now booked to a direct-cost type project, and other accounting changes that are a direct response to the Commission order.
   b. Additional studies or analyses conducted by Spire to evaluate compliance with the USOA.

7) Measurement of costs that are no longer booked to plant account as a direct result of the Commission Order in GR-2021-0108.
    a. Spreadsheet "EE Ben Alt w 920 PR in Denominator 10-29-21" shows a calculation of the impact to A&G rates (see Deliverable #5).
        i. Spreadsheet relies on the transfer rates supplied in DR 44. During the pendency of the rate case, Spire alerted Staff that the data supplied in the DR response was either incorrect or applied incorrectly in Staff's payroll annualization. Explanation of the correction during the rate case and confirmation that the transfer rates in DR 44 are accurate.
        ii. Spreadsheet includes a tax gross up factor for costs that were capitalized before the Commission Order, but will be expensed going forward. Generally, increasing or decreasing O&M expense will have a dollar for dollar impact on the revenue requirement accounting schedules and no tax gross up is required. Explanation of why a tax gross up is necessary to measure the impact of the Commission Order.
    b. Measurement of impact to discontinuing capitalization of Spire Services costs and clearing account costs that are deemed non-operational overheads and do not flow to A&G accounts, including changes to cost management to account for cost in an "Order-compliant" fashion.
8) Evaluation of changes necessary to comply with the USOA's plant instruction 4(B) requirement for executive/management/supervisory labor to be capitalized based on timecards or the alternative special studies of their time.
9) Evaluation of changes necessary to comply with the USOA's plant instruction 4(C) requirement for utility plant accounts to be maintained so that the total amount of each overhead, the nature and quantity of each overhead that is charged to each work order and each plant account, as well as the basis of distributing the overhead costs can be shown.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

2021 REPORT ON ENFORCEMENT

Docket No. AD07-13-015

Prepared by Staff of the

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

NOVEMBER 18, 2021

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 2021 (FY2021),[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, Commission and delegated letter orders addressing accounting and financial reporting matters, and audit reports. This report summarizes the status and resolution of various matters that were public in FY2021. However, not all of Enforcement's activities result in public actions by the Commission. Like reports in previous years, the FY2021 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 several areas to help companies enhance compliance programs.

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 changes in the fuel mix of resources participating in the organized electric markets 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

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[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. FY2021, the subject of this report, begins on October 1, 2020, and ends on September 30, 2021.

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

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 FY2021, Enforcement's priorities focused on matters involving:

- Fraud and market manipulation;
- Serious violations of the Reliability Standards;
- Anticompetitive conduct;
- Threats to the nation's energy infrastructure and associated impacts on the environment and surrounding communities; 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 remedying misconduct involving the greatest harm to the public, where there may be significant gain to the violator or loss to the victims.

The Reliability Standards established by the 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 addition, Enforcement focuses on Commission orders and regulations related to energy infrastructure, including ensuring compliance with Certificates of Public Convenience and Necessity to minimize the impact of these projects on the environment, landowners, and communities.

In FY2021, DOI staff opened 12 new investigations, while bringing four pending investigations to closure without further action. Additionally, during the fiscal year, staff negotiated settlements of eight investigations totaling approximately $6.4 million, which included approximately $4.6 million in civil penalties and $1.8 million in disgorgement.[4] Six of these Commission-approved settlements also included compliance monitoring requirements. There was

[4] A table of FY2021 Civil Penalty Enforcement Actions is attached as Appendix B to this report.

also a Commission-approved settlement of one federal district court litigation matter for $166,841.13 in disgorgement and $1,308,158.87 in civil penalties.

In FY2021, DAA completed 12 audits of public utility, natural gas, and oil companies covering a wide array of topics. The audits resulted in 64 findings of noncompliance and 250 recommendations for corrective action, the majority of which were implemented within six months, and directed approximately $18.5 million in refunds and other recoveries. Additionally, during the fiscal year, DAA acted through the Chief Accountant's delegated authority or advised on 432 proceedings, including acting on 145 accounting filings requesting approval of a proposed accounting treatment or financial reporting matter, and assisting with 287 rate, pipeline certificate, merger and acquisition, and debt and security issuance proceedings before the Commission. Also, in FY2021 the Commission received Electric Quarterly Report (EQR) submittals from nearly 2,900 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 FY2021, 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 FY2021, 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 13,603 screen trips which resulted in 34 natural gas surveillance inquiries and two referrals to DOI for investigation. Electric surveillance screens produced approximately 470,832 screen trips which resulted in 31 electric surveillance inquiries and two referrals to DOI for investigation. In total, DAS closed 22 electric surveillance inquiries with no referral and, as of the end of the fiscal year, continued its analytic work on seven. Included in these surveillance activities, DAS has been conducting a comprehensive review of wholesale natural gas and electricity market activity during the February 2021 cold snap associated with winter storm Uri to determine whether any market participants engaged in market manipulation or other violations. DAS also worked and provided analytical support on approximately 40 investigations with DOI and 15 other matters involving inquiries or litigation. During FY2021, DAS staff reviewed over 2.6 million market-based rate transactions filed through the Commission's EQRs by 184 sellers of wholesale energy.

DIVISION OF INVESTIGATIONS

A. Overview

This section of the report provides details on DOI's current investigative processes and practices 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 Independent System Operators/Regional Transmission Organizations (ISOs/RTOs) in organized markets or their market monitoring units (both internal and external); referrals from other agencies (both federal and state); 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, insufficient evidence of a violation, or that a violation should not be subject to sanctions, DOI staff closes the investigation without further 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, staff conducts additional fact-finding after reviewing a subject's response and may modify its findings based on the response and further fact-finding. At these preliminary findings stage, DOI staff also provides investigative subjects with third-party evidence gathered during the investigation.

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 Enforcement 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 along with a 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

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

[6] The four investigations DOI closed in FY2021 were closed because staff found there was not enough evidence to conclude that a violation had occurred.

[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.

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

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 FY2021, Enforcement resolved eight investigations via settlements approved by the Commission. Those settlements involved: (1) a gas generating facility and its affiliate's violation of the Commission's Anti-Manipulation Rule (18 C.F.R. § 1c.2 (2021)); (2) an electric generating unit's violation of the ISO-New England (ISO-NE) tariff and the Commission's market behavior regulations (18 C.F.R. § 35.41(a) (2021)); (3) an electric generating company's violation of the New York Independent System Operator (NYISO) tariff and the Commission's market behavior regulations, including the Duty of Candor (18 C.F.R. §§ 35.41(a)-(b) (2021)); (4) a liquified natural gas facility's violation of Section 3 of the Natural Gas Act (NGA) and a prior Commission Order; (5) an energy marketer's violation of the ISO-NE tariff and the Commission's Duty of Candor rule (18 C.F.R. § 35.41(b) (2021)); (6) a natural gas storage facility owner's violation of Section 7(e) of the NGA and its Commission-issued Certificate Order; (7) an energy trading company's violation of Section 4A of the NGA and the Commission's Anti-Manipulation Rule (18 C.F.R. § 1c.1 (2021)); and (8) a wind farm's violation of the California Independent System Operator (CAISO) tariff and the Commission's Duty of Candor rule (18 C.F.R. § 35.41(b) (2021)).[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. This report, the subject's response to the Section 1b.19 notice, and any other submissions from the subject are then submitted to the Commission for consideration along with a proposed 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 then 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 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 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

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

[10] *See* 18 C.F.R. §§ 385.2201, 385.2202 (2021) (outlining the Commission's rules governing off-the-record communications and separation of functions). *See also* 5 U.S.C. § 554(d) (2014).

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 a "review de novo" of the law and facts 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 FY2021, staff is litigating three such actions in federal district court, seeking to enforce the Commission's combined assessment of more than $80 million in penalties and disgorgement. It also resolved another district court action through settlement during FY2021. There is one NGA-related matter on appeal to the United States Court of Appeals for the Fifth Circuit and one NGA trial-type ALJ proceeding remains pending before the Commission as of the end of the fiscal year.[11]

B. Significant Matters

DOI staff spent substantial time in FY2021 preparing briefs, reports, and other public filings related to litigation in federal courts, administrative proceedings before the Commission, and an inquiry into the operations of the bulk-power system during the February 2021 extreme winter weather conditions in the Midwest and South Central states.

During FY2021, DOI represented the Commission in four litigation matters in United States district courts, one of which has now been settled. There is also one matter on appeal from a Commission final order pending in the United States Court of Appeals for the Fifth Circuit. Currently pending at the Commission is one NGA trial-type proceeding before an ALJ. There are three other OSC proceedings pending before the Commission (two FPA-related and one NGA-related).

As of the end of FY2021, a total of approximately $70 million in civil penalties and $10 million in disgorgement of unjust profits, plus interest, remains pending in the federal district court matters.

1. District Court Litigation

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

[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.

deceptive conduct pleadings; (4) what constitutes individual culpability under the FPA; (5) particular activity that establishes manipulation; (6) what evidence satisfies the scienter requirement under Section 222 of the FPA; (7) what is required to establish "due diligence" to overcome a Section 35.41(b) violation; and (8) the sufficiency of defendants' affirmative defenses. A United States court of appeals also issued an opinion on the construction and application of the federal statute of limitations to FPA civil penalty actions, as discussed below. In addition, in FY2021, a district court granted the Commission summary judgment on its claim that a defendant violated the Duty of Candor (18 C.F.R. § 35.41(b) (2021)) by providing false or misleading information to the Commission, also discussed below.

In FY2021, 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 are:

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, Defendants) 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 Defendants had engaged in a scheme fraudulently to 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 Defendants. The Defendants filed a motion to dismiss the petition, which the District Court denied on April 11, 2016. In its order denying the Defendants' 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 case 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 Defendants' 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 Defendants' motion was denied.

The parties engaged in another mediation before a magistrate judge in February 2020 and July 2020. Following mediation, the parties reached a settlement, which was approved by the Commission on November 25, 2020. Under the terms of the settlement, Defendants agreed to make payments totaling $1,475,000 over seven years, divided as follows: CES will pay $166,841.13 in disgorgement to ISO-NE and a penalty of $708,158.87 to the United States Treasury; and Silkman will pay a penalty of $600,000 to the United States Treasury. Defendants admitted to the facts set forth in the settlement agreement, but neither admitted nor denied the violations.

CES made its first installment payment in December 2020, including the full disgorgement payment to ISO-NE. Following confirmation of receipt of the initial payment, the parties filed a stipulation of dismissal with prejudice in the Maine District Court case. Staff continues to monitor this matter for compliance with the settlement agreement.

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, Defendants) 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 Defendants had engaged in trades to improperly collect certain market payments (called Marginal Loss Surplus Allocation, or "MLSA"). Specifically, the Commission found that Defendants 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 and held oral arguments in December 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).

Following the issuance of the Fourth Circuit's opinion and mandate on April 17, 2020, the District Court set a trial date of August 22, 2022, and a corresponding schedule for discovery and pretrial motions. The parties are set to complete fact discovery in fall 2021 and then proceed to expert discovery, which staff expects to continue through early 2022.[12]

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, Defendants). The Commission found that the Defendants 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 Defendants' "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 Defendants' 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 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.

[12] On October 29, 2021, the Commission approved a settlement with Defendants Houlian Chen, HEEP Fund, Inc., and CU Fund, Inc. These Defendants agreed to pay $600,000 based on a demonstrated inability to pay and to a trader-ban of two years from FERC jurisdictional markets. They neither admitted nor denied liability but agreed to a factual stipulation and to cooperate with the Commission in the litigation.

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 Defendants 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.

After the parties briefed cross-motions for summary judgment in early 2020, the Court issued an order on November 20, 2020 resolving the motions. In the order, the Court denied Defendants' motions to dismiss the Commission's claims for market manipulation and granted the Commission's motion for summary judgment on Defendants' affirmative defenses to those claims. The Court also granted the Commission's motion for summary judgment on its claim that Coaltrain violated Section 35.41(b).

During June and July 2021, the parties briefed Defendants' motion seeking a ruling that under the FPA the Commission has no ability to: (a) require disgorgement of unjust profits, (b) impose joint and several liability for disgorgement, or (c) impose joint and several liability for penalties. The motion is pending before the Court.

The Court has set a trial date of May 2, 2022.

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, Defendants) 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. Defendants failed to pay the assessed amounts within the sixty-day period provided by the statute.

On January 6, 2020, Enforcement staff filed a complaint in the United States District Court for the Eastern District of California to enforce the penalty assessment order against Defendants. Defendants filed motions to dismiss the complaint on March 6, and Enforcement staff filed a consolidated opposition to the motions on April 21. Defendants filed their replies to the opposition on June 12. Defendants also filed a motion on April 10, 2020 seeking a stay of discovery pending the Court's ruling on their motions to dismiss. Enforcement staff filed its opposition to that motion on May 1 and Defendants 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 Defendants' position that the Commission's claims are time-barred under the applicable statute of limitations. Enforcement staff 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. The motions remain pending.

2. United States Court of Appeals Matters

a) 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 Commission issuance of an order on BP's request 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 contended 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 argued that it cannot be ordered to repay its unjust profits because the same statute of limitations applies to actions for disgorgement under *Kokesh*. Enforcement staff's response was filed on January 25, 2018.

On December 17, 2020, the Commission denied BP's motion for rehearing. On January 19, 2021, BP paid the civil penalty and disgorgement under protest and filed a petition for review with the United States Court of Appeals for the Fifth Circuit. BP filed its opening brief on May 26, 2021. The Commission's responsive brief was filed on July 26, 2021. BP's reply brief was filed on August 17, 2021. Oral argument is tentatively scheduled for the week of January 3, 2022.

3. 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; a $1,000,000 civil penalty against Hall (jointly and severally with TGPNA, Total, and TGPL), and a $2,000,000 civil penalty against Tran (jointly and severally with TGPNA, Total, and TGPL).

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.[13] 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.

On July 15, 2021, the Commission ordered a hearing before an ALJ to determine whether TGPNA, Hall, Tran, Total, and TGPL are liable for market manipulation. The hearing order also directs the ALJ to determine facts relevant to applying the penalty guidelines.

Chief Judge Cintron has ordered the hearing to commence by August 15, 2022, and designated Judge Suzanne Krolikowski as the presiding judge. Judge Joel deJesus is the settlement judge.

b) *GreenHat Energy, LLC, et al., Docket No. IN18-9-000*

On May, 20, 2021, the Commission issued an OSC directing GreenHat Energy, LLC (GreenHat), John Bartholomew, Kevin Ziegenhorn, and the Estate of Andrew Kittell (collectively, Respondents) to explain why they should not be required, jointly and severally, to disgorge $13.1 million in wrongful gains from a scheme to manipulate PJM's Financial Transmission Rights market in violation of the Commission's Anti-Manipulation Rule and PJM's tariff. Based on the

[13] 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), https://www.ferc.gov/legal/staff-reports/2018/11-15-18-enforcement.pdf.

same allegations of misconduct, the OSC directed GreenHat to explain why it should not pay a civil penalty of $179 million and directed Bartholomew and Ziegenhorn to explain why they should not each pay a civil penalty of $25 million. Respondents filed answers on July 6, 2021, and Enforcement staff filed its response to the answers on July 27, 2021. On August 23, 2021, the Estate of Andrew Kittell filed a proposed supplemental answer and a motion for leave to file the supplemental answer.[14]

c) PacifiCorp, Docket No. IN21-6-000

On April 15, 2021, the Commission issued an OSC directing PacifiCorp to show cause why it should not assess a civil penalty of $42 million against PacifiCorp for violating FPA Sections 215(b)(1) and 39.2(b) of the Commission's regulations. The Commission directed PacifiCorp to address potentially violative conduct of failing to comply with a Commission-approved Reliability Standard requiring transmission owners such as PacifiCorp to establish and have ratings for their transmission lines that are consistent with the company's methodology for establishing those ratings. After receiving an extension from the Commission, PacifiCorp filed its answer on July 16, 2021, and Enforcement staff filed its response to the answer on September 14, 2021.

d) Rover Pipeline, LLC and Energy Transfer Partners, L.P., Docket No. IN19-4-000

On March 18, 2021, the Commission issued an OSC directing Rover Pipeline, LLC and Energy Transfer Partners, L.P. (collectively, Rover) to show cause why they should not be found to have violated 18 C.F.R. § 157.5 by misleading the Commission in its Application for a Certificate of Public Convenience and Necessity and attendant filings. Section 157.5 requires that certificate applications and attendant filings contain full and forthright information. Rover stated in its certificate application that it was "committed to a solution that results in no adverse effects" to a historic 1843 farmstead, the Stoneman House, located near Rover's largest proposed compressor station. The Commission asked Rover to address allegations that Rover was planning to purchase the Stoneman House with the intent to demolish it, and ultimately did demolish it, without notifying the Commission of the purchase or demolition. The OSC further directed Rover to show cause why it should not be assessed civil penalties in the amount of $20,160,000. Rover's answer to the OSC was filed on June 21, 2021, and Enforcement staff's response to the answer was filed on July 21, 2021. On September 15, 2021, Rover filed a proposed supplemental answer.

[14] On November 5, 2021, the Commission issued an Order Assessing Civil Penalties in which it found that GreenHat, Bartholomew, Ziegenhorn, and Kittell (represented by his Estate) violated section 222 of the FPA and section 1c.2 of the Commission's regulations by engaging in a manipulative scheme in the PJM Financial Transmission Rights market; assessed civil penalties in the amounts of $179,600,573 against Greenhat, $25 million against Bartholomew, and $25 million against Ziegenhorn; and found Greenhat, Bartholomew, Ziegenhorn, and the Kittle Estate jointly and severally liable for $13,072,428 in disgorgement. The docket remains active because of a pending motion and the Commission continues to maintain the wall between decisional and non-decisional staff.

e) Boyce Hydro Power, LLC, Docket Nos. P-10809-050, et al.

On December 9, 2020, the Commission issued an OSC to Boyce Hydro Power, LLC (Boyce Hydro), finding that it had violated numerous FERC dam safety orders and license provisions related to three jurisdictional projects in Michigan and directing it to show cause why the Commission should not assess a civil penalty of $15 million for those violations. The violations related to Boyce Hydro's failure to take required actions after a May 19, 2020, failure of two of its dams.

Boyce Hydro filed an answer to the OSC on January 8, 2021, and Enforcement staff submitted its response to the answer on February 3, 2021. Approximately three weeks later, on February 25, 2021, the United States Bankruptcy Court for the Eastern District of Michigan confirmed a plan for bankruptcy and liquidation of Boyce Hydro.

On April 15, 2021, citing the seriousness of the violations and the lack of effort by Boyce Hydro to remedy its violations, the Commission issued an order assessing a $15 million penalty against Boyce Hydro. That order directed FERC staff to take steps necessary to pursue the penalty in the bankruptcy proceeding but instructed staff to ensure that the flood victims recover their damages before the Commission recovers its civil penalty.

In December 2020, two Michigan counties, acting through their delegated agent, obtained title to the Boyce Hydro projects through a condemnation proceeding. On May 20, 2021, citing the bankruptcy and condemnation proceedings, the Commission terminated Boyce Hydro's licenses.

4. Joint Reliability Inquiry

From February 8 through 20, 2021, and especially on February 15 and 16, Texas and other southern and central states experienced unusually cold weather, including snow and freezing rain. The below-average temperatures caused 1,045 individual generating units within the Balancing Authority and Reliability Coordinator footprints of the Electric Reliability Council of Texas (ERCOT), Southwest Power Pool, Inc. (SPP), and the Midcontinent Independent System Operator, Inc. (MISO), to experience more than 4,000 outages, derates, or failures to start. For over two consecutive days, ERCOT averaged over 34,000 MW of generation outages, 49 percent or nearly half of its 2021 actual all-time winter peak load. The unexpected generation outages caused capacity emergencies in ERCOT, SPP, and MISO South, leading to firm load shed. ERCOT, unable to import more than 1,220 MW over its direct current ties, shed 20,000 MW and its load shed lasted three consecutive days. MISO-South shed 700 MW, which lasted over two hours, and SPP's load shed lasted approximately five hours and was 2,700 MW at its worst point. MISO and SPP imported large amounts of power from the east, and the power flows of approximately 13,000 MW at peak caused transmission emergencies in MISO, leading to an additional 2,000 MW of firm load shed.

Immediately following the event, the Commission announced the formation of a joint inquiry with the North American Electric Reliability Corporation (NERC) and all six of the relevant regional reliability entities to determine the causes of the event and make recommendations to prevent such events in the future. Enforcement staff, including individuals from DOI, were part of the FERC team that conducted the inquiry into the matter. Staff reviewed entity data and

conducted interviews to determine the causes of the generation losses and to develop recommendations. The inquiry team issued its preliminary findings and recommendations on September 23, 2021, and issued its final report on November 16, 2021. FERC and NERC staff found that freezing issues caused by failure to winterize the generating units caused 44 percent of the generation losses, and fuel issues (the majority of which were natural gas fuel supply issues) caused 31 percent of the losses. The team made nine key recommendations and several other secondary recommendations to help prevent similar future events.

C. Settlements

In FY2021, the Commission approved nine settlement agreements to resolve pending enforcement matters, including eight investigations and one federal district court matter. The settlements totaled $5,915,804.30 in civil penalties and disgorgement of $1,996,726.47. Since 2007, Enforcement has negotiated settlements totaling approximately $790 million in civil penalties and approximately $520 million in disgorgement.

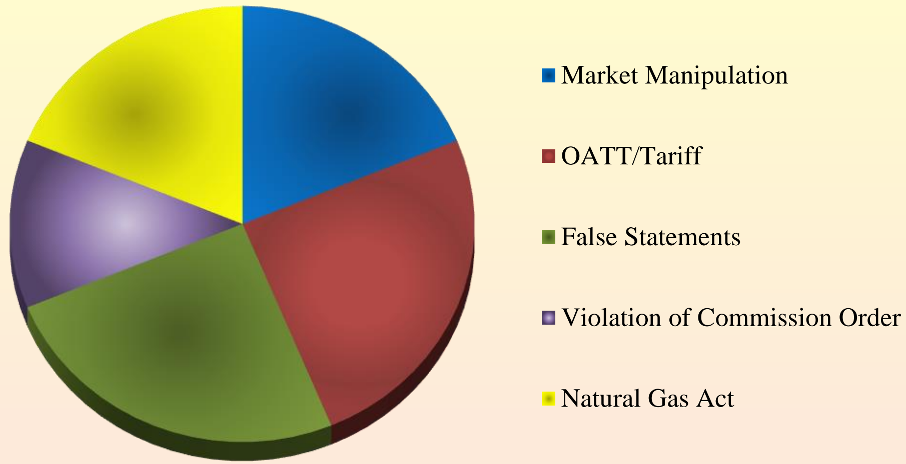
In 2010, the Commission issued revised Penalty Guidelines.[15] Under the Penalty Guidelines, an organization's civil penalty can vary significantly depending on the amount of market harm caused by the violation, the amount of unjust profits, an organization's efforts to remedy the violation, and other 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.[16]

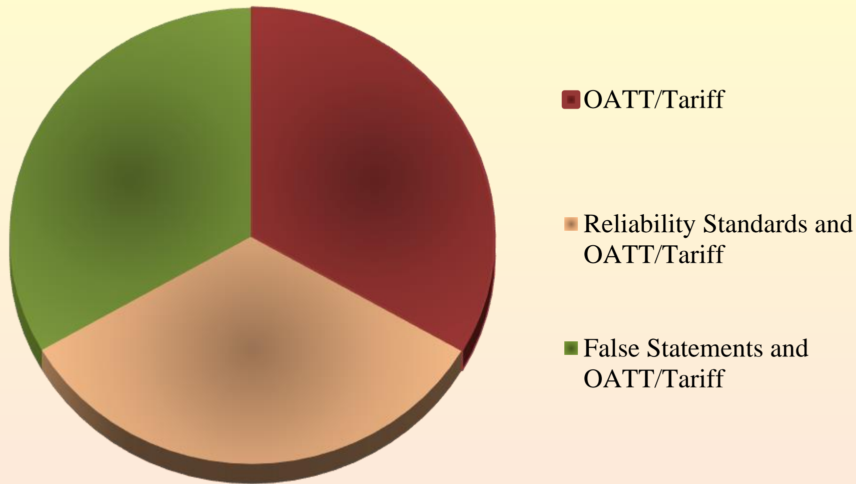
In FY2021, the Commission approved settlement agreements that resolved investigations concerning several different types of violations, including the Duty of Candor, 18 C.F.R. § 35.41(b); the Anti-Manipulation Rule, 18 C.F.R. §§ 1c.1 and 1c.2; ISO/RTO tariffs; and Commission orders related to the construction of natural gas and LNG facilities under NGA Sections 3 and 7(e).

