

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



**2019 REPORT ON ENFORCEMENT**

Docket No. AD07-13-013

Prepared by Staff of the

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

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

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## INTRODUCTION

The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) is issuing this report as directed by the Commission in its Revised Policy Statement on Enforcement.<sup>1</sup> This report informs the public and the regulated community of Enforcement's activities during Fiscal Year 2019 (FY2019),<sup>2</sup> including an overview of, and statistics reflecting, the activities of the four divisions within Enforcement: Division of Investigations (DOI), Division of Audits and Accounting (DAA), Division of Analytics and Surveillance (DAS), and Division of Energy Market Oversight (DEMO).

Enforcement recognizes the importance of informing the public of the activities of its staff, and prepares this report with that objective in mind. Most of the information the public receives about Enforcement's activities comes from public Commission orders approving settlements, orders to show cause, publicly released staff reports, and audit reports. This report summarizes the status and resolution of various matters that were public in FY2019. However, not all of Enforcement's activities result in public actions by the Commission. Like reports in previous years, the FY2019 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, monitoring market trends and market competitiveness, and performing surveillance and analysis of conduct in wholesale natural gas and electric markets. In addition, DAA points out a number of areas to help companies enhance compliance programs.

Consistent with Enforcement's continual efforts to increase transparency, this year's report builds on the information presented in previous reports by providing further details about our processes, practices, and specific enforcement matters. Specifically, this year's report includes greater and new details about: (1) DOI's investigatory processes and practices; (2) the Market Monitoring Unit (MMU) referral process, including the rules requiring referrals of potential violations and examples of MMU referrals reviewed by Enforcement staff during FY2019; (3) DAA's audit processes and practices, including the organization and new focus areas of DAA's four audit branches, and the addition of citations to docket numbers for recurring, problematic compliance issues discussed in DAA's Compliance Alerts section of this report; and (4) DAS's processes and practices related to reviewing MMU referrals and data management, and the inclusion of additional examples of DAS inquiries closed with no action.

On September 16, 2019, certain functions performed by DEMO and DAS were realigned within Enforcement, the Office of Energy Policy and Innovation (OEPI), and the Office of the Executive Director (OED). The primary objective of the realignment was to better reflect the key functions and mission statements of the three existing Commission offices. Compliance functions

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<sup>1</sup> *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 A1 to this report.

<sup>2</sup> The Commission's fiscal year begins October 1 and ends September 30 of the following year. FY2019, the subject of this report, began on October 1, 2018 and ended on September 30, 2019.

performed by DEMO, such as Electric Quarterly Report (EQR) and financial forms administration and market power monitoring, remain in Enforcement under DAA and DAS. Policy-related functions performed by DEMO that were more aligned with the mission of OEPI, such as the Annual State of the Markets Report and seasonal assessments, were transferred to that office under a new Division of Energy Markets Assessments. Additionally, some data management support functions performed by DAS were transferred to the newly created Data Governance Division within OED. This realignment will allow Enforcement staff to be more focused on its core mission: continuing oversight of market activities, investigations, and audits.<sup>3</sup>

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<sup>3</sup> Enforcement's organizational chart before this realignment is attached as Appendix A2 to this report.

## OFFICE OF ENFORCEMENT PRIORITIES

The Commission's current Strategic Plan sets forth a mission to account for significant changes in energy supply due to a number of factors, such as the increased availability of domestic natural gas and the emergence and growth of new energy technologies. As the Strategic Plan notes, both the nation's energy infrastructure and energy markets must adapt to these changes to ensure that consumers have access to economically efficient, safe, reliable, and secure energy at a reasonable cost.<sup>4</sup> The Strategic Plan identifies three primary goals to fulfill this mission: (1) ensure just and reasonable rates, terms, and conditions; (2) promote safe, reliable, and secure infrastructure; and (3) support the mission through organizational excellence. To further those goals and assist the Commission in its obligation to oversee regulated markets, Enforcement gathers information about market rules, market participants, and market behavior through its investigations, audits and surveillance. Enforcement also gathers information regarding energy infrastructure, as appropriate. Each of the divisions continues to work to bring entities into compliance with applicable statutes, Commission rules, orders, regulations, and tariff provisions.

In FY2019, Enforcement's priorities continued to focus on matters involving:

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

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

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<sup>4</sup> The Federal Energy Regulatory Commission, Strategic Plan FY 2018-2022 (Sept. 2018) (Strategic Plan), available at <https://www.ferc.gov/about/strat-docs/strat-plan.asp>.

In FY2019, DOI staff opened 12 new investigations, while bringing 14 pending investigations to closure with no action. Additionally, during the fiscal year, staff negotiated two settlements of more than \$14 million, which included \$7.4 million in civil penalties and \$7 million in disgorgement.<sup>5</sup> These Commission-approved settlements also included provisions requiring the subjects to enhance their compliance programs and periodically report back to Enforcement regarding the results of those compliance enhancements.

In FY2019, DAA completed 11 audits of public utility and natural gas companies covering a wide array of topics. The audits resulted in 76 findings of noncompliance, 286 recommendations for corrective action, the majority of which were implemented within six months, and directed \$161.2 million in refunds and other recoveries. Additionally, during the fiscal year, DAA acted through the Chief Accountant's delegated authority on 120 accounting filings requesting approval of a proposed accounting treatment or financial reporting matter. Among its other work, DAA also assisted with numerous rate, pipeline certificate, merger and acquisition, and debt and security issuance proceedings before the Commission.

In FY2019, DAS surveillance 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, to determine whether to recommend an investigation. During the fiscal year, natural gas surveillance screens produced approximately 7,629 screen trips which resulted in 20 natural gas surveillance inquiries and ultimately one referral to DOI for investigation. Electric surveillance screens produced approximately 369,230 screen trips which resulted in 23 electric surveillance inquiries and ultimately five referrals to DOI for investigation. In total, DAS closed 31 surveillance inquiries with no referral and, as of the end of the fiscal year, continued its analytic work on six. DAS also worked and provided analytical support on approximately 45 investigations with DOI.

DEMO continued its analysis of market fundamentals (including significant trends and developments) and enhancement of its analytical capabilities related to the ongoing eForms refresh project. As in prior years, DEMO presented its annual State of the Markets report assessing significant events in the energy markets during the previous year. This year's report also reviewed the development of US pipeline infrastructure and the rapid increase in the LNG export industry. Additionally, during the fiscal year, DEMO presented its Winter Energy Market Assessment and Summer Energy Market and Reliability Assessment. DEMO also assisted with over 40 docketed Commission proceedings where it evaluated the efficacy of certain regulatory policies in light of evolving energy markets. DEMO held one EQR user group meeting in FY2019 to conduct outreach with the filing community and to discuss potential system improvements and enhancements.

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<sup>5</sup> A table of FY2019 Civil Penalty Enforcement Actions is attached as Appendix B to this report.



# DIVISION OF INVESTIGATIONS

## A. Overview

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

DOI staff conducts investigations of potential violations of the statutes, regulations, rules, orders, and tariffs administered by the Commission. DOI staff learns of potential violations from multiple sources, including referrals from other program offices within the Commission and other divisions within Enforcement; referrals from Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) in organized markets or their market monitoring units; referrals from other agencies; self-reports; calls to the Enforcement Hotline; whistleblowers; and information gathered in other investigations. After learning of a potential violation, DOI staff evaluates whether to open an investigation based on the factors outlined in the Commission's Revised Policy Statement on Enforcement.<sup>6</sup>

If, after gathering and reviewing relevant facts, DOI staff finds no violation or finds that a violation should not be subject to sanctions, DOI staff closes the investigation without action and informs the subject.<sup>7</sup> Most of DOI staff's investigations are closed without further action.<sup>8</sup> 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.

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<sup>6</sup> Revised Policy Statement, 123 FERC ¶ 61,156 at P 25.

<sup>7</sup> DOI closed seven investigations in FY2019 either because staff found no violation or because there was not enough evidence to conclude that a violation had occurred. In addition, DOI closed five investigations where it found violations but concluded that further proceedings were not warranted.

<sup>8</sup> In some circumstances, DOI finds that, while the investigation should terminate, there are 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 OEPI and explain how the issues may be resulting in poor or inefficient market outcomes.

If, after reviewing the subject's response to the preliminary findings and conducting supplemental fact-finding, DOI staff continues to conclude that violations occurred and that the violations warrant sanctions, it consults with OE management and then seeks authority from the Commission to enter into settlement negotiations with the subject.<sup>9</sup> This request for settlement authority describes the facts and law that led to staff's determination, recommends a range of settlement terms and penalty analysis under the Commission's Penalty Guidelines, and attaches the subject's preliminary-findings response(s). If the Commission grants settlement authority, staff seeks negotiated resolutions within the provided settlement authority range and with terms that will transparently inform the regulated industry about what conduct constitutes the violation. If an agreement is reached between Enforcement and the subject, it will be submitted to the Commission for approval. If approved, the Commission issues a public order that typically states why the settlement serves the public interest and attaches the settlement agreement. In FY2019, Enforcement staff resolved two investigations via settlements approved by the Commission: (1) a natural gas company's violation of its certificate of public convenience and necessity issued by the Commission under section 7(c) of the Natural Gas Act (NGA) (15 U.S.C. § 717f(c)) and Part 157 of the Commission's regulations (18 C.F.R. Part 157); and (2) an electric utility's violation of the Commission's Anti-Manipulation Rule (18 C.F.R. § 1c.2).<sup>10</sup> 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), staff will provide the subject with notice and an opportunity to respond pursuant to section 1b.19 of the Commission's regulations. After reviewing this response, staff, if it continues to believe violations have occurred, drafts an Enforcement Staff Report and Recommendation, which includes its findings of fact and conclusions of law regarding the investigation, as well as its recommendation to issue an OSC. Following review and approval by OE management, this report and the subject's response to the section 1b.19 notice are then submitted to the Commission for a vote on the OSC. If the Commission concurs with staff's recommendation, it issues an OSC in a public docket directing the subject to explain why it did not commit a violation and why penalties and disgorgement are not warranted. The subject has an opportunity to respond to the OSC, and Enforcement staff may reply to the subject's response. The Commission's issuance of an OSC triggers the Commission's *ex parte* and separation of functions rules, because it initiates a contested on-the-record proceeding, with Enforcement and subjects as participants and the Commission as a neutral adjudicator.<sup>11</sup> 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

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<sup>9</sup> Investigative subjects are free to raise and explore potential resolution of an investigation, including through settlement, at any time during an investigation.

<sup>10</sup> The Commission's regulations can be found at [www.ecfr.gov](http://www.ecfr.gov).

<sup>11</sup> See 18 C.F.R. §§ 2201, 2202 (2019) (outlining the Commission's rules governing off-the-record communications and separation of functions). See also 5 U.S.C. § 554(d) (2014).

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 Administrative Law Judge (ALJ), assuming genuine issues of material fact exist. In these matters, the ALJ holds a hearing and issues an initial decision, which is followed by a final Commission decision that can be appealed to a U.S. Court of Appeals. Alternatively, if a civil penalty is proposed in an FPA matter, a subject can elect a process different from the ALJ route described above. A subject has 30 days following the OSC issuance in which to affirmatively elect a penalty assessment by the Commission followed by “review de novo” of the assessment before a district court. If such an election is made, the Commission follows its OSC paper hearing procedures but determines whether a violation occurred and, if so, assesses penalties through an order. If the subject does not pay the civil penalty within 60 days of the penalty assessment, the Commission is required by statute to file an action in district court for an order affirming the civil penalty. As of the end of FY2019, staff is litigating three such actions in federal court (all filed in previous years), seeking to enforce the Commission’s combined assessment of more than \$97.5 million in penalties and disgorgement. One NGA-related proceeding remains pending on rehearing before the Commission as of the end of the fiscal year.<sup>12</sup>

## **B. Significant Matters**

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DOI staff spent substantial time in FY2019 preparing briefs, reports, and other public filings related to litigation in federal courts and administrative proceedings before the Commission, as well as on the Commission’s joint inquiry with NERC into the January 17, 2018 cold weather event. In addition, during FY2019, staff requested that the Commission issue one new OSC.

DOI staff continues to represent the Commission in three litigation matters in United States District Courts. Currently pending at the Commission are two OSC proceedings and one NGA proceeding, in which the respondent’s motion for rehearing is under consideration. A third OSC proceeding was terminated by the Commission upon the recommendation of Enforcement staff.

As of the end of FY2019, a total of approximately \$76 million in civil penalties and \$9 million in disgorgement of unjust profits, plus interest, remains pending in the federal court matters.

### **1. District Court Litigation**

Over the past six years, Enforcement has filed seven 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 FERC’s notice of fraud and deceptive conduct pleadings; (4) what constitutes individual culpability under the FPA; (5)

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<sup>12</sup> 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.

particular activity that establishes manipulation; and (6) what evidence satisfies the scienter requirement under Section 222 of the FPA.

In FY2019, Enforcement staff continued litigating three matters in United States District Courts to enforce the Commission's penalty assessments under the FPA. Those District Court litigation matters were:

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

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

On December 2, 2013, Enforcement staff filed a petition in the United States District Court for the District of Massachusetts to enforce the penalty assessment order against Respondents. The Respondents filed a motion to dismiss the petition, which the District Court denied on April 11, 2016. In its order denying the Respondents' motion to dismiss, the Court specifically rejected the argument that the Commission was required to file its District Court action within five years of the violation (confirming 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 Anti-Manipulation Rule. The Court then transferred the cases to the United States District Court for the District of Maine.

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

On January 29, 2018, upon agreement of the parties, the 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 Court issued an order finding that the Commission's action was not time-barred; therefore, the Commission's motion was granted and Respondents' motion was denied. Respondents subsequently sought certification of the Court's decision to the First Circuit Court of Appeals. Following briefing of the matter, the Court denied Respondents' motion for certification on June 26, 2019.

Trial in the matter is currently scheduled for April 27, 2020 in Bangor, Maine, with various pre-trial deadlines set for March and April 2020.

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

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

On July 31, 2015, Enforcement staff filed a petition in the United States District Court for the Eastern District of Virginia to enforce the Commission’s Order. Following briefing requested by the Court on the de novo review procedures required by section 31(d)(3) of the FPA, the Court directed FERC to re-file its petition or file an amended complaint. The Commission filed an amended complaint on January 29, 2018, and Respondents 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, but authorized Respondents to seek interlocutory appeal. On October 4, 2018, Respondents petitioned the United States Court of Appeals for the Fourth Circuit to review the order, and the Commission did not oppose the appeal. The Fourth Circuit granted the petition for review on November 5, 2018. Following briefing, the Fourth Circuit has scheduled oral argument for December 11, 2019.

The District Court case has been stayed pending resolution of the appeal.

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

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

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

On July 27, 2016, Enforcement staff filed a petition in the United States District Court for the Southern District of Ohio to enforce the Commission's Order. The Respondents filed motions to dismiss or transfer, which were denied by order of the Court on March 30, 2018. Discovery commenced shortly thereafter, and is currently scheduled to run into November 2019. Initial expert reports were exchanged by both sides on September 19, 2019; rebuttal expert reports are scheduled to be exchanged by November 18, 2019. Motions for summary judgment are scheduled to be filed in early 2020. As yet, there is no trial date.

## **2. Administrative Proceedings at the Commission**

### *a) Vitol Inc. and Federico Corteggiano, Docket No. IN14-4-000*

On July 10, 2019, the Commission issued an OSC to Vitol Inc. and its individual trader Federico Corteggiano (collectively, Respondents) directing them to show cause why they should not be found to have 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 California Independent System Operator's (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 OSC also directed Respondents to show cause why disgorgement and civil penalties should not be assessed in the following amounts: disgorgement of \$1,227,143, plus interest, from Vitol; a civil penalty of \$6,000,000 against Vitol; and a civil penalty of \$800,000 from Corteggiano.

After the parties submitted various procedural pleadings, Respondents filed their answers to the OSC on August 23, 2019. Enforcement staff filed its reply on September 20, 2019. Subsequent to the close of FY2019, on October 25, 2019, the Commission issued an order assessing civil penalties against Vitol and Corteggiano, finding that they engaged in a scheme to sell physical power, not to try to profit based on supply and demand fundamentals, but, rather, to eliminate congestion that they anticipated would cause losses on their CRR position. 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. Vitol and Corteggiano have sixty days from the date of the Commission's order to pay the penalty assessments. If they fail to pay, the Commission is required by statute to file an action in district court for an order affirming the civil penalties.



***b) Footprint Power LLC, Footprint Power Salem Harbor Operations LLC,  
Docket No. IN18-7-000***

On June 18, 2018, the Commission issued an OSC directing Footprint Power LLC and Footprint Power Salem Harbor Operations (collectively, Respondents) to show cause why they should not be found to have violated the Transmission, Markets and Services Tariff (Tariff) of ISO-NE and sections 35.41(a) and (b) of the Commission's regulations. Enforcement Staff alleged violations by Respondents for: (1) submitting false and misleading supply offers for Footprint's capacity resource - Unit 4 of Footprint's multi-unit Salem Harbor Power Plant in Salem, Massachusetts; (2) failing to report the fuel status and related operational status of the capacity resource to ISO-NE in June and July of 2013; (3) submitting false and misleading supply offers in violation of ISO-NE's Tariff; and (4) submitting false or misleading information and/or omitting material information regarding Salem Harbor and Unit 4 in their communications with ISO-NE. Additionally, the OSC directed Respondents to show cause why disgorgement and civil penalties should not be assessed in the following amounts: disgorgement of \$2,049,571, which reflected the capacity payments received during the relevant period, and a civil penalty of \$4,200,000.

On August 2, 2018, Respondents filed their Answer to the OSC denying they committed the violations and raising a new argument regarding Unit 4's start-up requirements and how that affected the unit's ability to provide capacity during a certain portion of the relevant period. While the start-up requirements of Unit 4 were referenced at times during the investigation, the import of those start-up requirements as a specific defense to the four tariff provisions at issue had not been apparent before Respondents raised this argument. Upon review, staff concluded that the supply offers on those days did not constitute a violation.

On September 19, 2018, Enforcement staff filed a Reply to Respondents' Answer, wherein staff acknowledged that it found merit in the new defense presented by Respondents. Based on that conclusion, and the resulting reduction in scope of the case for the remainder of the relevant period, staff recommended that the Commission vacate its OSC and that no penalties be assessed against Respondents.

The Commission agreed with Enforcement staff's assessment and recommendation. On February 25, 2019, the Commission issued an order terminating the OSC proceeding.

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

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

assessed in the following amounts: \$9,180,000 in disgorgement and \$213,600,000 in civil penalties against TGPNA, Total, and TGPL, jointly and severally; \$1,000,000 civil penalty against Hall (jointly and severally with TGPNA, Total, and TGPL), and \$2,000,000 civil penalty against Tran (jointly and severally with TGPNA, Total, and TGPL).

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.<sup>13</sup> 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 U.S. 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. The matter is pending before the Commission.

*d) 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 Anti-Manipulation Rule and section 4A of the NGA by manipulating the next-day, fixed-price natural gas market at Houston Ship Channel from September 2008 to November 2008; (2) impose a civil penalty in the amount of \$28,000,000; and (3) require BP to disgorge \$800,000 of unjust profits.

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

On September 7, 2016, BP moved for modification of the portion of the Commission's Order directing BP to pay the disgorgement to the Texas LIHEAP, alleging that Texas LIHEAP communicated to BP that it was unable to receive such a payment. The Commission responded with two orders. First, on September 8, 2016, the Commission granted rehearing for the limited purpose of further consideration of the matters raised by BP in its motion for rehearing of the July 11, 2016, decision. Second, on September 12, 2016, the Commission issued an order staying the payment directive of the disgorgement order until the Commission issues an order on BP's request for rehearing. On September 9, 2016, BP separately filed a Petition for Review in the U.S. Court of Appeals for the Fifth Circuit only on the procedural issues ripe for appeal.

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



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

### **3. Inquiry into South-Central United States Cold Weather Event of January 17, 2018**

On January 17, 2018, a large area of the south central region of the United States experienced unusually cold weather, which had been predicted five days earlier. The below-average temperatures resulted in a total of 183 individual generating units within the Reliability Coordinator (RC) footprints of the Southwest Power Pool, Inc. (SPP), the Midcontinent Independent System Operator, Inc. (MISO), the Tennessee Valley Authority (TVA), and Southern Company’s Southeastern RC experiencing either an outage, a derate, or a failure to start between January 15 and January 19, 2018. The unexpected generation outages caused a capacity emergency in MISO South and widespread transmission system constraints across all or part of nine states. In September 2018, the Commission announced the formation of a joint inquiry with NERC and four 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 an 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 report on July 18, 2019.<sup>14</sup> FERC and NERC staff found that at least 44 percent of the generation losses were directly or indirectly related to the extreme cold, and 70 to 74 percent of the units that experienced an outage, derate, or failure to start were gas-powered. Despite guidance since 2011 on the need to prepare generating units for winter weather, approximately one-third of the generating units involved did not have plans to do so. The system in MISO South was so stressed on January 17, 2018 that the loss of one additional large generating unit would have required MISO to shed firm load to restore its reserves while shedding additional firm load to maintain voltage within limits.

The report made 13 recommendations to prevent similar future events. The recommendations were shared with the affected entities and applicable trade groups for their consideration and feedback before being finalized. The report repeated a recommendation from a 2011 cold weather inquiry for NERC to draft a new or revised Reliability Standard to address the issue of generation owners failing to prepare for winter weather. NERC has accepted a Standards Authorization

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<sup>14</sup> FERC and NERC Staff Report, The South Central United States Cold Weather Bulk Electric System Event of January 17, 2018 (July 2019), available at <https://www.ferc.gov/legal/staff-reports/2019/07-18-19-ferc-nerc-report.pdf>.

Request, which begins the process to potentially approve a new Reliability Standard. Additional recommendations included: (1) RCs performing voltage stability analysis; (2) transmission planners performing additional studies to better forecast constrained conditions; (3) MISO South improving its five-to-three-day-ahead load forecasts and communicating when it is relying on non-firm transmission to serve its firm load; and (4) transmission operators using summer and winter ratings where possible.

## C. Settlements

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In FY2019, the Commission approved two settlement agreements between Enforcement and subjects to resolve pending matters. The settlements totaled \$7.4 million in civil penalties and disgorgement of \$7 million. Since 2007, Enforcement has negotiated settlements totaling approximately \$783.4 million in civil penalties and approximately \$518 million in disgorgements.

In 2010, the Commission issued revised Penalty Guidelines.<sup>15</sup> 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.<sup>16</sup>

In FY2019, the Commission approved settlement agreements that resolved investigations concerning violations of the Commission's Anti-Manipulation Rule as well as violations of a Commission Order issued pursuant to the NGA's pipeline certification requirements, and associated Commission regulations.

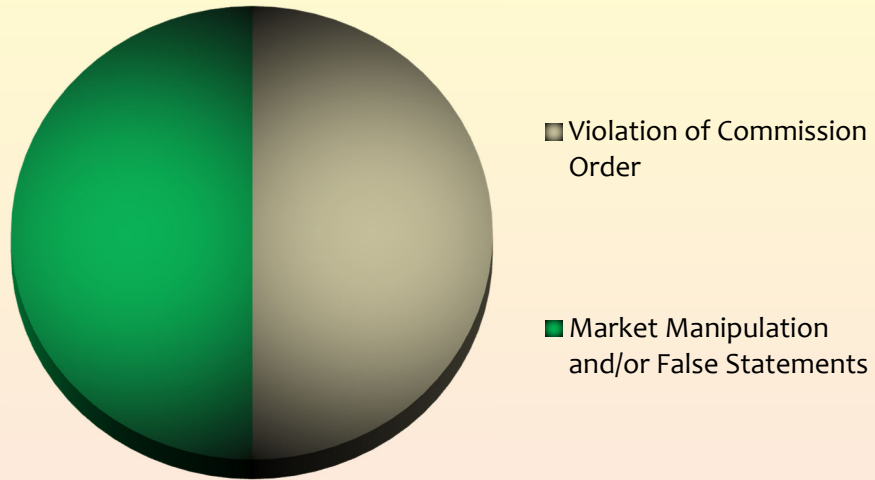
The charts below illustrate the types of violations settled in the last five fiscal years, Fiscal Years 2015-2019. Some settlements concerned multiple types of violations.

