UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

2010 REPORT ON ENFORCEMENT

Docket No. AD07-13-003

Prepared by the Staff of the

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

NOVEMBER 18, 2010

TABLE OF CONTENTS

I. 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 the Revised Policy Statement on Enforcement.[1] This report informs the public and the regulated community of Enforcement activities during Fiscal Year 2010 (FY2010),[2] including an overview and statistics on the activities of the three divisions within Enforcement: Division of Investigations (DOI), Division of Audits (DA), and Division of Energy Market Oversight (Market Oversight). In FY2010, the Division of Financial Regulation was integrated into DA and Market Oversight. DA now includes a Regulatory Accounting Branch, and Market Oversight is responsible for forms administration and filing compliance.

Enforcement recognizes the importance of informing the public of the activities of Enforcement staff, given the expanded scope and reach of the Commission's enforcement authority since the passage of the Energy Policy Act of 2005.[3] Because the investigative work of Enforcement is non-public, the majority of the information that the public receives about investigations comes from Commission orders that approve settlements or release staff reports, or orders to show cause why conduct should not be sanctioned. However, investigations that result in public actions by the Commission are only a fraction of Enforcement's activities. As in previous years, the FY2010 report provides the public with more information regarding the nature of non-public Enforcement activities, such as self-reported violations and investigations that are closed without any public enforcement action or civil penalty assessments. The report also highlights other Enforcement work in auditing companies subject to the Commission's jurisdiction, compiling and monitoring data from forms and reports submitted by industry participants to the Commission, and monitoring wholesale electric and natural gas markets.

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

[2] The Commission's fiscal year begins October 1 and ends September 30 of the following year. FY2010, the subject of this report, began on October 1, 2009 and ended on September 30, 2010.

[3] Energy Policy Act of 2005, Pub. No. 109-58, 119 Stat. 594 (2005) (EPAct 2005).

II. OFFICE OF ENFORCEMENT PRIORITIES

The Commission's Strategic Plan announced its mission of assisting consumers in obtaining reliable, efficient, and sustainable energy services at a reasonable cost through appropriate regulatory and market means.[4] The Strategic Plan identifies two primary goals in order to fulfill this mission: 1) ensuring that rates, terms, and conditions are just, reasonable, and not unduly discriminatory or preferential; and 2) promoting the development of a safe, reliable, and efficient energy infrastructure that serves the public interest. In order to further those goals, Enforcement's three divisions will gather information about market behavior, market participants, and market rules to assist the Commission in its obligation to oversee regulated markets and will work to bring entities into compliance with the applicable statutes, Commission rules, regulations, and tariff provisions.

Enforcement has selected priorities for its three divisions. In FY2010, Enforcement focused on matters involving:

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

Enforcement intends to focus on these same priorities in 2011. Conduct involving fraud and market manipulation poses a significant threat to the markets overseen by the Commission. Such intentional misconduct undermines the Commission's goal of providing efficient energy services at a reasonable cost because the losses imposed by such actions ultimately are 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 involve the violations of rules designed to limit market power or to ensure the efficient operation of regulated markets. Of particular concern to Enforcement are cases involving the greatest harm to the public, where there is often significant gain to the violator or loss to the victims of the misconduct.

The reliability standards established by the Electric Reliability Organization and approved by the Commission protect the public interest by requiring a reliable and secure bulk-power system. Enforcement enforces these standards and focuses primarily on violations resulting in actual harm, either through the loss of load or through some other means. Enforcement also focuses on cases involving repeat violations of the Reliability Standards, a violation of a standard that carries a high Violation Risk Factor, or substantial actual risk to the Bulk Power System. In addition, Enforcement enforces safety and environmental standards established by the Commission in order to promote the development of a safe, reliable, and efficient energy infrastructure with a particular emphasis on cases involving actual harm or a high risk of harm.

[4] The Federal Energy Regulatory Commission, The Strategic Plan (Oct. 2009), *available at* http://www.ferc.gov/about/strat-docs/FY-09-14-strat-plan-print.pdf.

III. DIVISION OF INVESTIGATIONS

A. Overview

DOI conducts non-public investigations of possible violations of the statutes, rules, orders, and tariffs administered by the Commission. Investigations may begin from self-reports, tips, calls to the Enforcement Hotline, referrals from organized markets, other agencies, other offices within the Commission, or as a result of other investigations. During most investigations, DOI staff coordinates with other divisions in Enforcement and subject matter experts in other Commission offices. Where staff finds violations of sufficient severity, staff so reports to the Commission and attempts to settle the investigation for appropriate sanctions and future compliance before recommending that the Commission initiate a public show cause proceeding.[5]

The Commission issued several orders focusing on transparency that made for more uniform penalties, bringing more certainty to its penalty structure and enforcement activities. In FY2010, the Commission furthered transparency by the issuance of the Penalty Guidelines, the Commission's order regarding notices of alleged violations, and the Commission's order regarding disclosure of exculpatory materials. The Revised Policy Statement on Penalty Guidelines[6] bases penalties on the same factors as those present in the Commission's Policy Statements on Enforcement,[7] but does so in a more focused manner by assigning specific and transparent weight to each factor so that organizations know with more certainty how each factor is applied.