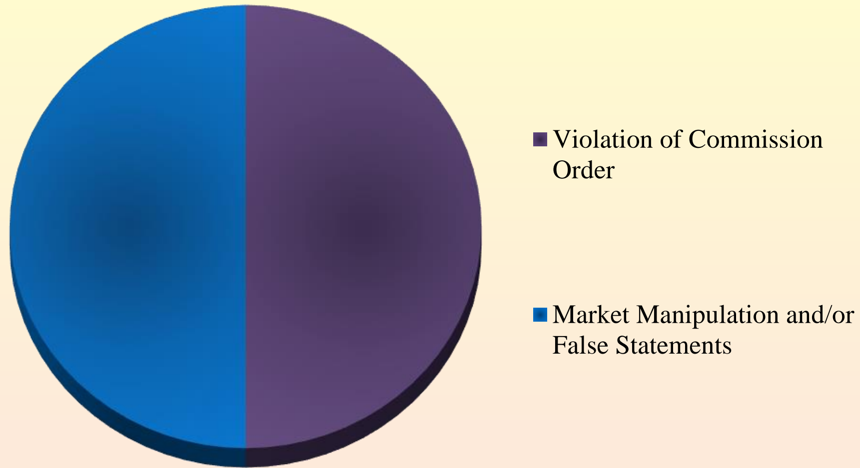
The charts below illustrate the types of violations settled in the last five fiscal years, Fiscal Years 2017-2021. Some settlements concerned multiple types of violations.

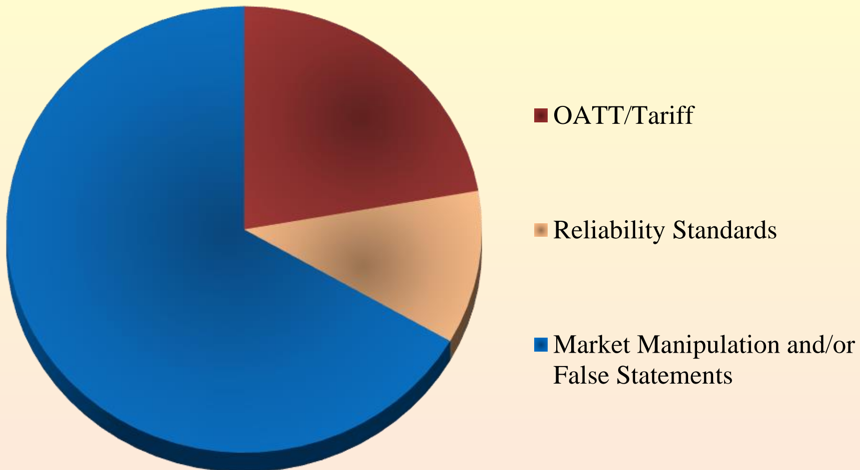
[15] *Revised Policy Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines), https://www.ferc.gov/whats-new/comm-meet/2010/091610/M-1.pdf.

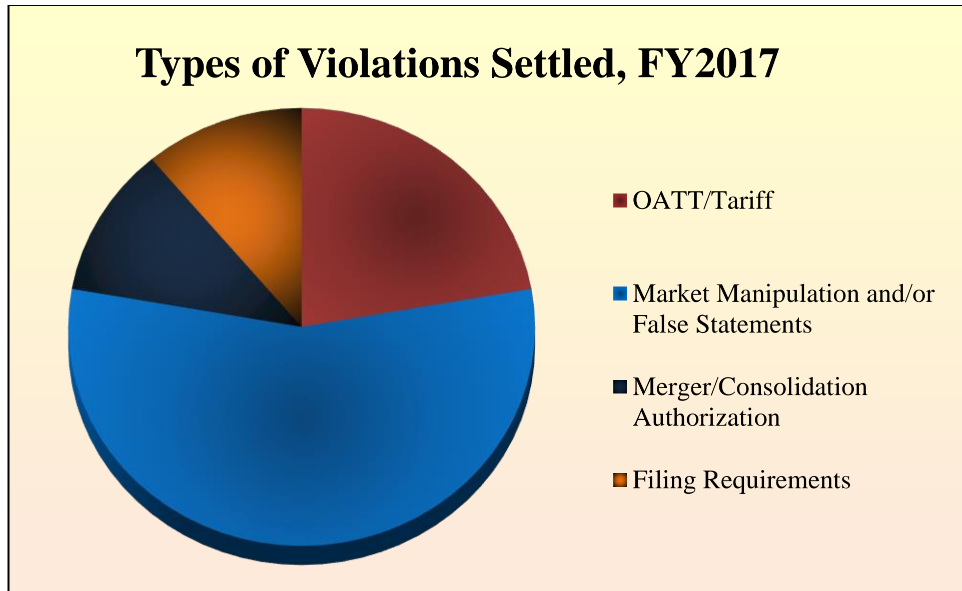
[16] *Id.* P 109.


Types of Violations Settled, FY2021
Market Manipulation
OATT/Tariff
False Statements
Violation of Commission Order
Natural Gas Act


Types of Violations Settled, FY2020
OATT/Tariff
Reliability Standards and OATT/Tariff
False Statements and OATT/Tariff


Types of Violations Settled, FY2019
Violation of Commission Order
Market Manipulation and/or False Statements


Types of Violations Settled, FY2018
OATT/Tariff
Reliability Standards
Market Manipulation and/or False Statements



The Commission approved the following settlement agreements of investigations in FY2021:

a) High Desert Power Project, LLC and Middle River Power LLC, Docket No. IN20-6-000

On October 23, 2020, the Commission issued an order approving the settlement of Enforcement's investigation of Middle River Power LLC and High Desert Power Project, LLC (collectively, MRP). Enforcement's investigation found that MRP took advantage of a CAISO software error and submitted residual unit commitment offers into CAISO's day-ahead market in a manner that sought to maximize any bid cost recovery payments that might be awarded, in violation of Section 222 of the FPA and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2. MRP stipulated to the facts, neither admitted nor denied the violation, and agreed to pay a civil penalty of $390,000 and disgorgement of $176,000, plus interest. Additionally, MRP agreed to annual compliance monitoring reporting for one year with the option of Enforcement to extend it to two years.

b) Algonquin Power Windsor Locks LLC, Docket No. IN21-2-000

On January 5, 2021, the Commission issued an order approving a settlement between Enforcement and Algonquin Power Windsor Locks LLC (Windsor Locks) regarding Enforcement's investigation into Windsor Locks' violation of its must-offer obligations in the ISO-NE energy market. Enforcement staff determined that Windsor Locks failed to offer the MWs required by ISO-NE tariff provisions governing its participation in the ISO-NE forward capacity and forward reserve markets. Those failures constituted violations of the ISO-NE tariff and Section 35.41(a) of the Commission's regulations. Under the terms of the settlement, Windsor Locks admitted the relevant facts but neither admitted nor denied the violations, and it agreed to pay a civil penalty of $1,000,000, pay ISO-NE $1,119,073.15 in disgorgement and interest, and undertake compliance monitoring for one year with the option of Enforcement to extend it to two years.

c) NRG Power Marketing LLC, Docket No. IN20-4-000

On January 8, 2021, the Commission issued an order approving the settlement of Enforcement's investigation of NRG Power Marketing LLC (NRG). Enforcement's investigation found that NRG, the market participant for several capacity resources in ISO-NE's Forward Capacity Market (FCM), violated Section II.13 of the ISO-NE tariff (requiring de-list bids for the FCM to include certain tariff-defined cost inputs) and Section 35.41(b) of the Commission's regulations when it submitted inaccurate cost-based de-list bids for certain of its capacity resources during the ISO-NE Eleventh Forward Capacity Auction (FCA 11) qualification period. The purpose of a static de-list bid is to give a resource already committed in the FCM an opportunity to eliminate its capacity supply obligation for a particular commitment period. Enforcement staff found that NRG's static de-list bids for FCA 11, submitted in June 2016, were inaccurate in two respects. First, staff found that NRG overstated its expectation regarding scarcity hours, which resulted in higher static delist bid prices submitted for the resources. Second, staff found that NRG misstated the resources' net going forward costs with respect to its treatment of mothball costs in the static de-list bids. Under the terms of the settlement, NRG admitted to the facts, but neither admitted nor denied the violation. NRG agreed to pay a civil penalty of $85,000 and to submit annual compliance reports for two years with the option of Enforcement to extend it to three years.

d) Tres Palacios LLC, Docket No. IN21-3-000

On January 19, 2021, the Commission issued an order approving the settlement of Enforcement's investigation of Tres Palacios LLC (Tres Palacios). Enforcement's investigation considered whether Tres Palacios failed to timely conduct sonar surveys on its natural gas salt dome caverns in violation of Section 7(e) of the NGA and its Commission-issued Certificate of Public Convenience and Necessity (Certificate Order). In 2007, Tres Palacios sought and obtained from the Commission a certificate pursuant to Section 7(c) of the NGA to construct and operate the storage facility in Matagorda County, Texas. The Certificate Order required Tres Palacios to comply with certain engineering conditions, including that Tres Palacios "conduct sonar surveys of the caverns every five years." Prior to achieving operational status, Tres Palacios conducted sonar studies of its caverns in 2008 and 2009. However, Tres Palacios did not conduct the next set of sonar surveys until 2016 and 2017. Tres Palacios stipulated to the facts, neither admitted nor denied the violations, and agreed to pay a civil penalty of $700,000 and to submit annual compliance monitoring reports for two years.

e) Freeport LNG Development, L.P., Docket No. IN17-7-000

On January 28, 2021, the Commission issued an order approving the settlement of Enforcement's investigation of Freeport LNG Development, L.P. (Freeport) regarding the company's failure to provide an accurate reporting of unpermitted construction activities that had occurred at its site. Enforcement's investigation found that Freeport cleared and stabilized approximately 25 acres of land without prior Commission authorization. Despite having information in its possession regarding the full extent of the violation, Freeport's initial report to the Commission contained factually incorrect information regarding the violation's cause and scope. Enforcement staff found these behaviors violated the terms and conditions of the Commission's Order authorizing Freeport to construct an LNG terminal at its site. Under the terms

of the settlement, Freeport admitted to the facts, but neither admitted nor denied the violation. Freeport also agreed to pay a civil penalty of $550,000.

f) Alliance NYGT LLC, Docket No. IN21-4-000

On February 8, 2021, the Commission issued an order approving the settlement of Enforcement's investigation of Alliance NYGT LLC (Alliance). Enforcement investigated whether Alliance: (1) submitted offers and information to NYISO that did not accurately reflect the fuel used to run its generators; (2) failed to respond to NYISO's inquiries regarding the type of fuel required and used to run its generators; and (3) omitted material information from its responses to NYISO. Enforcement staff found that Alliance offered its two dual-fuel generators, Hillburn and Shoemaker, based on a kerosene reference level when they were running on gas, a cheaper fuel, which resulted in Alliance receiving excess uplift revenues. Alliance stipulated to the facts and admitted that it violated 18 C.F.R. §§ 35.41(a)-(b) and several provisions of the NYISO tariff. Alliance agreed to pay $369,264.19 in disgorgement plus $94,710.09 in interest, pay a civil penalty of $420,000, and be subject to compliance monitoring for two years.

g) Shell Energy North America (US), L.P., Docket No. IN21-8-000

On June 15, 2021, the Commission issued an order approving the settlement of Enforcement's investigation of Shell Energy North America (US), L.P. (SENA) into whether SENA engaged in a related-positions fraudulent scheme during the May 2016 bidweek. Enforcement's investigation found that SENA violated Section 4A of the NGA, 15 U.S.C. § 717c-1, and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1, by engaging in physical trading at two California trading hubs that was intentionally designed to manipulate monthly index prices to benefit derivative financial positions in one junior trader's speculative book. Enforcement further determined that oversights in SENA's compliance program contributed to the violations. Under the terms of the settlement, SENA admitted to the facts, but neither admitted nor denied the violations. SENA also agreed to pay a civil penalty of $951,683 and disgorgement of $48,317 plus interest, and to submit to a two-year annual compliance reporting requirement.

h) Terra-Gen, LLC, Docket No. IN21-7-000

On August 2, 2021, the Commission issued an order approving the settlement of Enforcement's investigation of Terra-Gen, LLC (Terra-Gen) into whether Terra-Gen violated 18 C.F.R. § 35.41(b) by submitting false or misleading information to CAISO about the physical capabilities of its wind-powered electric generation facility and whether Terra-Gen violated Section 4.2.1 of the CAISO tariff by deviating its wind farms' output from CAISO's dispatch instructions. Under the agreement, Terra-Gen agreed to pay a civil penalty of $510,962.43 and disgorgement to CAISO in the amount of $117,231. Terra-Gen neither admitted nor denied the alleged violations. Terra-Gen further agreed to submit annual compliance reports for at least two years and up to three years.

The Commission also approved the settlement of the *FERC v. Silkman* litigation in the United States District Court for the District of Maine, as described more fully above in DOI Section B(1).

D. Self-Reports

Over the previous five fiscal years (Fiscal Years 2017-2021), staff received approximately 685 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

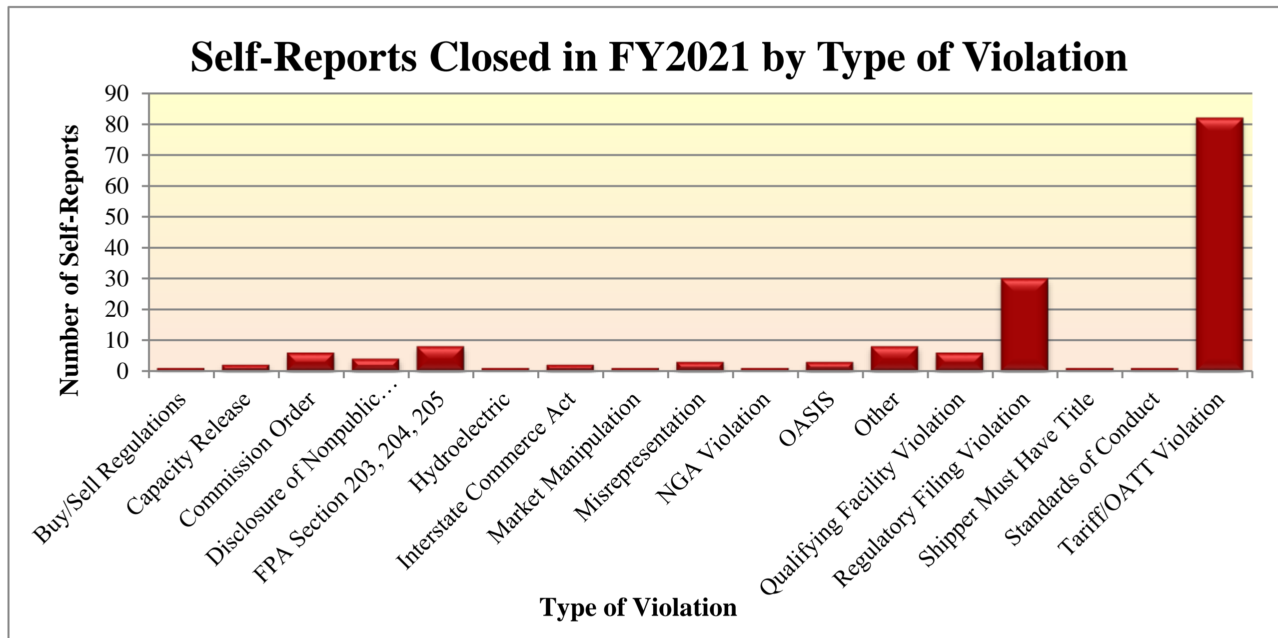
In FY2021, staff received 146 new self-reports from a variety of market participants, including public utilities, natural gas companies, generators, and ISOs/RTOs. The majority of these self-reports (86) were from ISOs/RTOs and involved relatively minor violations of tariff provisions. Staff closed 113 self-reports in FY2021, 32 of which were carried over from previous fiscal years. Of the self-reports received in FY2021, 64 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.[17] Staff continues to encourage the submission of self-reports and views self-reports as showing a company's commitment to compliance. Additional information about self-reports, including how to submit them to DOI, is contained on the Commission's website at www.ferc.gov/self-reports.

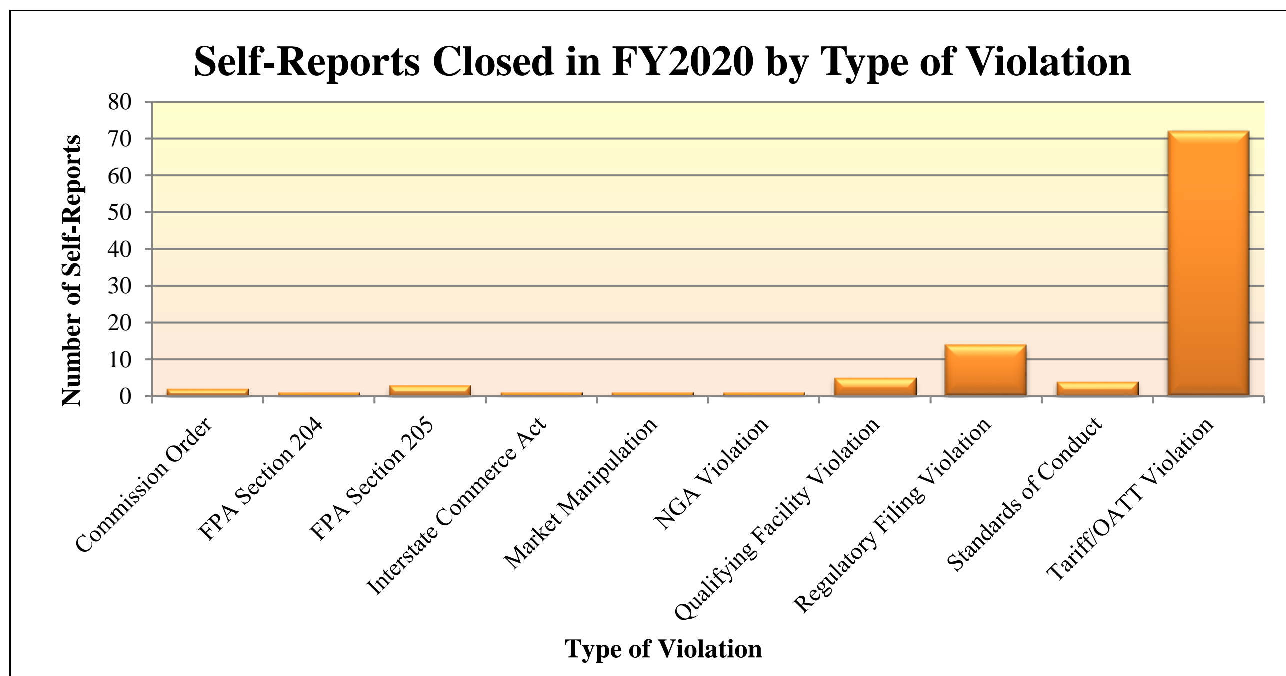
The following charts depict the types of violations for which staff received self-reports from Fiscal Years 2017 through 2021.[18] Some self-reports include more than one type of violation.

[17] Revised Penalty Guidelines, 132 FERC ¶ 61,216 at P 127.

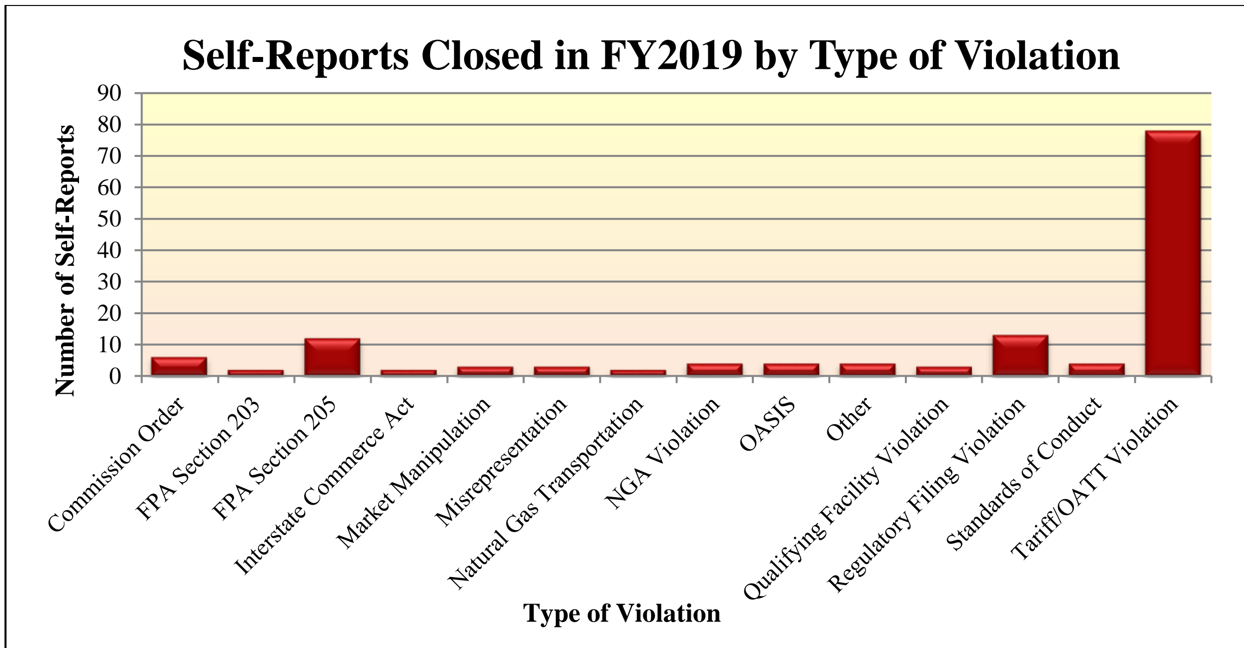
[18] Consistent with the FY2018 through FY2020 Annual Reports, the FY2021 Self-Reports Closed chart includes the substantive violation reported by an ISO/RTO and replaces the ISO/RTO category used in previous years.