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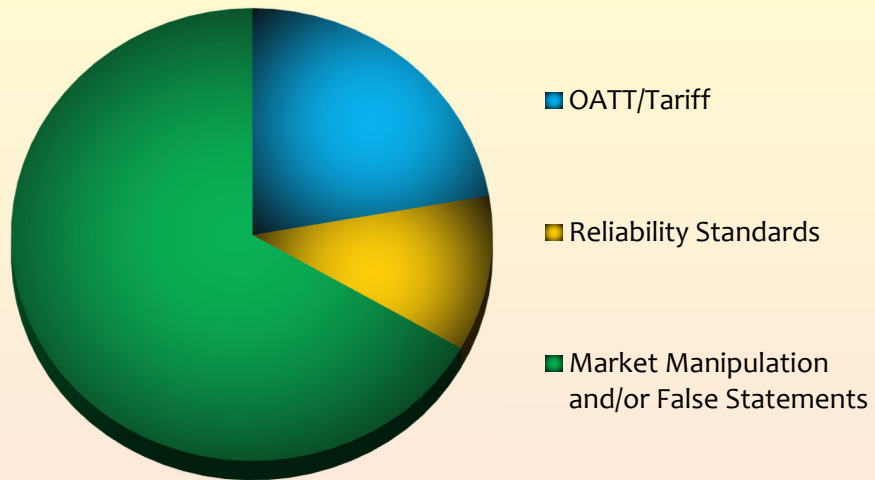
<sup>15</sup> *Revised Policy Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines), available at <https://www.ferc.gov/whats-new/comm-meet/2010/091610/M-1.pdf>.

<sup>16</sup> *Id.* P 109.

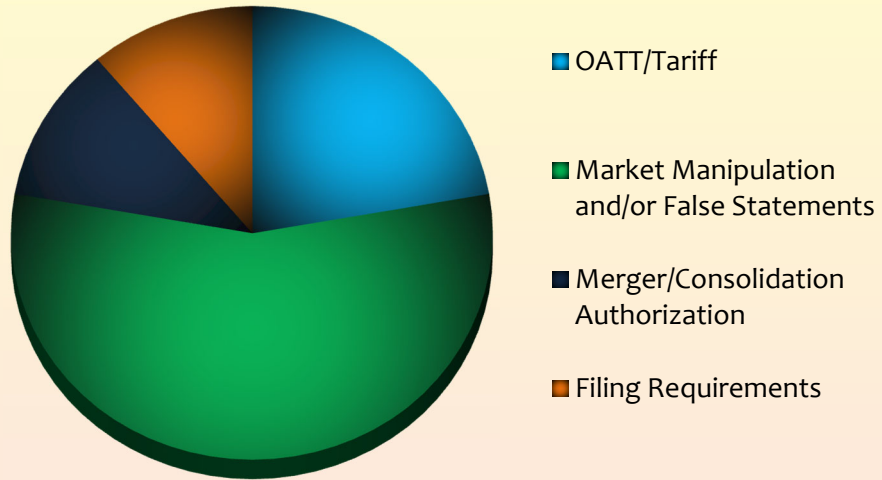
### Types of Violations Settled, FY2019



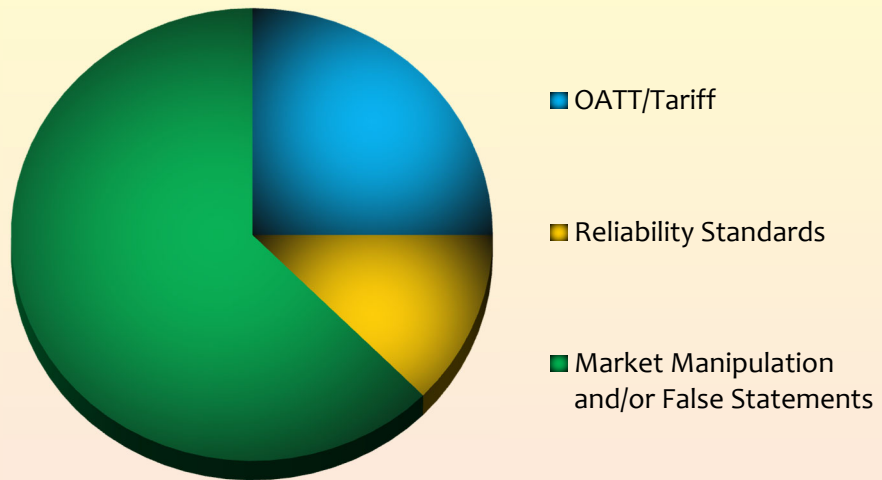
### Types of Violations Settled, FY2018

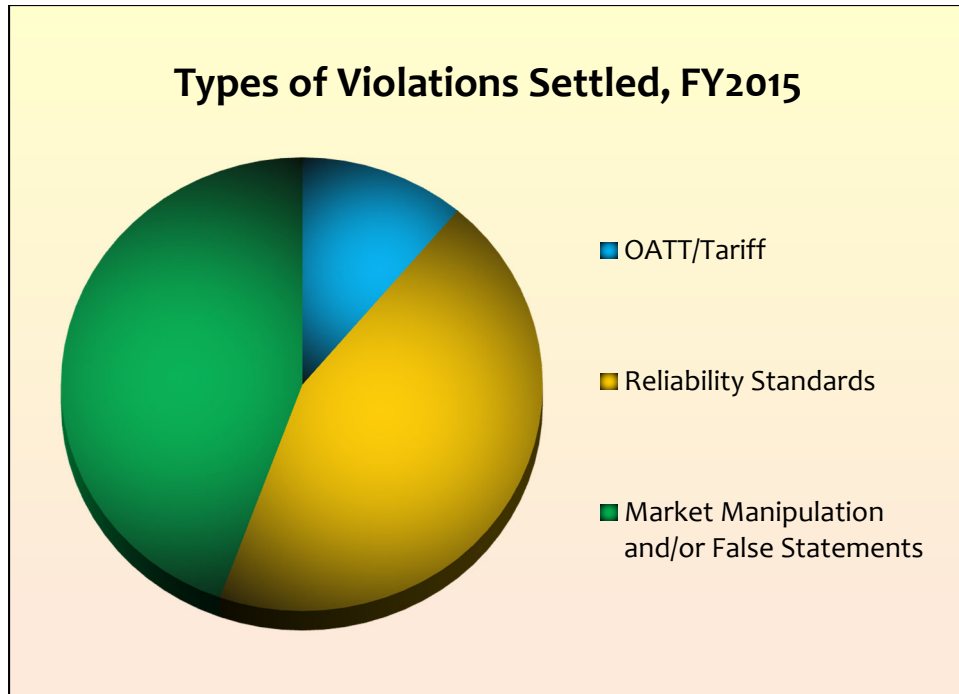


### Types of Violations Settled, FY2017



### Types of Violations Settled, FY2016





The Commission approved the following settlement agreements in FY2019:

#### **Algonquin Gas Transmission, LLC, Docket No. IN19-2-000**

On January 7, 2019, the Commission issued an order approving the settlement of Enforcement’s investigation of Algonquin Gas Transmission, LLC (Algonquin) regarding the company’s obligations under its Commission-issued Certificate of Public Convenience and Necessity (Project Certificate). Enforcement’s investigation found that Algonquin violated its Project Certificate, issued under section 7(c) of the NGA (15 U.S.C. § 717f(c)) and Part 157 of the Commission’s regulations (18 C.F.R. Part 157), when it entered a wetland area with construction equipment in an attempt to retrieve a broken drill stem in August 2016 before obtaining a required variance. Enforcement found that Algonquin’s work in the wetland area failed to comply with the Commission’s Project Certificate issued to Algonquin. Under the terms of the settlement, Algonquin admitted to the facts, but neither admitted nor denied the violations. Algonquin agreed to pay a civil penalty of \$400,000, and to submit semi-annual environmental compliance monitoring reports for one year, with a potential one-year extension at Enforcement’s discretion.

#### **Dominion Energy Virginia, Docket No. IN19-3-000**

On May 3, 2019, the Commission issued an order approving the settlement of Enforcement’s investigation of Virginia Electric and Power Company (d/b/a Dominion Energy Virginia (DEV)) relating to its receipt of lost opportunity cost credits (LOCs) in the PJM market. Enforcement’s investigation found that DEV violated the Commission’s Anti-Manipulation Rule by targeting and maximizing its receipt of LOCs paid to combustion turbine units that cleared the day-ahead market and were not dispatched in the real-time market, during the period April 2010 to March 2011. Staff determined that DEV engaged in a strategy that sought to obtain more day-ahead commitments by discounting the units’ incremental energy offers, and at the same time, sought to

reduce the chance the units would be dispatched in the real-time market by substantially increasing the start-up values in their day-ahead offers. Staff found that DEV offered its units in this manner not based on supply and demand fundamentals, but, rather, for the purpose of targeting and obtaining LOCs. Under the terms of the settlement, DEV stipulated to the facts, but neither admitted nor denied the violations. DEV agreed to pay a civil penalty of \$7 million and disgorgement to PJM of \$7 million, and also to submit an annual compliance monitoring report, with a potential one-year extension at Enforcement's discretion.

## **D. Self-Reports**

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Over the previous five fiscal years (Fiscal Years 2015-19), staff received approximately 574 self-reports. The vast majority of those self-reports were concluded without further enforcement action because 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 FY2019, staff received 149 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 (91) were from ISOs/RTOs and involved relatively minor violations of tariff provisions. Two of the self-reports received were the source for two investigations opened this fiscal year. Staff closed 130 self-reports in FY2019, 13 of which were carried over from the previous fiscal year. Of the self-reports received in FY2019, 32 remained pending at the end of the fiscal year.

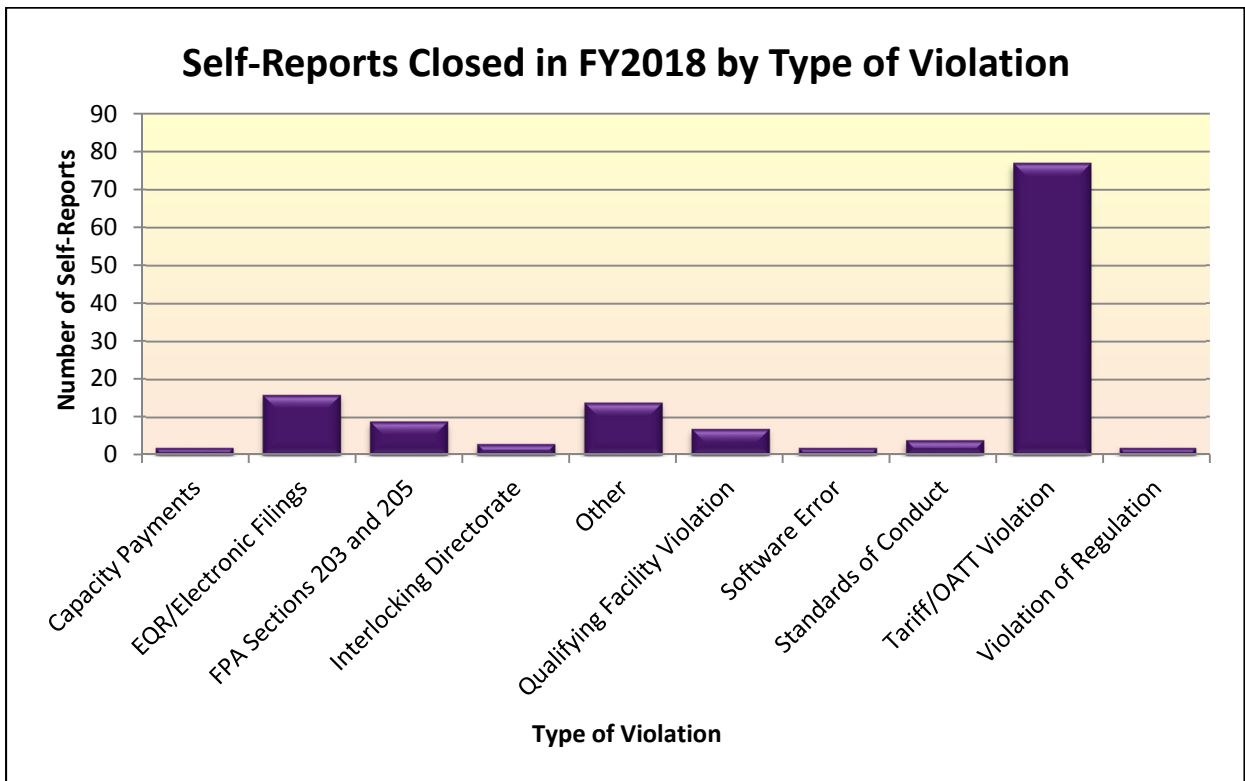
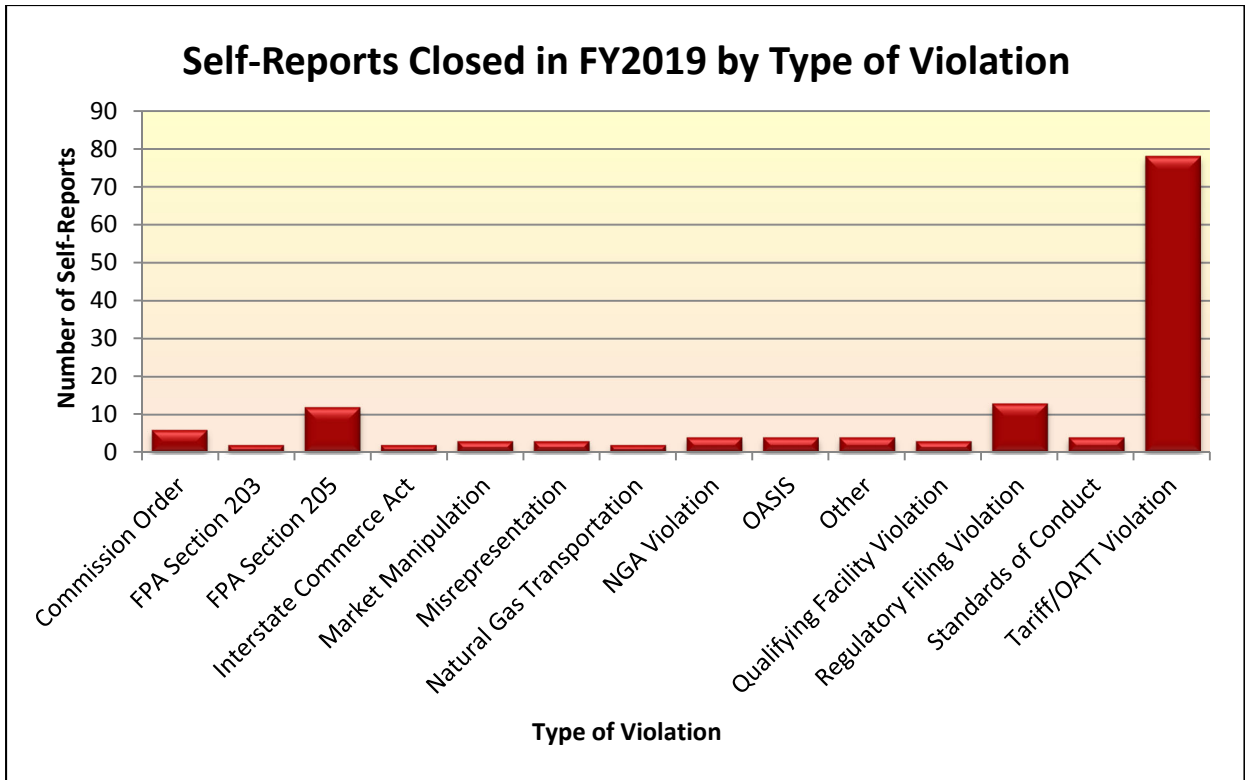
The Penalty Guidelines emphasize the importance of self-reporting by providing credit that can significantly mitigate penalties if a self-report is made.<sup>17</sup> Staff continues to encourage the submission of self-reports and views self-reports as showing a company's commitment to compliance.

The following charts depict the types of violations for which staff received self-reports from Fiscal Years 2015 through 2019.<sup>18</sup> Some self-reports include more than one type of violation.

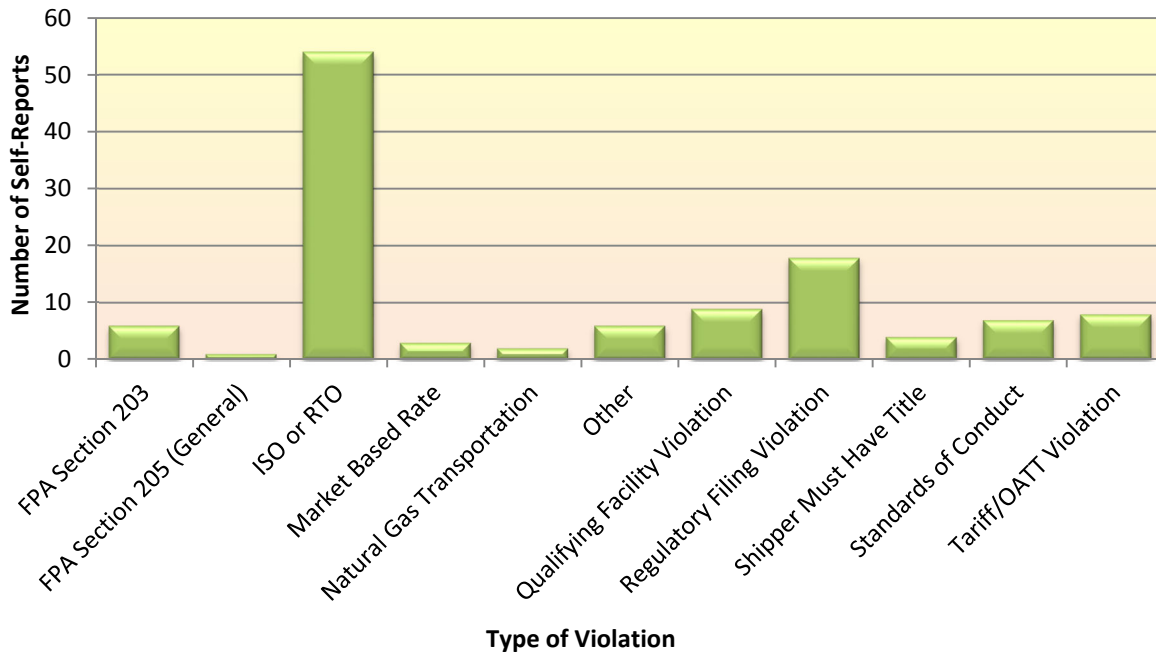
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<sup>17</sup> Revised Penalty Guidelines, 132 FERC ¶ 61,216 at P 127.

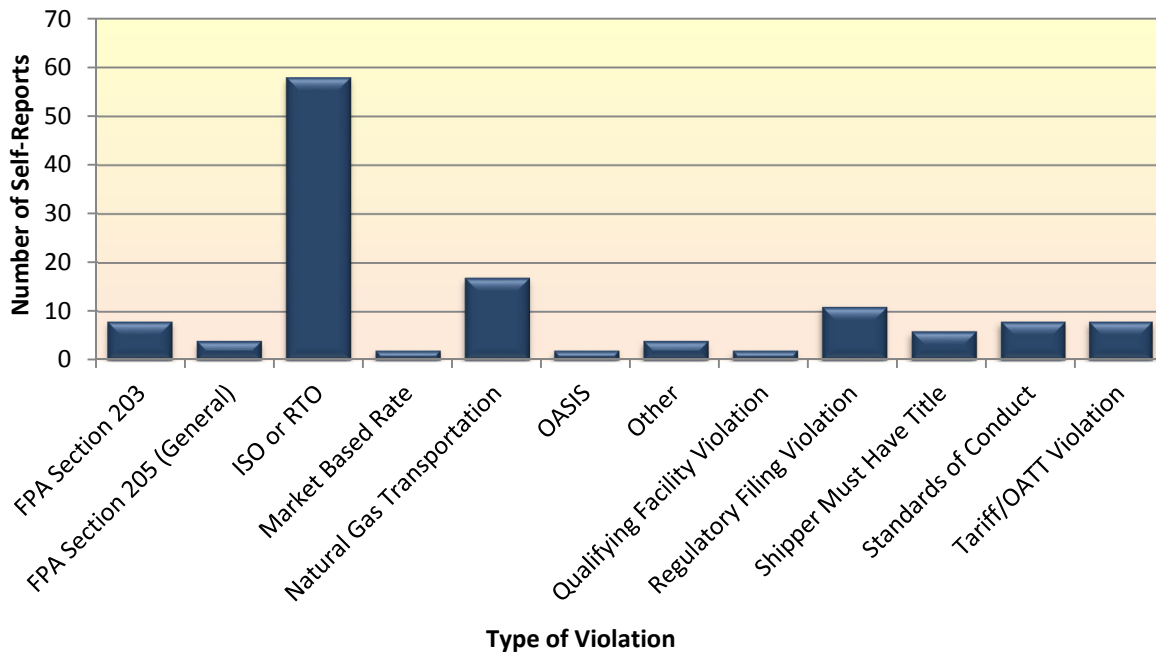
<sup>18</sup> Consistent with the FY2018 Annual Report, the FY2019 Self Reports Closed chart includes the substantive violation reported from an ISO/RTO, and replaces the ISO/RTO category used in previous years.



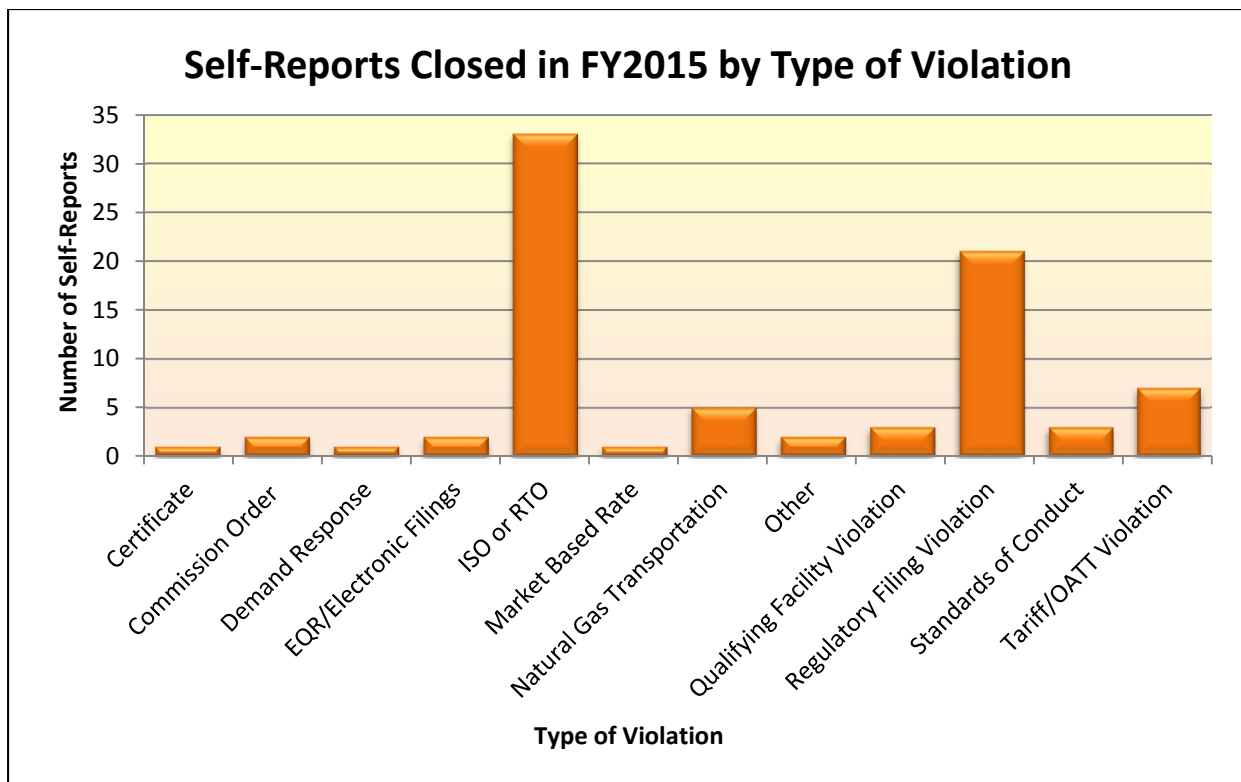
### Self-Reports Closed in FY2017 by Type of Violation



### Self-Reports Closed in FY2016 by Type of Violation







## 2. Illustrative Self-Reports Closed with No Action

In a continuing effort to promote transparency while encouraging the compliance efforts of regulated entities, Enforcement presents the following illustrative examples of self-reports that DOI staff closed in FY2019 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.<sup>19</sup> As examples, in FY2019 several ISOs/RTOs and market participants reported minor tariff and reporting violations, at least two market participants reported potential market manipulation, three public utilities reported standards of conduct violations, four natural gas companies reported pipeline certificate violations, and several companies reported notice and regulatory filing violations resulting from inadvertent oversight or changes in ownership. The illustrative summaries below are intended to provide guidance to the public and to regulated entities as to why staff chose not to pursue an investigation or enforcement action, while preserving the non-public nature of the self-reports.