Similarly, the Commission issued an Order Authorizing Secretary to Issue Staff's Preliminary Notice of Violations,[8] which expands the Commission's efforts to provide the public with notice of, and information about, enforcement activities. The notice is designed to increase the transparency of staff's non-public investigations conducted under Part 1b[9] of the Commission's regulations by identifying the alleged violations that are the subject of the investigation, along with a concise description of the alleged wrongful conduct.

The Commission also issued a Policy Statement on Disclosure of Exculpatory Materials,[10] formalizing Enforcement staff's practice of providing exculpatory material to the subjects of investigations that it receives from sources other than the investigative subjects themselves.[11] This Policy Statement ensures open and fair investigations and enforcement proceedings, while promoting administrative efficiency and certainty.

In FY2010, DOI has continued to focus on the enforcement of reliability standards. DOI staff coordinates with the compliance programs of the North American Electric Reliability Corporation (NERC) and the eight Regional Entities as to reliability standards. DOI played a central role in processing the 190 Notices of Penalty (NOPs) that NERC filed with the Commission during FY2010 in which Regional Entities proposed monetary penalties totaling approximately $4.5 million for alleged violations of the reliability standards.

DOI has also continued to prioritize the investigation of market manipulation. Notably, this fiscal year marked the first Initial Decision finding that an individual had violated the Commission's Anti-

---

[5] For a discussion of the processes by which Enforcement staff conducts and concludes investigations, *see* Revised Policy Statement, *supra* note 1.

[6] Revised Policy Statement on Penalty Guidelines, 132 FERC ¶ 61, 216 (2010).

[7] *See* Revised Policy Statement, *supra* note 1; *Enforcement of Statutes, Orders, Rules and Regulations,* 113 FERC ¶ 61,068 (2005) (2005 Policy Statement).

[8] *Order Authorizing Secretary to Issue Staff's Preliminary Notice of Violations*, 129 FERC ¶ 61,247 (2009); *order on reh'g*, *Enforcement of Statutes, Regulations, and Orders*, Docket No. PL10-2-001 (Feb. 16, 2010).

[9] 18 C.F.R. Part 1b (2009).

[10] Policy Statement on Disclosure of Exculpatory Materials, 129 FERC ¶ 61,248 (2009).

[11] Administrative enforcement actions are proceedings that arise from section 1b investigations. *See* 18 C.F.R. § 1b (2009); 18 C.F.R. Part 385 (2009).

Manipulation Rule.[12] In another Initial Decision, the judge agreed with DOI that the plaintiff failed to prove a violation of the market manipulation rule.[13]

During this fiscal year, the Commission issued six orders approving settlements reached by DOI staff with the subjects of investigations. These settlements resulted in the payment of over $31 million in civil penalties and more than $280,000 in disgorgement of unjust profits, as well as compliance monitoring reporting requirements in most cases. DOI staff also worked on the Energy Transfer Partners Allocation,[14] which resulted in the disbursement of the $25,000,000 disgorgement fund among 15 verified claimants.

B. Significant Matters

1. Penalty Guidelines

In September 2010, the Commission issued Penalty Guidelines for the purpose of adding greater fairness, consistency, and transparency to its enforcement program.[15] The Penalty Guidelines provide a framework for determining civil penalties that is based on a set of uniform factors that are assigned specific values and weighted similarly for similar types of violations and similar types of violators. This approach continues Enforcement's efforts to promote fairness by imposing penalties that are proportionate to the seriousness of the violation. The objectivity of the guidelines approach also promotes consistency by reducing potential disparities in penalties that might otherwise arise for similar violations, particularly because a uniform approach ensures that penalties are not based solely on subjective factors. Finally, the Penalty Guidelines promote greater transparency by providing notice to organizations of how the Commission will determine civil penalties. This will add to organizations' confidence in the fairness and consistency of the Commission's enforcement program.

The Penalty Guidelines represent a change in the method the Commission uses to determine civil penalties. But they also incorporate many of the Commission's prior considerations and continue its enforcement program goals of encouraging compliance, serving as a deterrent, and ensuring fairness, consistency, and transparency. The Penalty Guidelines continue to base penalties on the same factors as those present in the Commission's 2005 and 2008 policy statements on enforcement, but do so in a more focused and direct manner by assigning specific and transparent weight to each factor. For example, the Commission will continue to base penalties on the seriousness of the violation, measured in large part by the harm or risk of harm caused, an organization's efforts to remedy the violation, as well as other culpability factors, such as senior-level involvement, prior history, compliance, self-reporting, and cooperation. While these factors remain the same, organizations will now have more certainty as to how each is applied.