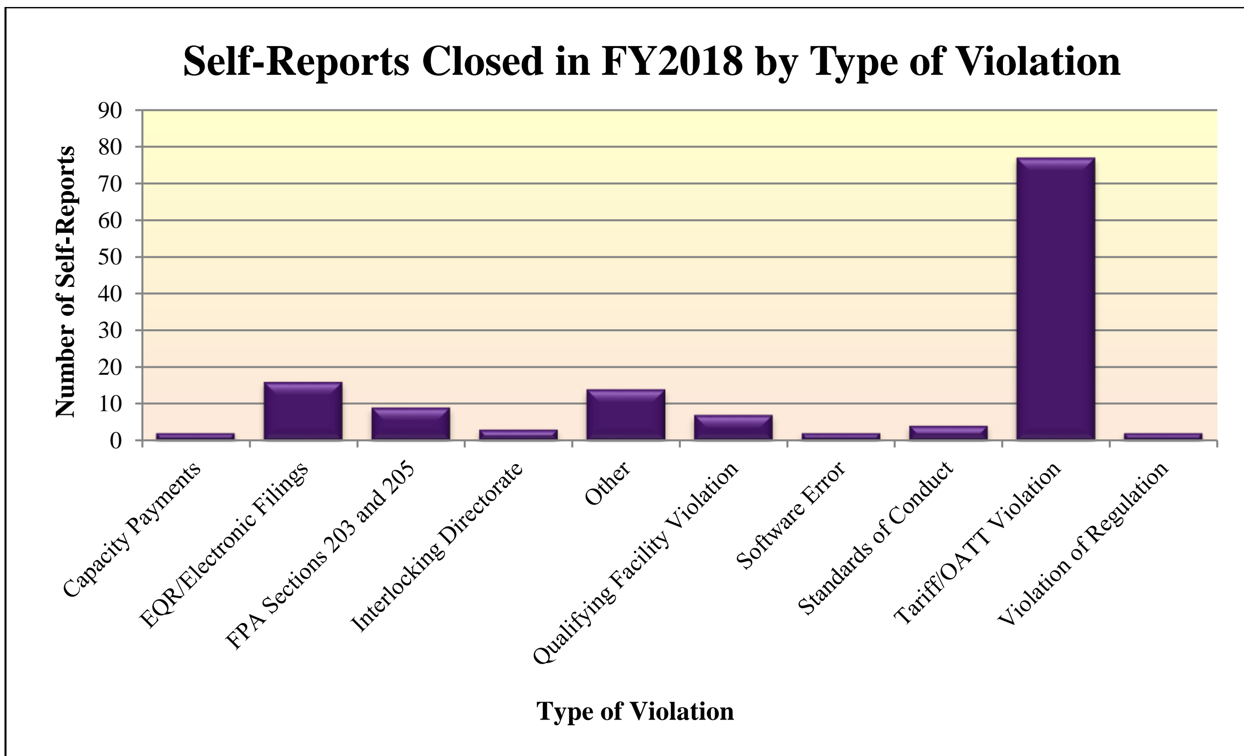


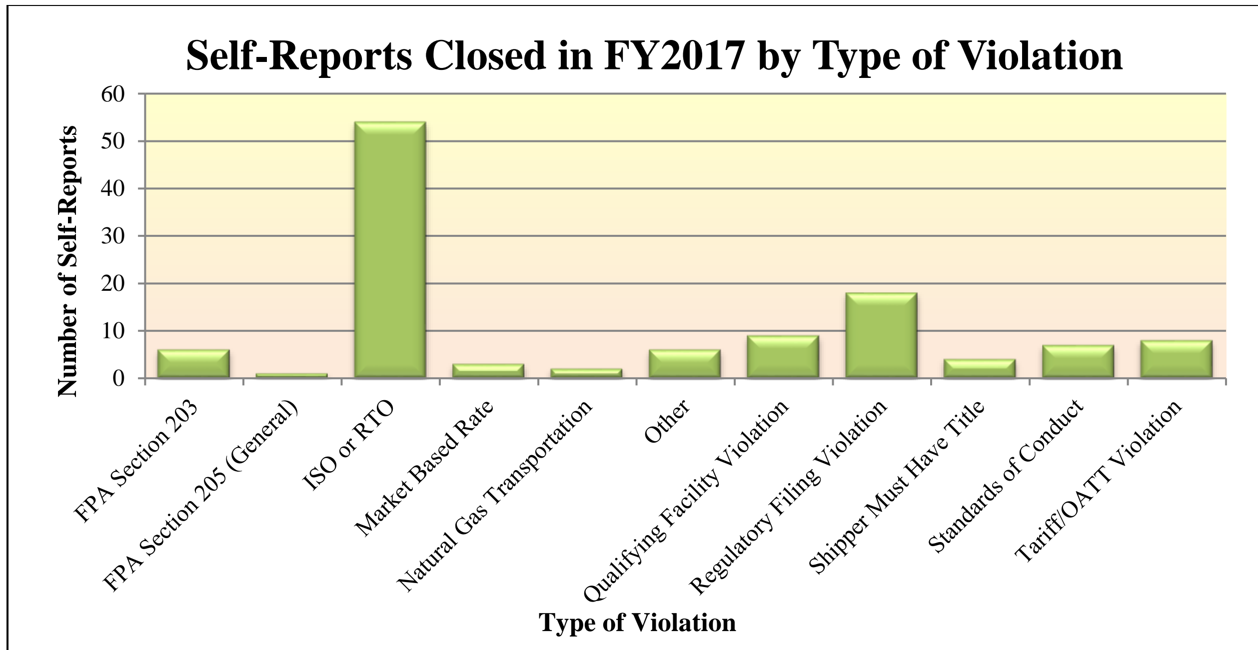
Self-Reports Closed in FY2021 by Type of Violation
Number of Self-Reports
90
80
70
60
50
40
30
20
10
0
Buy/Sell Regulations
Capacity Release
Commission Order
Disclosure of Nonpublic…
FPA Section 203, 204, 205
Hydroelectric
Interstate Commerce Act
Market Manipulation
Misrepresentation
NGA Violation
OASIS
Other
Qualifying Facility Violation
Regulatory Filing Violation
Shipper Must Have Title
Standards of Conduct
Tariff/OATT Violation
Type of Violation



Self-Reports Closed in FY2020 by Type of Violation
Number of Self-Reports
80
70
60
50
40
30
20
10
0
Commission Order
FPA Section 204
FPA Section 205
Interstate Commerce Act
Market Manipulation
NGA Violation
Qualifying Facility Violation
Regulatory Filing Violation
Standards of Conduct
Tariff/OATT Violation
Type of Violation


Self-Reports Closed in FY2019 by Type of Violation
Number of Self-Reports
90
80
70
60
50
40
30
20
10
0
Commission Order
FPA Section 203
FPA Section 205
Interstate Commerce Act
Market Manipulation
Misrepresentation
Natural Gas Transportation
NGA Violation
OASIS
Other
Qualifying Facility Violation
Regulatory Filing Violation
Standards of Conduct
Tariff/OATT Violation
Type of Violation


Self-Reports Closed in FY2018 by Type of Violation
Number of Self-Reports
90
80
70
60
50
40
30
20
10
0
Capacity Payments
EQR/Electronic Filings
FPA Sections 203 and 205
Interlocking Directorate
Other
Qualifying Facility Violation
Software Error
Standards of Conduct
Tariff/OATT Violation
Violation of Regulation
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 FY2021 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.[19] As examples, in FY2021 several ISOs/RTOs and market participants reported minor tariff and reporting violations, one market participant reported a standards of conduct violation, two reported violations of the Interstate Commerce Act, and several companies reported regulatory filing violations. 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 minor technical computer error that it had not previously encountered, a temporary termination (*i.e.*, undesignated) request of 50 MW of a designated network resource (DNR) was not confirmed within the required 30 minutes of the request being accepted by the utility's automated system. Shortly thereafter, the DNR's energy was transferred to and sold by the utility's power supply merchant group without it first being undesignated. Staff closed this self-report without further action because of the inadvertent and isolated nature of the event, and because it was caused by minor, technical glitches in the system that were limited to the one undesignated request associated with the transfer and subsequent sale of 50 MW. In addition, the violation did not cause significant monetary harm.

Tariff/OATT and Reporting Violation (Electric). A utility and several of its subsidiaries self-reported that, due to administrative oversight, they failed to file timely notifications with the

[19] Revised Policy Statement, 123 FERC ¶ 61,156 at P 25.

Commission disclosing that the subsidiaries had become Category 2 Sellers in various regions when their corporate parents purchased other utilities. They also failed to submit required MBR tariff amendments reflecting the changes and, in some cases, failed to submit timely triennial reports required of Category 2 Sellers. The parent company discovered the violations after it made substantial improvements to its compliance program and conducted reviews of its subsidiaries' compliance with FERC obligations. Because of the inadvertent nature of the violations, the lack of market harm, and the companies' substantial compliance improvements, staff closed this self-report without further action.

Tariff/OATT Violation (Electric). A utility self-reported its failure to offer into an ISO/RTO's day-ahead energy market consistent with its capacity supply obligation. The ISO/RTO had approved an increase in the utility's capacity. Following the increase in capacity, the utility failed to update its day-ahead market offers because of an error in its internal bid sheet. The utility's commercial team discovered the error in a routine spot check of the bid sheet and alerted the compliance team, which in turn consulted outside counsel. Thereafter, the utility updated its day-ahead market offers to reflect the increased amount of capacity that it sells. The utility informed the ISO/RTO of the error and notified the ISO/RTO it had self-reported to Enforcement. Because the violation was minor and the company discovered the error on its own and promptly self-reported it, staff closed this self-report without further action.

Tariff/OATT Violation (Electric). An investor-owned utility self-reported a tariff violation relating to generation unit capacity testing and results for some of its generation units. The issues focused on what could be viewed as a disconnect between (i) the ISO/RTO's testing protocols that call for units to be tested over a specified period, and (ii) certain operating and regulatory restrictions that resulted in limitations on the ability of the units to maintain their maximum energy output reflected in the test results for longer periods of time. Staff closed this self-report without further action based on several factors, including that the violations did not result in significant market harm, the utility's behavior was consistent with a reasonable interpretation of the relevant tariff and business practice manual provisions, and the utility had been forthcoming and proactive with the ISO/RTO, the IMM, and staff in addressing the issues raised in the self-report.

Tariff/OATT Violation (Electric). A utility self-reported that, due to an employee communication error caused by physical distancing requirements of the coronavirus pandemic, it inadvertently scheduled a quantity of generation to an ISO/RTO that was in excess of that resource's temporary undesignated (or non-network) transmission capacity for approximately three days. The utility's tariff sets forth the requirements for its designation of transmission capacity quantities, including for temporary undesignated capacity. Upon learning about the violation, the utility increased that resource's temporary undesignated capacity on file to make up for the shortfall from the violation. Staff closed this self-report without further action due to the inadvertent nature of the error, the company's swift action to correct the violation and any potential harm to in-network customers, and the company's subsequent efforts to improve internal communications.

Tariff/OATT Violation (Electric). The operator of a generator self-reported that it had unintentionally provided inaccurate start-up information to an RTO for one generator for two days. Because the violation was inadvertent, the generator voluntarily returned revenues gained from the

violation, and the violation resulted in only limited market harm, staff closed the matter with no further action.

Tariff Violation (Gas). An interstate pipeline self-reported that due to a coding error, one shipper on the pipeline was able to schedule a small volume of firm transportation above its contracted limit during a five-day period. As a result, 10 other shippers received lower allocations of firm transportation service than they otherwise should have. Upon realizing the violation, the pipeline corrected the coding error and adjusted the shipper's invoice accordingly. Because the violation was unintentional, quickly corrected, limited in nature, and unlikely to occur again, staff closed this self-report with no further action.

Tariff and Capacity Release Violation (Gas). A gas local distribution company (LDC) self-reported a multi-year violation of capacity release rules on an interstate pipeline. The LDC, acting as an agent, purchased gas for several of its larger customers that chose to participate in a state-enacted program. However, the LDC did not take transportation service to move that gas over the pipeline. Rather, it released capacity to an affiliate for the purpose of transporting the aggregate amount of gas for the participating customers. But it did not transfer title of the gas to that affiliate. This violated both the interstate pipeline's tariff as well as the Commission's shipper must have title and capacity release policies. Once the violation was identified, the LDC worked quickly with its state regulator to modify the company's procurement policies and to ensure compliance with the interstate pipeline's tariff and Commission policies. Because the LDC did not benefit from the violation and promptly attempted to remedy the violation once it was identified, staff closed the self-report without further action.

Tariff/OATT Violation (ISOs/RTOs). Multiple ISOs/RTOs self-reported what staff determined upon factual review to be relatively minor violations of their tariffs, resulting from either software or human error. Those errors included: failing to maintain confidentiality of market participant project information; small errors in calculating capacity and reserve values; data adjustment errors that resulted in inaccurate modeling inputs; failing to properly calculate market participants' credit requirements under certain conditions; transmission service processing delays due to a storage device failure; misapplication of dispatch parameters due to software issues; late-filing of agreements with the Commission; a software error resulting in a generator's inability to increase certain bids in the real-time market; failing to publish bid data or to generate bids for certain resources; delayed payments due to wire instruction issues; failing to prevent suspended market participants from participating in the market; misallocated payments due to a coding error; failing to register a market participant for a capacity spot auction; software errors that created the potential for incorrect market participant compensation; the inclusion or exclusion of costs in a manner inconsistent with the tariff; not capping costs or charges in a manner consistent with the tariff; and the calculation of interest repayments in a manner inconsistent with the tariff. The ISOs/RTOs also reported certain other potential 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 (Failure to File a Variance). A gas supply company self-reported that it cleared an area of land before it filed a variance to a prior notice application, which granted the company permission to clear a different area of land. Staff determined that the unauthorized

clearing was inadvertent and the result of human error due to constraints from the pandemic that limited the quality control of the pipeline project. Once the error was identified, the company immediately discontinued work on the location, notified the Commission and filed the variance, which was approved. It also imposed more effective quality control standards for future projects. For these reasons, staff closed the self-report with no further action.

Regulatory Filing Violation (Electric Quarterly Reports). A power marketer self-reported errors in its EQRs in violation of Section 35.10b of the Commission's regulations, which requires that each public utility and non-public utility with more than a de minimis market presence file an updated EQR covering jurisdictional services it provides. EQRs must be filed within 30 days after the end of each quarter. During a routine internal review of its EQR data, the power marketer determined that it had failed to include certain balancing sales in its reports submitted to the Commission. The power marketer then informed its senior management, began a more in-depth internal review, and promptly contacted Enforcement, with whom it worked to cure the reporting deficiencies. The power marketer also updated its internal compliance procedures and training requirement to prevent recurrence of these types of violations. For these reasons, staff closed this self-report without further action.

Regulatory Filing Violation (FERC Form No. 552). A natural gas company self-reported that it had failed to file an accurate FERC Form No. 552 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 addressing its natural gas transactions by May 1 for the previous calendar year. While preparing its submission this year, the company realized that the way it was entering data into its software program caused certain reportable sales and purchases to be overstated. The company initiated a review of past forms and worked with Enforcement staff to ensure that corrected Form No. 552s were filed. For this reason, and because the violations were inadvertent and resulted in no economic harm, staff closed this self-report without further action.

Regulatory Filing Violation (FERC Form No. 556). The owner of several wind projects self-reported its failure to self-certify one of its projects as a Qualifying Facility (QF) before making wholesale power sales, violating 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 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 (Updated QF Status). A utility self-reported that it discovered that its 1986 QF status had not been updated in accordance with Order No. 671 to reflect the addition of a second cogenerator to its cogeneration facility that powers its industrial operations. The utility updated its QF status and submitted a refund report. The Commission granted a partial waiver so that the utility's facility was treated as a QF for the period during which the facility operated out of compliance with its certification filing requirements. The utility was also required to refund the time value of the money collected for the period during which the rates were charged without Commission authorization. For these reasons, staff closed this self-report with no further action.

Regulatory Filing Violation (Interlocking Directorate). A public utility and an investment fund jointly self-reported a violation of the Commission's requirements regarding interlocking directorates after they appointed common officers and directors at each entity without obtaining Commission approval. Upon discovering the error, which was inadvertent, they removed the individuals from certain positions and appointed other individuals. They also implemented new procedures to prevent the appointment of individuals to positions with both entities. For these reasons, staff closed this self-report without further action.

Regulatory Filing Violation (Failure to File Triennial Report). An energy storage project, which is a Category 2 Seller in the Northeast region, self-reported that it failed to timely file its market power analysis ("Triennial Report") in violation of Section 35.37(a)(1) of the Commission's regulations. The late submission stemmed from an administrative oversight and confusion over the MW threshold triggering the filing requirement. The entity discovered the violation three months after the deadline and immediately filed its Triennial Report, self-reported the matter, and implemented new compliance measures to prevent similar violations in the future. For these reasons and because the violation did not cause economic harm, staff closed the self-report without further action.

Regulatory Filing Violation (Form No. 556). An entity that owns four generating facilities self-reported that the facilities had inadvertently sold electricity at wholesale to a single purchaser without fulfilling the QF filing requirements pursuant to Section 292.203(a)(3) of the Commission's regulations requiring Form No. 556 filings. Staff closed the self-report without further action after confirming that the entity had disclosed the matter promptly to Enforcement once the violation was identified, paid the full amount of the time value refund to the purchaser, and implemented new compliance policies to ensure future filing oversights do not occur.

Standards of Conduct Violation (Annual Training). A public utility self-reported that it had violated Section 358 of the Commission's regulations by failing to provide annual training to certain employees likely to become privy to transmission function information. Upon learning of the violation, the utility orally informed Enforcement of the violation, initiated an internal investigation concerning the failure, and implemented new procedures. For these reasons, staff closed this self-report without further action.

FPA Section 203 Violation (Failure to File Change in Status Report). Following a corporate acquisition, a company self-reported that it had failed to timely file a change-in-status report to the Commission under FPA Section 203. Because the company promptly filed a self-report once it became aware of the violation, filed the requisite materials with the Commission to effectuate the change-in-status, and did not financially benefit from the violation, staff closed the self-report with no further action.

FPA Section 205 Violation (Failure to File Various Agreements). An energy transmission entity self-reported that it failed to file with the Commission several agreements that arguably should have been filed pursuant to FPA Section 205. That Section requires public utilities to file "schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, [ ] together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services." Staff closed the self-report without further action based on its determination that the agreements did not need to be filed and that the entity had developed

robust internal procedures to ensure that potentially jurisdictional contracts are reviewed to confirm compliance with Section 205.

FPA Sections 203 and 205 Violations (Late Filings). Five wind and solar project companies self-reported that after the sale of certain membership interests in their upstream owners, they failed to make appropriate filings to the Commission under FPA Sections 203 and 205. The companies discovered the failure to file approximately one month after the filings were due and submitted the late filings approximately one month later. The companies represented that the failure to file was inadvertent in nature, and due to miscommunications with their counsel. The companies put in place new procedures that would proactively identify upcoming FERC compliance obligations and filing requirements. As this violation was inadvertent, caused no known market impact or harm, and the company took remedial steps, staff closed this self-report with no further action.

Interstate Commerce Act Violation (Prohibited Disclosures). An oil pipeline self-reported the prohibited disclosure of nonpublic shipper information relating to oil pipeline operations under the Interstate Commerce Act (ICA). In a message intended to be viewed only internally at the pipeline, an employee of the pipeline inadvertently posted shipper information on the intranet site. The shipping information included contract details that are prohibited from being shared externally under Section 15(3) of the ICA. The pipeline's internal investigation determined that one marketing employee manager outside of the pipeline (but within the corporate family) had viewed the information but did not share or rely on the information. Because the prohibited disclosure was inadvertent, caused minimal impact, and the company conducted training to prevent similar violations from recurring, staff closed this self-report with no further action.

Interstate Commerce Act and Tariff Violation (Untimely Tariff Amendments). A company that owns and operates a pipeline system for the transportation of various grades of gasoline, diesel fuel, and jet fuel self-reported the untimely filing of a tariff amendment required by FERC's regulations and the Interstate Commerce Act. The filing was twice overlooked due to resource constraints. Staff closed this self-report without further action because both lapses appeared to be inadvertent mistakes and related to extreme events, the late filing did not appear to have had a negative impact on shippers, the company discovered the mistakes through its own internal procedures, the company reviewed its remaining agreements and confirmed compliance with the tariff, and the company implemented measures to help mitigate the potential for similar issues in the future.

NGA Section 7 Violations (Gas). An interstate gas pipeline company with an NGA Section 7(c) certificate of public convenience and necessity self-reported that during post-construction in-line inspections, the company determined that the pipeline was installed in certain places by its horizontal directional drill contractor outside the right-of-way specified in the certificate. The company was unaware of the deviations at the time of construction and now believes that existing subgrade infrastructure caused the deviations. The deviations were small and were not located below any structures. Neither the company nor a third-party safety consultant identified any safety or environmental harm caused by the deviations, and the company anticipated obtaining easement amendments from all affected landowners. Additionally, the company modified its tracking requirements, including mandating that contractors provide all raw drill tracking data to the

company as part of a completion package. For these reasons, staff closed this self-report without further action.

Natural Gas Transportation Violation (Prohibition on Buy/Sell Transactions). A public utility self-reported that two affiliates (affiliates A and B) engaged in prohibited buy/sell transactions on two consecutive days. On both days, affiliate A purchased gas from affiliate B, transported the gas using affiliate A's transportation capacity, and then sold a small portion of the gas back to affiliate B. On the second day, a scheduler at the utility identified the transactions as raising potential buy/sell concerns and examined the relevant circumstances. The utility found that the affiliates did not specifically design the transactions to circumvent the Commission's capacity release rules but traded the small amount of gas strictly for balancing purposes. The utility took immediate actions to stop these types of transactions from recurring, self-reported the violations, and provided retraining to the relevant employees on the Commission's capacity release rules. The utility also restructured its operations to reduce the number of affiliates engaged in the purchase, sale, and transportation of natural gas. The buy/sell transactions occurred on only two days and did not result in any market harm. For these reasons, staff closed this self-report without further action.

Construction Certificate Violation (Gas). A company with authority to construct jurisdictional facilities failed to complete the project by the time set forth in the Commission's authorizing certificate. Following identification of the violation, the company promptly self-reported the matter and requested an extension of time from the Commission. Because the violation did not incrementally benefit the company and the company promptly remedied the violation, staff closed the self-report with no further action.

E. Investigations

In FY2021, DOI staff opened 12 new investigations, as compared with six investigations opened in FY2020. These investigations arose from several sources, including referrals by ISO/RTO market monitors and Enforcement's DAS and DAA. In addition to cases closed through settlement, staff closed four investigations without further action in FY2021, as compared to eight investigations closed without further action in FY2020. In addition to closing these investigations during the fiscal year, DOI staff closed three Market Monitoring Unit (MMU) referrals following inquiries into and analyses of the referred conduct and alleged violations. These MMU referrals, discussed in DOI Section F below, were closed without being converted into investigations.