**FPA Section 203 Violation (Disposition of Assets) and Late Change in Status Filing.** A public utility self-reported that one of its subsidiaries had failed to seek Commission approval before selling its ownership interest in one of its generating facilities in violation of section 203(a)(1)(A) of the FPA. Certain financing characteristics of the sale resulted in a change in the subsidiary’s status for purposes of retaining its market-based rate authority, and it also failed to timely report this change of status, in violation of section 35.42 of the Commission’s regulations. To remediate the violations, the subsidiary late-filed the required documents to obtain Commission approval,

<sup>19</sup> Revised Policy Statement, 123 FERC ¶ 61,156 at P 25.

and submitted the outstanding change in status filings. The public utility also implemented various compliance improvements to ensure similar noncompliance will not occur in the future, and conducted additional employee training. For these reasons, and because the violation was isolated, inadvertent, had little practical effect, and caused no economic harm, staff closed this self-report without further action.

**FPA Section 205 Violation (Market Based Rate Authorization).** A generation company self-reported that it made wholesale sales without market based rate authorization (MBR) in violation of section 205 of the FPA. The company had sold power to a buyer pursuant to a Power Purchase Agreement (PPA) that complied with the Public Utility Regulatory Policies Act (PURPA) and the Commission's regulations. When that agreement ended the company continued to sell to the same buyer, after executing a new PPA. These sales violated section 205 of the FPA because the seller did not have MBR authority for sales under the new PPA. Upon discovery, the company promptly filed for MBR authority, which the Commission granted. The company was obligated to make time value refunds for the unauthorized sales it made between the end of the first PPA and the Commission's grant of MBR authority. Because the company made this refund and took steps to prevent future recurrence of this violation, staff closed this self-report without further action.

**FPA Section 205 Violation and Regulatory Filing Violation (Failure to File Certain Agreements and EQR).** An energy services company self-reported that it failed to file certain agreements in violation of section 205 of the FPA and various Commission filing requirements outlined in Part 35 of the Commission's regulations. Specifically, the company failed to: (1) timely file transmission-related agreements; (2) timely file a Facilities Reimbursement Agreement and Phase Two Permitting and Engineering Agreement; (3) timely file a Transmission Asset Lease Agreement; and (4) report agreements in its EQR for certain reporting periods. The company identified these agreements after undertaking a comprehensive review of its records and took the necessary steps to come into full compliance by making the required filings. In a majority of cases, the services provided under these agreements were provided at no charge and to the extent there was a charge, it was only a pass-through of the company's costs on a dollar-for-dollar basis (i.e., no margin was collected). As such, no economic harm resulted from the late filings. For these reasons, staff closed this self-report without further action.

**Interstate Commerce Act Violation.** An oil pipeline self-reported that it inadvertently disclosed confidential shipper information in violation of section 15(13) of the Interstate Commerce Act, which prohibits common carrier product pipelines from disclosing information relating to the "nature, kind, quantity, destination, consignee, or routing" of the products being transported without the shipper's consent. *See* 49 U.S.C. app. § 15(13) (1988). A scheduler at the pipeline sent an email with the schedule of a third-party shipper's movements to the wrong distribution list. Within five minutes, the scheduler was notified of the error and sent an email stating "Please discard." The incident was reported within the company, ultimately to the company's legal department. The company investigated and determined the incident was inadvertent, the scheduler followed up with each recipient to confirm the email was discarded and not shared, the substance of the email was very limited and therefore presented no harm to the shipper or gain to the email recipients, and the shipper informed the company that the barrels were ultimately sold to other parties and not shipped. For these reasons, and because the company took steps to prevent future violations, staff closed this self-report without further action.

**Market Manipulation (Material Misrepresentations).** A curtailment service provider operating within an ISO/RTO self-reported a potential violation of the Commission’s Anti-Manipulation Rule. Some of its sales managers and employees made false statements to several of its demand resource customers in connection with the customers’ demand response contracts for two recent delivery years. Upon learning of the false statements, the curtailment service provider initiated an internal investigation, issued sanctions to its sales staff (including terminating the sales managers and several of the senior sales staff), notified customers and paid them refunds, and updated the relevant portions of its training for sales staff. Because the curtailment service provider took timely and effective remedial measures to address the potential violations and prevent reoccurrence, staff closed this self-report without further action.

**Market Manipulation (Scheme to Defraud).** An energy trading company self-reported a potential violation of the Commission’s Anti-Manipulation Rule. A former trader, while employed with the company, made virtual trades in an ISO/RTO based on recommendations and trading strategies received from another company that the trader eventually went to work for. Some of these trades were placed on days when the other company was also placing trades in the same ISO/RTO. The company reported the trading because of concerns about possible collusive or manipulative behavior. Staff analyzed the trading and did not find evidence of collusion, manipulation, or other violations of market rules. For these reasons, staff closed this self-report without further action.

**Misrepresentation to a Jurisdictional Transmission Provider.** A company that provides energy marketing services to public utility companies and municipalities self-reported that one of its traders made a misrepresentation to a jurisdictional transmission provider in violation of section 35.41(b) of the Commission’s regulations. After incorrectly tagging an energy sale for one of its member-clients to another region, the trader attempted to correct the error by finding an alternative buyer. In the process of doing so, the trader told a transmission provider that the transaction needed to flow 15 MW of power for reliability reasons to avoid a unit trip, and provided the same incorrect information to a reliability coordinator. The trader appeared to have engaged in the conduct independent of any direction from its member-client. In reviewing the self-report, staff determined that the company did not qualify as a Seller under section 35.41(b) of the Commission’s regulations. For this reason, and because the company has active compliance and training programs that it has committed to review and improve, and has taken steps to prevent the conduct from recurring, staff closed this self-report without further action.

**Natural Gas Transportation Violation (Shipper Must Have Title Violation).** A company (Company 1) self-reported that it had violated the Commission’s shipper-must-have-title (SMHT) requirement by transporting natural gas it owned on interstate pipelines using capacity reserved for a second Company (Company 2). For seven years Company 1 and Company 2 entered into repeated long-term capacity releases so Company 1 could ship its gas using Company 2’s capacity while satisfying the Commission’s SMHT requirement. However, when the last long-term capacity release expired, the person who served as the capacity manager had left employment at Company 1 and no one at either company took note of the expiration of the long-term release. Accordingly, Company 1 continued to use the capacity for an additional eight years without renewing the long-term release. Upon discovering the violations, based on a question from the pipeline owner, Company 1 and Company 2 immediately entered into a short-term and then a long-term capacity release. Company 1 also hired outside counsel to develop procedures for tracking

its capacity and gas contracts. Counsel also developed and conducted training on the SMHT requirement and created a manual for employees to consult. Because of these prompt mitigation measures, and because the violations were inadvertent, and, despite their duration, caused no harm, staff closed this self-report without further action.

**NGA Section 1(c) Violation (Hinshaw Exemption).** A natural gas pipeline self-reported a potential violation of section 1(c) of the NGA, which exempts pipelines from Commission regulation provided they satisfy certain eligibility criteria, including that the pipeline operates entirely within a single state (Hinshaw Exemption). The pipeline learned through ongoing compliance audits that its intrastate facilities included several limited border crossings. Upon learning of the potential crossings, the company immediately performed a thorough investigation to determine the existence and extent of the border crossings, physically eliminated some of the crossings, and made appropriate filings at the Commission to preserve its Hinshaw exemption. For these reasons, and because the violations were inadvertent and resulted in no market harm, staff closed this self-report without further action.

**NGA Section 7(b) Violation (Abandonment).** A natural gas pipeline self-reported that it abandoned two different jurisdictional facilities without Commission authorization in violation of section 7(b) of the NGA. After discovering the violations, the pipeline filed for, and received, Commission approval to formally abandon the facilities. For this reason, and because the violations were inadvertent and resulted in no market harm, staff closed this self-report without further action.

**OASIS Posting Violation and Tariff/OATT Violation.** A public utility self-reported its failure to post certain information to its Open Access Same-Time Information System (OASIS) platform in violation of section 37.6 of the Commission's regulations and the company's Open Access Transmission Tariff. The utility had failed to: (1) post narratives explaining its Available Transfer Capacity (ATC) reductions; and (2) timely complete notifications of impacts resulting from a transmission outage. The first issue stemmed from the disablement of an automated functionality that initiates the posting of ATC narratives within its OASIS software platform. The second issue resulted from utility personnel failing to recognize the full impact that the outage of a transformer owned by another utility would have on one of its transmission lines. Staff determined that the posting and outage issues were inadvertent and caused no harm to other entities. For these reasons, and because the utility implemented remedial actions to prevent future compliance issues, staff closed this self-report without further action.

**Qualifying Facility Violation (Unauthorized Power Sales).** The owner of a cogeneration plant self-reported its failure to self-certify this project as a Qualifying Facility (QF) before it began making wholesale power sales in violation of section 205 of the FPA. Although section 292.601 of the Commission's regulations affords QFs under 20 MW, such as the cogeneration plant, an exemption from section 205 of the FPA, the Commission's regulations require owners of such QFs to either file a notice of self-certification or apply for a Commission certification in order to obtain QF status pursuant to 18 C.F.R. § 292.207 (QF Filing Requirement). To remedy this violation, the owner submitted a FERC Form No. 556 to certify the project as a QF. No refunds were due because the project owner had not yet collected any revenues for the sales that occurred. Because

the violation was inadvertent and resulted in no economic harm, staff closed this self-report without further action.

**Regulatory Filing Violation (Electric Quarterly Reports).** A public utility self-reported several errors in its EQRs in violation of section 35.10b of the Commission’s regulations (EQR Filing Requirement). Pursuant to the EQR Filing Requirement, each public utility and non-public utility with more than a *de minimis* market presence must file an updated EQR covering jurisdictional services it provides. EQRs are required to be filed within 30 days after the end of each quarter. The public utility identified multiple reporting errors in its EQRs between 2015 and 2019. These errors included: (1) reporting a quarterly cumulative capacity payment when it should have reported at least three individual capacity transactions with unique rate and volume information; (2) failing to report various energy and capacity transactions; and (3) reporting one transaction that should have been reported in the EQR of an affiliate. The reporting errors resulted from a misunderstanding of the specific filing requirements and from a change in ownership. The utility worked with staff to cure its reporting deficiencies and implemented procedures and training to limit the likelihood that additional violations will occur. For these reasons, staff closed this self-report without further action.

**Regulatory Filing Violation (FERC Form No. 552).** A small gas exploration and development company self-reported that it had failed to file 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, which addresses its natural gas transactions. The form must be filed by May 1 for the previous calendar year. After acquiring a gas marketing unit from another company, the gas exploration company had failed to file FERC Form No. 552 the following two years. The company worked with staff to ensure that all missing 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. 566).** The owner of a generation facility self-reported that it failed to file FERC Form No. 566, listing its 20 largest retail customers, for three calendar years in violation of section 46.3 of the Commission’s regulations. The company had never had any retail customers, but was still required to file the form. This oversight resulted from the company’s failure to transfer the FERC Form No. 566 reporting responsibility after the responsible employee left the company. At staff’s request, the company filed the three FERC Form No. 566s out-of-time. Staff determined that the violation would not recur because the company is now an Exempt Wholesale Generator (EWG), and thus exempt from the filing requirement. For this reason, and because the violations were inadvertent and resulted in no harm, staff closed this self-report without further action.

**Regulatory Filing Violation (Failure to Update Tariff).** A FERC jurisdictional oil pipeline self-reported that it failed to update its tariff to reflect third-party agreements with one of its shippers in violation of section 341.3(b)(7) of the Commission’s regulations. Pursuant to this regulation, a regulated oil pipeline may not charge rates for its services other than those properly filed with the Commission. The pipeline’s violation occurred when it failed to incorporate the agreements it



made with the shipper into its tariff at the time they were executed. The pipeline also failed to update its tariff to reflect rates adjusted by these agreements in 2016, 2017, and 2018. The pipeline explained that the agreements were made to provide financial assistance to its anchor and only committed shipper. Staff determined that the violation did not permanently impact any other shipper and the only party directly impacted by the rate in question, the pipeline's anchor shipper, benefited under the rate change. For these reasons, staff closed this self-report without further action.

**Regulatory Filing Violation (Interlocking Directorate).** A public utility self-reported a violation of the Commission's requirements regarding Interlocking Directorates (18 C.F.R. Part 45) for failing to: (1) report the appointment of a new director; and (2) give notice of the contemporaneous resignation of the prior director. The utility's failure to make the requisite filings was an oversight due to the fact that the new director shadowed the prior director for some period of time, and the person responsible for the filing, who subsequently left the utility, failed to make the filing when the actual transition took place. The utility worked diligently with staff to cure the reporting deficiencies and implemented procedures and training to limit the likelihood additional violations will occur. For these reasons, staff closed this self-report without further action.

**Regulatory Filing Violation (Late Change in Status – Category Seller Designation).** The owner of several wind projects self-reported that after purchasing the projects it failed to timely change its ownership status for the projects, as required by section 35.42 of the Commission's regulations. The owner remedied the violation by making the late change in status filings and taking steps to prevent recurrence of this violation in the future. The only harm caused by this delay impacted the owner, who was unable to take advantage of certain exemptions associated with its status. For these reasons, and because the violation was unintentional, staff closed this self-report without further action.

**Standards of Conduct (No Conduit Rule).** A public utility self-reported that, over a period of up to six years, certain transmission function information stored on intranet websites was inadvertently available to all employees, including marketing function employees, in violation of section 358.6 of the Commission's regulations (Standards of Conduct - No Conduit Rule). The problem resulted from a software setting which allowed employees to give any other company employee access to documents stored in management folders, one of which contained a substantial number of transmission-related documents. The utility learned of the violation following a corporate compliance training and, within 3 days, revoked access to the documents and began an investigation which included interviews of all marketing function employees with access to the transmission materials, all of whom stated that they did not access the transmission-related information. In addition, the utility reviewed other document management systems and verified they did not contain the same flaws. Staff determined that the utility had conducted a thorough internal investigation of the matter and implemented changes to prevent recurrence. Although the duration of the violations was substantial, they were inadvertent and it was not clear that any harm resulted. For these reasons, staff closed this self-report without further action.

**Standards of Conduct (Transparency Rule).** A transmission provider self-reported that it failed to timely update the job title of a transmission function employee on OASIS, in violation of section 358.7 of the Commission's Regulations (Standards of Conduct – Transparency Rule). The

company updated the information on OASIS 12 days after the 7-day time frame required by the Standards of Conduct. Upon discovery, a senior compliance analyst discussed this issue with the responsible employee and performed individual training to ensure future compliance with the Standards of Conduct. Further, the company implemented a new control whereby IT provides it with a weekly report to monitor whether any personnel changes create any Standards of Conduct obligations. Staff determined that the company acted quickly to remedy the situation and prevent recurrence. For these reasons, and because no harm resulted, staff closed this self-report without further action.

**Tariff/OATT Violation (Electric).** An investor-owned utility self-reported its failure to provide historical fuel data to two ISO/RTOs' market monitors for certain months in 2017 and 2018 in violation of the ISO/RTOs' Tariffs. Regarding the violation in one ISO/RTO, the company explained that the responsible employee twice encountered technical issues when attempting to upload fuel data to the ISO/RTO market monitor's software system. The employee contacted the ISO/RTO market monitor for assistance, but continued to have technical issues loading the data. Regarding the violation in the other ISO/RTO, the company explained that its failure to provide fuel data resulted from employee turnover. By February 2019, the company provided the market monitors with the missing historical fuel data. The company has implemented process improvements to avoid future data submission errors and to enhance its overall compliance efforts. Those process improvements include increasing the number of responsible staff, implementing auto-reminders for submission deadlines and confirmations for receipt of submissions, and conducting annual training on data submittals. For these reasons, and because of the technical issues encountered by the employee when attempting to load fuel data, staff closed this self-report without further action.

**Tariff/OATT Violation (Electric).** An investor-owned utility self-reported that it inadvertently failed to undesignate a network resource prior to an off-system sale for two early morning hours, in violation of its OATT. The company had previously arranged for a day-ahead off-system sale, scheduled power flow from the appropriate unit (Unit), purchased firm transmission, and undesignated the Unit as a network resource as required. Before the power flow was scheduled to occur, the Unit tripped offline. Company employees took steps to change all firm sales from the Unit to other units, not realizing that a firm off-system sale was scheduled, and that sourcing the off-system power from a unit that had not been undesignated as a network resource violated its OATT. Upon discovery, employees began completing a request to undesignate the new unit but did not complete the request until after power had sourced from the network-designated unit for two hours. Staff determined that no transmission customers were impacted and no revenues were inappropriately collected. For these reasons, and because the violation was inadvertent and the company acted quickly to address it, staff closed this self-report without further action.

**Tariff/OATT Violation (Oil Pipeline).** An oil pipeline self-reported two potential violations of its Commission-approved tariff: (1) it did not post its tariff on its website; and (2) it charged its only customer more than the Commission-authorized rate. Regarding the first issue, the company did not know how long the tariff was missing from its website, but it remedied the violation by posting it. The violation occurred because the company was not aware of its obligation to post the tariff. Its customer was provided a copy of the tariff as an attachment to its contract. Regarding the second issue, the company determined that, due to an employee's misunderstanding, it

increased its rate without filing a tariff revision with the Commission. Upon discovery, the company reduced its rates to the amount in its tariff, began an investigation, and refunded the overpayments with interest (approximately \$19,000). Staff determined that these violations resulted in little harm to its customer, market participants who may have wanted to become customers, or the Commission's regulatory process. For these reasons, and because the violations were inadvertent and were remedied by the company, staff closed this self-report without further action.

**Tariff/OATT Violation (ISOs/RTOs).** Multiple ISOs/RTOs in organized markets self-reported relatively minor violations of their tariffs, resulting from either software errors or human errors. Such errors included: small miscalculations of the reserves that resources could provide; miscalculating uplift payments; failing to take required actions against assets in default of financial assurance obligations; failing to take required actions against market participants who had been assessed a penalty for submitting inaccurate fuel cost information; the incorrect inclusion or exclusion of costs in a manner inconsistent with the tariff; software errors that created the potential for incorrect market participant compensation; the inadvertent temporary grant of access to confidential market participant information; software errors that resulted in inaccurate modeling inputs; and failure to post certain links on its website pursuant to its tariff and North American Energy Standards Board (NAESB) standards. The ISOs/RTOs also reported certain other potential errors stemming from ambiguity in their tariffs or mistakes in implementing tariff provisions. Examples included the calculation of make-whole payments for resources with minimum run times spanning multiple days and committing generators with a "Reliability" status for reasons other than an emergency or local reliability issue. 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.

**Violation of Commission Order (Pipeline Certificate).** A natural gas pipeline company self-reported that its construction of a storage area access road to support a pipeline replacement project impacted a wetland in violation of the blanket certificate authority it had been granted by prior Commission order. The company promptly and effectively worked with government officials to complete a formal plan to remove the access-road fill material and developed a detailed wetland restoration and monitoring project. Staff determined that restoration was an appropriate and viable response to the company's violation. For this reason, staff closed this self-report with no action but required that the company report this issue in its FERC Form No. 537 (Annual Certificate Report).

## **E. Investigations**

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In FY2019, DOI staff opened 12 new investigations, as compared with 24 investigations opened in FY2018. The majority of these investigations arose from referrals by ISO/RTO market monitors and Enforcement's DAS. Additional investigations stemmed from referrals by ISOs/RTOs, self-reports, and from the Enforcement Hotline. In addition to cases closed through settlement, staff closed 14 investigations in FY2019 without further action, as compared to 23 investigations closed without further action in FY2018. In addition to closing these investigations during the fiscal year, DOI staff closed several MMU Referrals following inquiries into and



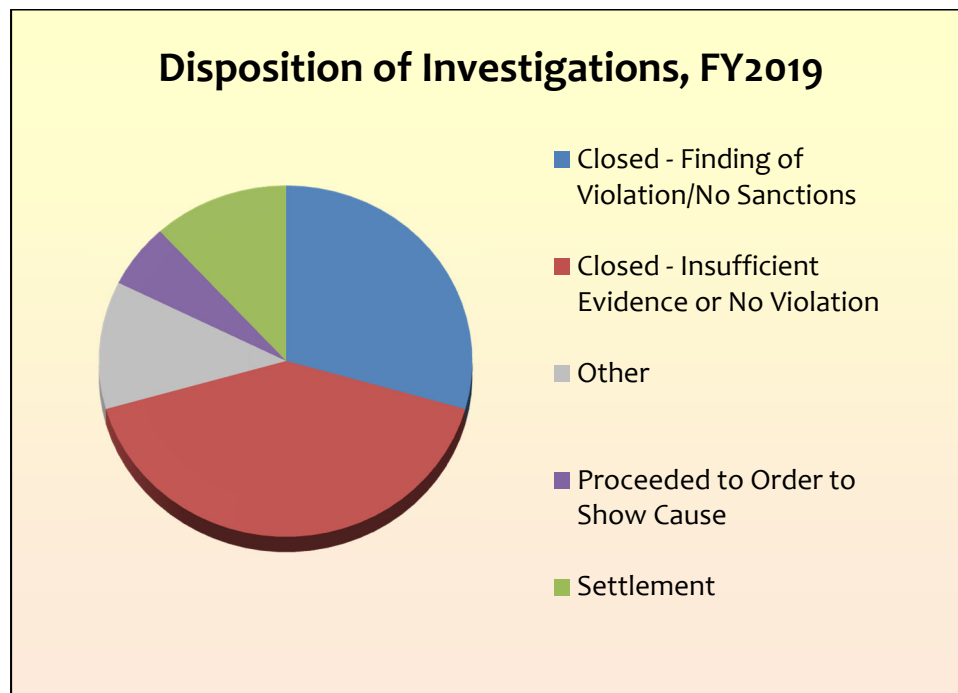
analyses of the referred conduct and alleged violations. These matters, discussed in DOI Section F below, were closed without being converted into investigations.

## 1. Statistics on Investigations

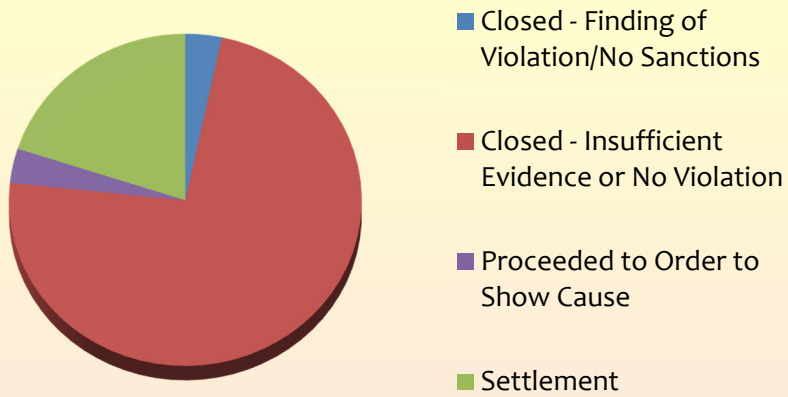
Of the 12 investigations staff opened this fiscal year (some of which involved more than one type of potential violation or multiple subjects), nine involved potential market manipulation, seven involved potential tariff violations, six involved misrepresentations prohibited by the Commission’s market behavior rules, and two involved regulatory filing violations. The 12 investigations involved a wide range of additional issues, including safety concerns, Critical Infrastructure Protection standards, demand response, and failure to update the prices in a gas tariff.

DOI staff closed 14 investigations in FY2019. Of the closed investigations, seven were closed without further action because staff concluded that the evidence did not support finding a violation. In five other investigations, a violation was found but staff did not pursue a sanction. DOI also closed two investigations following Commission Orders relevant to the matters being investigated. The 14 closings were in addition to the two investigations closed pursuant to settlements that staff reached with subjects. The Commission-approved settlements in these investigations are summarized above in DOI Section C and listed in Appendix B. Illustrative examples of investigations closed without enforcement action are discussed below.

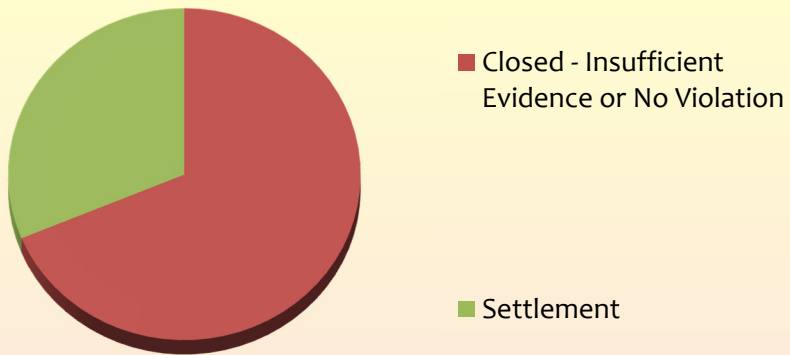
The following charts show the year-by-year disposition of investigations that closed over the past five years (FY2015-2019) and the aggregate disposition of investigations that closed over the previous decade from fiscal years 2009 through 2019.