The Penalty Guidelines' designation of factors to be applied in each case is balanced by a departure mechanism that allows the Commission to deviate from the Penalty Guidelines' application to account for circumstances not considered by the Penalty Guidelines but that nonetheless might warrant consideration. This feature preserves the Commission's function to make an individualized assessment based on the facts presented in each case. This feature is an important element of the Penalty Guidelines because each

[12] *Brian Hunter*, 130 FERC 63,004 (2010).
[13] *Richard Blumenthal, Attorney General for the State of Connecticut v. ISO-New England Inc., et al*., 132 FERC ¶ 63,017 (2010).
[14] *Energy Transfer Partners, L.P.*, Fund Administrator's Post-Distribution Report and Accounting, Docket No. IN06-3-010 (August 9, 2010).
[15] *Enforcement of Statutes, Orders, Rules, and Regulations*, 132 FERC ¶ 61,216 (2010). The Commission first issued the Penalty Guidelines on March 18, 2010, and then, on April 15, 2010, suspended their application to allow the public an opportunity to submit written comments on them. After careful consideration of forty-one sets of comments, the Commission issued a modified version of the Penalty Guidelines on September 17, 2010.

case presents unique facts and a guidelines approach creates the possibility of outcomes not adequately accounting for all of the specifics of a case.

Similarly, the Penalty Guidelines do not affect Enforcement staff's exercise of discretion to close investigations or self-reports without sanctions. Staff will continue to close all investigations and self-reports where no violation is found, and to close some investigations and self-reports without sanctions for certain violations that are relatively minor in nature and that result in little or no potential or actual harm.

2. Notices of Alleged Violations

In December 2009, the Commission issued an Order Authorizing Secretary to Issue Staff's Preliminary Notice of Violations that provides the public an initial notice of a pending investigation.[16] The order authorizes the Secretary of the Commission to issue a Staff's Preliminary Notice of Violations (Notice) upon direction from the Director of Enforcement. The Notice would be issued after Enforcement staff conducts its investigation and preliminarily concludes that a violation of one or more Commission requirements may have occurred and after the subject of the investigation has had the opportunity to respond to this information. The Notice issued by the Secretary will include: (1) the identity of the entity or entities that are the subject of the investigation; (2) the time and the place of the alleged conduct; (3) the rules, regulations, statutes or orders that staff alleges were violated; and (4) a concise description of the alleged wrongful conduct. The Notice will be sufficient to inform members of the public regarding the basic facts surrounding the investigation. The Notice does not confer a right on third parties to intervene in the investigation or any other right with respect to the noticed investigation. Rehearing of the Commission order has been requested and is pending.

3. Disclosure of Exculpatory Materials

In December 2009, the Commission issued a Policy Statement on Disclosure of Exculpatory Materials,[17] that provides for disclosure of exculpatory materials during investigations under section 1b and administrative enforcement actions under Part 385 of the Commission's regulations. The policy states that Enforcement will scrutinize evidence it receives from sources other than investigative subjects for material that would be required to be disclosed as exculpatory under the case law developed following the Supreme Court's decision in *Brady v. Maryland*.[18] The policy statement details procedures for and limitations regarding disclosure of exculpatory materials in section 1b investigations and administrative enforcement actions. The longstanding practice of staff has been to provide to the subjects of investigations such evidence in investigations and administrative enforcement actions, but the policy statement eliminates uncertainty regarding the Commission's position on its disclosure policy. The policy statement promotes and serves the Commission's goal of providing fairness to regulated entities appearing before it, setting forth a procedural framework within which exculpatory disclosures are made.

4. Brian Hunter Initial Decision

In FY2009,[19] an administrative law judge held a trial-type hearing to determine whether Brian Hunter manipulated natural gas markets within the Commission's jurisdiction. In FY2010, on January 22, 2010, the presiding judge issued an Initial Decision ruling that Hunter violated the Anti-Manipulation Rule (18 C.F.R. § 1c.1).[20] The judge found that Hunter intentionally manipulated the settlement price of certain

[16] *See Order Authorizing Secretary to Issue Staff's Preliminary Notice of Violations*, *supra* note 8.
[17] *See Policy Statement on Disclosure of Exculpatory Materials, supra* note 10.
[18] *Brady v. Maryland,* 373 U.S. 83 (1963*).*
[19] 2009 Annual Report, Docket No. AD07-13-002 (Dec. 17, 2009).
[20] *Brian Hunter, supra* note 12.

natural gas futures contracts solely for the benefit of Amaranth Advisors L.L.C. and that his conduct was fraudulent and with the requisite *scienter* required to find a violation under the Anti-Manipulation Rule (§ 1c.1). Hunter filed exceptions to the decision, and staff filed a response brief. Both parties also separately briefed the issue of appropriate penalties for the conduct, which the Commission had reserved for itself.[21] The Commission has not yet ruled.