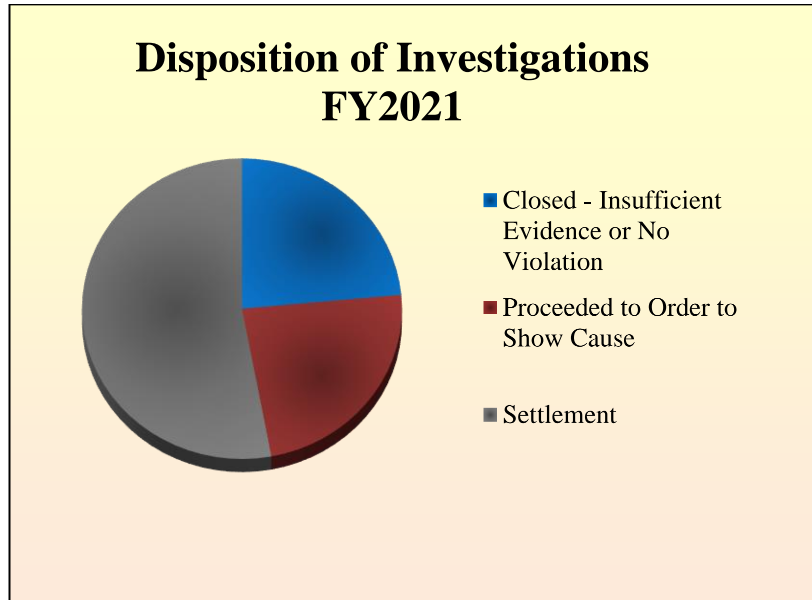
1. Statistics on Investigations

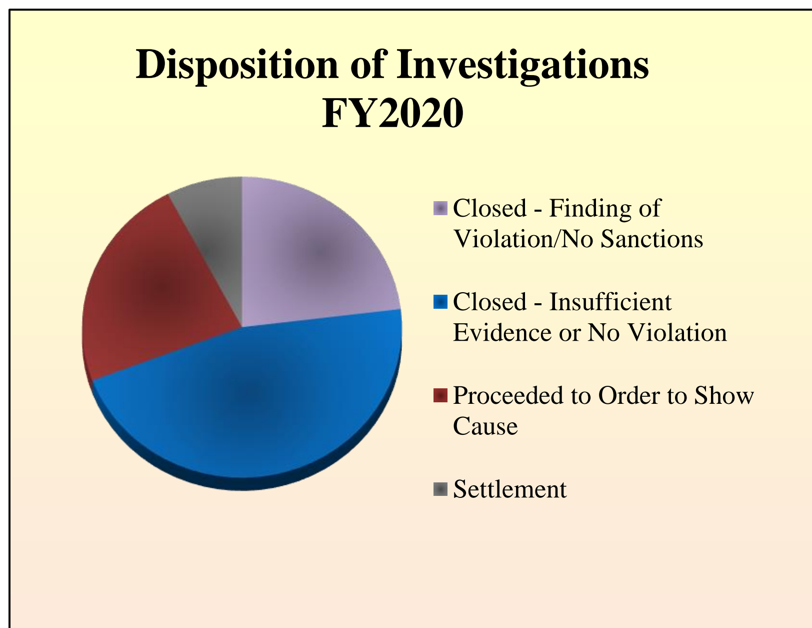
Of the 12 investigations staff opened this fiscal year (some of which involved more than one type of potential violation or multiple subjects), 10 involved potential market manipulation, seven involved potential tariff violations, and eight involved potential misrepresentations prohibited by the Commission's Duty of Candor rule. The 12 investigations involved a wide range of additional issues, including the Public Utility Holding Company Act, Commission Standards of Conduct for transmission providers, ISO/RTO must offer requirements, and Sections 301 and 304 of the FPA.

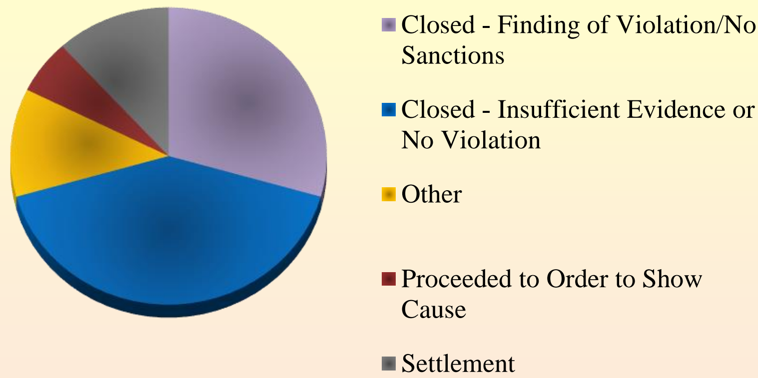
The four investigations DOI closed in FY2021 were closed because staff found there was insufficient evidence to conclude that a violation had occurred. The four closings were in addition

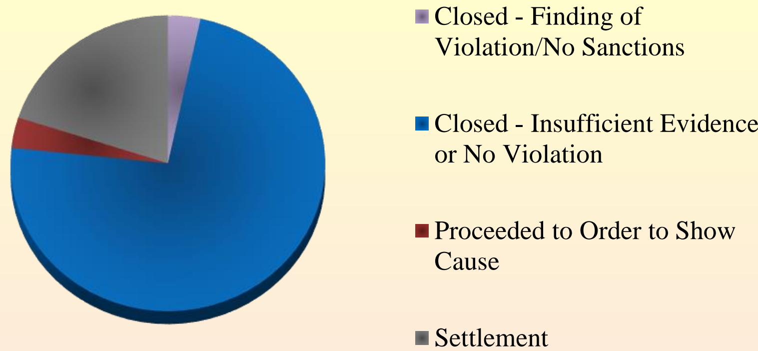
to the eight investigations closed pursuant to settlements that staff reached with subjects. The Commission-approved settlements in these investigations are summarized above in DOI Section C and listed in Appendix B. There were also four investigations that resulted in the Commission issuing an OSC, as summarized above in DOI Section B. The investigations closed without enforcement action are discussed below.

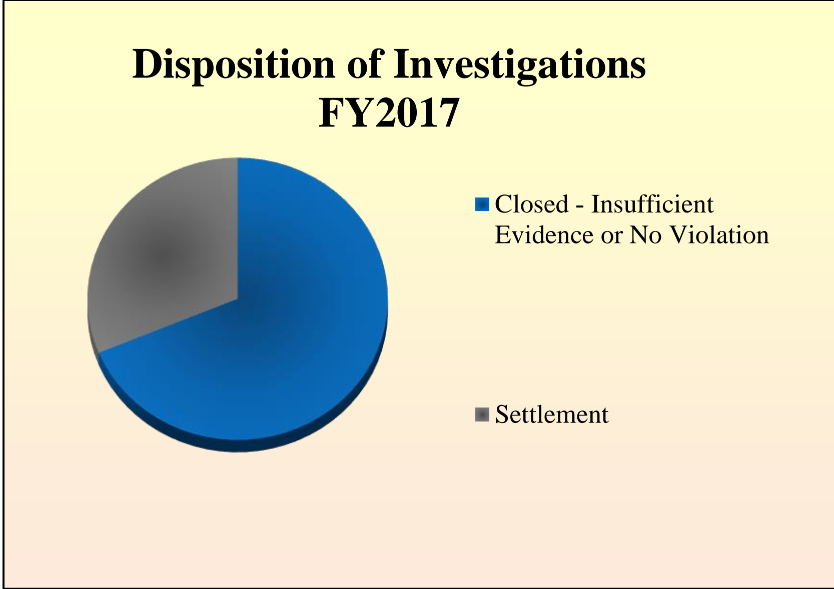
The following charts show the year-by-year disposition of investigations that closed over the past five years (FY2017-2021) and the aggregate disposition of investigations that closed from Fiscal Years 2011 through 2021.

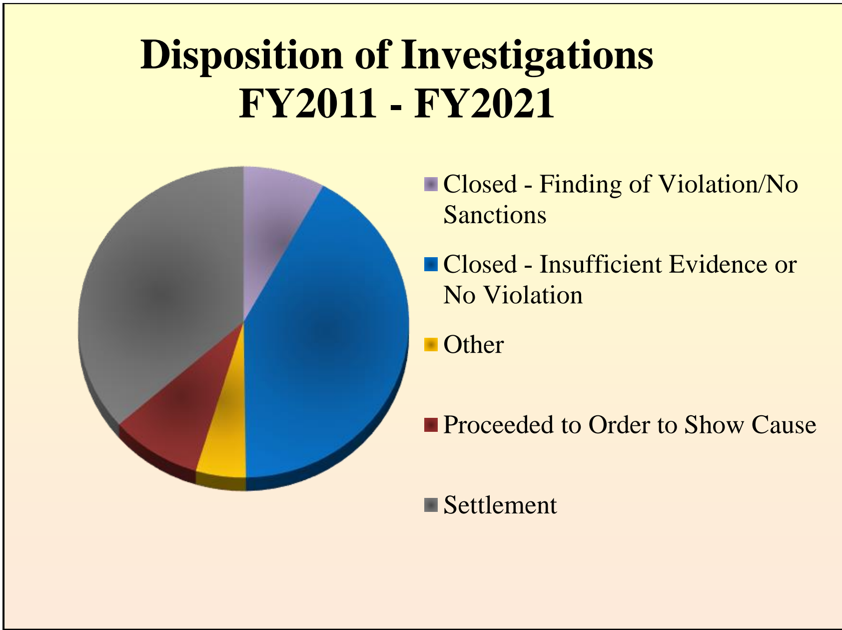




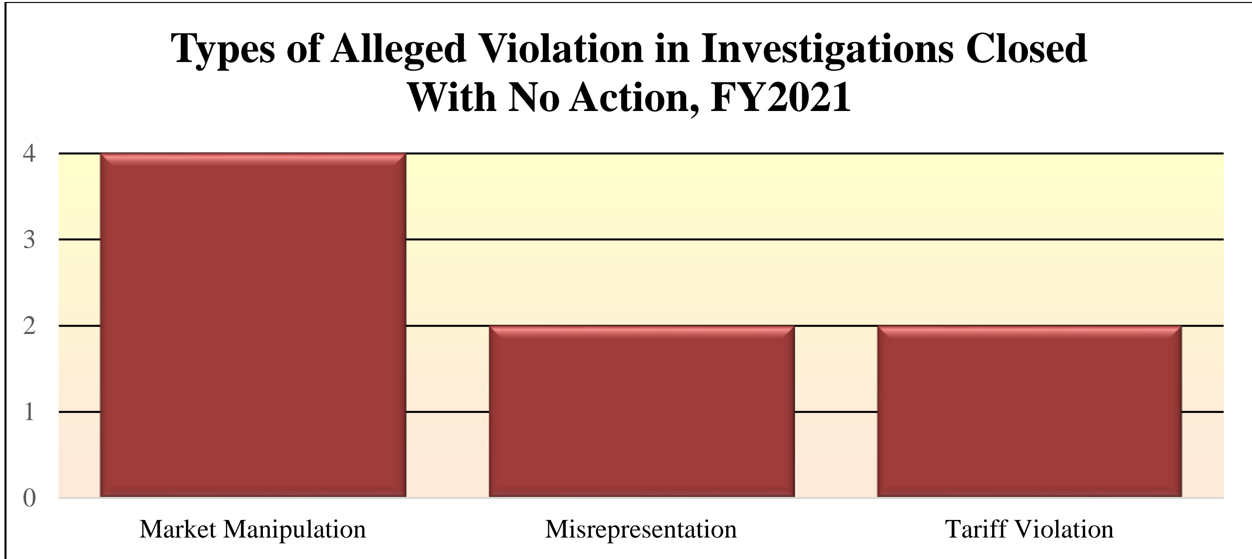

Disposition of Investigations
FY2019
Closed - Finding of Violation/No Sanctions
Closed - Insufficient Evidence or No Violation
Other
Proceeded to Order to Show Cause
Settlement

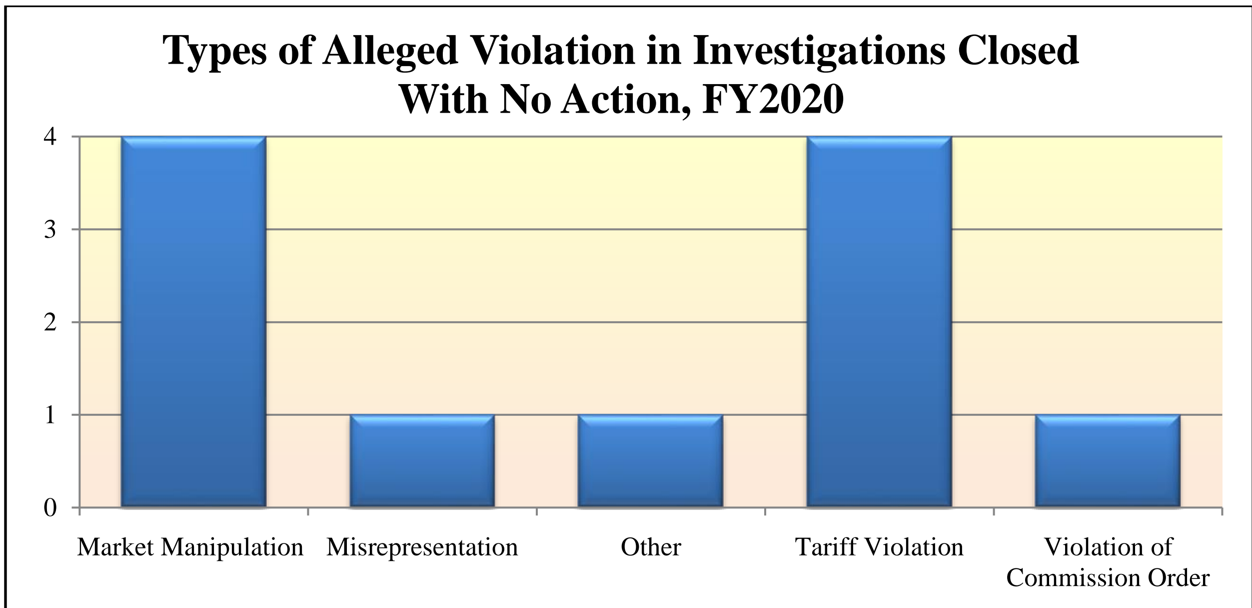

Disposition of Investigations
FY2018
Closed - Finding of Violation/No Sanctions
Closed - Insufficient Evidence or No Violation
Proceeded to Order to Show Cause
Settlement

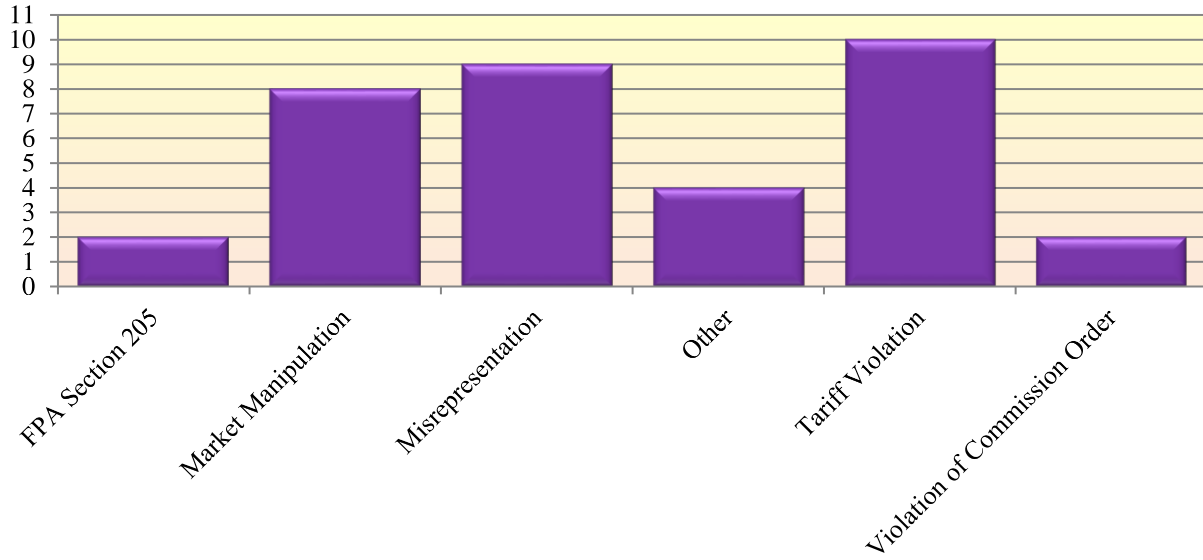


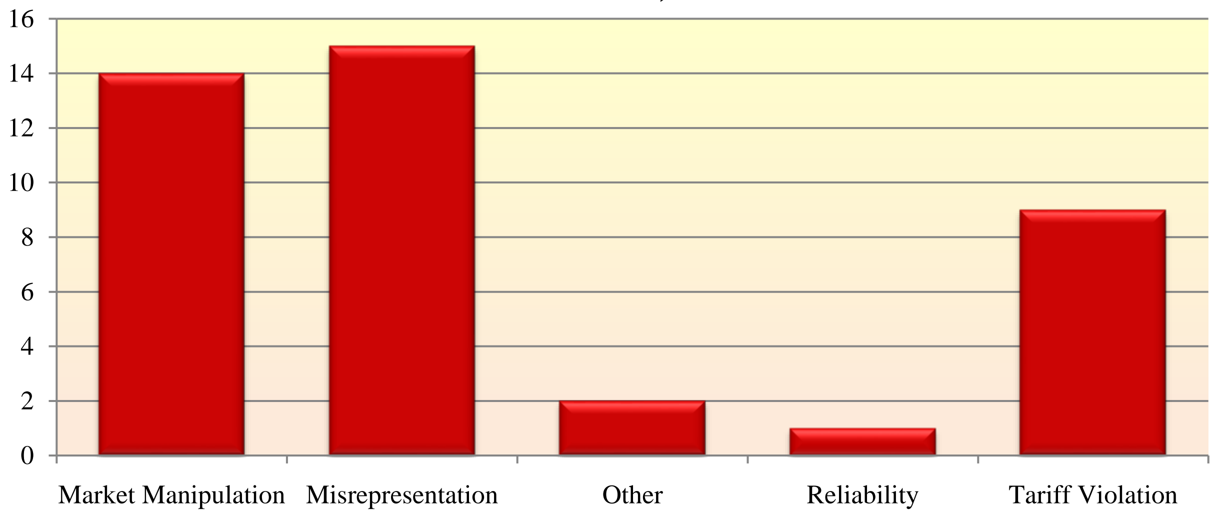


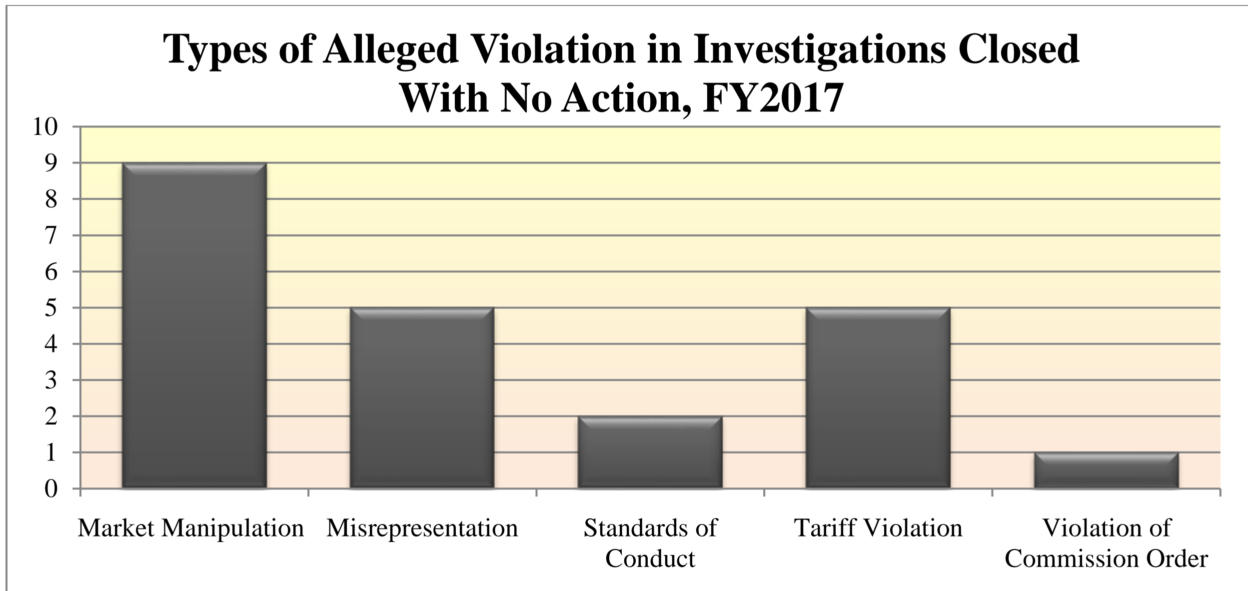
The following charts summarize the nature of the conduct at issue for those investigations that were closed without further action in Fiscal Years 2017-2021.


Types of Alleged Violation in Investigations Closed
With No Action, FY2021
4
3
2
1
0
Market Manipulation
Misrepresentation
Tariff Violation


Types of Alleged Violation in Investigations Closed
With No Action, FY2020
4
3
2
1
0
Market Manipulation
Misrepresentation
Other
Tariff Violation
Violation of
Commission Order


Types of Alleged Violation in Investigations Closed
With No Action, FY2019
11
10
9
8
7
6
5
4
3
2
1
0
FPA Section 205
Market Manipulation
Misrepresentation
Other
Tariff Violation
Violation of Commission Order


Types of Alleged Violation in Investigations Closed
With No Action, FY2018
16
14
12
10
8
6
4
2
0
Market Manipulation
Misrepresentation
Other
Reliability
Tariff Violation



2. Illustrative Investigations Closed with No Action

The following summaries of investigations that Enforcement closed without action in FY2021 are intended to provide guidance to the public while preserving the non-public nature of DOI's investigations.

Market Manipulation, Tariff Violation, and Misrepresentations Prohibited by Duty of Candor (Electric). Following a referral from CAISO's Department of Market Monitoring, staff opened an investigation into whether seven companies were violating the CAISO tariff and the Commission's Anti-Manipulation Rule and Duty of Candor by submitting a planned outage for a generating unit, canceling the planned outage after being asked by CAISO to provide Resource Adequacy substitution, and then submitting what appeared to be the same outage for the same unit as a forced outage. Staff determined that there was insufficient evidence that the companies had submitted false or misleading information to CAISO and that there was a reasonable basis for the companies to reschedule their planned outages as forced outages. For these reasons, staff closed the investigation without further action.

Market Manipulation (Electric). Following a referral from PJM, staff analyzed whether a curtailment service provider and its customer registered as a participant in the PJM Economic Load Response Program (ELRP) submitted ELRP settlement statements to PJM that did not represent load reductions in response to price but were instead part of normal operations that do not qualify for ELRP payments. Following an investigation, staff did not find sufficient evidence that the companies offered into the ELRP with an improper intent or by misrepresenting the participant's normal operations. For these reasons, staff closed this investigation without further action.

Market Manipulation (Electric). Following a referral from Enforcement's DAS, staff opened an investigation into whether a market participant intentionally placed its virtual trades in a manner intended to benefit its FTR positions in the MISO market in violation of the Commission's Anti-Manipulation Rule. During the investigation, staff took testimony from the market participant's traders and reviewed relevant data and other material from the participant and MISO. After

completing its analysis, staff determined that the evidence was insufficient to support a conclusion that the participant intended to perpetrate a fraudulent scheme with respect to its virtual trades, including the fact that some evidence supported a non-manipulative justification for the trades. Accordingly, staff closed this investigation without further action.

Market Manipulation (Electric). Following a referral from MISO's MMU, staff analyzed whether a market participant used large negative offers to produce more MWs at one generating facility in an effort to increase congestion to benefit its generator on the "relief" side of a constraint during the summer of 2016. During the investigation, staff reviewed and analyzed the generator's offer data, contemporaneous internal and external communications, and other relevant data and information. Based on this analysis, staff concluded that there was insufficient evidence of an intent to increase congestion to benefit the other facility. During the investigation, DAS referred the same generators and trading desk for potentially manipulating generator costs to increase make-whole payments in the fall of 2017. Staff again concluded there was insufficient evidence of manipulative intent and closed both investigations 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], ISOs, RTOs, and [Enforcement]."[20] 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 FY2021 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."[21] This referral requirement applies to potential "misconduct by the ISO or RTO, as well as by a market participant."[22] 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.[23] In addition, they must include: (1) "sufficient credible information to warrant further investigation by the Commission;" (2) the names and

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

[21] 18 C.F.R. § 35.28(g)(3)(iv)(A) (2021). 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).

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

[23] 18 C.F.R. §§ 35.28(g)(3)(iv)(B)-(C) (2021).