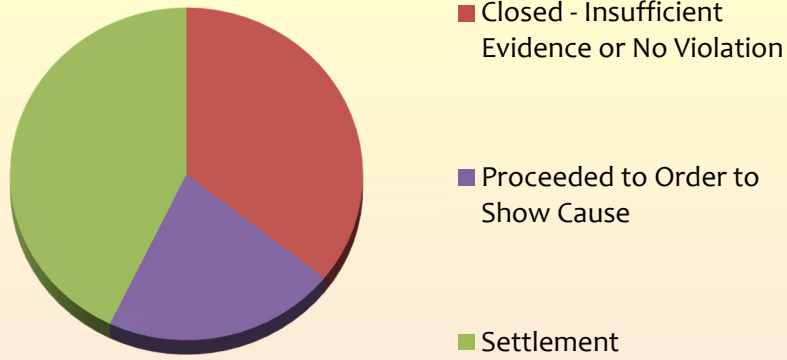
### Disposition of Investigations, FY2018



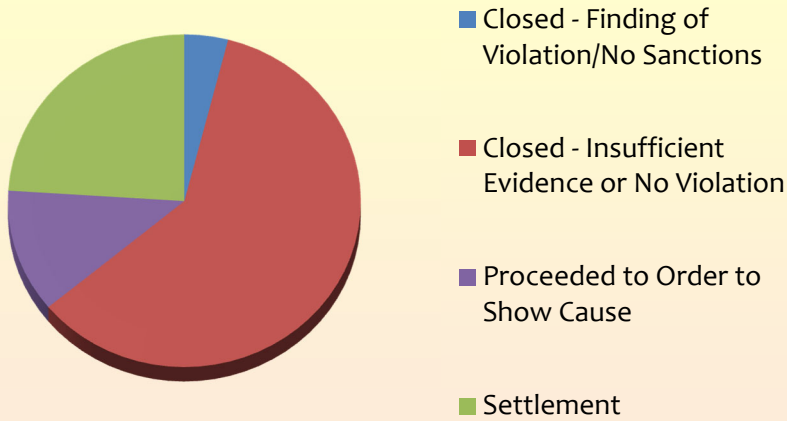
### Disposition of Investigations, FY2017

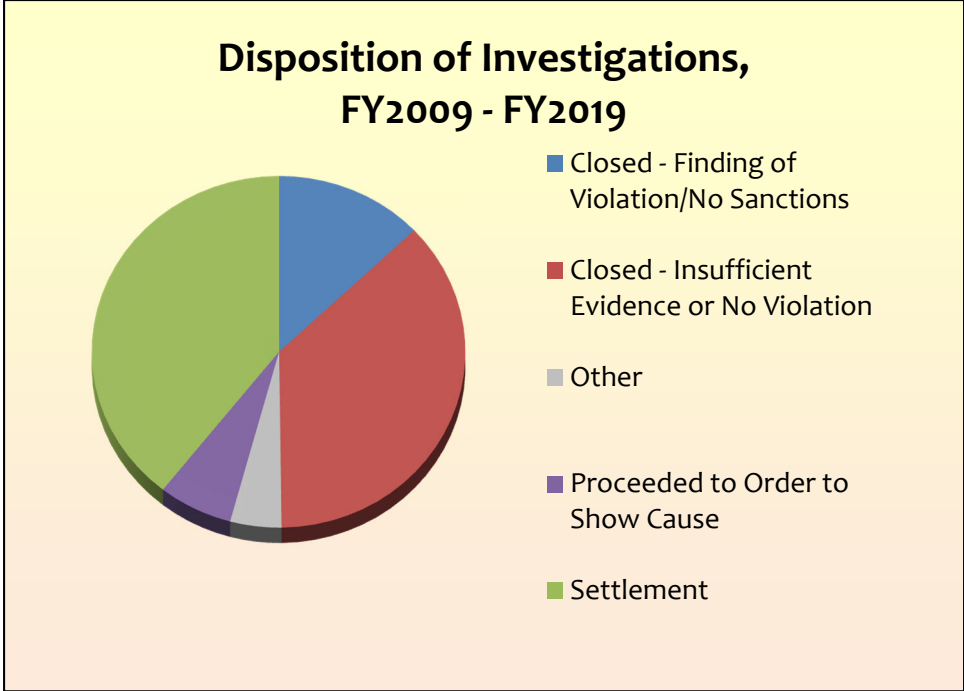


### Disposition of Investigations, FY2016

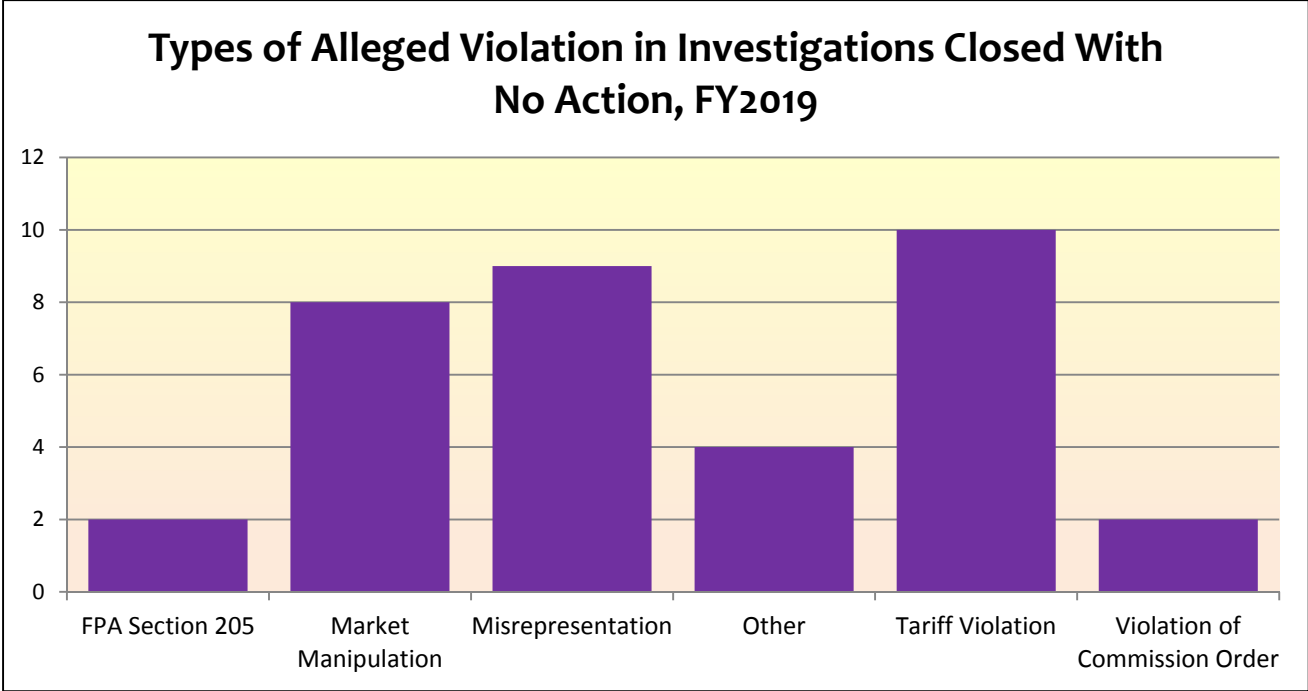


### Disposition of Investigations, FY2015

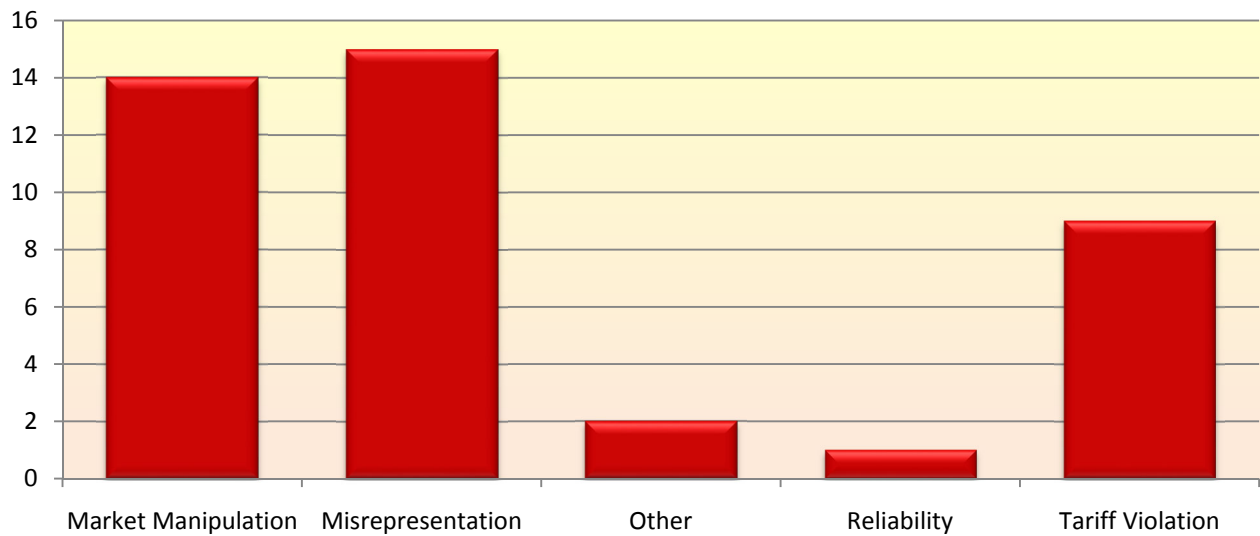




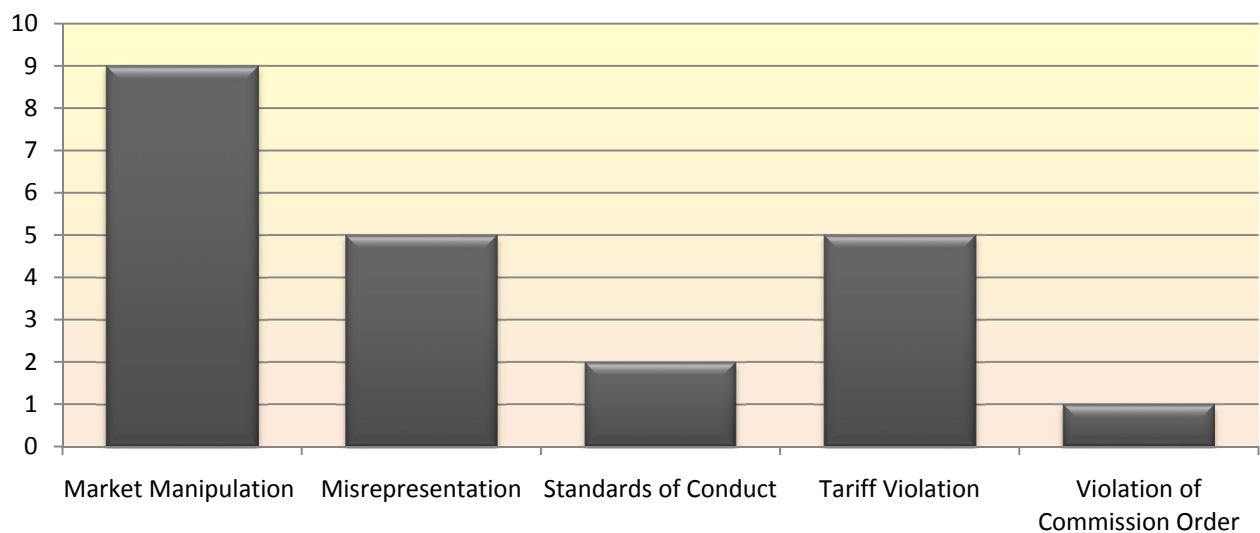
The following charts summarize the nature of the conduct at issue for those investigations that were closed without action in Fiscal Years 2015-2019.



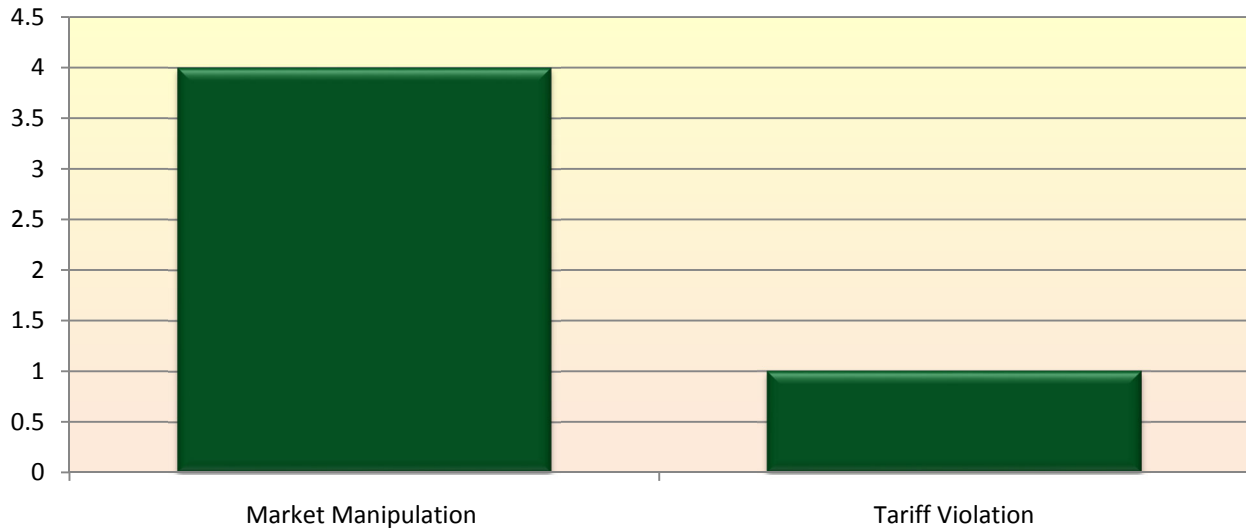
### Types of Alleged Violation in Investigations Closed With No Action, FY2018



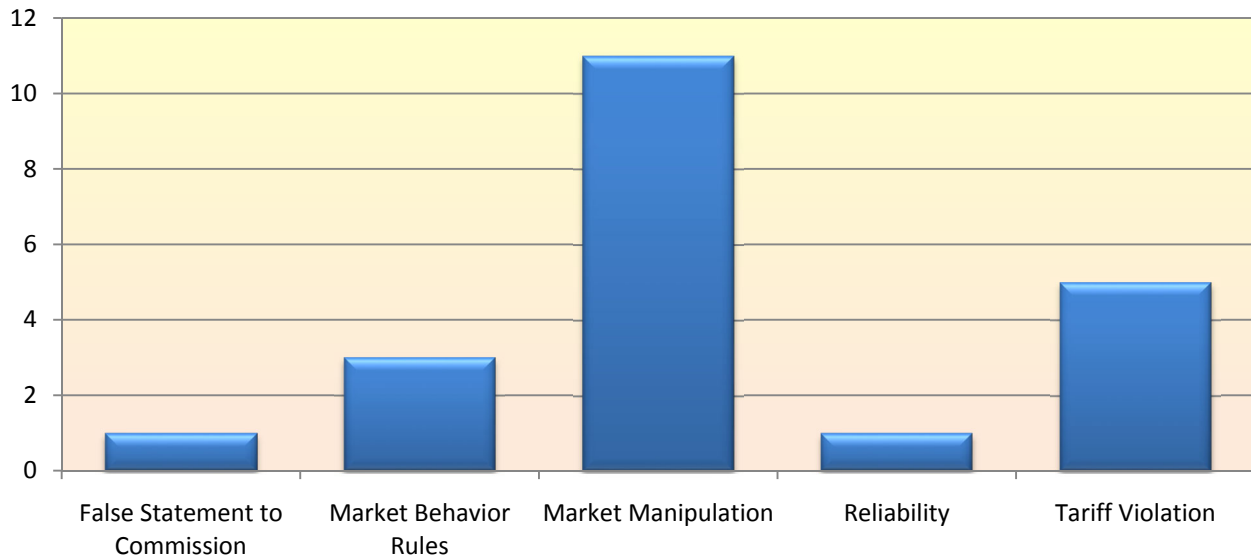
### Types of Alleged Violation in Investigations Closed With No Action, FY2017



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



### Types of Alleged Violation in Investigations Closed With No Action, FY2015



## 2. Illustrative Investigations Closed with No Action

The following summaries of investigations that Enforcement closed without action in FY2019 are intended to provide guidance to the public while preserving the non-public nature of DOI's investigations. In most of the examples, staff provides the relevant market and products involved

in order to provide the maximum level of transparency. However, staff omitted such information in the few examples where such information would risk identifying the investigative subject.

**FPA Section 205 Violation and Tariff Violation (Electric).** Following a referral from the ISO-NE market monitor, staff opened an investigation to determine whether a generator failed to submit accurate energy supply offers related to certain physical parameters in ISO-NE's day-ahead and real-time energy markets, consistent with applicable tariff provisions. During the course of the investigation, staff also learned of a separate potential issue – specifically, that the generator had been making sales for resale without Commission authorization in violation of section 205 of the FPA. Consistent with precedent, the Commission ordered, and the generator made, time-value refunds on the revenues collected on sales made during the period that the generator lacked authorization. On the tariff issue, staff ultimately determined that while certain aspects of the supply offers were inconsistent with the tariff, the generator had made those offers at the direction of ISO-NE employees. In light of this fact, and the generator's payment of time-value refunds on the FPA section 205 issue, staff closed the investigation without further action.

**Hydropower Licensing, Filing Requirements, Misrepresentation, Violation of Commission Order (Hydro).** Following a referral from OEP, staff opened an investigation into a hydropower licensee's failure to comply with the reservoir elevation and water flow requirements in its Commission-issued license and the possible submission of false water flow reports. Staff determined that the licensee is working on a license amendment to resolve the violations regarding the elevation and flow requirements. Staff also determined that the potential false reporting violations ended when the licensee terminated the responsible operator. Finally, staff learned that the licensee is in the process of selling this project (which lessens concerns about future noncompliance by this licensee at this particular project). Accordingly, staff closed the investigation without further action.

**Market Manipulation (Natural Gas).** Following a referral from DAS' Surveillance Group, staff opened an investigation to determine whether two natural gas traders at a commodities trading company violated the Commission's Anti-Manipulation Rule by trading next-day fixed-price natural gas at the Columbia Gulf-Mainline trading hub to benefit index swap positions at that location. Staff's investigation concluded that the traders had not engaged in market manipulation. Staff determined that each trader pursued a separate trading strategy based on market fundamentals and did not find evidence that either trader had made the next-day fixed-price trades to benefit the index swap positions. Staff concluded that one trader's cash trading and index swaps were consistent with a storage arbitrage strategy and that the other trader's cash trading at the hub during the months in question was consistent with his trading behavior at other hubs and in other months, regardless of his financial positions. Accordingly, staff closed the investigation without further action.

**Market Manipulation and Tariff Violation (Electric-Hydro).** Following a market monitor referral, staff opened an investigation to determine whether a power generation and marketing company had violated the Commission's Anti-Manipulation Rule and an ISO's tariff by operating hydroelectric resources in order to obtain unjustified make-whole payments. The market monitor's referral indicated that the company had received in excess of \$650,000 in make-whole payments in 2016 by self-scheduling and submitting offers in a way that would make it eligible for the make-whole payments when the hydroelectric resources generated small amounts of energy above their



self-schedules, but within the ISO's threshold for uninstructed deviations (Tolerance Band). Staff's investigation found no evidence that the company had engaged in manipulative conduct. Staff concluded that the deviations in this case (which resulted in the make-whole payments) were inherent in the resource type and not the result of improper activity. Moreover, staff found that the company regularly amended its offers to avoid receiving far greater amounts of make-whole payments. Accordingly, staff closed the investigation without further enforcement action.

**Market Manipulation and Tariff Violation (Electric).** Following a referral from the SPP market monitor, staff opened an investigation to determine whether a commodities trading company had violated the Anti-Manipulation Rule and SPP's Tariff by submitting bids for Transmission Congestion Rights (TCRs) between collocated and "Electrically Equivalent Settlement Locations" (EESLs), even after both the MMU and SPP personnel had advised the company that SPP's Tariff prohibited this practice. Working with the MMU and the investigative subject, staff confirmed that the alleged trades in fact had been submitted. There was no resulting market harm, however, because SPP had identified and removed those trades before the market clearing process took place. Staff also determined that the trader had not deliberately violated the restrictions – a lack of automation in the bidding software allowed for some degree of confusion on the part of the trader. For these reasons, as well as the limited scope of the violations and changes the company made to its trading systems that will ensure no further violations occur, staff closed the investigation without further action.

**Market Manipulation and Tariff Violation (Electric).** Following a referral from the SPP market monitor, staff opened an investigation to determine whether an electric utility: (1) manipulated the physical parameters of its energy offers from a power plant for the purpose of collecting unjustified make-whole payments; or (2) violated SPP's Tariff provisions on offer parameters. The energy offers had unusually high economic minimum limits and were often block-loaded (meaning the economic minimum and economic maximum parameters were set at the same level). The electric utility handled the offers from the plant on behalf of the plant owner, which had obtained qualifying facility (QF) status for the plant under PURPA. Staff found that the utility's offering strategy was not designed to collect make-whole payments and was consistent with the plant's right to sell power as a QF under PURPA. Staff also concluded there was insufficient basis to find a violation of the tariff, which allowed QFs to offer power into the market using a control status that effectively overrode the physical parameters. Accordingly, staff closed the investigation without further action.

**Misrepresentation and Tariff Violation (Electric-Wind).** Following a referral from the MISO market monitor, staff opened an investigation to determine whether certain market participants had violated MISO's Tariff and made misrepresentations to MISO by providing forecasts of output from wind facilities that persistently exceeded actual output. The MMU's referral indicated that the forecasting practices of the referred market participants violated the tariff because they were not unbiased "50/50" forecasts with an equal probability of being high or low. While staff concluded that the market participants were submitting upward biased forecasts, it was not clear whether the specific conduct violated the applicable MISO Tariff language regarding the forecast maximum limit (FML) parameter submitted by market participants to forecast output. Moreover, at the time of the conduct, MISO had yet to specify the requirements for FMLs or how market-participant submitted FMLs would be evaluated by MISO, as directed by a Commission Order on

the relevant tariff provisions. For these reasons, staff determined that the facts did not support pursuit of a violation and staff closed the investigation without further action.

**Misrepresentation and Tariff Violation (Electric-Hydro).** Following a referral from an ISO/RTO’s market monitor, staff opened an investigation to determine whether a scheduling coordinator for a hydroelectric resource: (1) violated its duty of candor and accuracy in communications with the ISO/RTO, as required by Commission regulations; and (2) violated the ISO/RTO’s Tariff for submitting inaccurate bids for energy and ancillary services and failing to update the resource’s availability in the ISO/RTO’s outage management system. Staff’s investigation found that the scheduling coordinator did not have a repeated pattern of submitting inaccurate, or infeasible, bids. Moreover, the outage coordinator largely complied with the ISO/RTO’s Tariff’s requirement to submit outage cards when water levels rendered the resource’s day-ahead bids infeasible in real-time and its limited failures to submit outage cards were inadvertent. The limited violations which occurred resulted in only minimal market harm. Also, during staff’s investigation, the subject stopped serving as the scheduling coordinator for the hydroelectric resource in question. Accordingly, staff closed the investigation without further action.

**Tariff Violation (Electric).** Following a referral from the NYISO market monitor, staff opened an investigation into an entity’s failure to submit energy offers into NYISO’s Day-Ahead Market (DAM) on three days in 2017 for two generation facilities it operated. At the time of these incidents, both generators were capacity resources for which the entity was receiving installed capacity payments. Pursuant to its tariff, NYISO assessed penalties for the violations. For one of the generators, staff determined that the entity’s failure to bid into the DAM was due to human error. The employee tasked with making the bid accidentally inserted the wrong date into the system. In the case of the other generator, a large hole was discovered in the duct work at the generation facility, leading to a forced outage. The generator notified its transmission operator of the outage but failed to similarly notify NYISO. Staff’s investigation found no deliberate misconduct and no market price impact. For these reasons, and because significant actions were taken to prevent re-occurrence, staff closed the investigation without further action.

## F. MMU Referrals

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ISO and RTO Market Monitoring Units (MMUs) perform a critical function surveilling organized electric markets to detect potential violations, including market manipulation, anticompetitive behavior, and tariff noncompliance. As the Commission has recognized, “effective market monitoring requires close collaboration between the [MMUs], RTOs, ISOs, and [Enforcement].”<sup>20</sup> This collaboration occurs formally, through certain reporting requirements 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 ensures 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

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<sup>20</sup> *Southwest Power Pool, Inc.*, 137 FERC ¶ 61,046, at P 20 (2011).

examples of MMU referrals that Enforcement closed in FY2019 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.”<sup>21</sup> This referral requirement applies to potential “misconduct by the RTO or ISO, as well as by a market participant.”<sup>22</sup> 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.<sup>23</sup> In addition, they must include: (1) “sufficient credible information to warrant further investigation by the Commission;” (2) the names and contact information for suspected violators; (3) the dates of the violations and whether the behavior is ongoing; (4) the rule, regulation, or tariff provisions violated; (5) the specific conduct; (6) the consequences to the market; (7) if the referral includes manipulation, a description of the manipulative effect; and (8) any other information the MMU wishes to include.<sup>24</sup> There is also a continuing obligation to update referrals with any information the MMU learns that is “related to the referral.”<sup>25</sup> After receiving a referral, Enforcement conducts an inquiry into the alleged conduct and determines whether to open a full investigation.