5. ISO-NE Connecticut Parties

In September 2010, after a trial-type hearing, DOI prevailed in the first third-party complaint alleging violations of the Commission's anti-manipulation authority.[22] On August 24, 2009, the Commission set for evidentiary hearing complaints filed by the Connecticut Attorney General, the Connecticut Department of Public Utility Control and the Connecticut Office of Consumer Council (the Connecticut Representatives) against ISO-New England, Inc. (ISO-NE), Constellation Energy Commodities Group, Inc., Shell North America (U.S.) LP and Brookfield Energy Marketing Inc. regarding activities related to capacity imports to ISO-NE from the three market participants' capacity resources located in New York ISO. The Commission directed DOI litigation staff to participate in the hearing of the Connecticut Representatives' complaint. Connecticut Representatives asserted the three market participants violated section 1c.2 of the Commission's regulations through their combined bid and offer pairings in New York ISO and ISO-NE markets by taking payments under the pretense they would perform as capacity suppliers while misrepresenting their willingness and ability to deliver energy to ISO-NE from those New York capacity resources if called to do so.

Staff's analysis revealed no section 1.c.2 violation, and staff took that position at hearing. In the Initial Decision, Administrative Law Judge Young agreed with staff's position and held that the Connecticut Representatives "failed in the extreme" to prove that the three market participants had violated any provision of 18 C.F.R. § 1c.2.[23]

6. NOPs

DOI staff worked with staff from the Office of Electric Reliability (OER) and the Office of the General Counsel (OGC) to review NOPs filed by NERC in order to recommend the Commission take action or decline further review of the proposed outcomes and penalties.

This fiscal year the Commission reviewed approximately 1,300 violations in 190 NOPs. The Commission issued requests for more information on ten NOPs, declined to review 154 NOPs, and initiated a review of one NOP. This included review of the Omnibus I filing (NP10-2-000) of 564 violations, and the Omnibus II filing (NP10-160-000) of 62 violations. At the end of FY2010, 31 NOPs were pending initial consideration, three NOPs were pending after requests for additional information, and one NOP was under review. By comparison, staff reviewed 97 violations in 46 Notices of Penalty filed by NERC in FY2009, all of which became effective after filing without further review by the Commission.

7. Energy Transfer Partners' Allocation

On September 21, 2009, the Commission approved a Joint Offer of Settlement requiring Energy Transfer Partners, L.P. (ETP) to pay $25,000,000 into a disgorgement fund and a $5,000,000 civil penalty to the U.S. Treasury.[24] Claimants submitted data, and Administrative Law Judge Young agreed with

[21] *Amaranth Advisors LLC*, 124 FERC ¶ 61,050 at P 14 (2008).
[22] *Blumenthal v. ISO-New England Inc., et al., supra* note 13.
[23] *Id.* P 117.
[24] *Energy Transfer Partners, L.P.*, 128 FERC ¶ 61,269 (2009) (Settlement Order).

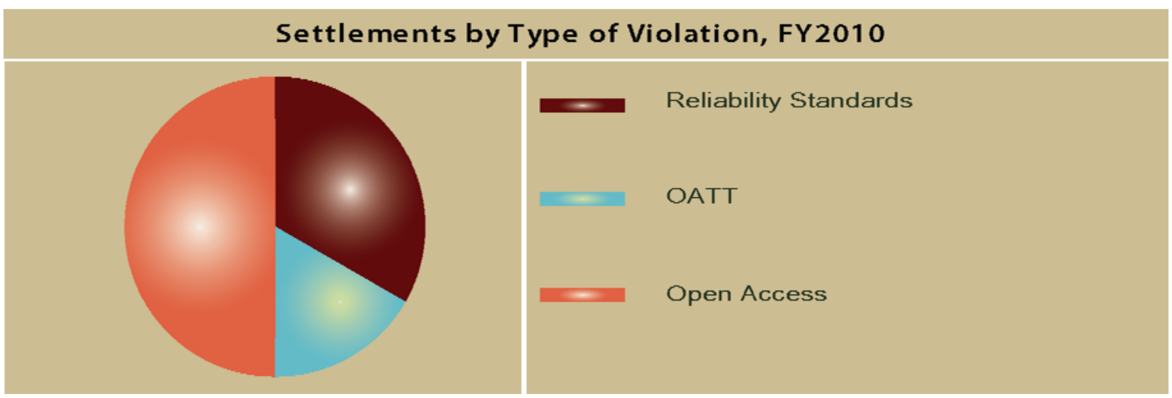
staff's allocation methodology. An Initial Allocation Report provided that the fund would be divided amongst the 16 verified claimants according to their exposure to the IFERC HSC Index without any individual adjustments except that those claimants with lawsuits against ETP that predated the settlement will receive their verified litigation expenses before any of the fund was allocated.[25] All funds have been distributed in accord with the Final Fund Allocation Report.