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.[24] There is also a continuing obligation to update referrals with any information the MMU learns that is "related to the referral."[25] 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 ISO or RTO as well as with the ISO and RTO 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 MISO;[26] (2) referral of Westar Energy for potential violations of the SPP tariff and Commission regulations for allegedly submitting inaccurate cost inputs in its mitigated energy offers;[27] and (3) referral of Etracom LLC for an alleged cross-market manipulation scheme in CAISO.[28]

1. Statistics on MMU Referrals

In FY2021, staff received 14 new MMU referrals. Of these referrals (some of which involved more than one type of violation or multiple subjects), two involved potential market manipulation, 11 involved potential tariff violations, and five involved potential misrepresentations prohibited by the Commission's Duty of Candor rule. Seven of these MMU referrals were the sources for investigations opened this fiscal year. Of the MMU referrals received in FY2021, five remained pending at the end of the fiscal year.

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[24] *Id.* § 35.28(g)(3)(iv)(D).

[25] *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) (2021). These notifications are more informal, can be made orally or in writing, and do not require the documentation involved in a referral.

[26] *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).

[27] *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).

[28] *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).

DOI staff elected not to open full investigations of three MMU referrals in FY2021, one of which was carried over from prior fiscal years. These referrals were analyzed and closed as inquiries. Of these referrals, one involved potential market manipulation, and two involved potential tariff violations.

Of the three MMU referrals that staff did not convert to full investigations, all were closed without further action because staff concluded that there was insufficient evidence of a violation.

2. Illustrative MMU Referrals Closed with No Action

Enforcement presents the following illustrative summaries of the three MMU referral inquiries that DOI staff closed in FY2021 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.[29] 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.

Potential Tariff Violation. Following a referral from NYISO's MMU, staff analyzed whether a generator violated: (1) NYISO's Installed Capacity (ICAP) manual by submitting an inaccurate output factor curve to adjust dependable maximum net capacity test results, and (2) NYISO's tariff by failing to offer the full ICAP equivalent in the day-ahead market during portions of 2018, 2019, and 2020. Following the referral, staff discussed the matter with the company and the MMU and collected documents from NYISO. Staff did not identify information suggesting that the generator knowingly submitted an inaccurate curve, and some evidence showed that the curve did in fact accurately represent the generator's ICAP. Additionally, any daily offer deficiencies likely flowed from including additional parameters that were not part of the output factor curve and the tariff provides NYISO with a mechanism to address such deficiencies. Finally, the MMU did not believe the conduct at issue resulted in unjust profits or substantial market harm. For those reasons, staff closed this MMU referral without further action.

Potential Tariff Violation. Following a referral from PJM's MMU, staff analyzed whether three PJM market participants were in violation of PJM's tariff or market rules relating to PJM notice of an FTR auction bid/offer limit reduction and a subsequent revision to one of its manuals. That revision capped the total FTR auction bid/offer limit to 10,000 bids or offers per corporate family. Staff spoke with the identified market participants and determined that the market participants were aware of the bid/offer limit and, upon the effective date of the manual revision, the market participants had taken steps to bring their respective bids and offers under that limit. Staff analyzed market data for a period of several months following the date the manual revision became effective and found that the market participants were in compliance with the bid/offer limit. Because of this, staff found that no tariff or market rule violation had occurred and closed this MMU referral without further action.

Potential Market Manipulation. Following a referral from PJM's MMU, staff analyzed whether 74 oil-fired generating units engaged in alleged manipulative conduct (economic withholding)

[29] Revised Policy Statement, 123 FERC ¶ 61,156 at P 25.

when they submitted price-based offers during a period of extreme cold weather days in excess of their estimated short-run marginal costs. Following the referral, staff discussed the matter with the companies and the MMU. Staff did not find evidence suggestive of economic withholding, such as evidence that the units were withheld to benefit other fleet units, evidence of collusion among participants, or withholding through the use of false outages, so staff closed the MMU referral without further action.

G. Enforcement Hotline

DOI staff fields calls and other inquiries made to the Enforcement Hotline (Hotline).[30] 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 FY2021, Enforcement received 184 Hotline calls and inquiries, 168 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 four Hotline matters that had been pending from the previous year. Of the Hotline calls received in FY2021, 16 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 FY2021, including:

Collaboration with Other Commission Offices. DOI staff regularly coordinates with other Commission program offices regarding potential enforcement matters or enforcement-related policies and procedures. 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 the Public Utility Regulatory Policies Act. Regulated

[30] *See* 18 C.F.R. § 1b.21 (2021).

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 prefiling 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 one project involving dam safety and other violations within DHAC's authority during FY2021.

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.[31] 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.

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 often complex compliance and other matters.

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

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. DAA's publicly issued audit commencement letters and audit reports provide valuable guidance and insight into areas of emphasis and concern involving industries regulated by the Commission.

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 outreach activities with industry trade associations, such as the Association of Oil Pipe Lines (AOPL), Edison Electric Institute (EEI), Interstate Natural Gas Association of America (INGAA), 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, including through outreach activities with the National Association of Regulatory Utility Commissioners (NARUC), and with the public accounting firms that audit and certify jurisdictional entities' financial reports. Such outreach contributes to DAA's analysis of

accounting, financial reporting, and market trends affecting jurisdictional entities and issuances of accounting guidance by the Chief Accountant.

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 issues related to the FERC financial forms may be obtained from DAA via email: Form1@ferc.gov (Forms 1, 1-F, and 3-Q (electric)); Form2@ferc.gov (Forms 2, 2A, and 3-Q (gas)); Form6@ferc.gov (Forms 6 and 6-Q); and Form60@ferc.gov (Form 60). Informal guidance on issues related to the EQR may be obtained from DAA via email (eqr@ferc.gov) and phone ((202)-502-8076). Informal guidance on all other compliance matters may be obtained through the Compliance Help Desk.[32]

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:
  - 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; and
  - 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.

[32] Information about the Commission's Compliance Help Desk is available at https://www.ferc.gov/about/contact-us/compliance-help-desk.

- 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 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. The completion of this implementation phase is communicated by the Chief Accountant to the regulated entity in each audit. 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.[33] In FY2021, 99 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, including entities that have not yet been audited, to prevent noncompliance, thereby avoiding potential enforcement 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.

ELECTRIC INDUSTRY

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

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

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 (FA20-9-000, FA19-3-000).

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 audit and decisions include:

- Improper exclusion of certain short-term debt or long-term debt amounts from the AFUDC rate calculation (FA20-3-000, FA20-1-000);
- Computing AFUDC on contract retention and other noncash accruals (FA19-3-000);
- 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 using fiscal year-end book balances for long-term debt and common equity amounts when computing the AFUDC rate, rather than the calendar year-end balances reported in FERC Form No. 1 (FA20-3-000);
- 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 (FA20-9-000, FA20-3-000, FA20-1-000, FA18-3-000, PA18-1-000, PA18-2-000);
- Improperly accruing AFUDC on inactive or suspended construction projects (FA20-1-000); and
- Improper inclusion in the short-term debt rate of interest recorded on transmission and interconnection study advances received from customers (PA18-1-000).

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. These revenue credits may be related to pole attachment revenue or rental revenue, among other items (FA20-9-000, FA20-3-000, FA17-2-000, FA18-3-000).

- 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 (FA20-9-000, FA17-4-000).

- Excess Accumulated Deferred Income Taxes (ADIT) – To address the tax effects of the Tax Cuts and Jobs Act of 2017 (TCJA), public utilities were required to adjust ADIT balances to reflect the change in the effective corporate tax rate from 35 percent to 21 percent. Audit staff found instances where utilities did not properly record excess ADIT related to the TCJA. Additionally, under certain formula rate tariffs, public utilities were required 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. Further, audit staff found instances where utilities improperly netted the excess and deficient ADIT related to the TCJA and recorded the amount that resulted from the improper netting in Account 254, Other Regulatory Liabilities (FA20-9-000, FA20-3-000, 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 carryforwards 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 filings. 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 (PA20-2-000, PA18-3-000, FA18-3-000, FA17-1-000, FA16-3-000, PL15-3-000).

- 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 (FA16-6-000, FA16-5-000, FA15-7-000).

- 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 (PA18-2-000, PA18-1-000).

- 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).

- 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 (PA20-2-000, 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 (FA20-3-000, FA20-2-000, FA20-1-000, FA19-7-000, FA19-3-000, FA19-2-000, FA18-3-000, FA17-1-000).

- 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).

- 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.

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. 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 (FA20-2-000, FA16-1-000).

Open Access Transmission Tariffs. An essential goal of open access is to support efficient and competitive markets.[34] 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 marketing function employees in violation of the independent functioning requirement[35] (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 (PA19-3-000, PA17-7-000); transmission capacity not released in accordance with Commission-approved tariffs (PA13-4-000); inaccurate available transmission capacity or total transfer capability data posted on OASIS (PA19-3-000, PA17-7-000); 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 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.

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), did not clearly distinguish Commission-

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[34] *See Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119 (Order No. 890), *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007) (Order No. 890-A), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

[35] *See Standards of Conduct for Transmission Providers*, Order No. 717, 125 FERC ¶ 61,064 (2008), *order on reh'g and clarification*, Order No. 717-A, 129 FERC ¶ 61,043, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

jurisdictional from non-jurisdictional monies held in the funds, or did not accurately report the amount of Commission-jurisdictional money in the trusts (PA13-15-000, FA15-6-000. FA15-7-000).

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.

NATURAL GAS INDUSTRY

Comprehensive natural gas pipeline audits have evaluated compliance with the Commission's accounting and financial reporting (FERC Form No. 2, Annual Report of Major Natural Gas Companies) requirements to ensure proper accounting and 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. There have also been past audits with singular audit focuses, such as AFUDC, informational posting websites, capacity release, and more. In recent comprehensive natural gas audits, DAA has found noncompliance in the following areas:

Gas Tariff Provisions. Order No. 636 required that interstate natural gas pipelines maintain a tariff containing provisions regarding their services to effectively manage their systems. DAA audits have identified issues relating to noncompliance with natural gas pipelines' FERC Gas Tariffs, including: (1) improper valuation of certain system gas activities at the wrong cash-out index price rather than the cash-out price prescribed in the valuation methodology in the tariff (FA19-6-000); (2) tariff language that is inconsistent with the Commission's requirement that all interconnecting pipelines enter into Operating Balancing Agreements (OBAs) and inconsistencies with the administration and management of imbalances in accordance with the terms of a pipeline's tariff and standard OBA (PA16-4-000); (3) tariffs that were not updated to fully incorporate the Commission's reservation charge crediting policy[36] for force majeure and non-force majeure events (FA19-9-000, FA18-2-000, PA16-4-000, FA15-1-000); and (4) penalty revenues that were collected from offending shippers and improperly refunded to non-offending shippers instead of the method prescribed in the tariff (FA19-9-000 (Other Matter), FA18-2-000, PA16-4-000).

System Gas Accounting. Order No. 581 established the accounting for system gas activities to provide transparency to financial statement users. In recent audits, DAA identified common accounting findings pertaining to system gas accounting. Specifically, DAA identified issues relating to pipelines that improperly: (1) netted shipper imbalance payables and receivables and netted imbalance cash-out settlement losses, rather than accounting for these transactions in the correct accounts (FA19-6-000, FA15-1-000); (2) recorded amounts for lost and unaccounted-for gas and fuel used for underground storage compressor stations in a transmission expense account rather than in production and gas storage expense accounts (FA19-6-000, PA16-4-000, FA15-1-

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

000); and (3) recorded revenues from cash-out sales in a sales for resale account rather than a revenue account. These practices reduced the transparency of the gas activities reported in the FERC Form No. 2 and deprived the financial statement users of the information and the transparency afforded to them by the Commission's regulations.

AFUDC and CWIP. As noted above in the Electric Industry compliance alerts, recent audit activity has shown deficiencies in how jurisdictional entities have calculated AFUDC, resulting in excessive AFUDC accruals above the maximum allowed by the Commission's regulations. Errors relating to natural gas pipelines' determinations of the short-term debt component and capital structure used in AFUDC calculations include: erroneously using the consolidated short-term debt and CWIP book balances of the pipeline's parent entity rather than the regulated pipeline's own book balances; only using a portion of the pipeline's short-term debt borrowed in the month such debt was incurred, rather than the total outstanding short-term debt amount; and using a capital structure and resulting AFUDC rate that exceeded the pipeline's overall rate of return underlying its recourse rates (FA19-6-000, PA16-4-000, FA15-16-000). Errors relating to the equity and long-term debt components include: adding to the equity component a pipeline's subsidiary's undistributed earnings and adding accumulated other comprehensive income (particularly unrealized gains and losses), which is contrary to Commission policy, and including unamortized discounts on long-term debt in the long-term debt component (FA18-2-000). Audits of natural gas pipelines also continue to find errors that impact, usually by inflating, the amount of CWIP, which causes excessive AFUDC as well as other negative effects. Such errors involving CWIP have included: allocating overhead costs to construction projects (i.e., CWIP) not based on actual time expended or on representative time studies; including unpaid contract retention accruals in CWIP balances despite that CWIP should include amounts actually paid by the pipeline, not remaining unpaid; and recording as CWIP contributions in aid of construction (CIAC) received from third parties (FA19-9-000, FA17-6-000, FA15-16-000, FA15-1-000).

General Accounting. Other common accounting findings include: (1) improperly classifying as operating expenses the non-operating expenses associated with employment discrimination settlements (FA15-16-000); donations, penalties/fines and lobbying activities (FA19-9-000, FA19-6-000, FA17-6-000, FA15-16-000); and membership dues (FA19-6-000, FA18-2-000); (2) misclassification of costs within general and administrative expenses and operating expenses as general and administrative expenses (FA19-9-000, FA18-2-000, PA16-4-000, PA16-2-000); (3) improper allocation of shared service costs and use of cost allocation methodologies absent a time study or other supporting records (FA19-9-000, PA16-2-000, FA15-16-000); and (4) improperly accounting for replacement of minor items of property as capital expenses (FA18-2-000).

Reporting and Filing. Recent audits have found that some natural gas pipelines did not comply with the financial reporting requirements of the FERC Form No. 2. Reporting was inaccurate, incomplete, and omitted required information and footnote disclosures required for various schedules supporting financial reporting (FA19-9-000, FA18-2-000, FA17-6-000, PA16-4-000, PA16-2-000, FA15-1-000). Other reporting matters pertained to: (1) unfiled nonconforming service agreements and cash management agreements (FA17-6-000); (2) inaccurate reporting of balances within fuel retainage quantity filings (FA19-9-000, PA16-4-000); and (3) failing to file journal entries with the Commission for approval of the sale and purchase of an operating unit or system (FA15-16-000).

OIL INDUSTRY

DAA incorporated oil pipeline audits into the annual audit plan in Fiscal Year 2014. All oil pipeline audits have focused on accounting and financial reporting (FERC Form No. 6, Annual Report of Oil Pipeline Companies) with emphasis on Page 700 (Annual Cost of Service-Based Analysis Schedule) of FERC Form No. 6. Some audits have evaluated compliance with an oil pipeline company's tariffs, specifically, the company's administration and application of transportation services and rates among customers in accordance with approved transportation rates in local and joint tariffs and the other charges and procedures within the rules and regulations tariffs.

An essential part of oil pipeline audits is an examination of the accounting and operating data reported on Page 700 of the FERC Form No. 6. 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.[37] Oil pipeline audits have identified noncompliance in the following areas:

Carrier and Noncarrier Property. Carrier property represents assets used to provide interstate and intrastate transportation of crude oil and other by-products. This includes property that is inactive or not in current use but held for future use within a reasonable time under a definite plan for pipeline operations. Property or assets that are not used in carrier operations or held for future use with a definite plan are considered noncarrier property and, as such, should be excluded from Page 700. Recent audits have found that oil pipelines have misclassified idled property that has no definite plan for future carrier use in Account 30, Carrier Property, rather than Account 34, Noncarrier Property. Related accrued depreciation should have been reclassified from Account 31, Accrued Depreciation-Carrier Property, to Account 35, Accrued Depreciation-Noncarrier Property. Oil pipelines also did not retire carrier and noncarrier property when it was no longer used and useful in carrier operations. These errors resulted in overstated carrier property and depreciation expense, which also overstated rate base and other inputs in the cost of service on Page 700 (FA19-10-000, FA19-4-000, FA18-1-000, FA16-7-000, FA15-12-000).

Depreciation Rates and Studies. Under 18 C.F.R. Part 352, GI 1-8, oil pipelines are required to conduct their own depreciation studies and to request approval of depreciation rates, or to change existing depreciation rates in the future. In accordance with 18 C.F.R. Part 352, GI 1-8(b),

[37] Page 700 is used as a preliminary screening tool by 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 its determination of its proposed oil pipeline transportation rate index adjustment for a five-year, forward-looking period. The current five-year index is 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 became effective in 2021.

Depreciation Accounting – Carrier Property, companies are required to use the composite method of depreciation unless they receive specific approval from the Commission to use the component method. Recent audits have found that oil pipelines have not complied with these Commission regulations by: (1) using depreciation rates not approved by the Commission (FA20-4-000, FA19-5-000, FA18-1-000, FA16-6-000, FA14-1-000); (2) using the component method rather than composite method of depreciation without Commission approval (FA19-10-000); and (3) using outdated and stale depreciation studies, leading to depreciation rates not aligning with the actual service lives of carrier property, leaving certain asset groups with negative book values (FA19-5-000, FA16-5-000, FA15-12-000).

Operating and Nonoperating Expenses. The Commission's accounting instructions in 18 C.F.R. Part 352 designate the 300 and 500 series of accounts as "Operating Expenses." Expenses associated with charitable contributions, fines, penalties, and lobbying activities are nonoperating in nature, and should be recorded in Account 660, Miscellaneous Income Charges. Further, the 300 and 500 series of accounts are included on Page 700, line 1, Operations and Maintenance Expenses, of the FERC Form No. 6, whereas, nonoperating expenses are excluded from Page 700. Oil pipelines did not comply with Commission accounting requirements, specifically with regard to the misclassification of: (1) charitable donations, fines/penalties, and lobbying activities as operating rather than non-operating expenses (FA19-10-000, FA19-5-000, FA19-4-000, FA16-7-000, FA16-6-000, FA15-12-000, FA15-4-000); (2) affiliate transaction mark-ups as operating rather than non-operating expenses (FA16-7-000, FA16-4-000); and (3) material and infrequent transactions and casualty and other losses involving oil spills as normal, rather than material and infrequent, operating expenses (FA16-6-000).

Equity Method for Investments. The Commission's long-standing policy on accounting for investments in affiliated companies has been to use the equity method of accounting rather than the consolidation method. The use of the equity method prevents investments in affiliated companies from being consolidated in the financial statement and ensures that their cost and revenue balances are not factored into the cost of service on Page 700. Oil pipelines improperly accounted for investments in wholly owned subsidiaries and joint ventures using the consolidation method rather than equity method of accounting, did not maintain records to support initial investments and net income and distributions of income, or engaged in other incorrect accounting for investments (FA19-10-000, FA16-6-000, FA16-5-000, FA14-4-000).

Pipeline Loss Allowance (PLA) and Gravity Shrinkage Deduction (GSD). Oil pipeline tariffs provide for the retainage of PLA and GSD from receipts of shipper's oil on their pipeline system. PLA is retained to cover oil lost during transportation due to evaporation, measurement inaccuracies, and other operational losses. GSD is retained to cover density differences in an individual shipper's oil compared to the density of the common stream of oil being transported in the pipeline. Oil pipelines incorrectly accounted for and reported activities associated with PLA and GSD which resulted in omitting the interstate portion of the revenues and expenses associated with these activities from Page 700 (FA19-10-000, FA19-4-000), and a lack of transparency in reporting the sales of excess oil retainage in the FERC Form No. 6 (FA16-6-000).

Capital Structure and Return on Equity. The Commission has used a two-step DCF (Discounted Cash Flow) model to derive the ROE for pipelines' cost of service since the 1980s. On May 21, 2020, the Commission revised its ROE methodology in Docket No. PL19-4-000,

recommending that oil pipelines derive an ROE based on an equal weighting of the results from the DCF model and CAPM (Capital Asset Pricing Model). The capital structure is used in conjunction with the ROE to derive an oil pipeline's return on rate base. The Commission has stated that a 100 percent equity capital structure is unacceptable and results in overstated capital costs. When an equity ratio moves beyond generally accepted limits, pipelines should use a hypothetical capital structure consistent with Opinion No. 502. Oil pipelines calculated the weighted cost of capital using methods not supported by the Commission for determining ROE and capital structure (FA20-4-000) or inappropriately used an all equity capital structure to calculate the weighted cost of capital to derive the return on rate base for Page 700 (FA19-10-000).

Reporting and Filing. Submitting the FERC Form No. 6 is an annual regulatory reporting requirement that provides financial and operational information about pipelines. The Commission has other filing requirements: Order Nos. 634 and 634-A require oil pipeline companies that participate in cash management programs to disclose those programs to the FERC; Instruction for Carrier Property Accounts 3-11(c) requires approval of accounting entries for the cost of the acquisition of properties comprising a distinct operating system, or an integral portion thereof, when the purchase price exceeds $250,000; and General Instruction 1-6(g) requires Commission approval for a prior period adjustment to retained earnings. Recent audits have found that oil pipelines did not comply with these reporting and filing requirements: (1) FERC Form No. 6 reporting was inaccurate, incomplete, and omitted required information and footnote disclosures required for various schedules supporting financial reporting (FA20-4-000, FA19-10-000, FA19-5-000, FA19-4-000); (2) oil pipelines inaccurately reported input balances or misapplied interstate allocation percentages on Page 700 (FA20-4-000, FA19-10-000, FA18-1-000, FA16-7-000 FA15-4-000, FA14-4-000); (3) oil pipelines failed to file cash management agreements (FA20-4-000, FA15-4-000, FA14-1-000); and (4) oil pipelines did not file journal entries with the Commission for approval for the purchase of distinct operating systems (FA19-10-000) or seek Commission approval to adjust retained earnings (FA16-7-000).

Oil Tariff Provisions. Oil pipelines did not comply with certain tariff rates and procedures; specifically, pipelines: (1) charged incorrect rates for transportation service using intermediate delivery points (FA15-4-000, FA14-1-000) and for other interstate movements on stated paths in the tariff (FA18-1-000, FA16-5-000, FA15-4-000); and (2) incorrectly applied prorationing procedures when allocating capacity among shippers (FA16-6-000, FA16-5-000).

D. Audit Matters

DAA's audits are risk-based and cover a variety of audit scope areas. The entities selected for an audit are not typically suspected of any wrongdoing. Rather, selections are based upon DAA's development of audit risk factors using publicly available information. DAA also 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 internal accounting, financial reporting, and other procedures. 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 FY2021, DAA completed 12 audits of public utility, natural gas, and oil companies covering a wide array of topics. The audits resulted in 64 findings of noncompliance, 250 recommendations for corrective action, and directed approximately $18,517,318 in refunds and other recoveries. Specifically, DAA directed $5,437,397 to be refunded to jurisdictional customers and prevented approximately $13,079,921 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 refunds being treated as prepayments; and compliance with the Commission's AFUDC regulations.

Besides these refunds and other recoveries, audit recommendations directed improvements to the audited companies' internal accounting processes and procedures, financial reporting for accuracy and transparency, web site postings, and efficiency of operations. In addition, on December 17, 2020, the Commission issued its post-briefing order in the contested audit proceeding in *Dominion Energy Transmission, Inc.*, Docket No. FA15-16-000 (discussed further below in Section E), upholding DAA's finding that AFUDC was inappropriately determined and directing the removal of $51.4 million from plant accounts that otherwise could potentially have been passed on to customers. 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 FY2021 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.[38]

[38] The Commission's eLibrary system can be accessed at elibrary.ferc.gov.