To help facilitate these regulatory requirements, Enforcement assigns staff to serve as liaisons with the MMUs for each RTO or ISO as well as with the RTO and ISO itself. MMUs refer a wide range of potential violations – both in terms of type and seriousness. Examples of referrals illustrating this broad range include: (1) referral of JP Morgan Ventures Energy Corporation for manipulation and tariff violations related to allegedly abusive bidding practices in CAISO and MISO;<sup>26</sup> (2) referral of Westar Energy for potential violations of the SPP Tariff and Commission

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<sup>21</sup> 18 C.F.R. § 35.28(g)(3)(iv)(A) (2019). 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).

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

<sup>23</sup> 18 C.F.R. § 35.28(g)(3)(iv)(B)-(C) (2019).

<sup>24</sup> *Id.* § 35.28(g)(3)(iv)(D).

<sup>25</sup> *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) (2019). These notifications are more informal, can be made orally or in writing, and do not require the documentation involved in a referral.

<sup>26</sup> *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).

regulations for allegedly submitting inaccurate cost inputs in its mitigated energy offers;<sup>27</sup> and (3) referral of Etracom LLC for an alleged cross-market manipulation scheme in CAISO.<sup>28</sup>

## 1. Statistics on MMU Referrals

In FY2019, staff received 16 new MMU referrals. Of these referrals (some of which involved more than one type of violation or multiple subjects), 11 involved potential market manipulation, seven involved potential tariff violations, and four involved misrepresentations prohibited by the Commission's market behavior rules. Three of these MMU referrals were the source for three investigations opened this fiscal year. Enforcement also received two supplemental referrals of two entities that were already being investigated for the conduct described in the referrals. As such, these supplemental referrals were rolled into those existing investigations. Of the MMU referrals received in FY2019, seven remained pending at the end of the fiscal year.

DOI staff elected not to open full investigations of 10 MMU referrals in FY2019, four of which were carried over from the previous fiscal year. These were analyzed and closed as inquiries. Of these referrals (some of which involved more than one type of violation or multiple subjects), seven involved potential market manipulation, eight involved potential tariff violations, and five involved misrepresentations prohibited by the Commission's market behavior rules.

Of the 10 MMU referrals that staff did not convert to full investigations, six were closed without further action because staff concluded that the evidence did not support finding a violation. In four other MMU referrals, a violation was found but staff did not pursue a sanction.

## 2. Illustrative MMU Referrals Closed with No Action

Enforcement presents the following illustrative examples of MMU referral inquiries that DOI staff closed in FY2019 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.<sup>29</sup> The illustrative summaries below are intended to provide guidance to the public and to regulated entities as to why staff chose not to pursue an investigation or enforcement action, while preserving the non-public nature of the MMU referral.

**Market Manipulation.** Following a referral from the SPP MMU, staff analyzed but did not open an investigation into whether the two separate ownership groups of a jointly-owned unit (JOU) violated the Commission's Anti-Manipulation Rule when they submitted similar cost-based and competitive offer curves. The MMU questioned whether the similar curves resulted from collusion between the two groups. The referral noted that each ownership group had received one unjustified

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<sup>27</sup> *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).

<sup>28</sup> *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).

<sup>29</sup> Revised Policy Statement, 123 FERC ¶ 61,156 at P 25.

make-whole payment during this period. Staff determined that although SPP's Tariff permitted each unit share of the JOU to be modeled and committed independently, the owners' inability to actually operate the shares independently required that the resource be registered under a provision in which commitment decisions were based on aggregated data from each ownership share (Combined Resource Option). Staff concluded that it was reasonable that unit-wide costs would lead to similar cost-based offers for each ownership group. As for the similarity of the competitive offer curves, staff concluded that this was largely explained by tariff specifications that eliminated variation with respect to certain offer parameters and the central role of the owner-operator in supplying parameters for each of the two ownership shares. Subsequent to the MMU's referral, the Commission accepted SPP's elimination of the Combined Resource Option because of difficulties in administering this registration option. Finally, staff concluded that there was insufficient evidence to demonstrate that the single unjustified make-whole payment to each ownership group was necessarily the result of collusion. For these reasons, staff closed this MMU Referral without further action.

**Market Manipulation.** Following a referral from the CAISO MMU, staff analyzed but did not open an investigation into whether six market participants violated the Commission's Anti-Manipulation Rule by cutting scheduled exports from CAISO to the Centro Nacional de Control de Energia (CENACE) Baja Norte system. CENACE operates Mexico's wholesale electricity markets, including the Baja California region of Mexico. The MMU questioned whether the market participants were engaged in an arbitrage scheme whereby they sold in CENACE's day-ahead market at a high price, then cut the schedule, did not deliver power in real time, and then bought back the power at lower real-time prices. Staff determined that there were a variety of acceptable reasons for the observed cuts, which occurred primarily for reasons out of the market participants' control. Given the relative deadlines for submission of offers in the CENACE and CAISO day-ahead markets, inter-market coordination on bidding was extremely difficult. The CAISO day-ahead market offers had to be submitted before the market participant could know the exact amount of power that its counterparty cleared in the CENACE day-ahead market. Staff also confirmed with the CENACE market monitor that, except when CENACE or CAISO orders a cut, an entity cannot profit by buying back its day-ahead schedule. For these reasons, staff closed this MMU referral without further action.

**Market Manipulation and Misrepresentation.** Following a referral from the SPP MMU, staff analyzed but did not open an investigation into whether a large owner-operator of renewable generation projects had: (1) violated the Commission's Anti-Manipulation Rule by trading virtual products to benefit certain of its Transmission Congestion Revenue (TCR) positions; and (2) violated section 35.41(b) of the Commission's regulations by making certain misrepresentations to the MMU as part of its explanation that these trades were part of a hedging strategy. Staff reviewed the company's trades over a five-month period in 2018 and determined that the company had not placed virtual trades in large enough quantities or at the right times to have a deliberate impact on its associated TCR positions. As such, no harm resulted from the company's virtual trading nor did the company benefit from it. Staff also spoke with relevant personnel at the company, who explained that its virtual trading aimed to hedge the real-time congestion exposure of three of its wind resources by using virtual transactions, and it, therefore, based its virtual volume on the wind forecast. Staff confirmed that the company's minimum and maximum virtual supply offers matched SPP's wind forecast, on average, 86.6 percent of the time. The company also credibly explained the mismatch between its virtual and TCR volumes which had been



observed and questioned by the MMU. Staff also confirmed that the company did not engage in any speculative virtual trading at the locations of interest – every virtual supply offer/demand bid at a node was connected to an asset. Finally, since the MMU’s referral, the company took steps to eliminate the need for these virtual transactions by implementing dynamic scheduling at two of the three wind resources. For these reasons, staff closed this MMU referral without further action.

**Misrepresentation and Tariff Violation.** Following a referral from MISO’s MMU, staff analyzed but did not open an investigation into whether a combined cycle unit violated MISO’s Tariff and section 35.41(b) of the Commission’s regulations by failing to update real-time offers to reflect a reduction in the unit’s production capability. The unit did not follow MISO dispatch instructions to ramp up output for several hours due to an emission issue causing insufficient steam production. The unit’s operator informed its real-time desk of the need to reduce the unit’s economic maximum, but the real-time dispatcher failed to do so. Staff determined that, although the failure to update real-time offers to reflect the unit’s reduced capability was likely a tariff violation, the conduct was inadvertent, and staff was unaware of any similar past incidents involving the unit. In addition, staff determined that the resulting uplift payments were minimal and that the market participant had taken corrective measures to ensure offers are properly updated in the future. For these reasons, staff closed this MMU referral without further action.

**Misrepresentation and Tariff Violation.** Following a referral from MISO’s MMU, staff analyzed but did not open an investigation into whether a unit of a coal-fired generation plant violated MISO’s Tariff and section 35.41(b) of the Commission’s regulations by failing to update its real-time offers to reflect a reduction in the unit’s output caused by a mechanical problem. The unit’s dispatcher immediately entered an off-control designation when the equipment problem occurred, but did not revise the unit’s real-time offer to reduce its economic maximum. As a result, when the off-control designation lapsed, the unit failed to follow MISO dispatch instructions to ramp up based on its offered capability. Staff determined that, although the failure to update real-time offers to reflect the unit’s reduced capability was likely a tariff violation, the conduct was inadvertent and the market participant refunded to MISO the uplift payments it had received for the period when the unit failed to ramp up. The market participant also implemented remedial measures to prevent such incidents in the future and cooperated with staff in providing information about the incident. For these reasons, staff closed this MMU referral without further action.

**Tariff Violation.** Following a referral from PJM’s MMU, staff analyzed but did not open an investigation into whether two market participants had violated the PJM Tariff by improperly including certain variable operating expenses in their cost-based offers. The MMU alleged that not only had these costs been included in violation of the PJM Tariff, but also that some of the costs had been double counted. The MMU raised these concerns to staff following PJM’s approval of the costs at issue. Following the referral, staff discussed the matter with the companies, PJM, and the MMU. Additionally, staff analyzed data related to the claimed costs and conducted extensive research into the relevant portions of the PJM Tariff. Staff determined that it was not clear whether the tariff prohibited the types of costs at issue. For this reason, and because PJM had approved the costs, staff closed this MMU referral without further action.

**Tariff Violation.** Following a referral from MISO’s MMU, staff analyzed but did not open an investigation into whether a generation unit violated MISO’s Tariff by failing to follow MISO’s dispatch instructions. The dispatch deviations occurred when the unit, which is pseudo-tied to

PJM, received instructions from both MISO and PJM to ramp up. In response, the unit's overall output and its PJM share of output increased, but its MISO output remained flat or decreased. The market participant determined that the cause of the MISO dispatch deviations was an error in the unit's generation control system's allocation of ramp and output between PJM and MISO. Staff determined that, although the dispatch deviations possibly violated the applicable business practice manual and the tariff, they were not intentional. In addition, the market participant acknowledged the deviations, promptly investigated their cause and instituted corrective measures, cooperated with staff in providing information about the deviations, and did not receive uplift payments for the unit on the days when the deviations occurred. For these reasons, staff closed this referral without further action.

## **G. Enforcement Hotline**

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DOI staff fields calls and other inquiries made to the Enforcement Hotline (Hotline).<sup>30</sup> 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 investigations by DOI.

In FY2019, Enforcement received 153 Hotline calls and inquiries, 148 of which were promptly resolved within the fiscal year through advice provided by staff, because the caller stopped responding to staff's communications, or because the matter was already before the Commission and so staff could not discuss it with the caller. Staff also closed two Hotline matters that had been pending from the previous year. One Hotline call was the source of an investigation opened this fiscal year. Of the Hotline calls received in FY2019, five 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**

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In addition to its investigative work, DOI staff worked on other important matters in FY2019, including:

**Collaboration with Other Commission Offices.** DOI staff regularly coordinates with other Commission program offices regarding potential enforcement matters. This includes working closely with OEP and OGC on pipeline certificate and hydroelectric licensing matters to ensure compliance with statutory and regulatory obligations, as well as the terms and conditions of pipeline certificates and hydroelectric licenses and exemptions. In addition, DOI staff works

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<sup>30</sup> See 18 C.F.R. § 1b.21 (2019).



closely with OGC, OEMR, and OEPI regarding late filings submitted under sections 203 or 205 of the FPA. There were more than 170 such late filings during FY2019 that DOI staff reviewed. Staff also worked closely with OGC and OEMR on evaluating refund reports related to the late filings. OGC and OEMR regularly consult with DOI staff when a qualifying facility submits a request for a declaratory order and/or a request for waivers of various provisions of Part 292 of the Commission's regulations related to small power production and cogeneration under PURPA. Regulated entities can submit questions to the Compliance Help Desk to reduce their risk of subsequent findings of noncompliance and potential enforcement actions. DOI staff assisted in four Compliance Help Desk inquiries in FY2019. Finally, OGC and OEMR confer with DOI staff for pre-filing meetings and/or regarding requests involving the Standards of Conduct under Order No. 717 or Affiliate Restrictions under Order No. 697. During FY2019, DOI staff was involved in ten such matters.

**Hydropower Compliance.** OEP's Division of Hydropower Administration and Compliance (DHAC) has authority over hydropower compliance matters until such matters are referred to Enforcement. DOI staff provided significant input and advice to DHAC regarding three projects involving dam safety and other violations within DHAC's authority during FY2019.

**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.<sup>31</sup> FERC staff is generally available to confer on a pre-filing basis for possible "No-Action Letter" requests. During FY2019, Enforcement assisted with processing one such request.

**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.

**Revision of Maximum Civil Penalties.** The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires all Federal agencies to make annual inflation adjustments to the maximum civil penalties that may be assessed under the laws administered by those agencies.<sup>32</sup> Pursuant to that statutory obligation, DOI proposed for Commission approval an

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

<sup>32</sup> See Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, § 701, 129 Stat. 584, 599 (2015).

instant final rule increasing the civil penalties that the Commission may assess under the FPA, the NGA, the Natural Gas Policy Act of 1978, and/or the Interstate Commerce Act.<sup>33</sup> The Commission adopted that rule on January 8, 2019, and the revised maximum penalties took effect on February 1, 2019.

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<sup>33</sup> See Civil Monetary Penalty Inflation Adjustments, Order No. 853, Docket No. RM19-9-000, 166 FERC ¶ 61,014 (2019), 84 Fed. Reg. 966 (Feb. 1, 2019).

# DIVISION OF AUDITS AND ACCOUNTING

## A. Overview

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The Division of Audits and Accounting (DAA) administers Enforcement's audit and accounting 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 and accounting activities is to enable the Commission to achieve its strategic objectives by assisting in the development of just and reasonable rates and increasing compliance with Commission regulations and policies.

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

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

## B. Outreach and Guidance

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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 actively engages in regular industry outreach with trade associations, such as the Interstate Natural Gas Association of America, Edison Electric Institute, Association of Oil Pipe Lines, and Natural Gas Supply Association, 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 and accounting programs. For example,

in response to industry comments, DAA adopted a process of formally notifying a company by email from the Director of DAA of the close of an audit proceeding when the compliance implementation stage has been completed. DAA also engages with state regulators and the public accounting firms that audit and certify jurisdictional entities' financial reports. Such industry outreach contributes to DAA's analysis of accounting trends affecting jurisdictional entities and issuances of accounting guidance by the Chief Accountant. For example, in FY2019, guidance was issued for lease accounting in Docket No. AI19-1-000. DAA 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](mailto:accountinginquiries@ferc.gov)) and phone ((202) 502-8877). Informal guidance on all other compliance matters may be obtained through the Compliance Help Desk.<sup>34</sup>

## C. Compliance

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### 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;
  - 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.

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<sup>34</sup> Information about the Commission's Compliance Help Desk is available at [www.ferc.gov/contact-us/compliance-help-desk.asp](http://www.ferc.gov/contact-us/compliance-help-desk.asp).

- The active involvement of internal audit and monitoring functions to routinely assess compliance with tariff provisions and Commission rules, orders, and regulations, to foster a strong and sustainable culture of commitment to compliance on an enterprise-wide basis.
- A policy and culture of seeking guidance from the Commission as necessary to ensure compliance, including an effective process to self-report noncompliance identified through internal oversight activities.

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

## 2. Timely Remedy of Noncompliance

Equally important to a robust compliance program is the timely remedy of noncompliance. Although an effective compliance program will often prevent noncompliance with Commission rules, regulations, and orders, any instances of noncompliance should be addressed immediately. Timely implementation of audit recommendations helps maximize their impact, demonstrates commitment to compliance, and supports fair, competitive markets. DAA tracks every audit recommendation it makes, and works with each company until all recommendations have been fully implemented. Further, the Commission's FY2018-2022 Strategic Plan encourages strong compliance programs and places emphasis on timely implementation of corrective actions within six months of audit completion.<sup>35</sup> In FY2019, 97 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 will increase awareness of these concerns and facilitate compliance efforts. The topics presented below represent areas where DAA has found recurring compliance concerns or noncompliance of significant impact. DAA believes that greater attention in these areas will enable jurisdictional entities to prevent noncompliance, thereby avoiding enforcement actions. To assist in gaining a better understanding of a particular topic, the docket number(s) of one or more recent audit reports or Commission orders dealing with that topic are provided in the discussions below.

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

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<sup>35</sup> See Strategic Plan, *supra* note 4, at 7 (Objective 1.2: Performance Measure).

activities; or (3) performed activities supporting both jurisdictional and nonjurisdictional activities. (PA16-2-000, PA16-4-000).

**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 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).

Other common findings related to AFUDC during audits include:

- Failure to exclude goodwill-related equity from the equity component of the AFUDC rate (PA10-13-000);
- Computing AFUDC on contract retention and other noncash accruals (FA17-6-000);
- Compounding AFUDC more frequently than semi-annually (AC12-53-000);
- Improperly using monthly equity and long-term debt balances instead of prior-year-end balances in computing the AFUDC rate (FA17-1-000, PA18-2-000);
- Improperly including Account 216.1, Unappropriated Undistributed Subsidiary Earnings, and Account 219, Accumulated Other Comprehensive Income, balances as part of the equity component of the AFUDC formula (FA18-2-000, FA18-3-000, PA18-2-000);
- Employing the net-of-tax approach when performing AFUDC calculations (AC18-63-000); and
- Improperly using an AFUDC methodology not prescribed by the Commission that results in capitalized AFUDC above the maximum permitted by the Commission's regulations (PA16-4-000).

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

- Revenue Credits – Public utilities understated the revenue credits that were used to reduce the revenue requirements of their transmission formula rates by improperly excluding certain transmission-related revenues. (FA17-2-000 (pole attachment revenue), FA18-3-000 (rent from affiliate)).

- Income Tax Overpayments – Public utilities have incorrectly recorded in Account 165, Prepayments, income tax overpayments for which they elected to receive a refund and not have such overpayments applied to a future tax year’s obligation. This has led to excess recoveries through formula rate billings. These costs are properly recorded in Account 146, Accounts Receivable from Associated Companies, or Account 143, Other Accounts Receivable, as appropriate. (FA17-4-000, FA13-1-000).
- Excess Accumulated Deferred Income Taxes (ADIT) – To address the tax effects of the Tax Cuts and Jobs Act of 2017 (TCJA), public utilities adjusted ADIT balances to reflect the change in the effective corporate tax rate from 35 percent to 21 percent. Under certain formula rate tariffs, public utilities were required to make adjustments to neutralize the rate base impacts of these TCJA adjustments to ADIT balances. Audit staff found instances where utilities removed balances from the ADIT accounts but did not make the necessary adjustments to keep rate base neutral. This led to rate base being overstated and wholesale transmission customers being overbilled. (FA18-3-000).
- Storm Damage – Public utilities have collected excess storm damage amounts from wholesale customers by either recovering estimates that did not reflect actual experience or recovering both estimated and actual storm damage expenses. (FA15-5-000, FA15-6-000, FA16-4-000).
- Investment Tax Credits (ITCs) – Public utilities have improperly accounted for ITCs associated with utility plant as income tax prepayments in Account 165. ITCs are generated as a result of investments made in utility plant. DAA found instances in which tax credits were used to reduce taxable income, but not all of the ITCs were used at once and resulted in an ITC carry-forward. DAA found that ITC carry-forwards were recorded in an incorrect account and factored into formula rate billings, leading to customer overbillings. (FA15-8-000).
- Internal Merger Costs – Public utilities have included merger-related transaction costs in operating expense accounts, contrary to the long-standing Commission policy that such costs be recorded in non-operating expense accounts. This accounting resulted in companies misrepresenting utility operating income and expenses reported in their FERC Form No. 1. In addition, public utilities subject to hold-harmless commitments have incorrectly recovered merger-related transaction and transition costs, including internal labor costs, in rates. Public utilities should obtain Commission approval to recover such costs and otherwise should have appropriate controls and procedures to ensure that the costs are tracked and excluded from formula rates. (FA16-3-000, FA17-1-000, FA18-3-000, FA14-10-000, PL15-3-000).
- 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, FA13-1-000).
- Commitment Fees – Public utilities improperly recorded commitment fees associated with lines of credit in Account 165, Prepayments, which led to excess recoveries through formula rate billings. (FA15-5-000, FA15-6-000, FA15-7-000).



- **Formula Rate Errors** – Public utilities’ transmission formula rates contained errors, omissions, and miscalculations related to various accounts. Some accounts that should have been added were incorrectly subtracted. In other instances, the formula pulled information from the wrong FERC Form No. 1 line. Finally, there were instances where items specifically excluded by formula rate protocols were included in the formula rate. (FA15-6-000).
- **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. (FA18-3-000, FA17-1-000).
- **Unused Inventory and Equipment** – Public utilities included in the cost of construction projects the cost of materials, supplies, and equipment purchased for the project, without removing the cost of items ultimately unused in whole or in part. (FA13-3-000).

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

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

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

manage transmission congestion. DAA encourages all market participants to have adequate controls in place to ensure accurate, complete, and timely data are submitted to the ISOs/RTOs.

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

- Gas Tariff – Natural gas pipelines did not comply with FERC gas tariff procedures, specifically with regard to: (1) using the method specified in the tariff for valuing system gas activities (PA16-2-000, PA13-5-000); (2) enforcing stipulations in operational balancing agreements to manage and monitor gas imbalance activities between interstate and intrastate pipelines (PA16-4-000); (3) updating their tariffs to fully reflect the Commission’s reservation charge crediting policy<sup>36</sup> for force majeure and non-force majeure events (PA16-4-000); and (4) penalty revenues collected from offending shippers and refunded to non-offending shippers (FA18-2-000).
- Accounting – Natural gas pipelines did not comply with Commission accounting requirements, specifically with regard to: certain activities pertaining to system gas accounting (PA16-2-000); penalty revenues assessed to noncompliant shippers (PA16-4-000, PA10-3-000); shipper imbalances and cash-outs (FA15-1-000, PA13-5-000, PA10-3-000); lost and unaccounted-for gas (FA15-1-000, PA16-4-000, PA13-5-000); and fuel used in compressor stations (FA15-1-000). Other common areas of noncompliance included: (1) use of AFUDC rates above the maximum allowed rate (PA16-4-000); (2) improper derivation of certain components included in the AFUDC rate (FA13-7-000); (3) accrual of AFUDC on unpaid amounts and non-eligible construction costs (FA13-9-000, FA12-4-000); (4) misclassification of non-operating expenses associated with donations, fines, and employment discrimination compromise settlements (FA15-16-000), or with penalties and lobbying activities (PA13-5-000, FA13-7-000, FA12-4-000), or membership dues (FA18-2-000); (5) misclassification of operating expenses as general and administrative expenses (PA16-2-000, PA16-4-000); (6) improper allocation of shared service costs (PA16-2-000); and (7) application of cost allocation methodologies absent a time study or other supporting records (PA16-2-000, FA15-16-000).
- Reporting – FERC Form No. 2 reporting was inaccurate, incomplete, and omitted required information and footnote disclosures required for various schedules supporting the financial reporting (FA18-2-000, FA17-6-000). Other reporting matters pertained to unfiled nonconforming service agreements and cash management agreements (FA17-6-000).

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<sup>36</sup> *Natural Gas Supply Ass’n*, 135 FERC ¶ 61,055, *order on reh’g*, 137 FERC ¶ 61,051 (2011).

**Oil Pipelines (Page 700).** An essential part of oil pipeline audits is an examination of the accounting and operating data included on page 700 of the FERC Form No. 6, Annual Cost of Service-Based Analysis Schedule. This Schedule requires each oil pipeline company to report its total annual cost of service (as calculated under the Order No. 154-B methodology), operating revenues, and throughput in barrels and barrel-miles for the current and previous reporting year. The amounts reflected on page 700 represent only interstate service (i.e., FERC-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.<sup>37</sup> Recent oil pipeline audits have identified accounting errors that impacted the accuracy of amounts reported on page 700, including: incorrect determination of interstate revenues and expenses and designating intrastate amounts as interstate (FA16-7-000); misclassification of carrier and noncarrier property, and of charitable donations, fines/penalties, lobbying activities, and affiliate transaction mark-ups as operating rather than non-operating expenses (FA16-6-000, FA16-7-000); and use of the consolidated rather than the equity method of accounting for investments in joint ventures and subsidiary companies (FA16-5-000). DAA also found that some companies were not conducting depreciation studies as required, leading to depreciation rates not aligning with the actual service lives of the plants, and ultimately to asset groups with negative book balances (FA16-5-000).