C. Settlements

In FY2010, the Commission approved six settlement agreements entered into by Enforcement for total civil penalty payments of $31.4 million and disgorgement of $281,038 plus interest.[26] Of these settlements, three involved violations of the Commission's natural gas pipeline open access transportation requirements, two involved violations of Reliability Standards, and one involved a violation of the Open Access Transmission Tariff, section 205 of the FPA, and then-section 358.5(c)(5) of the Commission's regulations.

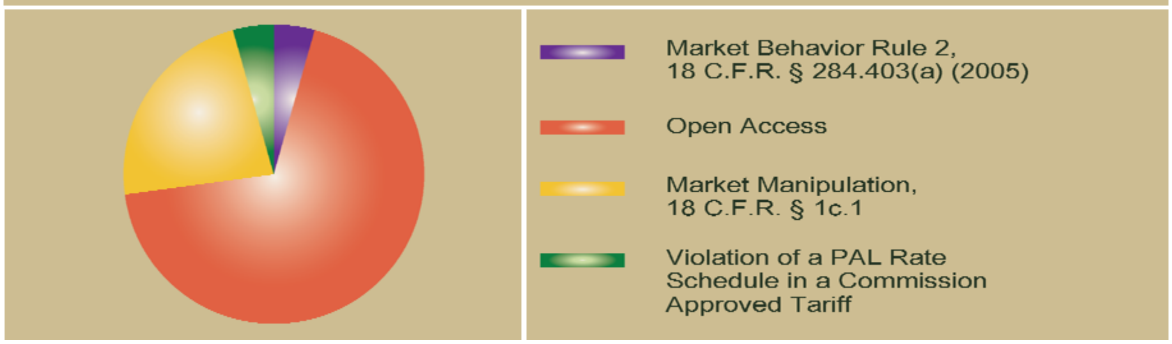
By comparison, staff entered into 22 Commission-approved settlement agreements in FY2009, for total civil penalty payments of $38.3 million. In FY2008, staff entered into seven Commission-approved settlement agreements, for total civil penalty payments of $19.95 million. Settlements decreased this year because of DOI's increased focus on reliability and market manipulation cases. These cases are complex and therefore require more resources and time to complete.

Settlements approved in FY2010 are compared, by type of violation, with settlements in prior years:

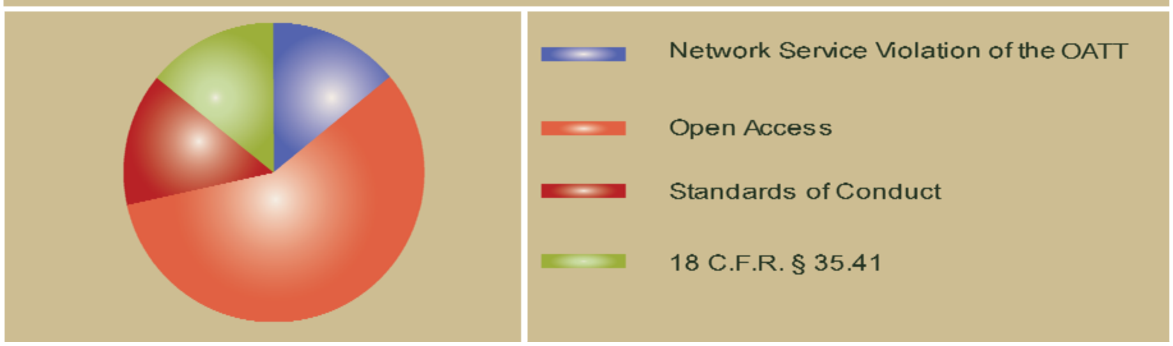


[25] *Energy Transfer Partners, L.P.*, 130 FERC ¶ 63,018 (2010) (Fund Administrator's Initial Fund Allocation Report).
[26] A table of EPAct 2005 Civil Penalty Enforcement Actions in FY2010 is attached to this report as Appendix B.