DAA continued to adjust its audit procedures during FY2021 to accommodate companies during 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 and conducting virtual site visits in lieu of traveling to companies.

Creating Greater Audit Efficiencies and Effectiveness

In FY2021, to provide a convenient, informal means by which members of the public can convey suggestions for achieving greater efficiency and effectiveness in audits, DAA established the following email address at which the DAA quality assurance group may be reached: QualityAssuranceFeedback@ferc.gov.

1. Formula Rates

ALLETE, Inc. (ALLETE) – Docket No. FA20-2-000. At ALLETE, DAA evaluated compliance with: (1) the approved terms, rates, and conditions of ALLETE's transmission formula rate as provided in Attachment O of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff; (2) conditions included in the Commission's orders granting ALLETE transmission incentives; (3) 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)); (4) the reporting requirements of FERC Form No. 1 under 18 C.F.R. § 141.1; and (5) the preservation of records requirements under 18 C.F.R. Part 125.[39] The audit identified seven findings and 36 recommendations that required ALLETE to take corrective action. The company did not contest the seven findings and the 36 recommendations.

The seven findings covered the following areas: (1) use of a method for computing prefunded AFUDC for the company's transmission incentive projects that, contrary to Commission orders, understated the amount of prefunded AFUDC and, as a result, led to overstatements of the transmission plant balances used to compute ALLETE's annual transmission revenue requirements; (2) improperly recording environmental mitigation project costs of $4.2 million in Account 930.2, Miscellaneous General Expenses, rather than in the appropriate donations account and, as a result, overstating ALLETE's annual transmission revenue requirement; (3) improperly recording distribution assets in transmission plant accounts and transmission assets in distribution plant accounts, resulting in overstating ALLETE's annual transmission revenue requirement; (4) improperly recording proceeds from long-term debt instruments in Account 186, Miscellaneous Deferred Debits, and improperly recording interest expense associated with the debt instruments in Account 920, Administrative and General Salaries, resulting in overstating ALLETE's annual transmission revenue requirement; (5) improperly recording lobbying costs in Account 921, Office Supplies and Expenses, rather than in Account 426.4, Expenditures for Certain Civic, Political, and Related Activities; improperly recording fuel adjustment clause amounts associated with its production activities in Account 930.2, instead of in a production related O&M account; and misrecording various other A&G expenses; (6) using depreciation rates not approved by the Commission, and improperly recording depreciation expenses associated with plant held for future

[39] *ALLETE, Inc.,* Docket No. FA20-2-000 (Dec. 4, 2020) (delegated letter order).

use in Account 403, Depreciation Expense, instead of Account 421, Miscellaneous Nonoperating Income; and (7) not properly following the FERC Form No. 1 instructions and, therefore, not reporting all required information in the company's FERC Form No. 1 filings.

As a result of the audit, ALLETE made refunds to wholesale transmission customers and revised its accounting policies and procedures in the identified areas of noncompliance.

UGI Utilities, Inc. (UGIU) – Docket No. FA20-3-000. At UGIU, DAA evaluated compliance with: (1) the tariff requirements governing UGIU's FERC jurisdictional rates, including its transmission formula rate mechanism as provided in Attachment H-8C of the PJM Interconnection, L.L.C. Open Access Transmission Tariff; (2) accounting requirements of the Uniform System of Accounts (Public Utilities) in 18 C.F.R. Part 101; (3) reporting requirements of the FERC Form No. 1 under 18 C.F.R. § 141.1; and (4) the requirements in Preservation of Records of Public Utilities and Licensees under 18 C.F.R. Part 125.[40] The audit identified nine findings and 50 recommendations that required UGIU to take corrective action, and one other matter. The company did not contest the nine findings and 50 recommendations.

The nine findings covered the following areas: (1) the improper recording of excess ADIT related to the 2017 Tax Cuts and Jobs Act in Account 282, Accumulated Deferred Income Taxes – Other Property and Account 190, Accumulated Deferred Income Taxes, and improperly excluding excess and deficient ADIT, created as a result of the 2017 Tax Cuts and Jobs Act, from the company's wholesale transmission formula rate computation, resulting in overstating UGIU's annual transmission revenue requirement; (2) over accruing AFUDC as a result of (a) improperly excluding short-term debt, as the first source of financing construction, in calculating the AFUDC rate; (b) improperly including Account 216.1, Unappropriated Undistributed Subsidiary Earnings, and Account 219, Accumulated Other Comprehensive Income, in the equity component when computing the AFUDC rate; and (c) and improperly using fiscal year-end book balances for long-term debt and common equity amounts when computing the AFUDC rate rather than the calendar year-end balances reported in the company's FERC Form No. 1 filings; (3) UGIU improperly included ADIT related to SFAS 106, Employers' Accounting for Postretirement Benefits Other Than Pensions, as an input to its wholesale transmission formula rate contrary to the directives of its tariff, resulting in overstating its ADIT balances included in its wholesale transmission formula rate, which led to overstating its annual transmission revenue requirements; (4) UGIU improperly included common plant O&M expenses, that were also included as A&G expenses, in its wholesale transmission formula rate, resulting in double counted expenses associated with common plant; (5) understating revenue credits used to reduce annual transmission revenue requirements by improperly excluding certain transmission-related revenues recorded in Account 454, Rent from Electric Property and, additionally, improperly accounting for rental revenue associated with third parties' usage of utility assets by recording such revenue in Account 418, Nonoperating Rental Income; (6) UGIU misclassified various expenses associated with services provided by its parent company in Account 923, Outside Services Employed, and also did not consistently apply its internally calculated, cost allocation percentages used to allocate costs between UGIU's electric utility business and its gas utility business, resulting in improper amounts being included in UGIU's wholesale transmission formula rate; (7) UGIU misrecorded various advertising costs,

[40] *UGI Utilities, Inc.,* Docket No. FA20-3-000 (Jan. 14, 2021) (delegated letter order).

charitable donations, lobbying expenses, and legal expenses in a manner that caused them improperly to be included in annual transmission revenue requirements and wholesale transmission customers' billing rates, misclassified company subscriptions, cybersecurity insurance, and payroll costs in various A&G expense accounts, and improperly included portions of the distribution O&M costs in Account 930.2 in its wholesale transmission revenue requirements and resulting billings to wholesale transmission customers; (8) UGIU did not file its depreciation rate schedule with the Commission when depreciation rates were changed; and (9) UGIU did not properly follow the FERC Form No. 1 instructions and, therefore, did not report all required information in its FERC Form No. 1 filings.

The other matter related to DAA's observation that, while UGIU recorded equity and debt AFUDC in the appropriate accounts per the Commission's accounting regulations, UGIU did not report equity AFUDC ADIT, debt AFUDC ADIT, and the equity AFUDC ADIT gross-up (collectively AFUDC ADIT) on its FERC Form No. 1.

As a result of the audit, UGIU made refunds to wholesale transmission customers and revised its accounting policies and procedures in the identified areas of noncompliance.

Southern California Edison Co. (SCE) – Docket No. FA20-1-000. At SCE, DAA evaluated compliance with: (1) approved terms, rates, and conditions of SCE's Transmission Owner Tariff governing its jurisdictional rates; (2) conditions included in the Commission's orders granting SCE transmission incentives; (3) accounting requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Part 101; (4) financial reporting requirements of the FERC Form No. 1 under 18 C.F.R. § 141.1; and (5) requirements in Preservation of Records of Public Utilities and Licensees under 18 C.F.R. Part 125.[41] The audit identified six findings and 22 recommendations that required SCE to take corrective action. The company did not contest the six findings and 22 recommendations.

The six findings covered the following areas: (1) improper recording in Account 925, Injuries and Damages, of approximately $7.3 million of compromise settlement payments relating, at least in part, to alleged employment discrimination, thereby resulting in overstating SCE's annual transmission revenue requirement; (2) improperly recording approximately $39.9 million of vendor discounts for early payment of various invoices in Account 930.2, Miscellaneous General Expenses, resulting in understating A&G expense and overstating various Operating and Maintenance as well as Electric Plant in Service accounts; (3) over accruing AFUDC included in utility plant accounts and overbilling wholesale transmission customers as a result of a deficient AFUDC calculation method involving (a) improperly excluding short-term debt related to energy procurement margin and collateral postings from the AFUDC rate calculation; (b) improperly excluding $100 million of long-term debt related to nuclear fuel procurement from the AFUDC rate calculation; and (c) improperly accruing $182,586 of AFUDC on a suspended construction project during the audit period; (4) improperly including Account 216.1, Unappropriated Undistributed Subsidiary Earnings, and Account 219, Accumulated Other Comprehensive Income, in determining the equity component used to compute the company's AFUDC rate; (5) improperly recording various A&G expenses in a manner contrary to the Commission's accounting

[41] *Southern California Edison Co.*, Docket No. FA20-1-000 (June 28, 2021) (delegated letter order).

regulations, resulting in misrepresenting A&G expense account balances reported in SCE's FERC Form No. 1 filings; and (6) not properly following the FERC Form No. 1 instructions and, therefore, not reporting all required information in FERC Form No. 1 filings.

As a result of the audit, SCE made refunds to wholesale transmission customers and revised its accounting and reporting policies and procedures in the identified area of noncompliance.

Versant Power– Docket No. FA20-9-000. At Versant Power, DAA evaluated compliance with: (1) approved terms, rates, and conditions of its wholesale transmission formula rates; (2) accounting requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Part 101; (3) financial reporting requirements of the FERC Form No. 1 under 18 C.F.R. §141.1; and (4) requirements in Preservation of Records of Public Utilities and Licensees under 18 C.F.R. Part 125.[42] The audit identified six findings and 28 recommendations that required Versant Power to take corrective action. The company did not contest the six findings and 28 recommendations.

The six findings covered the following areas: (1) Versant Power capitalized overhead costs to Account 107, Construction Work in Progress (CWIP) – Electric, using an allocation method that was not based on the actual time that employees were engaged in construction activities or on a representative time study; (2) improper inclusion of Account 216.1, Unappropriated Undistributed Subsidiary Earnings, in the equity component when computing the AFUDC rate, which led to over accrued AFUDC in utility plant accounts, and overbilling of wholesale transmission customers; (3) improper recording of income tax receivables that represented refunds for income tax overpayments in Account 165, Prepayments, instead of in Account 143, Other Accounts Receivable, resulting in overstating Versant Power's transmission rate base used in its wholesale transmission formula rate calculation; (4) including an incorrect amount for transmission rental revenues in the wholesale transmission formula rate, resulting in overstating the revenue credits and understating the wholesale transmission revenue requirement; (5) improperly netting the excess and deficient Accumulated Deferred Income Tax (ADIT) related to the 2017 Tax Cuts and Jobs Act and recording the amount that resulted from this improper netting in Account 254, Other Regulatory Liabilities, affecting the transparency and accuracy of the amounts reported in FERC Form No. 1 filings; and (6) Versant Power did not properly follow the FERC Form No. 1 instructions and, therefore, did not report all required information in its FERC Form No. 1 filings.

As a result of the audit, Versant Power was directed to make refunds to wholesale transmission customers and revise its accounting policies and procedures in identified areas of noncompliance.

2. Gas Tariff & Accounting

Maritimes & Northeast Pipeline, L.L.C. (Maritimes) – Docket No. FA19-9-000. At Maritimes, 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) financial reporting requirements of the FERC Form No. 2 under 18 C.F.R. § 260.1; and (3) select provisions of

[42] *Versant Power*, Docket No. FA20-9-000 (Sept. 16, 2021) (delegated letter order).

Maritimes' FERC Natural Gas Act Tariff (Tariff).[43] The audit identified seven findings, one other matter, and 23 recommendations that required Maritimes to take corrective action. The company did not contest the seven findings and 23 recommendations.

The seven findings covered the following areas: (1) failing to record labor burden and overhead costs to capital projects based on actual costs or time studies and not maintaining necessary records to support allocation percentages used; (2) not performing a study to support the allocation percentage used to assign O&M expenses to incremental rate projects, and improperly aggregating maintenance expenses with operating expenses, rather than separately reporting these expenses for Maritime's incremental rate projects in its FERC Form No. 2 filings; (3) Maritimes' affiliates allocating to Maritimes certain nonoperating expenses and costs that had no relationship to its interstate pipeline operations, which Maritimes improperly recorded in operating expense accounts; (4) improperly accounting for certain operating expenses, such as transmission operating expenses, regulatory activities, and legal fees, in a manner inconsistent with the Commission's accounting regulations; (5) not reporting complete information as required in certain supporting schedules of Maritimes' 2017 and 2018 FERC Form No. 2 reports; (6) misreporting the deferred fuel balance and negative LAUF in Maritimes' annual Fuel Retainage Quantity filings, and not separately breaking out its deferred fuel balance from other activities reported on Page 268, Miscellaneous Current and Accrued Liabilities, in its FERC Form No. 2 reports; and (7) Maritimes' Tariff contained general terms and conditions for its reservation charge crediting that were inconsistent with Commission policy.

The other matter noted that Maritimes' tariff provisions for scheduling penalties and park and loan penalties contained some inconsistencies with Commission policy.

As a result of the audit, Maritimes updated its tariff and 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

Chevron Pipeline Company (CPL) – Docket No. FA19-5-000. At CPL, DAA evaluated CPL's compliance with requirements of the: (1) Uniform System of Accounts in 18 C.F.R. Part 352; (2) FERC Form No. 6 financial reporting requirements in 18 C.F.R. Part 357; (3) Preservation of Records for Oil Pipeline Companies under 18 C.F.R. Part 356; and (4) select provisions of CPL's FERC transportation tariffs.[44] The audit identified five findings of noncompliance and 18 recommendations that required CPL to take corrective action. The company did not contest the five findings and 18 recommendations.

The five findings covered the following areas: (1) misapplication of depreciation rates and miscalculation of depreciation reserve balances, including (a) using depreciation rates slightly

[43] *Maritimes & Northeast Pipeline, L.L.C.*, Docket No. FA19-9-000 (Nov. 12, 2020) (delegated letter order).

[44] *Chevron Pipeline Co.*, Docket No. FA19-5-000 (Oct. 7, 2020) (delegated letter order).

higher than those approved by the Commission; (b) accruing depreciation when the underlying asset accounts had been fully depreciated; and (c) maintaining two carrier asset accounts with negative depreciation reserve balances; (2) accounting for inactive and idle property as carrier rather than non-carrier property, resulting in overstating rate base and depreciation expense on Page 700 of CPL's 2018 FERC Form No. 6; (3) the misreporting of non-carrier property revenue and expenses in operating expense and revenue accounts; (4) accounting for legal settlement costs relating to employment discrimination claims as operating rather than nonoperating expenses and misreporting certain regulatory fees; and (5) underreporting interstate operating revenues on Page 700 of the FERC Form No. 6.

As a result of the audit, CPL restated and footnoted certain balances in its FERC Form No. 6 filings and strengthened its accounting and reporting procedures relating to the identified findings, and particularly relating to Page 700 of its FERC Form No. 6 filings, thereby improving shippers' and other parties' use of Page 700.

Mustang Pipeline LLC (Mustang) – Docket No. FA20-4-000. At Mustang, DAA evaluated Mustang's compliance with the requirements of the: (1) Annual Cost of Service Based Analysis Schedule on Page 700 of Mustang's FERC Form No. 6 filings; (2) the Uniform System of Accounts in 18 C.F.R. Part 352, as relating to transactions affecting Page 700 inputs; and (3) the Commission's financial reporting requirements in 18 C.F.R. Part 357.[45] The audit identified five findings of noncompliance and 19 recommendations that required Mustang to take corrective action. The company did not contest the five findings and 19 recommendations.

The five findings covered the following areas: (1) not using Commission approved depreciation rates, and starting depreciation expense accrual on the date that Mustang transferred project costs from its CWIP account to its carrier property accounts rather than, as required, on the date it placed projects into service; (2) using the ROE rate of an indirect parent and the capital structure of an ultimate parent, when calculating the weighted cost of capital reported on Page 700, rather than using a Commission approved methodology for determining ROE and capital structure; (3) incorrectly calculating certain inputs to Page 700, including the following errors in calculating AFUDC: (a) including ineligible costs of purchased and ready for service, rather than constructed, assets in its calculations of AFUDC, including the cost of a vehicle not used for construction; (b) assuming a twelve-month construction period for all projects rather than using the projects' actual construction periods; and (c) arbitrarily taking one-half of the current year amount reported on Line 36, Column (c), and multiplying it by the weighted cost of capital (i.e., its calculated AFUDC rate) to derive the amount of AFUDC to be included in rate base reported on Page 700 each year, and also failing to reduce Mustang's rate base by Mustang's ADIT in 2014; (4) not reporting complete and accurate information on certain supporting schedules of the FERC Form No. 6, which affected the accuracy of barrel-miles reported on Page 700; and (5) not filing initial and amended cash management agreements with the Commission.

As a result of the audit, Mustang restated and added footnotes to its FERC Form No. 6 filings and strengthened its accounting and reporting policies and procedures relating to the identified findings, thereby improving shippers' and other parties' use of Page 700.

[45] *Mustang Pipeline LLC*, Docket No. FA20-4-000 (July 20, 2021) (delegated letter order).

Centurion Pipeline L.P. (Centurion) – Docket No. FA19-4-000. At Centurion, DAA evaluated Centurion's compliance with the requirements of the: (1) Uniform System of Accounts in 18 C.F.R. Part 352; (2) FERC Form No. 6 financial reporting requirements in 18 C.F.R. § 357.2; (3) Preservation of Records for Oil Pipeline Companies in 18 C.F.R. Part 356; and (4) select provisions of Centurion's FERC transportation tariffs.[46] The audit identified five findings of noncompliance and 15 recommendations that required Centurion to take corrective action. The company did not contest the five findings and 15 recommendations.

The five findings covered the following areas: (1) failure to remove the original cost of idled and retired assets from rate base in the cost of service reported on Page 700 of the FERC Form No. 6 and incorrectly removing retired assets from rate base at the book cost (i.e., purchase price) rather than original cost; (2) incorrectly accounting for and reporting on Page 700 certain activities associated with the company's pipeline loss allowance (PLA) and gravity shrinkage deduction (GSD) – specifically, incorrectly recording oil losses as an offset to revenue in Account 230, Allowance Oil Revenues, rather than as an operating expense in Account 340, Oil Losses and Shortages, and omitting PLA and GSD revenues, reported in Account 230 on Page 301 of its FERC Form No. 6, when reporting jurisdictional operating revenue on Page 700, Line 10; (3) improperly recording the cash proceeds from sales of carrier property as incidental revenue rather than as a charge to the carrier property accrued depreciation account and also not retiring the carrier property from the company's books when sold; (4) recording the lobbying portion of industry association dues in an operating expense account rather than a nonoperating expense account, and improperly recording the annual fees and dues paid to regulatory agencies and an industry trade association as operating and maintenance, rather than general, expenses; and (5) not providing complete and accurate information required on certain supporting schedules of the FERC Form No. 6.

As a result of the audit, Centurion restated and footnoted FERC Form No. 6 filings and strengthened its accounting and reporting policies and procedures relating to the identified findings, thereby improving shippers' and other parties' use of Page 700.

Bridger Pipeline LLC (Bridger) – Docket No. FA19-10-000. At Bridger, DAA evaluated Bridger's compliance with the requirements of the: (1) Page 700, Annual Cost of Service Based Analysis Schedule of the FERC Form No. 6; (2) Uniform System of Accounts in 18 C.F.R. Part 352; (3) FERC Form No. 6 financial reporting requirements in 18 C.F.R § 357.2; and (4) Preservation of Records for Oil Pipeline Companies in 18 C.F.R. Part 356.[47] The audit identified nine findings of noncompliance and 35 recommendations that required Bridger to take corrective action. The audit also identified one other matter related to Bridger's determination of return on equity for Page 700, suggesting a more refined approach to determining this input. The company did not contest the nine findings and 35 recommendations.

The nine findings covered the following areas: (1) improperly accounting for idle property as carrier property, rather than noncarrier property, thereby affecting the accuracy of certain schedules reported in the FERC Form No. 6 and input balances on Page 700; (2) improperly accounting for and reporting in FERC Form No. 6 certain financial statement activities for

[46] *Centurion Pipeline L.P.*, Docket No. FA19-4-000 (Sept. 23, 2021) (delegated letter order).

[47] *Bridger Pipeline LLC*, Docket No. FA19-10-000 (Sept. 23, 2021) (delegated letter order).

investments in other companies, and lacking sufficient records relating to investment activities; (3) classifying costs incurred for fines and penalties, lobbying activities, and charitable contributions as operating expenses rather than nonoperating expenses and misclassifying association dues in an incorrect operating expense account; (4) making input errors and taking actions inconsistent with Opinion No. 154-B when completing Page 700 of the FERC Form No. 6 – in particular: incorrectly deriving the interstate portion for certain lines, excluding accumulated deferred income taxes from rate base, including the purchase price rather than original cost in rate base for an asset acquired, and not disclosing certain required information; (5) incorrectly accounting for and reporting activities associated with the company's pipeline loss allowance and gravity shrinkage deduction, resulting in omitting the interstate portion of the revenues and expenses associated with these activities from Page 700; (6) inappropriately using an all equity capital structure to calculate the weighted cost of capital used to derive the return on rate base on Page 700 and using an outdated capital structure to derive the amortization of deferred earnings; (7) not maintaining records of the depreciation study supporting the depreciation rates adopted and using the component method, rather than the composite method, of depreciation without receiving Commission approval, thereby preventing verification that the company used appropriate depreciation rates and reported certain amounts correctly on Page 700; (8) not filing journal entries for Commission consideration and approval for two operating systems acquired in 2003 and 2017; and (9) not reporting complete information as required in certain supporting schedules of the FERC Form No. 6.

As a result of the audit, Bridger restated and footnoted certain FERC Form No. 6 filings and strengthened its accounting and reporting policies and procedures relating to the identified findings, thereby improving shippers' and other parties' use of Page 700.

4. Electric Tariff & Accounting

El Paso Electric Company (El Paso) – Docket No. PA19-3-000. At El Paso, DAA evaluated compliance with: (1) approved terms, conditions, and rates of El Paso's Open Access Transmission Tariff (OATT); (2) accounting requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Part 101; (3) the financial reporting requirements of the FERC Form No. 1 under 18 C.F.R. § 141.1; and (4) the regulations regarding Open Access Same-time Information Systems (OASIS) prescribed in 18 C.F.R. Part 37.[48] The audit identified four findings and 10 recommendations that required El Paso to take corrective action, and one other matter. The company did not contest the four findings and 10 recommendations.

The four findings covered the following areas: (1) failing to post Available Transfer Capability (ATC) and Total Transfer Capability (TTC) for nine control area to control area interconnection paths; (2) using a Designated Network Resource (DNR) to make firm off-system sales, which was inconsistent with El Paso's OATT; (3) failing to functionalize portions of third-party billings characterized as A&G expenses for the operation and maintenance of the Palo Verde Generating Station, the Four Corners Generating Station, and the Palo Verde Transmission Switchyard, resulting in overstating A&G expenses and understating expenses in the generating and transmission O&M accounts; and (4) applying state-approved depreciation rates to assets included in El Paso's wholesale production formula rate, but not filing these updated depreciation rates with

[48] *El Paso Electric Co.*, Docket No. PA19-3-000 (Jan. 28, 2021) (delegated letter order).

the Commission and obtaining Commission approval prior to using them in wholesale formula rate determinations.