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

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

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

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<sup>37</sup> Page 700 is used as a preliminary screening tool for shippers and other stakeholders to gauge whether an oil pipeline’s cost of service substantially diverges from revenues generated by its rates. The Commission also uses the expense and barrel mile data from this page to support the Commission’s determination of its proposed oil pipeline transportation rate index adjustment for a five-year, forward looking period. The next five-year index will be based on the Commission’s evaluation of the increase in costs, on a dollar per barrel-mile basis from 2014 to 2019, as reflected on page 700 in oil pipelines’ filings, and will become effective in 2021.

transparency and creates doubt regarding the effectiveness of these companies' compliance programs.

## D. Audit Matters

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

DAA's public audit reports detail each audit's scope, methodology, findings of noncompliance, and corrective recommendations, with the expectation that all jurisdictional entities will use this information to be better informed, avoid noncompliance, and improve operational performance. Although not all audits result in findings of noncompliance, when they do, timely implementation of the audit report's corrective recommendations is expected. Timely implementation demonstrates an entity's commitment to improving compliance with the Commission's regulations and precedents and to reducing the risk of future noncompliance.

In FY2019, DAA completed 11 audits of public utility and natural gas companies covering a wide array of topics. The audits resulted in 76 findings of noncompliance, 286 recommendations for corrective action, and directed approximately \$161.2 million in refunds and other recoveries.

### Creating Greater Audit Efficiencies

In FY2019, DAA assigned its four audit branches to specific industry and audit coverage areas. Previously, DAA staff were assigned to various industries and audit coverage areas simultaneously. Now, each audit branch and its staff will focus on a specific industry and coverage area. The new branches are organized as follows: Electric (formula rates), Electric (other financial topics), Energy Markets, and Oil and Gas. This change was made to enable the branches and their staffs to develop greater expertise on the industries and topics they audit. In turn, this will translate into greater efficiency and effectiveness on each audit coverage area. DAA's other branches were not impacted by the realignment.

Specifically, DAA directed \$11.8 million to be refunded to jurisdictional customers and prevented approximately \$149.4 million from being inappropriately amortized and collected through future rates. These refunds and other recoveries addressed, among other subjects, the improper application of merger-related costs; lobbying, charitable donation, membership dues, and employment discrimination settlement costs; revenue credits; pending income tax and insurance premium refunds being treated as prepayments; and the regulatory AFUDC formula. Audit recommendations also directed improvements to the audited companies' internal accounting processes and procedures, financial reporting for accuracy and transparency, web site postings, and efficiency of operations. Collectively, these refunds and

recommendations prevented unjust charges in jurisdictional rates, and provided procedural and process enhancements that benefit ratepayers and market participants. The audits summarized below were completed in FY2019 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.<sup>38</sup>

## 1. Formula Rates

**Black Hills Power Inc. (BHP) – Docket No. FA16-3-000.** At BHP, DAA evaluated compliance with: (1) the approved terms, rates, and conditions of BHP's transmission formula rate mechanism as provided in Attachment H of its Joint Open Access Transmission Tariff (Joint OATT); (2) the accounting requirements of the Uniform System of Accounts Prescribed for Public Utilities and Licensees in 18 C.F.R. Part 101 (Uniform System of Accounts (Public Utilities)); and (3) the reporting requirements of the FERC Form No. 1 under 18 C.F.R. § 141.1.<sup>39</sup> The audit identified six findings and 24 recommendations that required BHP to take corrective action. The six findings covered the following areas: (1) incorrect accounting for utility and nonutility operating income payroll taxes and improper inclusion of payroll taxes in BHP's transmission formula rate calculations; (2) prepaid annual software license renewal fees and prepaid maintenance costs that were recorded in Account 107, Construction Work in Progress (CWIP), rather than correct Account 165, Prepayments; (3) double counting litigation costs that flowed through formula rates to wholesale customers; (4) misclassifying various lobbying costs and merger-related consulting fees in expense accounts included in BHP's formula rate mechanism; (5) the inappropriate transfer of pension and benefit expenses into Account 253, Other Deferred Credits, instead of correct Account 228.3, Accumulated Provision for Pensions and Benefits; and (6) calculating the cost of long-term debt in a manner inconsistent with the Commission's regulations under 18 C.F.R. § 35.13(h)(22)(ii). As a result of the audit, BHP made refunds to wholesale transmission customers and revised its accounting policies and procedures in identified areas of noncompliance.

**Ohio Power Company (Ohio Power) – Docket No. FA17-2-000.** At Ohio Power, DAA evaluated compliance with: (1) the approved terms, rates, and conditions of Ohio Power's transmission formula rate mechanism as provided in Attachment H-14 of the PJM OATT, and other jurisdictional rates on file with the Commission; (2) the accounting requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Part 101; and (3) the reporting requirements of the FERC Form No. 1 and the Supplemental Form 3-Q: Quarterly Financial Report (Supplemental Form 3-Q), under 18 C.F.R. § 141.1.<sup>40</sup> The audit identified four findings and 18 recommendations that required Ohio Power to take corrective action. The four findings covered the following areas: (1) understating revenue credits by excluding pole attachment revenue from revenue credit calculations; (2) not returning to transmission customers amounts collected in excess of Ohio Power's total investment in certain customer-funded projects; (3) treating as operating expenses various non-operating expenses relating to the servicing of accounts receivables sold to a third party on a non-recourse basis; and (4) not reporting certain required information on select pages of the FERC Form No. 1. As a result of the audit, Ohio Power made

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<sup>38</sup> The Commission's eLibrary system can be accessed at [www.ferc.gov/docs-filing/elibrary.asp](http://www.ferc.gov/docs-filing/elibrary.asp).

<sup>39</sup> *Black Hills Power Inc.*, Docket No. FA16-3-000 (Dec. 14, 2018) (delegated letter order).

<sup>40</sup> *Ohio Power Co.*, Docket No. FA17-2-000 (Sept. 6, 2019) (delegated letter order).



refunds to wholesale transmission customers and updated its accounting policies and procedures in areas of noncompliance.

**Northern States Power Company (Minnesota) (NPSM) – Docket No. FA17-4-000.** At NSPM, DAA evaluated compliance with: (1) the approved terms, rates, and conditions of NSPM’s transmission formula rate mechanism provided in Attachment O of MISO’s FERC Electric Tariff, and other jurisdictional rates on file with the Commission; (2) the accounting requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Part 101; (3) the reporting requirements of the FERC Form No. 1 and the Supplemental Form 3-Q, under 18 C.F.R. § 141.1; and (4) preservation of records requirements under 18 C.F.R. Part 125.<sup>41</sup> The audit identified six findings and 24 recommendations that require NSPM to take corrective action. The six findings covered the following areas: (1) recording an income tax receivable that represented a refund of a tax overpayment in Account 165, Prepayments, instead of Account 143, Other Accounts Receivable, resulting in an overstatement of rate base; (2) recording other costs (unspent contributions to joint venture trusts and estimated pending insurance premium refunds) as prepayments in Account 165 that did not qualify as prepayments; (3) the misclassification as operating expenses of certain costs that should be recorded in non-operating expense accounts, including settlement payments relating to employment discrimination claims, contrary to Accounting Release AR-12; (4) the improper recording of amounts relating to contingent liabilities in Account 282.2, Accumulated Provision for Injuries and Damage, without having obtained Commission permission; (5) the use of depreciation rates that had not been approved by the Commission; and (6) failing to follow a consistent capitalization policy for transmission insulators. As a result of the audit, NSPM was directed to submit refund analyses and make subsequent refunds with respect to findings 1 through 3, and update accounting practices and policies, correct journal entries, and submit a corrected FERC Form No. 1 with respect to particular areas of noncompliance identified in the audit report.

**Cleco Power LLC (Cleco Power) – Docket No. FA18-3-000.** At Cleco Power, DAA evaluated compliance with: (1) the tariff requirements governing Cleco Power’s FERC jurisdictional rates, including its transmission formula rate mechanism in Attachment O of MISO’s FERC Electric Tariff; (2) conditions established in the July 17, 2015 Commission Order authorizing a merger involving Cleco Power; (3) the accounting requirements of the Uniform System of Accounts (Public Utilities) under 18 C.F.R. Part 101; and (4) the reporting requirements of the FERC Form No. 1 under 18 C.F.R. § 141.<sup>42</sup> The audit identified 12 findings and 59 recommendations that required Cleco Power to take corrective action. The 12 findings covered the following areas: (1) improper computation of AFUDC by grossing up the return on equity rate and including undistributed subsidiary earnings in the equity balance; (2) improper exclusion of excess and deficient ADIT, created as a result of the 2017 Tax Cut and Jobs Act, from the wholesale transmission formula rate computation; (3) improper inclusion of merger-related internal labor costs and debt cancellation costs in wholesale transmission formula rate cost determinations; (4) improper inclusion of ADIT related to merger commitment costs in wholesale transmission

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<sup>41</sup> *Northern States Power Company (Minnesota)*, Docket No. FA17-4-000 (Aug. 29, 2019) (delegated letter order).

<sup>42</sup> *Cleco Power LLC*, Docket No. FA18-3-000 (Sept. 27, 2019) (delegated letter order).

formula rates; (5) recording of rent received from an affiliate in Account 455, Interdepartmental Rents, rather than correct Account 454, Rent from Electric Property, thereby understating revenue credits; (6) recording operating and maintenance costs associated with a renewable electric generation plant in Account 923, Outside Services Employed, instead of Account 553, Maintenance of Generating and Electric Equipment (Major Only); (7) recording the cost of a transmission asset not owned by Cleco Power in Account 353, Station Equipment, and including the cost in transmission formula rate computations; (8) recording compromise settlement payments relating to a discriminatory employment practice suit in Account 921, Office Supplies and Expenses, instead of Account 426.5, Other Deductions; (9) improperly including the cost of generation, distribution, and gas pipeline assets in the formula rate as Account 105, Electric Plant Held for Future Use, when Cleco Power's formula rate specified that items in Account 105 are only included in the computation of the wholesale transmission revenue requirement to the extent they are transmission-related costs; (10) improper accounting treatment of various non-operating or non-transmission expenses as A&G expenses or functional transmission expenses, including lobbying costs, charitable contributions, membership dues, and storm damage costs incurred on Cleco Power's distribution system; (11) recovery of regulatory assets for which Cleco Power had not obtained the necessary prior authorization from FERC; and (12) not reporting all required information in FERC Form No. 1 filings. As a result of the audit, Cleco Power was directed to submit refund analyses and make subsequent refunds with respect to findings 1 through 10. Other costs that were incorrectly accounted for in plant-in-service and similar accounts were reclassified to appropriate accounts to ensure proper treatment of the costs in the development of future rates. Cleco Power was also directed to update accounting practices and policies, correct journal entries, and update FERC Form No. 1 reporting practices with respect to particular areas of noncompliance identified in the audit report.

## 2. Gas Tariff & Accounting

**Northern Natural Gas Company (Northern Natural) – Docket No. PA16-2-000.** At Northern Natural, DAA evaluated compliance with: (1) selected provisions of Northern Natural's FERC Gas Tariff; (2) accounting regulations of the Uniform System of Accounts Prescribed for Natural Gas Companies (Uniform System of Accounts (Natural Gas)), under 18 C.F.R. Part 201; and (3) reporting requirements of the FERC Form No. 2, under 18 C.F.R. § 260.1.<sup>43</sup> The audit identified five findings and 15 recommendations that required Northern Natural to take corrective action. The five findings covered the following areas: (1) misclassifying certain labor costs averaging about \$2.6 million annually as A&G expenses rather than O&M expenses, and between certain O&M expense accounts; (2) misallocating certain payroll costs and not assigning compressor electric costs to Northern Natural's market-based rate storage project; (3) not maintaining proper records to support payroll allocations to all O&M expense accounts; (4) not performing annual surveys and maintaining records to support the allocation of employee labor costs to construction overheads; and (5) misclassifying operational gas sales revenues and other related activities for system gas imbalance accounting purposes. As a result of the audit, Northern Natural committed to update its accounting procedures and practices in the areas of noncompliance, and make

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<sup>43</sup> *Northern Natural Gas Co.*, Docket No. PA16-2-000 (May 14, 2019) (delegated letter order).



corrections in its next FERC Form No. 2 filing to rectify certain affected account balances and statements.

**Trunkline Gas Company (Trunkline) – Docket No. PA16-4-000.** At Trunkline, DAA evaluated compliance with: (1) select portions of Trunkline’s FERC Gas Tariff; (2) the Uniform System of Accounts (Natural Gas), under 18 C.F.R. Part 201; and (3) the reporting requirements of the FERC Form No. 2, under 18 C.F.R. § 260.1.<sup>44</sup> The audit identified ten findings and made 28 recommendations that required Trunkline to take corrective action. The ten findings covered the following areas: (1) absence of a tariff provision for reservation charge credits to shippers with firm service affected by force majeure and non-force majeure events, and the improper inclusion of maintenance activities in the tariff’s force majeure definition; (2) tariff language not consistent with the Commission’s requirement that all interconnecting pipelines enter into Operational Balancing Agreements (OBAs), and inconsistencies between the administration and management of imbalances and the terms of Trunkline’s Tariff and standard OBA; (3) misreporting gas equivalents in annual fuel reimbursement filings in a manner that did not impact the accuracy of the fuel reimbursement rate charges but reduced the transparency of the gas equivalents reported in the deferred fuel reimbursement account component schedule; (4) recording cash management and affiliate transactions carried for less than a year as long-term investments or cash advances rather than short-term receivables or payables; (5) incorrectly applying an AFUDC rate that exceeded the rate of return reflected in Trunkline’s recourse rates and that did not take into account the effects of Trunkline’s cash management program on its AFUDC rate calculation; (6) classifying labor and other system gas control employee costs as A&G expenses rather than transmission operating expenses, and treating general supervision costs associated with underground storage facilities as transmission, rather than storage, operating expenses; (7) accounting for penalty revenues collected from offending shippers and refunded to non-offending shippers in Account 142, Customer Accounts Receivable, and Account 242, Miscellaneous Current and Accrued Liabilities, rather than Account 495, Other Gas Revenues, and Account 254, Other Regulatory Liabilities; (8) incorrectly accounting for lost-and-unaccounted-for fuel (LAUF) as compressor fuel, rather than in accounts designated for system gas losses; (9) not timely removing from Trunkline’s books certain assets and a regulatory liability for an asset retirement obligation (ARO) associated with facilities Trunkline had sold; and (10) recording incorrect volumes in Account 808.1, Gas Withdrawn from Storage-Debit, and Account 808.2, Gas Delivered to Storage-Credit. As a result of the audit, Trunkline updated its accounting policies and procedures in areas of noncompliance, submitted corrected FERC Form No. 2s, and removed from its plant or operating expense accounts certain improperly recorded expenses.

**Transcontinental Gas Pipe Line Company (Transco) – Docket No. FA18-2-000.** At Transco, DAA evaluated compliance with: (1) selected provisions of Transco’s FERC Gas Tariff; (2) accounting regulations of the Uniform System of Accounts (Natural Gas), under 18 C.F.R. Part 201; and (3) reporting requirements of the FERC Form No. 2, under 18 C.F.R. § 260.1.<sup>45</sup> The audit identified ten findings and 31 recommendations that required Transco to take corrective

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<sup>44</sup> *Trunkline Gas Co.*, Docket No. PA16-4-000 (Oct. 19, 2018) (delegated letter order).

<sup>45</sup> *Transcontinental Gas Pipe Line Co.*, Docket No. FA18-2-000 (June 25, 2019) (delegated letter order).

action. The ten findings covered the following areas: (1) capitalizing as plant the cost of replacing minor items of property rather than recording the cost in maintenance accounts; (2) improperly accounting for allocated direct and indirect overhead operating expenses; (3) accounting for allocated direct and indirect overhead *non-operating* expenses, such as charitable contributions, advertising expenses, and lobbying and political expenses, in utility plant and operating expense accounts rather than non-operating expense accounts; (4) improperly including the cost of unused materials in Account 106, Completed Construction Not Classified; (5) improperly including undistributed subsidiary earnings, accumulated other comprehensive income, and unamortized discounts on long-term debt in the equity and long-term debt balances when computing the AFUDC rate; (6) improperly accounting for feasibility evaluation costs on contemplated construction in a manner that overstated expenses in some periods, and understated them in others, in FERC Form No. 2 filings; (7) reporting expenses in FERC Form No. 2 relating to incremental rate facilities in an inaccurate manner; (8) a lack of required information in FERC Form No. 2 filings; (9) distributing penalty revenues to the shippers that caused the penalties, thereby reducing the amount of penalty revenues that should have gone to non-offending shippers, and not properly accounting for the regulatory liabilities associated with the penalty revenue collected; and (10) adding required reservation charge crediting provisions to three firm storage rate schedules in Transco's FERC Gas Tariff. As a result of the audit, Transco submitted proposed revised accounting entries and FERC Form No. 2 entries in the areas of noncompliance, thereby preventing amounts from potentially being inappropriately collected through future rates, and developed revised accounting policies and practices in the areas of noncompliance.

**Equitrans, L.P. (Equitrans) – Docket No. FA17-6-000.** At Equitrans, DAA evaluated compliance with: (1) selected provisions of Equitrans' FERC Gas Tariff; (2) accounting regulations of the Uniform System of Accounts (Natural Gas), under 18 C.F.R. Part 201; and (3) reporting requirements of the FERC Form No. 2, under 18 C.F.R. § 260.1.<sup>46</sup> The audit identified eight findings and 28 recommendations that required Equitrans to take corrective action. The eight findings covered the following areas: (1) the inappropriate inclusion of *unpaid* contract retention accruals in the calculation of AFUDC; (2) the incorrect inclusion of approximately \$1.3 million of unused construction materials in construction work orders, CWIP, and ultimately plant-in-service, which also resulted in the overstatement of AFUDC; (3) accounting for an income tax receivable that represented a refund for an overpayment in Account 165, Prepayments, rather than Account 146, Accounts Receivable from Associated Companies; (4) recording non-operating expenses, such as charitable donations, penalties, and nonutility expenses, in plant cost accounts and operating expense accounts; (5) recording assets in Account 105, Plant Held for Future Use, when there was no definite plan for their future use in gas service, instead of Account 121, Nonutility Property; (6) failing to file two nonconforming interruptible gathering service agreements with the Commission; (7) not filing Equitrans' effective cash management agreement with the Commission as required by 18 C.F.R. § 260.400; and (8) not including certain required information in its FERC Form No. 2 filings. As a result of the audit, Equitrans submitted proposed revised accounting entries and revised FERC Form No. 2 entries relating to areas of noncompliance, thereby preventing amounts from potentially being inappropriately collected through future rates, and developed revised accounting policies and practices in the areas of noncompliance.

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<sup>46</sup> *Equitrans, L.P.*, Docket No. FA17-6-000 (Oct. 19, 2019) (delegated letter order).

### 3. Electric Tariff & Accounting

**Avista Corporation (Avista) – Docket No. PA18-2-000.** At Avista, DAA evaluated compliance with: (1) the terms, conditions, and rates of Avista’s OATT; (2) the accounting requirements of the Uniform System of Accounts (Public Utilities), under 18 C.F.R. Part 101; (3) the reporting requirements of the FERC Form No. 1 and the Supplemental Form 3-Q, under 18 C.F.R. § 141.1; and (4) the regulations regarding OASIS platforms prescribed in 18 C.F.R. Part 37.<sup>47</sup> The audit identified six findings of noncompliance and made 23 recommendations for corrective action. The six findings covered the following areas: (1) improper reservation of hourly secondary network transmission service to support off-system sales to non-network customers; (2) when computing AFUDC, improperly including undistributed subsidiary earnings in the equity component; including Account 219, Accumulated Other Comprehensive Income, in the equity component; using monthly (instead of the required prior-year-end) balances to compute equity and long-term debt; excluding Account 234, Notes Payable to Associated Companies, from the short-term debt component; and accounting for the excess AFUDC accrual arising from higher state-approved versus Commission-approved AFUDC rates as a cost of plant rather than a regulatory asset in Account 182.3; (3) improper accounting for deferred income taxes relating to the equity component of the AFUDC rate; (4) when removing approximately \$2.8 million of system planning costs improperly capitalized as CWIP, failing to remove the cost of plant amounts relating to AFUDC, the accumulated provision for depreciation, and current and deferred income taxes that stemmed from the improper capitalization; (5) improperly accounting for certain items related to its Asset Retirement Obligations; and (6) failing to comply with the instructions on Page 398, Purchase and Sale of Ancillary Services, in its FERC Form No. 1 filings. The Avista audit also identified an additional matter regarding Avista’s use of Transmission Service Numbers. As a result of the audit, Avista was prevented from potentially recovering amounts inappropriately included in AFUDC or otherwise capitalized, and updated its accounting policies and practices in areas of noncompliance.

**American Electric Power Company, Inc. (AEP) – Docket No. FA17-1-000.** At AEP, DAA evaluated compliance with: (1) cross-subsidization restrictions on affiliate transactions under 18 C.F.R. Part 35; (2) accounting, recordkeeping, and reporting requirements under 18 C.F.R. Part 366; (3) the Uniform System of Accounts For Centralized Service Companies under 18 C.F.R. Part 367; (4) preservation of records requirements for holding companies and service companies under 18 C.F.R. Part 368; and (5) FERC Form No. 60, Annual Report of Centralized Service Companies (FERC Form No. 60), requirements under 18 C.F.R. Part 369. The audit also evaluated the associated public utilities’ transactions with affiliated companies for compliance with the Commission’s accounting requirements under the Uniform System of Accounts (Public Utilities), under 18 C.F.R. Part 101, the applicable reporting requirements in the FERC Form No. 1, under 18 C.F.R. Part 141, and jurisdictional rates on file.<sup>48</sup> The audit identified four findings and made 22 recommendations requiring corrective action. The findings addressed the following areas: (1) when calculating AFUDC, certain AEP jurisdictional utilities improperly included Account 219,

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<sup>47</sup> *Avista Corp.*, Docket No. PA18-2-000 (Sept. 19, 2019) (delegated letter order).

<sup>48</sup> *American Electric Power Company, Inc.*, Docket No. FA17-1-000 (Apr. 23, 2019) (delegated letter order).

Accumulated Other Comprehensive Income, as part of the equity component, and multiple AEP jurisdictional utilities improperly computed AFUDC rates on a monthly basis; (2) AEP improperly included approximately \$295,000 of merger-related transition costs in formula rate determinations and wholesale transmission customer bills; (3) AEP recorded charitable contributions and a penalty payment in various A&G and operation and maintenance (O&M) expense accounts, instead of using the appropriate *non-operating* expense accounts; and (4) various A&G labor, membership dues, outside services, and advertising expenses were misclassified. As a result of the audit, AEP or its jurisdictional utility subsidiaries made refunds to wholesale customers, updated accounting policies and practices in areas of noncompliance, and reclassified amounts that otherwise might have been improperly used in the development of future rates.

**Xcel Energy Inc. (Xcel) – Docket No. FA17-4-000.** At Xcel, DAA evaluated compliance with: (1) cross-subsidization restrictions on affiliate transactions under 18 C.F.R. Part 35; (2) accounting, recordkeeping, and reporting requirements under 18 C.F.R. Part 366; (3) preservation of records requirements for holding companies and service companies under 18 C.F.R. Part 368; and (4) the Uniform System of Accounts for Centralized Service Companies under 18 C.F.R. Part 367. The audit also evaluated the associated public utilities' compliance with the Commission's accounting requirements for transactions with associated companies under the Uniform System of Accounts (Public Utilities), under 18 C.F.R. Part 101 and the applicable reporting requirements in the FERC Form No. 1, under 18 C.F.R. Part 141.<sup>49</sup> The audit identified five findings and made 14 recommendations requiring corrective action. The findings addressed the following areas: (1) Xcel's centralized service company, Xcel Energy Services Inc. (XES), allocated capital costs of corporate software only to the Xcel public utilities, but such capital costs should have been allocated to all Xcel companies benefiting from XES' use of the software, as required by 18 C.F.R. § 376.11; (2) XES incorrectly calculated a cost allocation method used on shared costs for operation, maintenance, and management of the Xcel companies' information technology network; (3) XES allocated income tax expense only to the Xcel public utilities, but such expense should have been allocated to all Xcel companies that caused Xcel to incur income tax liabilities, per the requirements of 18 C.F.R. § 376.11; (4) payments relating to settlement of employment discrimination claims were recorded in operating expense accounts, instead of Account 426.5, Other Deductions, as required by Accounting Release AR-12, and the expenses were passed through to wholesale transmission customers; and (5) XES did not disclose all allocation methodologies that it used to assign costs in its FERC Form No. 60 filings. As a result of the audit, Xcel was directed to submit refund analyses relating to the areas of noncompliance, and update its accounting and FERC Form No. 60 procedures and policies.