Settlements by Type of Violation, FY2009



Settlements by Type of Violation, FY2008



1. Violations of Reliability Standards

FY2010 settlements involving Reliability Standards include Florida Power & Light (FPL) and Florida Reliability Coordinating Council, Inc. (FRCC). On February 26, 2008, portions of the lower two-thirds of the bulk electric system in Florida experienced an event that involved voltage and frequency swings that resulted in significant losses of customer load. In response to the event, the Commission opened a formal investigation into the cause and events surrounding the outages.[27] Contemporaneously, NERC also opened a parallel Compliance Violation Investigation.[28]

FPL entered into a settlement with FERC and NERC for payment of a $25 million civil penalty following a dual investigation which both FERC and NERC conducted.[29] This penalty reflects the seriousness and nature of the event, yet takes account of FPL's efforts to remedy the violations. This amount also reflects the amount allocated for enhanced mitigation and recognizes that some amount of expenditure on additional reliability measures above the requirements of the Reliability Standards is in the public interest. The FRCC settlement totaled $350,000.[30] This penalty reflects the nature and seriousness of FRCC's alleged conduct as the reliability coordinator. As with FPL, this settlement followed a dual investigation which both the Commission and NERC conducted.

---

[27] *Florida Blackout*, 122 FERC ¶ 61,244 (2008).
[28] NERC0002CVI.
[29] *Florida Blackout*, 129 FERC ¶ 61,016 (2009).
[30] *Florida Blackout*, 130 FERC ¶ 61,163 (2010).

2. Open Access Transmission Tariff, section 205 of the FPA, and 358.5(c)(5) of the Commission's Regulations

A settlement involved Open Access Transmission Tariff (OATT), section 205 of the FPA, and then-section 358.5(c)(5) of the Commission's regulations. Specifically, the alleged misconduct related to the improper use of designated network resources. Portland General Electric Co. (PGE) agreed to pay a civil penalty of $375,000, and to submit compliance monitoring reports.[31] This penalty was based on the fact that PGE did not receive unjust profits or cause a significant amount of quantifiable harm. However, the violations impeded transparency in the electric market and undercut certain core OATT principles.

3. Open Access Transportation

The three settlements concerning open access transportation resulted from both self-reports of violations and from DOI staff investigations. One case involved abuses in capacity release transactions known as "flipping."[32] Many cases involved more than one violation – failure to adhere to the shipper-must-have-title requirement, flipping, discounted rate capacity releases, and prohibited buy/sell transactions occurred in several of the settled cases. In addition to civil penalties ranging from $750,000 to $4 million, two of these settlements involved disgorgement of unjust profits. Each settlement required the submission of compliance monitoring reports to Enforcement.

On March 12, 2010, the Commission issued an order approving the Stipulation and Consent Agreement between Enforcement and Noble Energy, Inc. This order resolved staff's investigation into alleged violations from 2005-2007 of the Commission's open access transportation program, including circumvention of the posting and bidding requirements for released capacity, flipping, the shipper-must-have-title requirement, and violations of the prohibition on buy-sell transactions. In the settlement approved by the Commission, Noble agreed to pay a $4,000,000 civil penalty, $160,487 of disgorgement, and agreed to file a one-time compliance report if it becomes involved in certain interstate natural gas operations within the next four years.

On September 27, 2010, the Commission issued an order approving the Stipulation and Consent Agreement between Enforcement and RRI Energy, Inc. (RRI, formerly known as Reliant Energy, Inc.) and RRI Energy Wholesale Generation, LLC (REWG), resolving staff's investigation into self-reported violations from 2000-2008 of the Commission's open access transportation program, including the prohibition of buy/sell transactions and the competitive bidding requirements for long-term, discounted rate capacity releases.[33] In the settlement approved by the Commission, RRI and REWG agreed to pay a $750,000 civil penalty and agreed to submit compliance monitoring reports.

Also on September 27, 2010, the Commission issued an order approving the Stipulation and Consent Agreement between Enforcement and South Jersey Gas Company (South Jersey) resolving violations of the Commission's open access transportation program, including the prohibition of buy/sell transactions and the competitive bidding requirements for long-term, discounted rate capacity releases, and the shipper-must-have-title requirement.[34] In the settlement approved by the Commission, South Jersey agreed to pay a $950,000 civil penalty, pay disgorgement in the amount of $120,550 plus interest, and submit compliance monitoring reports.

[31] In re Portland Gen. Elec. Co., 131 FERC ¶ 61,224 (2010).

[32] Flipping describes transactions that avoid the posting and bidding requirements for discounted rate firm capacity at 18 C.F.R. § 284.8 (2009), typically consisting of a series of short-term releases of discount rate capacity to two or more affiliated replacement shippers on an alternating monthly basis that rolls over, extends, or continues the discount rate release without complying with the posting and competitive bidding requirements.

[33] RRI Energy, Inc., 132 FERC ¶ 61,267 (2010).

[34] South Jersey Gas Co., 132 FERC ¶ 61,266 (2010).