The other matter concerned El Paso's transmission function creating Transmission Service Numbers (TSNs) and assigning these TSNs to its merchant function to facilitate scheduling of transmission service, which is less transparent than assigning TSRs created in OASIS because El Paso's TSNs were manually created outside of OASIS.

As a result of the audit, El Paso revised its accounting and tariff-implementation policies and procedures in the identified areas of noncompliance.

5. Mergers & Acquisitions

Evergy, Inc. (Evergy) and its public utility subsidiaries (collectively, the Companies) – Docket No. PA20-2-000. At Evergy, DAA evaluated whether the Companies were in compliance with the conditions established in the Commission's February 28, 2018 order authorizing the merger of Great Plains Energy Incorporated and Westar Energy, Inc.[49] The audit also evaluated the Companies' compliance with: (1) the tariff requirements governing their FERC jurisdictional rates; (2) the Uniform System of Accounts (Public Utilities) in 18 C.F.R. Part 101; and (3) financial reporting regulations in 18 C.F.R. Part 141, focusing primarily on the transactions and costs associated with the merger transaction.[50] The audit identified three findings and 14 recommendations that required the Companies to take corrective action. The Companies did not contest the three findings and 14 recommendations.

The three findings covered the following areas: (1) certain of the Companies improperly included approximately $14.2 million of merger-related costs in wholesale transmission formula rate revenue requirements without first submitting an FPA Section 205 filing and obtaining Commission authorization; (2) one of the Companies improperly included the income tax effects of book-tax timing differences associated with merger-related costs, recorded in Account No. 190, Accumulated Deferred Income Taxes (ADIT), in its wholesale transmission formula rate annual transmission revenue requirement calculations without first submitting a Section 205 filing and obtaining Commission approval for any such inclusion; and (3) two of the Companies improperly included the amortization of merger-related regulatory assets approved by state commissions in wholesale transmission formula rate annual revenue requirement determinations without first submitting an FPA Section 205 filing and obtaining Commission approval, resulting in overstating their wholesale transmission revenue requirements and overbilling their wholesale transmission customers during the audit period.

As a result of the audit, the Companies were directed to make refunds to wholesale transmission customers and revise their accounting policies and procedures in the identified areas of noncompliance.

[49] *Great Plains Energy Inc. and Westar Energy, Inc.*, 162 FERC ¶ 61,174 (2018).

[50] *Evergy, Inc.*, Docket No. PA20-2-000 (Apr. 14, 2021) (delegated letter order).

6. No Audit Findings of Noncompliance

Macquarie Energy LLC and select Macquarie FERC-jurisdictional affiliates (collectively, Macquarie) – Docket No. PA19-5-000. At Macquarie, DAA evaluated Macquarie's compliance with: (1) its market-based rate (MBR) authorizations, including, but not limited to, the Commission's MBR regulations under 18 C.F.R. Part 35, Subpart H and EQR filing regulations under 18 C.F.R. § 35.10b; and (2) the requirements of FERC Form No. 552, Annual Report of Natural Gas Transactions, under 18 C.F.R. § 260.401.[51] The audit focused on Macquarie's jurisdictional wholesale electric and natural gas marketing activity, including compliance with tariffs of regional transmission operators, independent system operators, and transmission owners in electricity markets in which Macquarie participated, and with Commission regulations governing natural gas transportation and sales under 18 C.F.R. § 284. The audit did not identify any findings of noncompliance that required Macquarie to take corrective action at this time.

E. Commission Order on Contested Audit Matter

Dominion Energy Transmission, Inc. (DETI) – FA15-16-000. On December 17, 2020, the Commission issued its post-briefing order in the contested audit proceeding in *Dominion Energy Transmission, Inc.*, Docket No. FA15-16-000.[52] The order evaluated Dominion Energy Transmission, Inc.'s (DETI) objections to DAA's finding that DETI was required by Commission regulations to use its own short-term debt and CWIP balances when calculating AFUDC, rather than using its parent entity's consolidated short-term debt and CWIP balances. In rejecting DETI's objections to the noncompliance finding, the Commission held, among other things, that its AFUDC regulations were clear and required regulated entities to use their own short-term debt and CWIP book balances in calculating their AFUDC rates, and that there was no unfairness or legal barrier to requiring DETI to remove from its plant accounts excess amounts of capitalized AFUDC arising from noncompliance beginning in 2008 and continuing through the time of DAA's audit of DETI. As a result, DETI removed $51.4 million in improperly accrued and capitalized AFUDC from its plant accounts.

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 decision-useful accounting information used by the Commission and other stakeholders to set and monitor cost-of-service rates. DAA enables the Commission to achieve

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[51] *Macquarie Energy LLC,* Docket No. PA19-5-000 (Sept. 27, 2021).

[52] *Dominion Energy Transmission, Inc.*, 173 FERC ¶ 61,248 (2020).

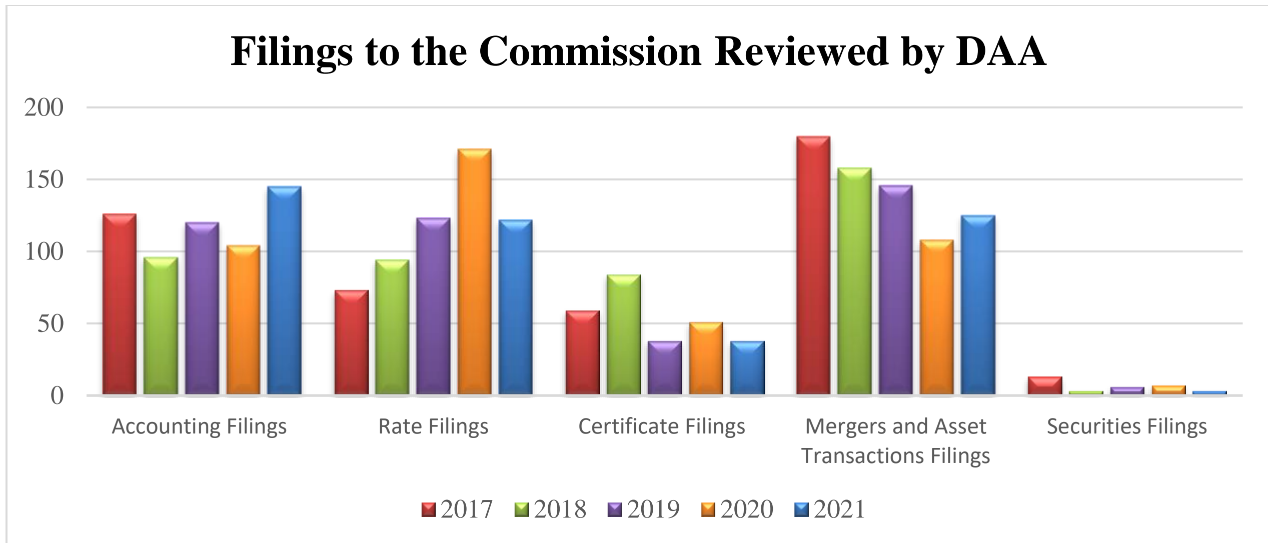
this strategic goal through careful consideration of the Commission's ratemaking policies, past Commission actions, industry rends, and external factors (e.g., economic, environmental, and technological changes, and mandates from other regulatory bodies) that impact the industries under the Commission's jurisdiction.

A substantial part of DAA's accounting workload involves coordination across various Commission program offices to provide regulatory accounting input and analysis on various types of filings made by jurisdictional entities. In addition, 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 seeking to make filings with the Commission to inform them of relevant accounting requirements. To better serve the Commission and other stakeholders in these capacities, DAA monitors and participates in projects initiated by the Financial Accounting Standards Board (FASB), Securities and Exchange Commission (SEC), Internal Revenue Service (IRS), and International Accounting Standards Board (IASB) to address issues that may impact the Commission or its jurisdictional entities.

DAA also receives accounting inquiries and provides informal feedback on the Commission's accounting and financial reporting regulations. These inquiries come directly from jurisdictional entities, industry trade groups, 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 of doubtful interpretation to ensure compliance with 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 FY2021 Filings Reviewed by DAA

In FY2021, DAA advised and acted on 432 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 approximately 2,200 Commission proceedings to ensure proper accounting is followed and to advise the Commission of potential rate impacts.

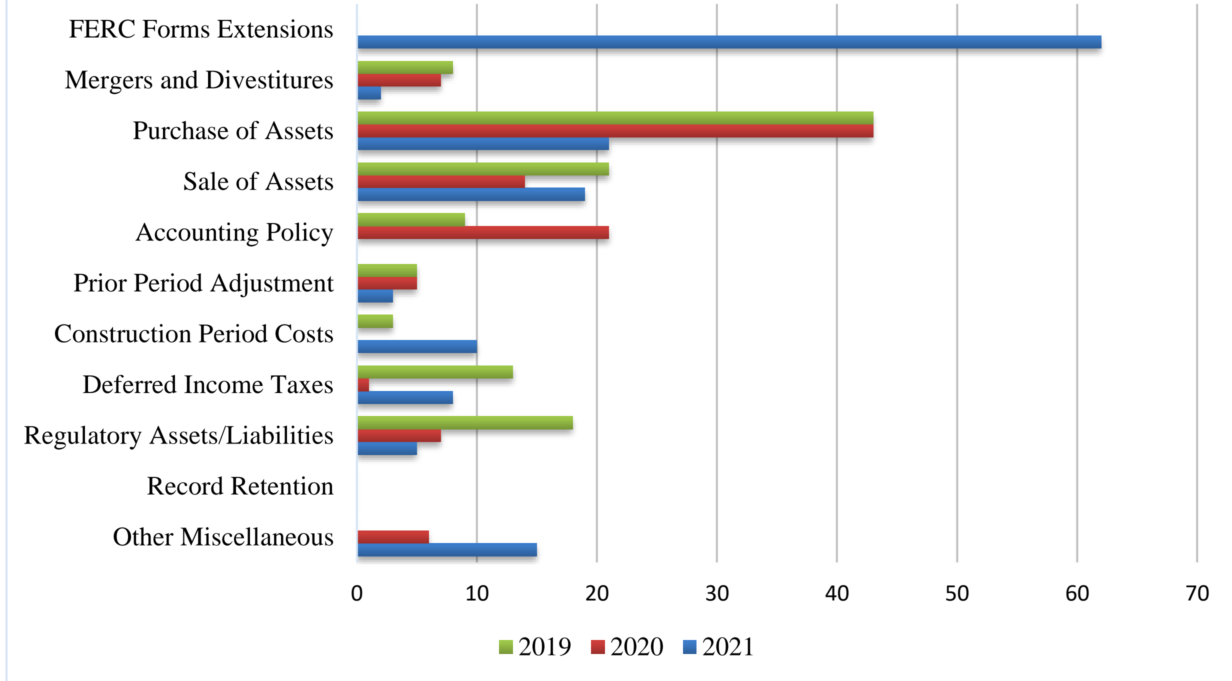


2. Requests for Approval of the Chief Accountant

In FY2021, DAA acted through the Chief Accountant's delegated authority on 145 accounting or reporting filings requesting approval (or authorization, acceptance, acknowledgement) of a proposed accounting treatment or financial reporting matter.[53] 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 FY2021, there was a continued high volume of accounting filings related to asset sales and acquisitions, similar to FY2020. These accounting requests also related to adjustments of ADIT balances, sales of land, transfer of facilities to an associated/affiliated company, early/premature retirement of plant assets, accounting for unusual or infrequent items, updates on the pre-commercial test period for authorized projects, and AFUDC waiver requests.

The Chief Accountant continues to receive accounting requests from jurisdictional entities to use Account 439, Adjustments to Retained Earnings, to make prior period adjustments for the use of incorrect depreciation rates and for the use of incorrect original life. The Chief Accountant letter orders that grant approval to use Account 439 are not intended to influence the outcome of any rate treatment established for the accounting adjustments. DAA encourages companies making similar filings to include all relevant historical evidence and analyses to support the adjustments.

[53] The accounting filings are docketed in the Commission's eLibrary with the "AC" docket prefix (AC Dockets), and "AI" docket prefix (for issuances of accounting guidance).



3. Rate Proceedings

In FY2021, DAA participated in 122 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 FY2021 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 FY2021, DAA reviewed 38 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 authorization to operate natural gas facilities. 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 FY2021, 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 asset retirement obligations.

5. Merger and Acquisition Proceedings

In FY2021, DAA reviewed 125 applications from public utilities under Section 203 of the Federal Power Act (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 FY2021, DAA reviewed three 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 nonutility 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 FY2021, DAA responded to 217 accounting inquiries from jurisdictional entities, industry trade associations, legal and consulting firms, other regulators, academia, other Commission program offices, 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. Many accounting inquiries during FY2021 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

system[54] and Title 18 of the Code of Federal Regulations.[55] Such informal accounting and financial reporting guidance is not binding on the Commission, and cannot grant waiver of a Commission regulation or order.

8. Renewable Energy Assets Notice of Inquiry

In Docket No. AC20-103-000, on January 19, 2021, the Commission denied Locke Lord LLP's request for confirmation that the cost of specific wind and solar generating equipment is properly booked to Account 343, Prime Movers; Account 344, Generators; and Account 345, Accessory Electric Equipment, due to an insufficient record to support the accounting request. The Commission found that, due to the generic nature of the request and the lack of specific details about an identifiable facility, such accounting guidance would likely have implications beyond just the accounting proceeding initiated by Locke Lord. Consequently, the Commission decided to address the matters raised by the request for guidance through concurrently issuing a Notice of Inquiry (NOI) under Docket No. RM21-11-000.[56]

In the NOI, the Commission requested comments on the appropriate accounting treatment for certain renewable energy assets, such as solar, wind, and other non-hydro renewable generating assets. First, the Commission requested comments on whether to create new accounts within the Uniform System of Accounts for non-hydro renewable energy generating assets, and, if so, how such accounts should be organized. Second, the Commission requested comments on how to modify FERC Form No. 1 to reflect any new accounts. Third, the Commission sought comments on whether to codify the proper accounting treatment of the purchase, generation, and use of renewable energy credits. Lastly, the Commission sought comments on the rate setting implications of these potential accounting and reporting changes. Comments on the NOI were due by March 29, 2021, and reply comments were due by April 26, 2021. DAA assisted the Commission with Docket Nos. AC20-103-000 and RM21-11-000.

9. 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 two letter orders under delegated authority relating to the pandemic, in response to specific financial accounting relief requests. In Docket No. AC21-20-000,[57] Union Electric Company d/b/a Ameren Missouri (Ameren Missouri), in accordance with the Commission's Accounting regulations,[58] notified the Commission that the pre-commercial operation test period for its wind farm project being developed and constructed by TG High Prairie, LLC, in Schuyler

[54] The Commission's eLibrary system can be accessed at elibrary.ferc.gov.

[55] The Commission's regulations in 18 C.F.R. can be found at www.ecfr.gov.

[56] *See Accounting and Reporting Treatment of Certain Renewable Energy Assets*, Notice of Inquiry, 174 FERC ¶ 61,032 (2001).

[57] *See* Docket No. AC21-20-000, *Union Electric Company d/b/a Ameren Missouri,* Delegated Letter Order (issued December 10, 2020).

[58] *See* 18 C.F.R. Part 101, Electric Plant Instruction No. 9D (2021).

and Adair counties in Missouri, would take up to 195 days rather than 180 days, as previously represented and accepted by the Chief Accountant (in Docket No. AC19-28-000). Ameren Missouri represented that the project would take additional time to complete based on project delays that had arisen in part due to the impact of the COVID-19 crisis. The Chief Accountant accepted Ameren Missouri's notification letter for filing.

In Docket No. AC21-158-000, Edison Electric Institute (EEI), the American Gas Association (AGA), and the Interstate Natural Gas Association of America (INGAA) requested, on behalf of their member companies, waiver of certain provisions of Parts 101 and 201 of the Commission's regulations[59] in order to modify existing AFUDC rate calculations in response to the impacts of 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 nonpayment 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 unchanged. The initial Waiver Order granted a one-year waiver (from March 1, 2020 through February 28, 2021) to all jurisdictional entities stating that their 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.[60] On February 23, 2021, given the potential ongoing industry impact caused by the COVID-19 emergency, the Commission found good cause to extend, on its motion, the AFUDC waiver request granted in the Waiver Order for an additional seven months for all jurisdictional entities subject to the Commission's accounting regulations (effective March 1, 2021 through September 30, 2021). Then, on September 23, 2021, the Chief Accountant authorized an extension[61] of the Waiver Order for an additional six months (effective October 1, 2021 through March 31, 2022), in response to EEI and AGA's request and representations that the COVID-19 impacts on liquidity and related temporary increases in short-term debt remain ongoing and are expected to continue into 2022.

[59] *See* 18 C.F.R. Part 101, Electric Plant Instruction No. 3(17) and Part 201, Gas Plant Instruction No. 3(17) (2021).

[60] *See* Docket No. AC20-127-000, *EEI, AGA, INGAA,* Order Granting Waiver Request (Commission's Waiver Order issued June 30, 2020, extension issued Feb. 23, 2021).

[61] *See* Docket No. AC21-158-000, *EEI and AGA,* Delegated Letter Order (Sept. 23, 2021).

10. Commission Order No. 864 Compliance

On November 21, 2019, the Commission issued Order No. 864,[62] 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.[63] 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 change in tax rates in the period that the change is enacted.[64] 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 over 150 compliance filings to date, including approximately 50 in FY2021. 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,[65] 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.

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[62] *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).

[63] 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).

[64] *See* 18 C.F.R. §§ 35.24 and 154.305 (2021); *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).

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

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 (2021), 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 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.[66] The Commission extended the EQR filing requirement to apply to certain non-public utilities in Order No. 768.[67]

In FY2021, the Commission received EQR submittals from nearly 2,900 entities each quarter. DAA assesses whether sellers have timely complied with the requirements set forth in the multiple orders regarding EQR filings and, through automated validations, whether the data is accurate. DAA also reviews EQR issues that arise during audits and self-reports and submits candidate entities that do not timely file their EQRs to OEMR for possible revocation of MBR authority. DAA began public outreach in 2020 on its EQR Reassessment Project, which aims to review the current EQR reporting requirements and to improve the data being collected. DAA held two EQR technical conferences via webcast in FY2021 with the filing community on potential updates and improvements to the existing data collection. At the February 24, 2021 technical conference, staff discussed proposed modifications to 21 data fields. At the May19, 2021 technical conference, staff discussed proposed modifications to 27 data fields. During FY2021, staff also updated the EQR webpage, and provided filing assistance to filers. On November 23, 2020, DAA updated the EQR Data Dictionary to reflect changes related to reporting time zone information for transmission

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[66] *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).

[67] *Electric Market Transparency Provisions of Section 220 of the Federal Power Act*, Order No. 768, 140 FERC ¶ 61,232 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013), *order on reh'g*, Order No. 768-B, 150 FERC ¶ 61,075 (2015).

capacity reassignments, consistent with the Commission's June 18, 2020 order in Docket No. RM01-8-000.[68]

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.[69] 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 filing these forms.[70] 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.[71] 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. Filers were able to submit test submissions starting in July 2020. The system was updated after extensive review of filer and vendor comments to version 1.5 on April 15, 2021, and staff made necessary technical changes to the system based on input from filers and vendors. On September 16, 2021, the development team published 10 years of historic forms' data in XBRL format. As of September 30, 2021, the Commission no longer accepted filings in the Visual FoxPro system. Immediately following that deadline, on October 1, 2021, the XBRL system went live, allowing filers to submit their 2021 third quarter filings using the XBRL process and to resubmit in XBRL any filing from Q3 2011 to the present.

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 FY2021, the Commission received approximately 2,600 financial forms submittals. On March 23, 2021, in order to provide the additional time necessary to complete the transition to an XBRL-based system, the Commission issued a notice extending the filing deadlines until December 31, 2021 for the third quarter FERC Form Nos. 3-Q (gas and electric) and 6-Q.[72] In August 2021, the Commission also provided relief to parties

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

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

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

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

[72] *Notice of eForms Updates, Termination of Visual FoxPro Filings, and Extension of Filing Deadlines*, Docket No. RM19-12-000 (March 23, 2021).

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 Ida. Specifically, the Commission extended until September 24, 2021, the second quarter deadlines for filing FERC Form Nos. 3-Q and 6-Q.[73]

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 referrals[74] 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.[75] On average, the Commission receives, on a non-public basis, approximately eight gigabytes of data in more than 1,388 tables each day from the six organized markets combined. Each ISO/RTO database is different, and DAS is responsible for understanding the nuances of each database and preparing them for use in surveillance screens and analyses.

Similarly, pursuant to Order No. 771,[76] 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

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[73] *Notice Granting Extension of Time*, Docket No. AD21-17-000 (Aug. 30, 2021).

[74] 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."

[75] *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).

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

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 Intercontinental Exchange (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.

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. February 2021 Cold Snap Analysis

As the Commission announced on February 22, 2021,[77] DAS has been conducting an examination of wholesale natural gas and electricity market activity during the cold snap associated with winter storm Uri to determine if any market participants engaged in market manipulation or other violations. DAS has examined physical wholesale natural gas trade data from ICE, financial natural gas and electric positions from the Large Trader Report, and day-ahead electricity awards in SPP and MISO using Order No. 760 data. In addition, DAS evaluated six tips received through the Commission's Enforcement Hotline regarding potentially improper market participant behavior during the cold snap. DAS also met with industry participants and public interest groups to discuss their concerns and coordinated with state representatives as appropriate, including the Attorneys General of Colorado, Kansas, Missouri, and Texas. Enforcement also coordinated with other federal agencies on matters that are outside of the Commission's jurisdiction.

There was a significant increase in the total number of natural gas screen trips and surveillance alerts during the cold snap. For February 2021 alone, DAS examined 2,280 next-day natural gas

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[77] FERC to Examine Potential Wrongdoing in Markets During Recent Cold Snap, https://www.ferc.gov/news-events/news/ferc-examine-potential-wrongdoing-markets-during-recent-cold-snap.

market screen trips, which resulted in 190 total natural gas market surveillance alerts that warranted a more thorough review to determine if a surveillance inquiry was necessary.[78] As a result of DAS surveillance screening and examination of public and non-public information, DAS conducted 10 inquiries into natural gas market participant behavior during the cold snap. As part of these inquiries, staff contacted 10 natural gas market participants to gather additional information and data regarding their activities. After analyzing the additional data and information gathered during the inquires, staff decided to close seven of the natural gas inquiries, refer two matters for investigation by DOI, and continue to analyze one matter. In addition, DAS conducted four inquiries into electric market participant behavior in SPP and MISO and contacted three of them for additional information. DAS also requested additional information from the MISO and SPP market monitors. After analyzing the additional data, staff closed three of the electricity markets inquires and continues to review the activity of one market participant in SPP. As of the end of FY2021, this examination remains ongoing, and DAS may refer additional matters to DOI as new information comes to light.

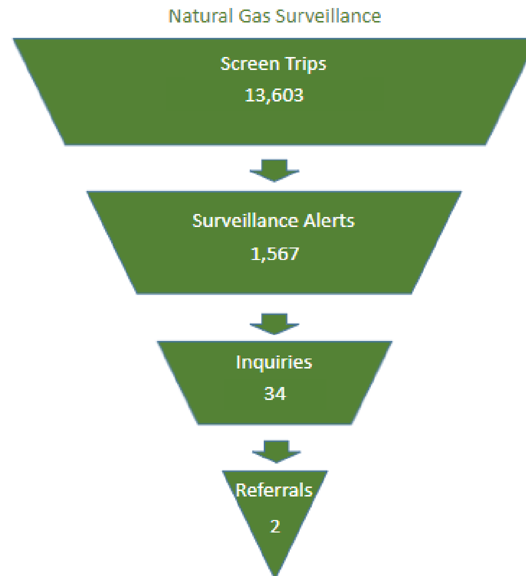
2. Natural Gas

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 FY2021, natural gas surveillance screens produced approximately 13,603 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 FY2021, 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 1,567 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 FY2021, DAS conducted 34 such natural gas surveillance inquiries. Of these inquiries, two were referred to DOI for investigation, 28 were closed with no referral, and four remain open with DAS staff continuing its analytic work.[79]

[78] For comparison to the prior years, in February 2020, there were 471 next-day natural gas market screen trips and 90 surveillance alerts, and in February 2019, there were 998 next-day natural gas market screen trips and 108 surveillance alerts.