## **E. Pending Contested Audit Matters**

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**Dominion Energy Transmission, Inc. (DETI) – FA15-16-000.** At DETI, DAA evaluated compliance with: (1) its FERC Gas tariff; (2) the accounting requirements of the Uniform System of Accounts (Natural Gas), under 18 C.F.R. Part 201; and (3) the reporting requirements of the

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<sup>49</sup> *Xcel Energy Inc.*, Docket No. FA17-4-000 (Aug. 29, 2019) (delegated letter order).

FERC Form No. 2, under 18 C.F.R. § 260.1.<sup>50</sup> The audit identified six findings and 24 recommendations that required DETI to take corrective action. On September 27, 2017, DETI notified DAA that it accepted five of the six findings and intended to contest one finding. As a result of the accepted findings, incorrectly accounted for were reclassified to accounts not used in the development of future cost of service rates.

On December 8, 2017, DETI formally contested the Audit Report's finding that DETI did not use its own book balances and cost rates associated with its debt, equity, and CWIP to compute its AFUDC rate as required by the Commission's accounting requirements. DETI elected to have a paper hearing under the procedures in 18 C.F.R. Part 158. Initial and reply memoranda have been filed by interested entities. This matter is pending before the Commission.

## **F. Accounting Matters**

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DAA administers the Commission's accounting programs established for the electric, natural gas, and oil industries, which are 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 System 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 for the Commission and other stakeholders to set and monitor cost-of-service rates. DAA enables the Commission to achieve this strategic goal through careful consideration of the Commission's ratemaking policies, past Commission actions, industry trends, and external factors (e.g., economic, environmental, and technological changes, and mandates from other regulatory bodies) that impact the industries under the Commission's jurisdiction.

A substantial part of DAA's accounting workload involves coordination across various Commission program offices to provide regulatory accounting 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, and International Accounting Standards Board to address issues that may impact the Commission or its jurisdictional entities.

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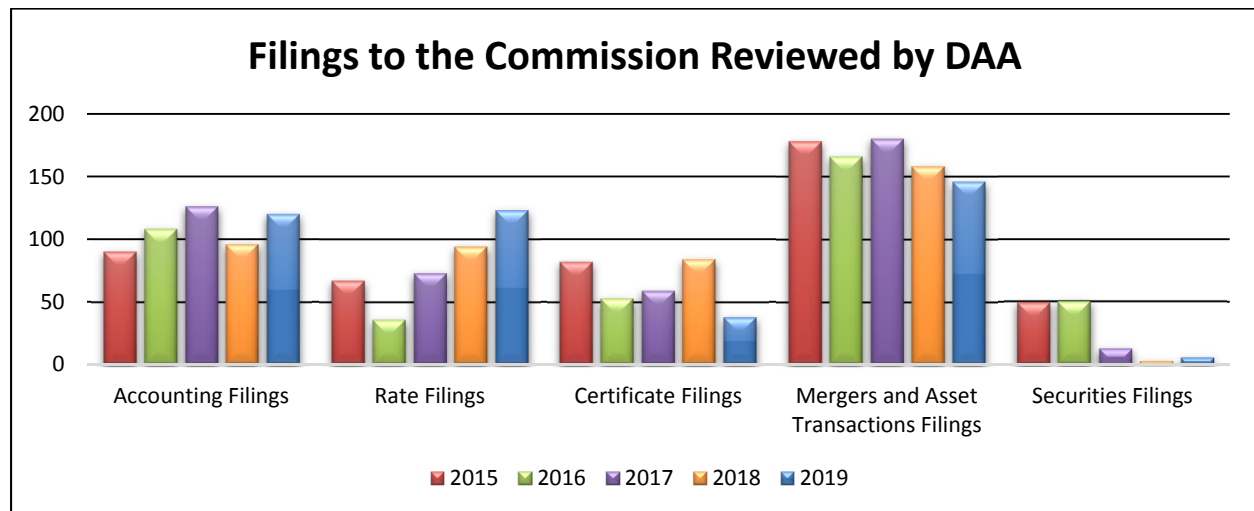
<sup>50</sup> *Dominion Energy Transmission, Inc.*, Docket No. FA15-16-000 (Nov. 8, 2017) (delegated letter order).



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 (OEA), 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 FY2019 Filings Reviewed by DAA

In FY2019, DAA advised and acted on 433 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 petitions 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, identifying and analyzing the accounting implications of those requests. Over the past five years, DAA has reviewed over 2,000 Commission proceedings to ensure proper accounting is followed and to advise the Commission of potential rate impacts related to accounting decisions.



## 2. Requests for Approval of the Chief Accountant

In FY2019, DAA took action under the Chief Accountant’s delegated authority on 120 accounting filings requesting approval of a proposed accounting treatment or financial reporting matter.<sup>51</sup> These filings raised various issues related to the Commission’s accounting and financial

<sup>51</sup> The accounting filings are docketed in the Commission’s eLibrary with the “AC” docket prefix (AC Dockets).

reporting requirements for electric, natural gas, and oil pipeline entities. Of note in FY2019, there was a continued high volume of accounting filings related to asset acquisitions, similar to FY2018. There was also a notable increase in the number of filings related to deferral of early plant retirement costs in regulatory accounts in response to applications by jurisdictional entities to recover those stranded costs in rates. The stranded costs, upon approval by the Chief Accountant, are held in regulatory accounts and amortized in concert with the period of rate recovery approved by the rate regulator.

The Chief Accountant also issued a number of orders approving the proposed accounting for certain Account Standards Updates (ASU) and new Accounting Standards Codifications (ASC) issued by the FASB. The areas affected by the ASUs during FY2019 included changes in the fair value of equity instruments previously recorded in accumulated other comprehensive income (ASU 2016-01),<sup>52</sup> changes to revenue recognition of contracts with customers (ASC 606),<sup>53</sup> and the stranded tax effects of the Tax Cuts and Jobs Act of 2017 (TCJA) within accumulated other comprehensive income (ASU 2018-02).<sup>54</sup> The orders pertaining to ASU 2018-02 are further discussed below with other accounting issuances related to the TCJA.

When jurisdictional entities would like to make changes or corrections in accounting that require a prior period adjustment and may affect their regulatory accounting, the Commission's regulations require them to file a request with the Commission and receive approval before using Account 439, Adjustments to Retained Earnings, for public utilities and licensees, centralized service companies, and natural gas companies, and Account 705, Prior Period Adjustments to Beginning Retained Income Account, for oil pipeline companies. In reviewing these filings, DAA staff considers the changes to retained earnings as a result of the prior period adjustments and their effects on each entity's capital structure. In FY2019, the Chief Accountant considered 10 of these filings, concluded that the requested prior period adjustments were adequately supported, and issued letter orders approving the requests. The Chief Accountant letter orders also noted that the approval is 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 proposed adjustments.

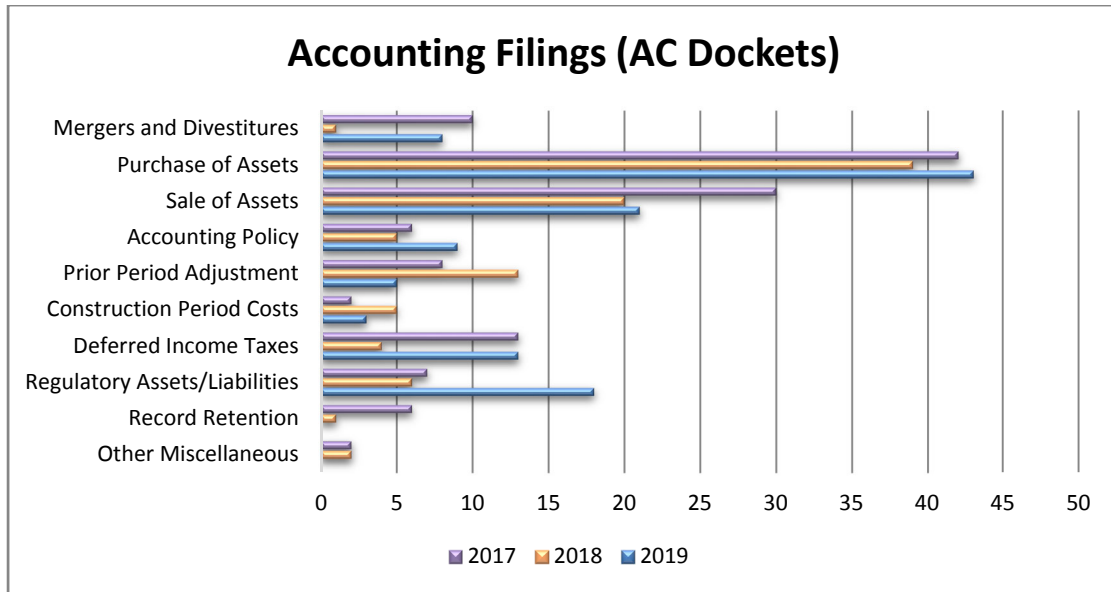
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<sup>52</sup> See FASB Accounting Standards Update No. 2016-01, Recognition and Measurement of Financial Assets and Financial Liabilities (January 2016).

<sup>53</sup> See FASB Accounting Standards Codification Topic 606, Revenue from Contracts with Customers.

<sup>54</sup> See FASB Accounting Standards Update No. 2018-02, Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income (February 2018).





### 3. Rate Proceedings

In FY2019, DAA participated in 123 rate proceedings that continued predominately to involve electric formula rate proceedings, but also included natural gas and oil rate proceedings. DAA worked with other Commission program offices to make recommendations related to accounting and financial issues and their effects on rates. Since many electric and natural gas rates are derived from accounting information in FERC Form Nos. 1 and 2, DAA sought to ensure that accounting information in rate proceedings was computed and presented consistently with the Commission’s requirements. DAA also worked with other Commission program offices to enhance the transparency of financial information affecting formula rates so that all stakeholders have an opportunity to review the costs included in rates. Recurring areas of emphasis in DAA’s rate filing reviews during FY2019 included stranded costs associated with early plant retirements, asset retirement obligations, pensions and post-retirement benefits other than pensions, and allocation of expenses to production, transmission, and distribution.

### 4. Certificate Proceedings

In FY2019, DAA reviewed 38 natural gas pipeline certificate applications seeking various authorizations, including to: (1) construct, own, and operate new pipeline facilities; (2) acquire pipeline facilities; (3) abandon pipeline facilities in place, by removal, or by sale; and (4) establish initial recourse rates for new pipeline service. DAA continued to assist other Commission program offices in the development of just and reasonable rates by reviewing construction costs and other items used to determine initial recourse rates, including O&M expenses, depreciation, taxes, and overall rate of return. In reviewing such information during FY2019, DAA continued to focus on whether applicants followed Commission accounting requirements related to asset abandonment, construction, AFUDC, contributions in aid of construction, regulatory assets and liabilities, leases, and system gas.

## **5. Merger and Acquisition Proceedings**

In FY2019, DAA reviewed four merger and divestiture applications and approximately 143 asset acquisition and sales applications from public utilities under section 203 of the Federal Power Act (FPA). 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 also examines whether the accounting is consistent with any hold-harmless or other rate requirements discussed in a merger order. For asset acquisition 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 maintained the appropriate original cost and historical accumulated depreciation of acquired utility plant and properly recorded acquisition premiums or discounts. DAA also reviewed merger and acquisition accounting entries to determine whether they provided enough transparency to the Commission and all interested parties to evaluate the impact on rates. 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 FY2019, DAA reviewed six 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 these filings, 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 FY2019, DAA responded to 74 accounting inquiries from jurisdictional entities and other stakeholders on various accounting and financial topics. Accounting inquiries are made through the Compliance Help Desk, the Accounting Inquiries phone line and email, or directly to DAA staff. A large number of accounting inquiries during FY2019 sought accounting and financial reporting direction on capitalization of various costs, taxes, and functional classifications of electric plant. DAA responds to such accounting inquiries by providing informal accounting and financial reporting guidance based on Commission precedent and regulations, in addition to instructing individuals on how to find documents and regulations using the Commission's eLibrary system and Title 18 of the Code of Federal Regulations available electronically. Such informal accounting and financial reporting guidance is not binding on the Commission, and does not grant waiver of a Commission regulation or order.

## 8. Accounting for the Tax Cuts and Jobs Act of 2017 (TCJA)

On November 15, 2018, the Commission issued a policy statement in Docket No. PL19-2-000 to discuss certain rate and accounting implications resulting from the TCJA.<sup>55</sup> Specifically, the Commission required that public utilities and natural gas pipelines record excess and deficient Accumulated Deferred Income Taxes (ADIT) in Account 254, Other Regulatory Liabilities, and Account 182.3, Other Regulatory Assets, respectively. The excess and deficient ADIT should then be amortized consistent with the manner in which such amounts are reflected in rates using Account 410.1, Provision for Deferred Income Taxes, Utility Operating Income, and Account 411.1, Provision for Deferred Income Taxes – Credit, Utility Operating Income. The policy statement also clarified that for public utilities and natural gas pipelines, the balances of excess and deficient ADIT should continue to be recognized as regulatory liabilities and assets after an asset sale, in cases where the excess and deficient ADIT do not transfer to the purchaser of the asset. Similarly, public utilities and natural gas companies should continue to account for excess and deficient ADIT related to retirements as regulatory liabilities and assets.

Separately, the Chief Accountant issued numerous letters of approval during FY2019 for requests to reclassify the deferred tax effects stranded in Accumulated Other Comprehensive Income (AOCI) as a result of the TCJA's impact on retained earnings. This reclassification was necessary because other comprehensive income is accounted for net of tax, including any deferred tax effects. When items are realized and transferred from AOCI to income, the income tax effects are recognized at current tax rates. The TCJA created a discord between those items already recognized net of tax in AOCI using the previous tax rates and the eventual tax recognition in income using the new tax rates. This difference is considered stranded in AOCI. In order to remove these stranded amounts from AOCI, regulated entities have requested approval to move these amounts directly into retained earnings. This treatment is consistent with the allowed accounting treatment by the FASB under ASU 2018-02.

## 9. Accounting for Leases

On December 27, 2018, the Chief Accountant issued accounting guidance in Docket No. A119-1-000 relating to the accounting for leases. The accounting guidance was issued in response to multiple inquiries from jurisdictional entities and other regulatory bodies regarding whether and how the Commission would implement ASC 842 issued by FASB. Prior to ASC 842, under generally accepted accounting principles, leases were classified either as operating leases, which did not recognize any assets or liabilities on the balance sheet, or capital leases, which recognized leased assets and lease obligations on the balance sheet. The criteria for classifying a lease as a capital lease depended on whether at least one of four criteria were met. If any one of those criteria were met, the lease was considered a capital lease. ASC 842 changed the nomenclature of the two classes of leases to operating leases and finance leases. While the requirement to meet at least one of four criteria to classify a lease as a finance lease is similar to that previously used for capital leases (i.e., the distinction between an operating lease and a capital lease is similar to the distinction between an operating lease and a finance lease), there was a significant change to accounting for

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<sup>55</sup> *Accounting and Ratemaking Treatment of Accumulated Deferred Income Taxes and Treatment Following the Sale or Retirement of an Asset*, Docket No. PL19-2-000 (Nov. 15, 2018).

operating leases. Under ASC 842, all leases, including operating leases, require recognition of assets and liabilities on the balance sheet if the lease term is over 12 months. With this change, most companies will now reflect much larger balance sheets than those prior to ASC 842.

The Chief Accountant guidance letter clarified that under the Commission's accounting requirements, jurisdictional entities may also recognize assets and liabilities on the balance sheet for operating leases consistent with ASC 842. However, while ASC 842 requires the presentation of operating leases and finance leases separately on the balance sheet, the Chief Accountant explained that the Uniform System of Accounts only provides one account for leased assets (Account 101.1, Property under Capital Leases). Similarly, the Uniform System of Accounts only provides one account for the current portion of lease liabilities (Account 243, Obligations under Capital Leases–Current) and one account for the long-term portion of lease liabilities (Account 227, Obligations under Capital Leases–Noncurrent). Accordingly, both operating leases and finance leases on the balance sheet must be accounted for under the same lease asset and lease liability accounts. Another difference between lease accounting under ASC 842 and lease accounting under the Commission's accounting requirements is whether to recognize land rights as a lease. Under ASC 842, certain easements are considered leases, while the Uniform System of Accounts requires all land rights to be recognized as part of utility plant in service.

Staff notes that changes in accounting by the FASB, such as ASC 842, are not to be construed as a change to, or a waiver of, the Commission's accounting requirements. When necessary, the Chief Accountant or the Commission will issue guidance on the implementation of changes in accounting standards issued by the FASB.

## **10. International Financial Reporting Standards**

DAA continued its participation with the International Financial Reporting Standards (IFRS) Foundation, the International Accounting Standards Board (IASB), and their project on Rate-Regulated Activities (RRA), which remains of special interest to the Commission and its regulated entities. In FY2019, the Chief Accountant, as a Consultative Group member for the RRA Project, participated in informal and formal meetings with U.S. regulated entities, state commissions, and international regulators to inform the development of an IFRS accounting standard that provides for regulatory assets and liabilities in IFRS financial statements. During this period, the IASB has begun to develop an accounting model for recognizing regulatory assets and liabilities on IFRS financial statements, and is expected to issue an exposure draft for comments during the first half of calendar year 2020. In FY2020, the Chief Accountant stands ready to continue providing expert advice to IASB staff regarding the development of permanent standards on rate-regulated activities.

# DIVISION OF ANALYTICS AND SURVEILLANCE

## A. Overview

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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 potentially calls for investigation. They do this not only by conducting surveillance and inquiries of the natural gas and electric markets, but also by reviewing market monitor referrals<sup>56</sup> 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 analysis, market event analysis, 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.<sup>57</sup> On average, the Commission receives, on a non-public basis, approximately seven gigabytes of data in more than 1,350 tables each day from the six organized markets combined. Each ISO/RTO database is different, and DAS is responsible for understanding the particular nuances of each database and preparing them for use in surveillance screens and analyses.

Similarly, pursuant to Order No. 771,<sup>58</sup> the Commission gained access to the electronic tags (eTags) used to schedule the transmission of electric power interchange transactions in jurisdictional wholesale markets by requiring that each covered eTag identify the Commission as a party authorized to review its contents. The Commission has access to approximately 7.6 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

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<sup>56</sup> 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.”

<sup>57</sup> *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).

<sup>58</sup> *Availability of E-Tag Information to Commission Staff*, Order No. 771, 141 FERC ¶ 61,235 (2012).

continue to use these data sources, EQR data, and data from a variety of subscription-based services, extensively.

## **B. Surveillance**

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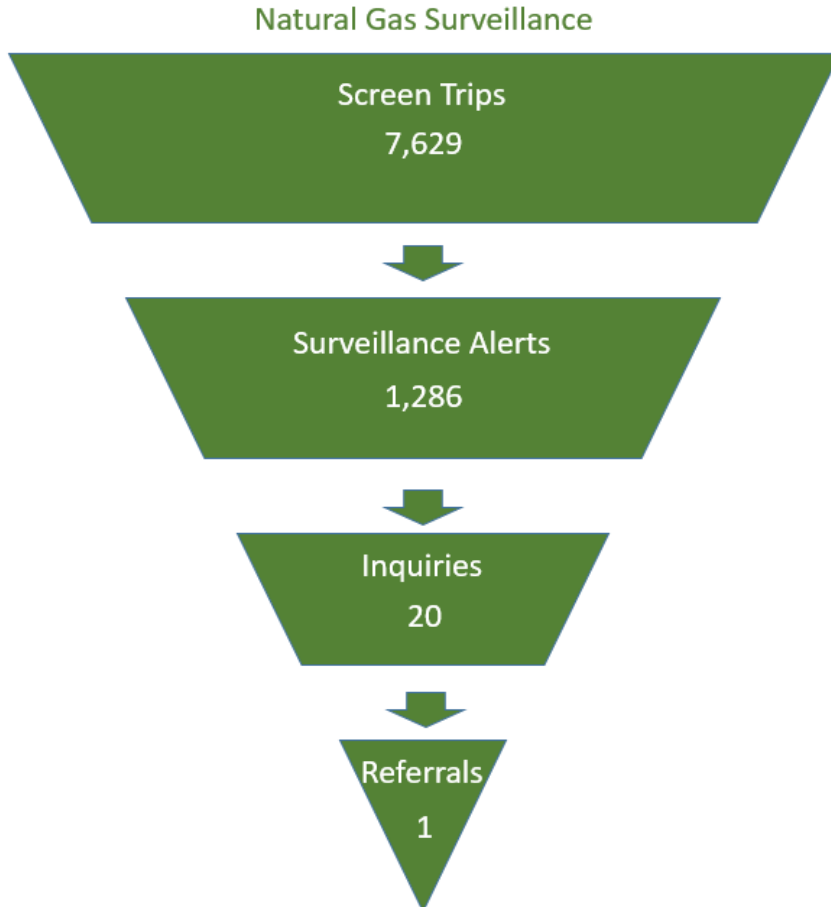
As part of its surveillance function, DAS develops, refines, and implements surveillance tools and algorithmic screens to perform continuous surveillance and analysis of market participant behavior, economic incentives, operations, and price formation, both in the natural gas and electricity markets. 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 explanations for the conduct. Staff classifies this enhanced review as the opening of a surveillance inquiry. If, after conducting an inquiry, staff is still concerned that there is a potential violation, it will recommend that DOI open an investigation into the matter.

### **1. Natural Gas**

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

In FY2019, natural gas surveillance screens produced approximately 7,629 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 FY2019, 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 1,286 surveillance alerts that ranged in severity from low to high concern. When concerns persisted through more thorough review, DAS opened a surveillance inquiry, which is 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 FY2019, DAS conducted 20 such natural gas surveillance inquiries. Of these inquiries, DAS referred one to DOI for investigation.



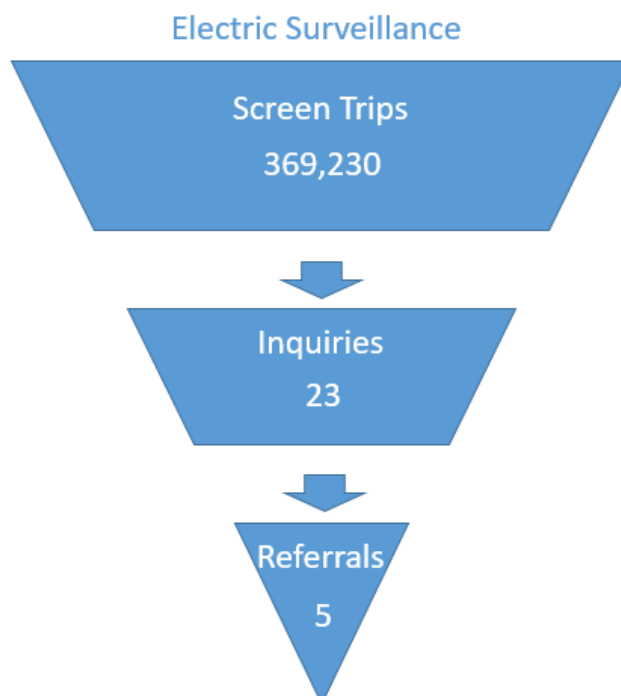


## 2. Electricity

DAS accesses data from a variety of sources to screen for anomalies and potentially manipulative behavior in the ISOs/RTOs and bilateral wholesale electricity markets. During FY2019, staff ran monthly and weekly screens to identify patterns by monitoring the interactions between bids and cleared physical and financially-settled electricity products. In particular, these screens identify financial transmission rights and swap-futures that settle against nodes that are affected by transmission constraints where market participants also trade virtuals, generate electricity, purchase electricity, or move power between Balancing Authorities.

During the fiscal year, staff continued to refine its processes for screening to detect: (1) uneconomic virtual transactions by node, zone, and constraint; (2) 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 FY2019, DAS ran and reviewed 83 electric surveillance screens; monthly, hourly and intra-hour sub-screens; and reports for over 37,000 hub and pricing nodes within the six ISOs/RTOs. Additionally, DAS screened non-RTO markets and cross-RTO portfolio trades for potential manipulation. In reviewing screen trips and, in some cases, after communicating with the ISO/RTO Market Monitoring Units, DAS identified 23 instances of market behavior that required further analysis through a surveillance inquiry. Of the 23 electric surveillance inquiries, five were referred to DOI for investigation, twelve were closed with no referral, and six remain open with staff continuing its analytic work.