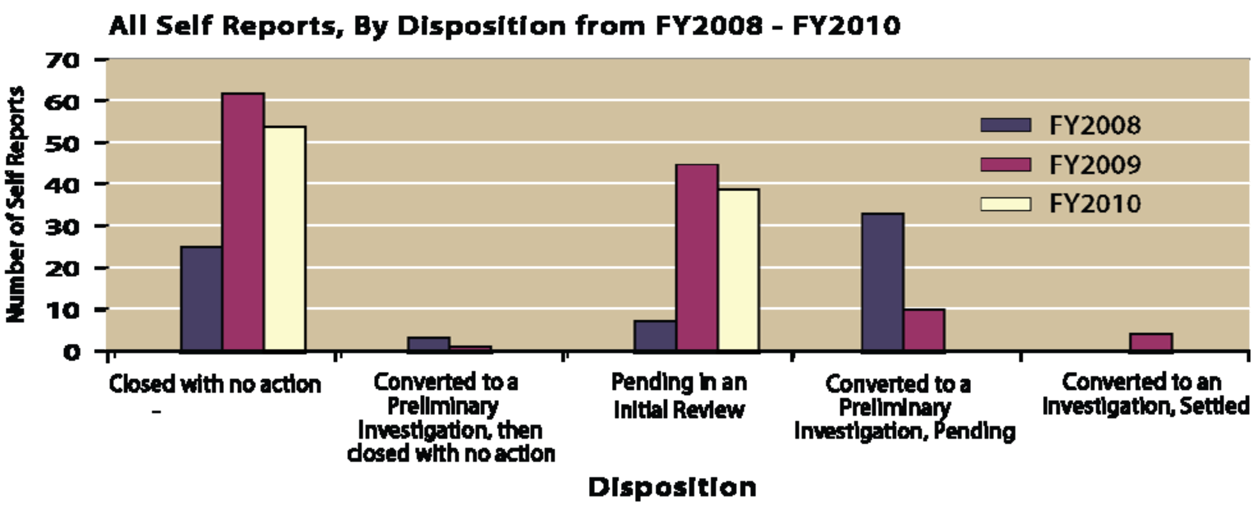
D. Self-Reports

Since issuance of the first Policy Statement on Enforcement through the end of FY2010,[35] staff has received a total of 351 self-reports. Recent years' reports are broken down by fiscal year as follows:

- FY2008 – 68 reports received
- FY2009 – 122 reports received
- FY2010 – 93 reports received

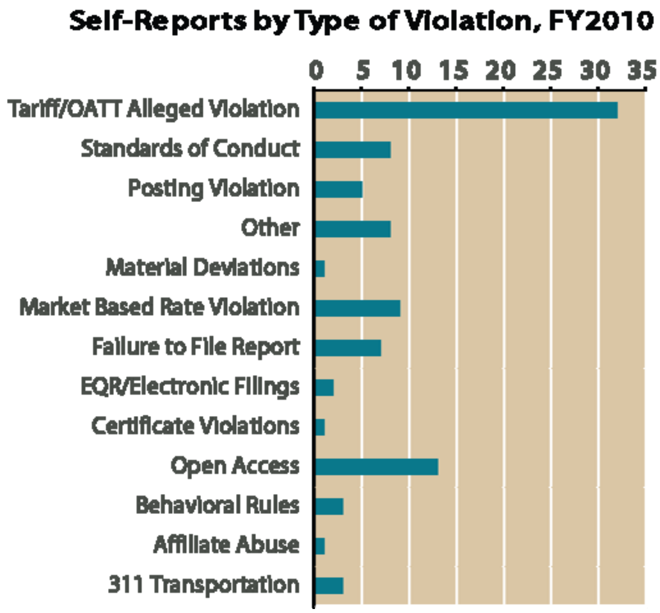
Of the 93 self-reports received in FY2010, staff closed 54 of them after an initial review and without opening an investigation. Staff's initial review is still pending for 39 of these self-reports, none of which have been converted into an investigation. For comparison, in FY2009, staff received 122 self-reports. Staff closed 62 of them after an initial review, and one was closed without sanctions after conducting an investigation. Staff receives self-reports from a variety of market participants, including power marketers, electric utilities, natural gas companies, and RTOs and ISOs. Staff received an increasing number of self-reports from RTOs and ISOs this fiscal year.