[79] These totals include the cold snap-related natural gas market inquiries described above.



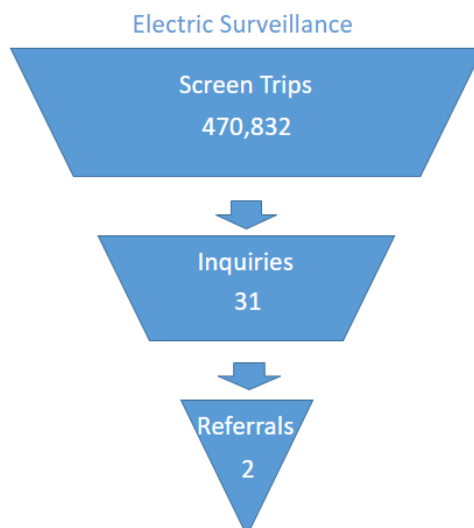
3. Electricity

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 FY2021, staff ran monthly and weekly screens to identify patterns by monitoring the interactions between bids and cleared physical and financially settled electricity products. 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 FY2021, DAS ran and reviewed 96 electric surveillance screens; monthly, hourly, and intra-hour sub-screens; and reports for over 41,000 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 31 instances of market behavior that required further analysis through a surveillance inquiry. Of the 31 electric surveillance inquiries,

two were referred to DOI for investigation, 22 were closed with no referral, and seven remain open with DAS staff continuing its analytic work.[80]



4. Illustrative DAS Surveillance Inquiries Closed with No Referral

Market Manipulation (Gas). DAS natural gas surveillance screens identified a market participant buying at high prices in the Midwest toward the end of a next day trading session with high market concentration and losses, while holding a large long swing future position. Staff interviewed the traders, who detailed specific call options and supply obligations that the next day purchases fulfilled. Further, the traders disclosed that the late nature of their trades was due to their pause in trading while they went to verify that their customers wanted gas from a high-priced market. After staff verified the explanations provided, DAS closed the surveillance inquiry with no referral to DOI.

Market Manipulation (Gas). DAS natural gas surveillance screens identified a pattern of multiple bidweeks at a Western hub where next month bidweek indices, like IFERC, printed at higher prices compared to trading on the ICE. Staff flagged a producer that bought gas at the hub with varying market share, losses, and a large long financial basis position during these bidweeks. Staff sent the producer a data request for the firm's off-ICE trades to assess the degree to which the participant was responsible for the above ICE printed prices. DAS findings showed that the company's off-ICE trading reasonably aligned with other companies' on-ICE trading, and that the off-ICE trades did not have large volume. DAS closed the surveillance inquiry with no referral to DOI.

Market Manipulation (Gas-Electric). DAS evaluated next-day cash surveillance screen trips in which a market participant bought at high prices at multiple points throughout the South-Central United States, while it was long index futures. Staff noted that the market participant also generated power at the time of these concerning physical gas purchases. DAS contacted the market

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[80] These totals include the cold snap-related electricity market inquiries described above.

participant's traders, who detailed how they supplied their gas-fired power plants and how these purchases supplemented their fuel needs. In addition, they provided additional information demonstrating how their index futures hedged their fuel procurement needs. These next-day purchases represented a small swing quantity of gas for the participant's fleet, and they were at low prices from a heat-rate perspective relative to contemporaneous power prices. 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 south-central United States at some of the highest next-day prices of a flow month. DAS interviewed the traders, who detailed how the purchases were necessary to supply gas-daily priced third-party obligations including an Asset Management Agreement to supply a generator and a supply obligation to an LDC. The respondent disclosed the next-day purchases were necessary because of partial supply curtailments from their affiliate producer on volumes priced at a first-of-month index. DAS sent a data request to the affiliate producer to verify that it did not engage in opportunistic higher priced sales using these curtailed volumes. After finding no evidence of opportunistic sales by the producer, DAS closed the inquiry without referral to DOI.

Market Manipulation (Electric). DAS electric surveillance screens flagged a large real-time Eastern RTO Coordinated Transaction Schedule (CTS) transaction that lost money over a one-month period. The market participant in question concurrently held a leveraged virtual demand position (synthetic long real-time swap) at the export side of the transaction. These virtual positions could have benefitted from the export. Upon further analysis, it became apparent that most of the export losses were due to just a few market hours where shadow prices hit $2,000 / MW-hour. Due to the nature of CTS transactions where transactions are cleared against *expected* (rather than *actual*) spread prices, staff also believes that the losses in the case were not anticipated. Because the virtuals were profitable during the rest of the month, DAS closed this inquiry.

Market Manipulation (Electric). Staff flagged a unit that received an unusually large amount of uplift in late spring. The largest payments occurred on a day in which actual temperatures, and hence load, were much lower than forecast. Further research revealed that the flagged unit was run out-of-market for local reliability reasons. Concurrently, the unit needed to switch from natural gas to fuel oil due to a pipeline compressor station outage that affected the unit's fuel supply and hence costs. As a result, the unit had legitimately increased its offers during the period staff analyzed and staff decided to close the inquiry.

Market Manipulation (Electric). DAS electric surveillance screens continue to analyze virtual positions which appear to be creating or aggravating binding constraints in the day-ahead market. In one instance, a trader was flagged when its collective virtual positions had an effective position (shift factor weighted) that exceeded a screen threshold with respect to a Midwest constraint. The trader in question simultaneously held FTR positions that could benefit from virtual demand on upstream nodes, and virtual supply on downstream nodes. Further analysis revealed that the trader's virtual positions were mostly profitable during days when the constraint bound. Additionally, the virtual strategy appeared to be part of a long-standing seasonal strategy rather than an isolated event. As a result, the inquiry was closed with no referral to DOI.

C. Analytics

During FY2021, DAS worked on approximately 40 investigations and 15 other matters involving inquiries or litigation. Some of these matters are discussed above in the DOI section. Many of these investigations in which DAS participated 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

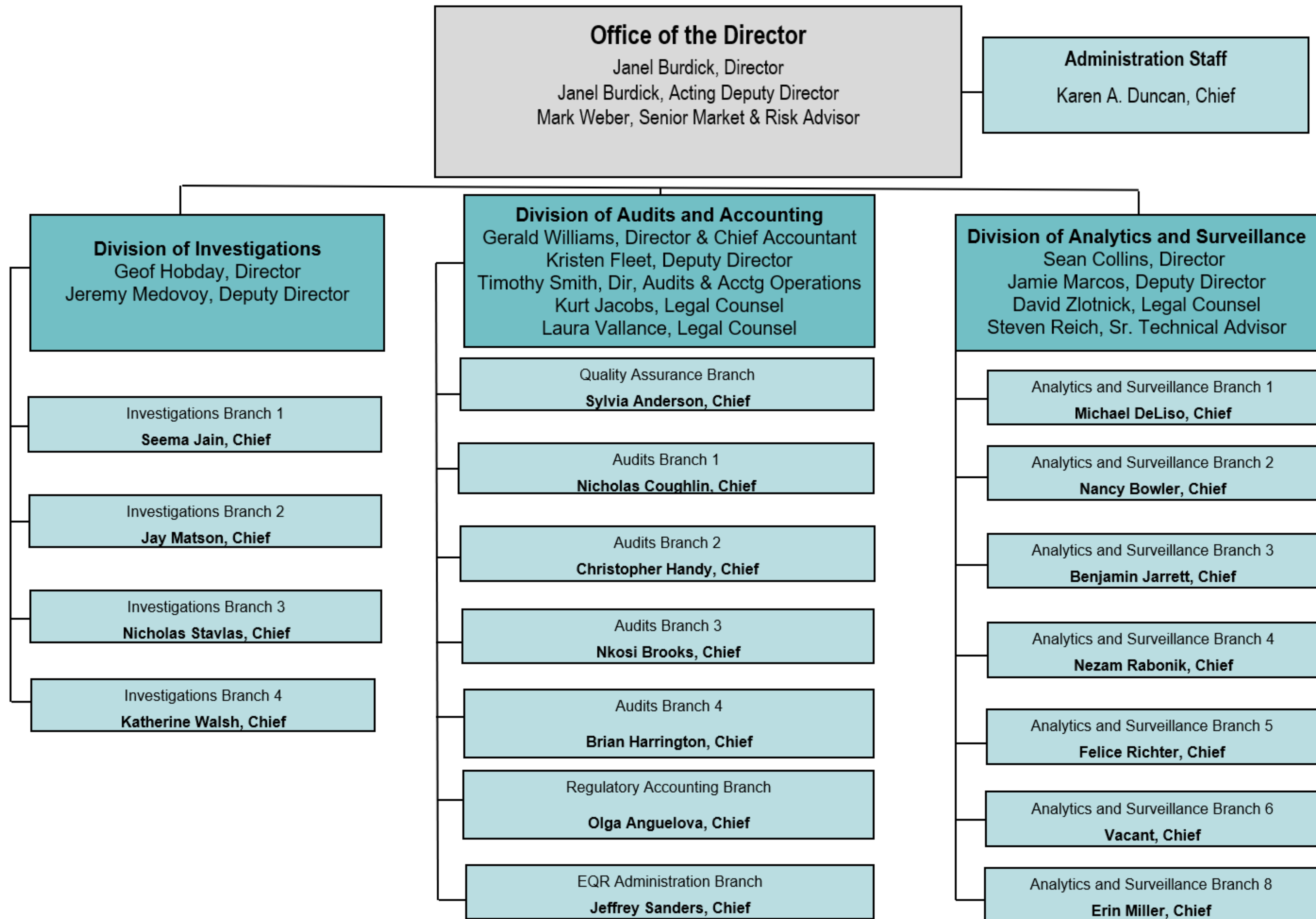
DAS conducts analytical reviews of wholesale electric market-based rate transactions to detect the potential exercise of market power. To accomplish this function in FY2021, DAS staff continued to develop, refine, and implement tools and algorithmic indicators to conduct ongoing analysis of transactional 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, and other docketed proceedings. During FY2021, DAS staff reviewed over 2.6 million market-based rate transactions filed through the Commission's EQRs by 184 sellers of wholesale energy. Staff routinely analyzed the combined results of 25 statistical indicators to detect potential instances of the exercise of market power within 63 geographic regions or market hubs.

E. Data Management

During FY2021, DAS focused on three data management and technology initiatives. First, under an initiative started in FY2020, DAS continued to develop a data warehouse that simplifies Commission analysts' use of Order No. 760 data. During the year, the data warehouse team completed development and validation on four of 11 data models, incorporating 360 of roughly 1,400 Order No. 760 tables into the data warehouse. The team projects completing the effort in FY2022. Second, DAS supported an initiative lead by the FERC Office of the Chief Information Office (CIO) to catalogue DAS' data assets, thereby facilitating other Program Offices' use and understanding of DAS data sources. Finally, also in support of a CIO-lead initiative to deploy a cloud-based analytics environment, DAS worked alongside its CIO counterparts to migrate key

data assets and analytics platforms into the cloud. In the new cloud environment, Commission analysts will have state-of-the-art analytics tools and powerful data platforms to analyze voluminous Commission data.

APPENDIX A: OFFICE OF ENFORCEMENT ORGANIZATION CHART (CURRENT)



APPENDIX B: FY2021 CIVIL PENALTY ENFORCEMENT ACTIONS

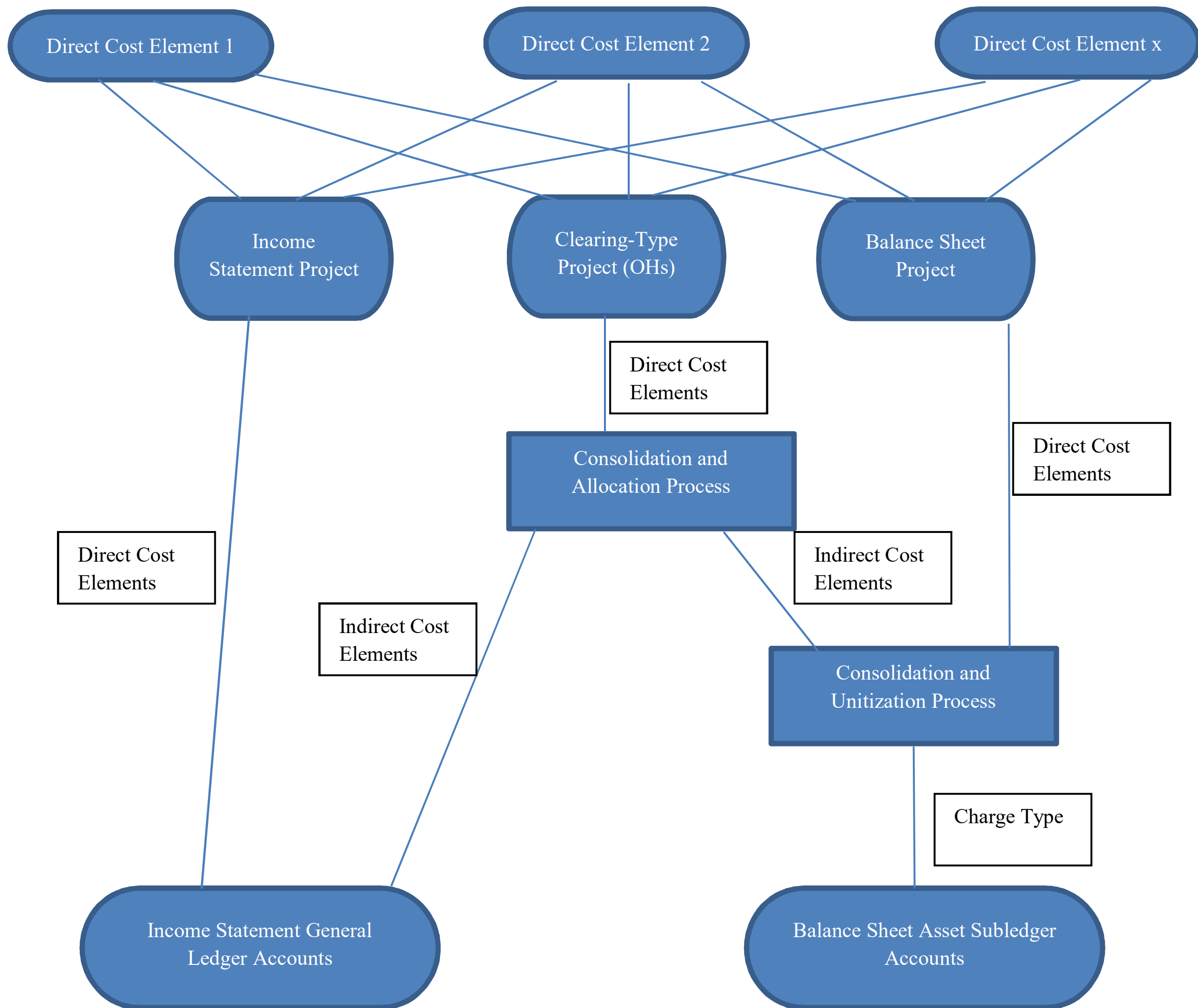
Subject of Investigation and Order Date	Total Payment	Explanation of Violations
High Desert Power Project, LLC and Middle River Power LLC, Docket No. IN20-6-000, October 23, 2020 Order Approving Stipulation and Consent Agreement, 173 FERC ¶ 61,087	$390,000 civil penalty; $176,000 disgorgement.	On October 23, 2020, the Commission issued an order approving the settlement of Enforcement's investigation of Middle River Power LLC and High Desert Power Project, LLC (collectively, MRP). Enforcement's investigation found that MRP took advantage of a CAISO software error and submitted residual unit commitment offers into CAISO's day-ahead market in a manner that sought to maximize any bid cost recovery payments that might be awarded, in violation of Section 222 of the FPA and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2. MRP stipulated to the facts and agreed to annual compliance monitoring reporting for one year with the option of Enforcement to extend it to two years.
Algonquin Power Windsor Locks LLC, Docket No. IN21-2-000, January 5, 2021 Order Approving Stipulation and Consent Agreement, 174 FERC ¶ 61,001	$1,000,000 civil penalty; $1,119,073.15 disgorgement.	On January 5, 2021, the Commission issued an order approving a settlement between Enforcement and Algonquin Power Windsor Locks LLC (Windsor Locks) regarding Enforcement's investigation into Windsor Locks' violation of its must-offer obligations in the ISO-NE energy market. Enforcement staff determined that Windsor Locks failed to offer the MWs required by ISO-NE tariff provisions governing its participation in the ISO-NE forward capacity and forward reserve markets. Those failures constituted violations of the ISO-NE tariff and Section 35.41(a) of the Commission's regulations. Under the terms of the settlement, Windsor Locks admitted the relevant facts but neither admitted nor denied the violations and agreed to undertake compliance monitoring for one year with the option of Enforcement to extend it to two years.

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
NRG Power Marketing LLC, Docket No. IN20-4-000, January 28, 2021 Order Approving Stipulation and Consent Agreement, 174 FERC ¶ 61,016	$85,000 civil penalty.	On January 8, 2021, the Commission issued an order approving the settlement of Enforcement's investigation of NRG Power Marketing LLC (NRG). Enforcement's investigation found that NRG, the lead market participant for several capacity resources in ISO-NE's Forward Capacity Market (FCM), violated Section II.13 of the ISO-NE tariff (requiring de-list bids for the FCM to include certain tariff-defined cost inputs) and Section 35.41(b) of the Commission's regulations when it submitted inaccurate cost-based de-list bids for certain of its capacity resources during the ISO-NE Eleventh Forward Capacity Auction (FCA 11) qualification period. The purpose of a static de-list bid is to give a resource already committed in the FCM an opportunity to eliminate its capacity supply obligation for a particular commitment period. Enforcement staff found that NRG's static de-list bids for FCA 11, submitted in June 2016, were inaccurate in two respects. First, staff found that NRG overstated its expectation regarding scarcity hours, which resulted in higher static delist bid prices submitted for the resources. Second, staff found that NRG misstated the resources' net going forward costs with respect to its treatment of mothball costs in the static de-list bids. Under the terms of the settlement, NRG admitted to the facts, but neither admitted nor denied the violation, and agreed to submit annual compliance reports for two years with the option of Enforcement to extend it to three years.
Tres Palacios LLC, Docket No. IN21-3-000, January 19, 2021 Order Approving Stipulation and Consent Agreement, 174 FERC ¶ 61,060	$700,000 civil penalty.	On January 19, 2021, the Commission issued an order approving the settlement of Enforcement's investigation of Tres Palacios LLC (Tres Palacios). Enforcement's investigation considered whether Tres Palacios failed to timely conduct sonar surveys on its natural gas salt dome caverns in violation of Section 7(e) of the NGA and its Commission-issued Certificate of Public Convenience and Necessity (Certificate Order). In 2007, Tres Palacios sought and obtained from

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
		the Commission issued a certificate pursuant to Section 7(c) of the NGA to construct and operate the storage facility in Matagorda County, Texas. The Certificate Order required Tres Palacios to comply with certain engineering conditions including that, Tres Palacios "conduct sonar surveys of the caverns every five years." Prior to achieving operational status, Tres Palacios conducted sonar studies of its caverns in 2008 and 2009. However, Tres Palacios did not conduct the next set of sonar surveys until 2016 and 2017. Tres Palacios stipulated to the facts, neither admitted nor denied the violation, and agreed to submit annual compliance monitoring reports for two years.
Freeport LNG Development, L.P., Docket No. IN17-7-000, January 28, 2021 Order Approving Stipulation and Consent Agreement, 174 FERC ¶ 61,055	$550,000 civil penalty.	On January 28, 2021, the Commission issued an order approving the settlement of Enforcement's investigation of Freeport LNG Development, L.P. (Freeport) regarding the company's failure to provide an accurate reporting of unpermitted construction activities that had occurred at its site. Enforcement's investigation found that Freeport cleared and stabilized approximately 25 acres of land without prior Commission authorization. Despite having information in its possession regarding the full extent of the violation, Freeport's initial report to the Commission contained factually incorrect information regarding the violation's cause and scope. Enforcement staff found these behaviors violated the terms and conditions of the Commission's Order authorizing Freeport to construct an LNG terminal at its site. Under the terms of the settlement, Freeport admitted to the facts, but neither admitted nor denied the violation.

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
Alliance NYGT LLC, Docket No. IN21-4-000, February 8, 2021 Order Approving Stipulation and Consent Agreement, 174 FERC ¶ 61,086	$420,000 civil penalty; $369,264.19 disgorgement.	On February 8, 2021, the Commission issued an order approving the settlement of Enforcement's investigation of Alliance NYGT LLC (Alliance). Enforcement investigated whether Alliance: (1) submitted offers and information to NYISO that did not accurately reflect the fuel used to run its generators; (2) failed to respond to NYISO's inquiries regarding the type of fuel required and used to run its generators; and (3) omitted material information from its responses to NYISO. Enforcement staff found that Alliance offered its two dual-fuel generators, Hillburn and Shoemaker, based on a kerosene reference level when they were running on gas, a cheaper fuel, which resulted in Alliance receiving excess uplift revenues. Alliance stipulated to the facts and admitted that it violated 18 C.F.R. §§ 35.41(a)-(b) and several provisions of the NYISO tariff and agreed to be subject to compliance monitoring for two years.
Shell Energy North America (US), L.P., Docket No. IN21-8-000, June 15, 2021 Order Approving Stipulation and Consent Agreement, 175 FERC ¶ 61,201	$951,683 civil penalty; $48,317 disgorgement.	On June 15, 2021, the Commission issued an order approving the settlement of Enforcement's investigation of Shell Energy North America (US), L.P. (SENA) into whether SENA engaged in a related-positions fraudulent scheme during the May 2016 bidweek. Enforcement's investigation found that SENA violated Section 4A of the NGA, 15 U.S.C. § 717c-1, and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1, by engaging in physical trading at two California trading hubs that was intentionally designed to manipulate monthly index prices to benefit derivative financial positions in one junior trader's speculative book. Enforcement further determined that oversights in SENA's compliance program contributed to the violations. Under the terms of the settlement, SENA admitted to the facts, but neither admitted nor denied the violations, and also agreed to a two-year annual compliance reporting requirement.

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
Terra-Gen, LLC, Docket No. IN21-7-000, August 2, 2021 Order Approving Stipulation and Consent Agreement, 174 FERC ¶ 61,071	$510,962.43 civil penalty; $117,231 disgorgement.	On August 2, 2021, the Commission issued an order approving the settlement of Enforcement's investigation of Terra-Gen, LLC (Terra-Gen) into whether Terra-Gen violated 18 C.F.R. § 35.41(b) by submitting false or misleading information to CAISO about the physical capabilities of its wind-powered electric generation facility and whether Terra-Gen violated Section 4.2.1 of the CAISO tariff by deviating its wind farms' output from CAISO's dispatch instructions. Under the agreement, Terra-Gen neither admitted nor denied the alleged violations and agreed to submit annual compliance reports for at least two years and up to three years.



Case No. GR-2021-0108
Schedule 4

SCHEDULE 5

SCHEDULE 6

and

SCHEDULE 7

HAVE BEEN DEEMED

CONFIDENTIAL

IN THEIR ENTIRETY