### 3. Illustrative DAS Surveillance Inquiries Closed With No Referral

**Market Manipulation (Gas).** DAS natural gas surveillance screens identified a market participant selling at low prices and with high market concentration in bidweek trading at a hub in the West, while holding large short financial basis positions. This created short exposure to next-month bidweek indices like Platts Inside FERC Gas Market Report (IFERC). Staff contacted the market participant, who explained that: (1) the participant needed to sell gas acquired under a long-term contract; (2) limited information concerning current events in the market affected supply and exacerbated the price collapse; and (3) the market experienced low liquidity during the trading period. After staff reviewed additional information provided by the market participant and verified market conditions, DAS closed the surveillance inquiry with no referral to DOI.

**Market Manipulation (Gas).** DAS identified a market participant selling at consecutively lower prices into short financial positions at a western hub during bidweek. At the same time, staff observed that published indices and trade prices diverged. Staff collected index and transaction data to develop a clear picture of the trades' effect on the index price. Staff held a conference call with the market participant, specifically the gas trader, the gas-trading manager, the company's

compliance officer, and outside counsel to discuss the low priced trades. On the call, the company explained its motivation, trading strategy, and build-up of financial positions, as well as the market conditions. In addition, the company sent DAS additional data on pipeline capacity, daily exposure, and over-the-counter (OTC) sales. The company also outlined its internal compliance review process. After staff verified additional information provided by the market participant, DAS closed the matter with no referral to DOI.

**Market Manipulation (Gas/Electric).** DAS evaluated a tip from a Hotline caller that alleged that a market participant imported gas uneconomically and depressed index prices for multiple months to benefit short financial positions. DAS observed that the accused market participant had minimal physical trading activity in the relevant hub, but that it had short financial gas and power positions that stood to benefit from market movements. Upon review, DAS determined that the company's financial gas and power sales could have been a reasonable mechanism to secure fuel for affiliated power generation. DAS closed the inquiry without referral to DOI.

**Market Manipulation (Gas).** DAS reviewed the natural gas trading activities of electric generators that triggered certain key screen trips during specific market events. Staff examined whether this activity might be responsible for some of the high natural gas and related power prices. Staff requested next-day and same-day bids and offers from ICE. The data did not show anomalous order activity, and, therefore, DAS did not refer this matter to DOI.

**Market Manipulation (Gas).** DAS natural gas surveillance screens identified a company that sold gas with high market share, losses, and a large short financial basis position during a bidweek at a northeastern hub. Staff was concerned that the company was depressing prices at this hub in both bidweek and next day markets to benefit its financial short position and to create lower prices for its purchase needs at other hubs in the region. Staff held a conference call with the company and received additional information on the company's interrelated pipeline capacity, risk exposures, and physical transactions. Staff determined that the company had engaged in transportation capacity transactions that had firm deliverability to the hub, and basis spreads along the transport path to an upstream hub justified the pricing of its sales at the hub in question. DAS closed the surveillance inquiry with no referral to DOI.

**Market Manipulation (Electric).** DAS staff routinely reviews cross-market transactions that result in an uneconomic flow of power across ISO/RTO boundaries, because they have the potential to impact prices in a neighboring ISO/RTO. In FY2019, DAS electric surveillance screens flagged more than one market participant exporting power in quantities that were large relative to the interface limit. In these cases, staff ran additional analyses on the market participants' portfolios in both the exporting and importing markets. Staff reviewed potentially benefiting positions such as generation, swaps, and swap futures. DAS closed these inquiries without a referral to DOI, because it did not find a nexus between the loss-making interchange trades and profitable trades elsewhere in the market participants' portfolios.

**Market Manipulation (Electric).** DAS identified a power plant that received large uplift payments during a shoulder month period. One of the plant's units was on outage, and the other units were needed for reliability. In addition, the start-up costs submitted for the plant during this shoulder month period were higher than normal. Further research revealed that the plant had a temporary adder in place. The market participant provided information on the additional costs

that demonstrated that they related to the ongoing operation of the remaining units. DAS closed this inquiry with no referral to DOI.

**Market Manipulation (Electric).** DAS electric surveillance screens identified a market participant that repeatedly sold physical power at a Western bilateral trading hub, while appearing to hold a corresponding leveraged short financial position at the same hub that would benefit from a lower index. The market participant had high concentration levels and often transacted at the beginning of trade sessions when the bid-ask spread was the highest. Staff conducted an inquiry into the market participant's portfolio and determined that the market participant was using hub transactions to market output from a plant it owned to the broader region, and that the physical power sales were economic. Staff further determined that, after accounting for all the market participant's physical and financial exposure to the hub, the financial position was not leveraged. As a result, the inquiry was closed without a referral to DOI.

**Market Manipulation (Electric).** DAS routinely focuses on virtual trading. Several surveillance screens identify virtual bidding behavior that appears uneconomic or otherwise anomalous. In the past year, several market participants were flagged for further analysis. In one such case, a market participant consistently traded Decrement Bids (DECs) into a large, leveraged long swap-futures position. Deeper analysis revealed that the trader had an over-the-counter short position that was being hedged with the swap-futures. As a result, the inquiry was closed with no referral to DOI.

**Market Manipulation (Electric).** DAS electric surveillance screens identified a market participant whose virtual positions appeared to be creating or aggravating a binding constraint in the day-ahead market. Staff analyzed the trader's effective positions potentially affecting the constraint, and its effective downstream positions that could benefit. Staff concluded that the virtual positions were too small and inconsistent throughout the month to cause the constraint to bind. As a result, the inquiry was closed with no referral to DOI.

## C. Analytics

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During FY2019, DAS worked on approximately 45 investigations, some of which are discussed above in the DOI section. Many of these investigations involve 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) assessing market conditions during periods of suspected manipulation; (2) identifying patterns of market activity that could indicate market manipulation; (3) identifying time periods in which potentially manipulative activities occurred; (4) fully reconstructing and analyzing companies' trading portfolios; (5) supporting DOI in taking investigative testimony; and (6) calculating the amount of unjust profits and market harm resulting from 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. Data Management

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During FY2019, DAS staff worked to streamline its Order No. 760 data collection efforts and to improve data usability within DAS and throughout the Commission. On streamlining its Order No. 760 collection, DAS' efforts included: (1) deploying a centralized platform with each ISO/RTO to track their system changes and to track issues; and (2) working with FERC's Office of the Chief Information Officer to more quickly deploy ISO/RTO data model changes into FERC's Order No. 760 databases.

On the data usability front, DAS' efforts in FY2019 included: (1) researching best-in-class data management organizational structures in government; (2) designing, building, and maintaining managed data pipelines; and (3) collaborating across offices to improve master data management. In addition, DAS, in collaboration with FERC IT, deployed the first cloud environment with secure production data at the Commission. Using this environment, the team delivered five proof-of-concepts, including new data visualization interfaces for important electric market data. Finally, the team designed, recommended, and supported the creation of the new Data Governance Division in the Office of the Executive Director. This Division, led by the Commission's first Chief Data Officer, will pursue best-in-class data strategy, management, and analytics. These data management efforts are consistent with Objective 3.1 of the Commission's FY2018-2022 Strategic Plan.<sup>59</sup>

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<sup>59</sup> See Strategic Plan, *supra* note 4, at 21-25 (Objective 3.1).

# DIVISION OF ENERGY MARKET OVERSIGHT

## A. Overview

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In support of the Commission's responsibility to ensure just and reasonable rates, terms, and conditions for consumers, the Division of Energy Market Oversight (DEMO) was responsible for monitoring and analyzing the nation's wholesale natural gas and electric power markets. DEMO performed this monitoring and analysis by: (1) examining and analyzing the structure and operation of the markets to identify significant market events and trends, inefficient market rules, tariff and rule violations, and other unusual market behavior; (2) analyzing market-based rate transactions to determine whether entities are exercising market power, and reporting its various analyses and observations to the Commission; (3) collaborating with other Commission offices to develop regulatory strategies, focusing on the competitiveness, fairness, and efficiency of wholesale energy markets; (4) administering, analyzing, and ensuring compliance with the filing requirements of Electric Quarterly Reports (EQRs) and various Commission forms; and (5) conducting outreach to and communication with the public. As described above, pursuant to a September 2019 realignment, DEMO's functions were realigned to better reflect the key functions and mission statements of Commission offices. The functions described in this section continue to be carried out by staff in OEPI, DAA, and DAS.

## B. Market Monitoring

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DEMO staff examined data from a variety of sources to review market fundamentals and emerging trends, and to examine the structure, operation, and interaction of natural gas and electric markets. As developments warranted, DEMO staff initiated projects designed to evaluate market trends and assess participant behavior. Staff also presented analyses at Commission meetings and made analyses available to the public on the Commission website. During FY2019, such reports and presentations included the following:

### 1. 2018 State of the Markets Report

DEMO presented to the Commission, and made public, its State of the Markets report, which assessed the significant events in the energy markets during the prior year.<sup>60</sup> Posted on April 18, 2019, the report for 2018 reviewed trends and events in natural gas and power markets, including trends in prices, supply, and demand. The report also reviewed the development of US pipeline infrastructure and the rapid increase in the LNG export industry.

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<sup>60</sup> See State of the Markets Report 2018, available at <http://www.ferc.gov/market-assessments/reports-analyses/st-mkt-ovr/2018-A-3-report.pdf>.



## 2. Seasonal Market Assessments

DEMO prepared seasonal assessments that it presented at Commission meetings and made available to the public on the Commission website. In FY2019, DEMO's seasonal assessments included the following:

**Winter 2018-2019 Energy Market Assessment, October 18, 2018.** DEMO staff presented its assessment of fuel and electricity market preparedness for the 2018-19 winter season. For fuels markets, the assessment covered natural gas storage volumes, regional natural gas price outlooks, and pipeline capacity expansion. For electricity markets, the assessment examined gas-oil switching in the Eastern U.S., including the use of dual-fuel generators to hedge fuel price volatility, as well as the adequacy of regional electric power supplies and trends in capacity additions and retirements. The assessment also discussed gas pipeline restrictions in Southern California and ISO New England's Pay-for-Performance capacity construct.<sup>61</sup>

**Summer 2019 Energy Market and Reliability Assessment, May 16, 2019.** This assessment reviewed the outlook for the electricity and fuels markets for summer 2019. For electricity markets, the assessment discussed the adequacy and diversity of regional electric power supplies, CAISO's hydroelectric generation outlook, and trends in renewable generation and battery storage. For fuels markets, the assessment presented an analysis of regional natural gas futures prices, as well as the growth in LNG exports. The presentation also discussed expectations for natural gas storage volumes.<sup>62</sup>

As of the September 2019 realignment, these reports will continue to be drafted and presented by staff now assigned to OEPI.

## C. Market-Based Rate *Ex Post* Analysis

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DEMO developed, refined, and implemented tools and algorithmic indicators to conduct ongoing analysis of transactional and other market data to detect the presence of market power, and 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 an exercise of market power. Once such outcomes were identified, DEMO coordinated with other Commission program offices to determine whether to recommend the Commission take action to remedy market power concerns. DEMO also used these tools to assist in analyzing applications and filings for market-based rates, public utility mergers, and other docketed proceedings. Since the September 2019 realignment, this function has been and will continue to be performed by staff now assigned to DAS.

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<sup>61</sup> See Winter 2018-2019 Energy Market Assessment, available at <http://www.ferc.gov/market-assessments/reports-analyses/mkt-views/2018/10-18-18-A-3.pdf>.

<sup>62</sup> See Summer 2019 Reliability and Energy Market Assessment, available at <http://www.ferc.gov/market-assessments/reports-analyses/mkt-views/2019/05-16-19.pdf>.

## D. Commission Orders and Rulemakings

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DEMO assisted the Commission in evaluating the efficacy of certain regulatory policies in light of evolving energy markets and ensured that the Commission has the information needed to administer and monitor the markets effectively. In FY2019, DEMO assisted with over 40 docketed Commission proceedings. Through its work on these matters, DEMO sought to enhance market transparency and efficiency while balancing the regulatory burden on market participants. Since the September 2019 realignment, this function has been and will continue to be performed by staff now assigned to DAS and OEPI.

## E. Forms Administration and Compliance

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DEMO staff administered and ensured 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 (2012), and Part 35 of the Commission's regulations, 18 C.F.R. Part 35 (2019), 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.<sup>63</sup>

In FY2019, the Commission received EQR submittals from nearly 2,600 entities each quarter. DEMO assessed whether sellers 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. It also coordinated with DAA on EQR issues that arose during audits and submitted candidate entities that did not timely file their EQRs to OEMR for possible revocation of Market-Based Rate authority. DEMO held one EQR user group meeting in FY2019 to conduct outreach

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<sup>63</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127 (2002), *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074 (2002), *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342 (2002), *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003), *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 (2007), *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

with the filing community and to discuss potential system improvements and enhancements. More than 370 participants attended this meeting either in person or via webcast/phone. Staff also updated the EQR Frequently Asked Questions (FAQs)<sup>64</sup> and the provided additional assistance to filers.

Since the September 2019 realignment, this function has been and will continue to be performed by staff now assigned to DAA.

## 2. eForms Refresh Project

On April 16, 2015, the Commission directed Commission staff to begin the process of replacing its electronic filing format for many of the forms submitted by the industry, as the current filing software is no longer supported.<sup>65</sup> On June 20, 2019, the Commission issued a final rule adopting eXtensible Business Reporting Language (XBRL) as the standard for filing these forms.<sup>66</sup> Throughout FY2019, DEMO staff, with the assistance of subject matter and technical experts from other Commission program offices, worked on the process for selecting a contractor to develop the XBRL standard and on resolving issues associated with transitioning from the current filing software to the XBRL standard.

Since the September 2019 realignment, this function has been and will continue to be performed by staff now assigned to DAA.

## F. Outreach and Communication

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DEMO made some of its analyses available to the public by posting reports on its website and hosting periodic snapshot presentations. Staff also briefed visiting industry participants, state and federal officials, and foreign delegations.

### 1. Website

DEMO published data and analyses on the FERC website, which was organized into pages for: (1) national overviews of natural gas and electricity markets; and (2) ten regional electricity and five regional natural gas markets.<sup>67</sup> The regional market pages provided charts, tables, and maps displaying market characteristics and outcomes.

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<sup>64</sup> See EQR Frequently Asked Questions, available at <http://www.ferc.gov/resources/faqs/eqr-2013.asp>.

<sup>65</sup> *Order Instituting Proceeding to Develop Electronic Filing Protocols for Commission Forms*, 151 FERC ¶ 61,025 (2015).

<sup>66</sup> *Revisions to the Filing Process for Commission Forms*, Order No. 859, 167 FERC ¶ 61,241 (2019).

<sup>67</sup> This information is available at <https://www.ferc.gov/market-assessments/market-assessments.asp>.

## 2. Snapshot Calls

DEMO held semi-annual conference calls with representatives of public utility commissions and state agencies in the eastern, central, and western states. These calls provided a current “snapshot” of energy markets. Regional Snapshot Reports, which included data and information on natural gas, electricity, LNG, weather, infrastructure development, and other market developments, served as the basis for discussion on the calls. DEMO’s Snapshot Reports are available on the FERC website and are archived back to 2007.<sup>68</sup>

## 3. Domestic and Foreign Delegation Briefings

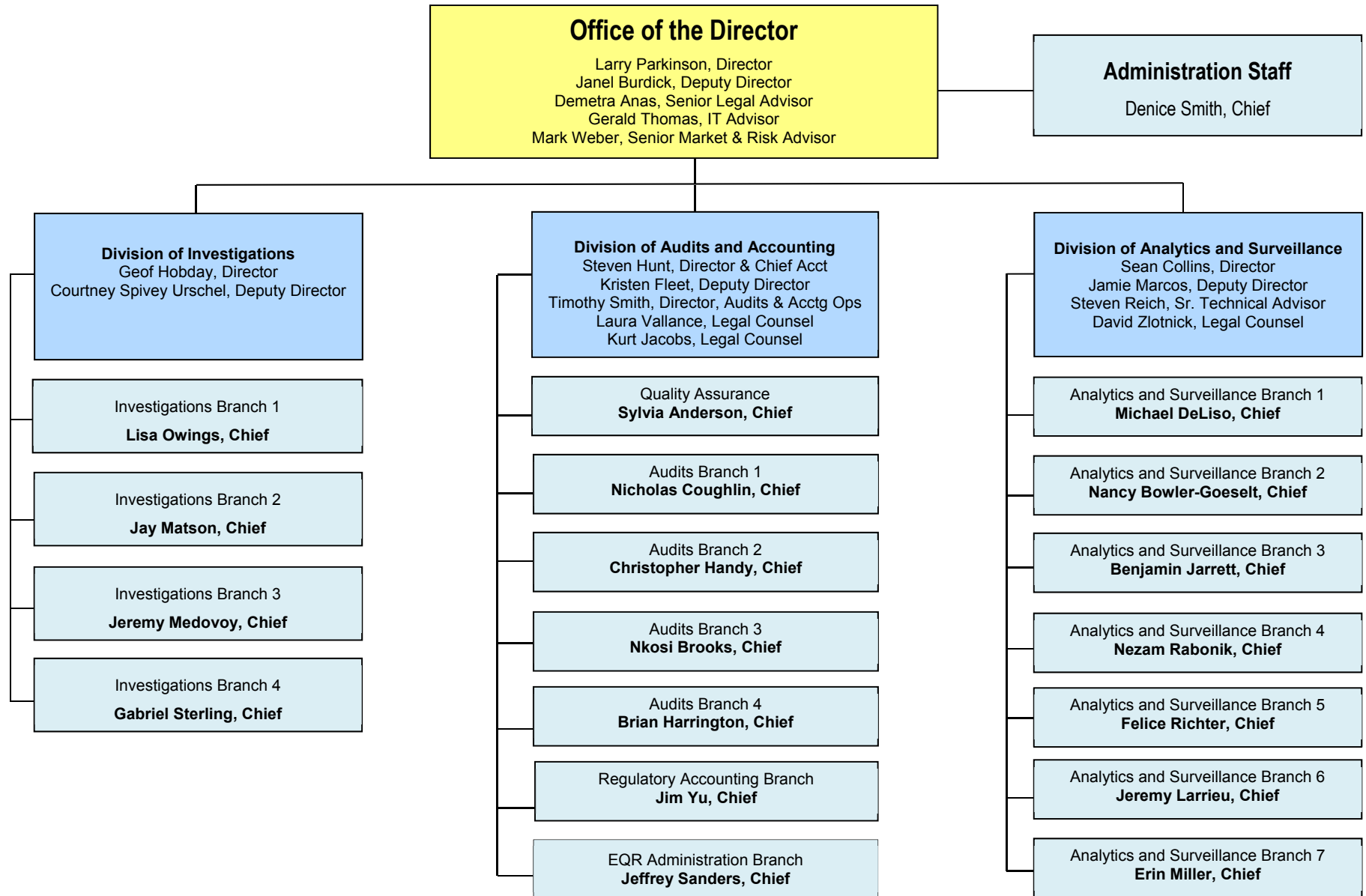
DEMO periodically hosted visitors, including domestic and foreign delegations of regulators and industry participants, who were interested in energy markets and in the Commission’s market monitoring activities. In FY2019, DEMO conducted 12 briefings for various domestic and foreign delegations in the Market Monitoring Center.

Since the September 2019 realignment, these outreach functions have been and will continue to be performed by staff now assigned to DAS and OEPI.

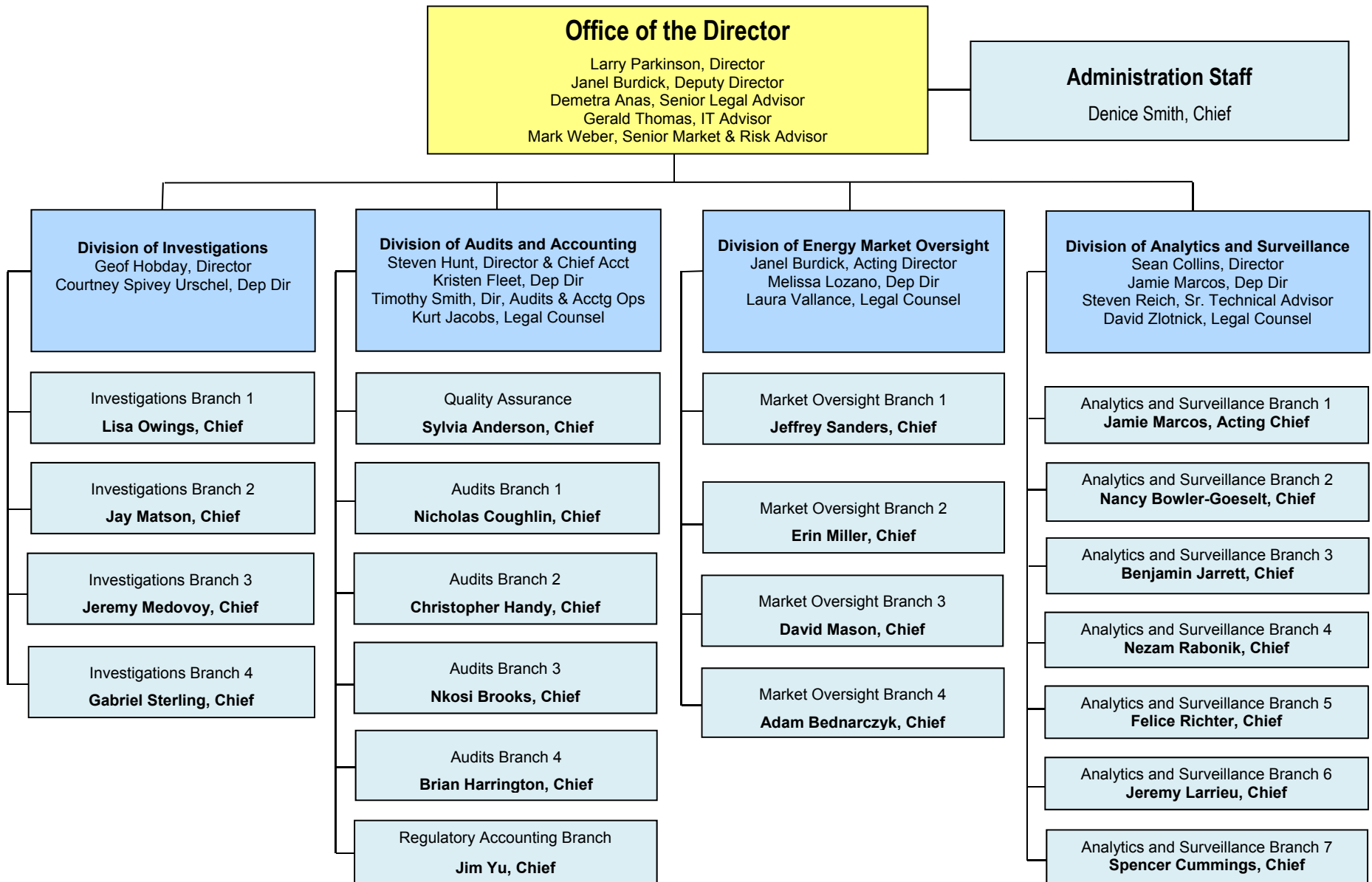
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<sup>68</sup> DEMO’s Snapshot Reports are available at <https://www.ferc.gov/market-assessments/mkt-snp-sht/mkt-snp-sht.asp>.

# APPENDIX A1: OFFICE OF ENFORCEMENT ORGANIZATION CHART (CURRENT)



# APPENDIX A2: OFFICE OF ENFORCEMENT ORGANIZATION CHART (THRU 9/15/19)





## APPENDIX B: FY2019 CIVIL PENALTY ENFORCEMENT ACTIONS<sup>69</sup>

Subject of Investigation and Order Date	Total Payment	Explanation of Violations
Algonquin Gas Transmission, LLC, Docket No. IN19-2-000, Order Approving Stipulation and Consent Agreement, 166 FERC ¶ 61,012.	\$400,000 civil penalty.	The Commission approved a Stipulation and Consent Agreement between Enforcement and Algonquin Gas Transmission, LLC (Algonquin), resolving Enforcement’s investigation into whether Algonquin violated the express terms of the Commission-issued Algonquin Incremental Market (AIM) Project Certificate, granted under section 7(c) of the NGA, when it entered a wetland area outside the AIM Project’s right of way with construction equipment in an attempt to retrieve a broken drill stem without obtaining a variance from the Commission as required.
Virginia Electric & Power Company, d/b/a Dominion Energy Virginia, Docket No. IN19-3-000, Order Approving Stipulation and Consent Agreement, 167 FERC ¶ 61,103.	\$7 million civil penalty; \$7 million disgorgement.	The Commission approved a Stipulation and Consent Agreement between Enforcement and Virginia Electric & Power Company, d/b/a Dominion Energy Virginia (DEV), resolving Enforcement’s investigation into whether DEV violated Commission regulations, including the Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2018), by improperly targeting and increasing its receipt of lost opportunity cost credits (LOCs) in the PJM Interconnection, L.L.C. (PJM) market.

<sup>69</sup> A list of all post-EPAAct 2005 civil penalty orders is available at <http://www.ferc.gov/enforcement/civil-penalties/civil-penalty-action.asp>.