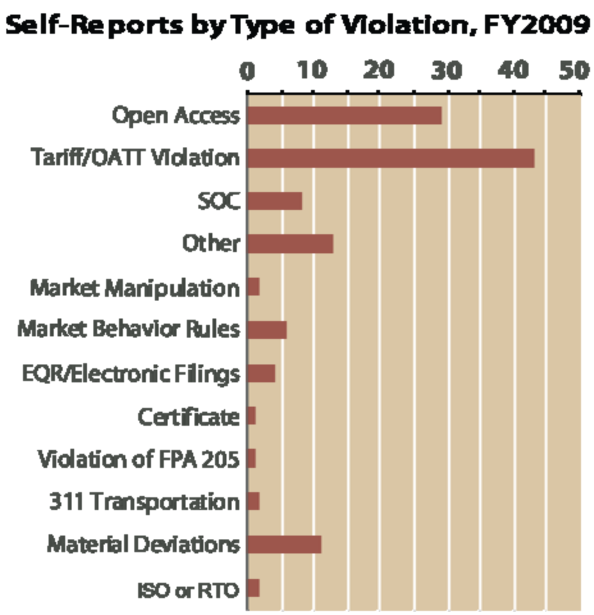
The importance of self-reporting is underscored by the issuance of the Penalty Guidelines, which provide for a five-point credit in a company's culpability score if the company self-reports the violation and has an effective compliance program. Staff encourages the submission of self-reports and expects to see a continuing upward trend in the number of self-reports received.

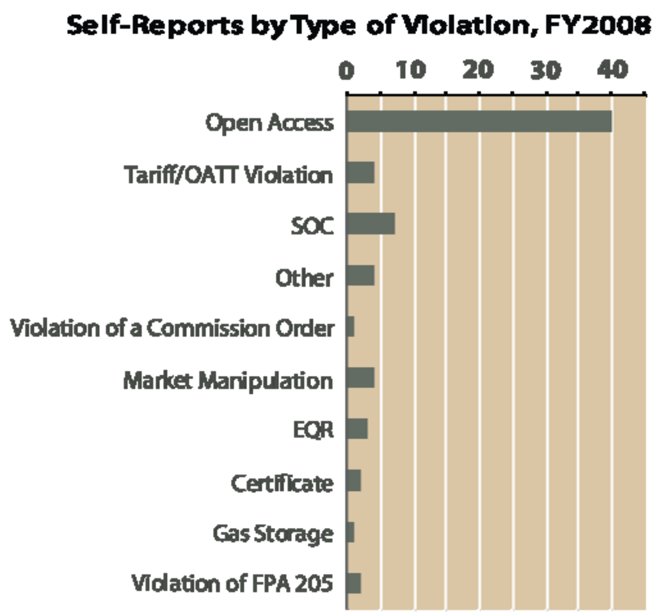


Staff receives self-reports on a variety of matters. The following charts depict the types of violations for which staff received self-reports from FY2008 through FY2010. As in previous years, the number of self-reported open access violations continues to account for a significant portion of the self-reports received in FY2010. The number of self-reported Tariff or Open Access Tariff (OATT) violations has continued its upward trend that began in FY2009 and currently accounts for the largest category of self-reports. Open access violations have decreased, as natural gas companies have increased compliance efforts to prevent capacity release violations.

[35] *See* 2005 Policy Statement, *supra* note 7.







1. Illustrative Self-Reports Closed with No Action

In a continuing effort to promote transparency while encouraging the compliance efforts of regulated entities, staff presents the following illustrations summarizing the circumstances surrounding some of the self-reports that were closed in FY2010. These illustrations are intended to provide guidance to the public and to regulated entities as to why staff chose not to pursue enforcement action, while still preserving the non-public nature of the self-reports.

Tariff/OATT Violation. A power marketer self-reported possible violations of the Commission's prohibition of using network transmission service for off-system sales. A trader for the marketer contacted various counterparties in an attempt to induce them to engage in a wash transaction by purchasing energy at the border of one control area and selling an equivalent amount of energy at another control area. The counterparties recognized this proposed arrangement as impermissible and declined to participate. A standard review of the trader's log the next day alerted the marketer to the potential violation. The marketer promptly investigated, gave the trader the opportunity to resign (and the trader did so), and self-reported the potential violation. Staff closed the matter without further action because (1) the prohibited transactions were not actually executed; (2) there was no harm to the market or to any parties; and (3) the company took remedial action and submitted a prompt self-report.

Tariff/OATT Violation. A utility company submitted a self-report after being assessed unreserved use penalties by its transmission provider for scheduling errors under the provisions of the provider's Open Access Transmission Tariff. The company reported that it had been charged approximately $6 million in unreserved use penalties over a 2,622 hour period spanning 17 months. According to the company, these scheduling errors were inadvertent. Staff determined that the self-report should be closed with no further action for several reasons: (1) the company already paid the penalties to its transmission provider; (2) there was no indication of fraudulent behavior by the company, past wrongdoing, or senior management involvement; (3) although the company's compliance program was lacking in significant ways, the company did attempt to provide for adequate training of its employees on its provider's Open Access Transmission Tariff; (4) the company instituted several remedial measures to ensure future compliance including technological improvements, improvements in its communication and coordination abilities, and modifications to its procedures regarding avoiding unreserved use and employee training.

Tariff/OATT Violation. An RTO/ISO self-reported that it had inadvertently failed to calculate and pay interest on certain study deposits held in connection with interconnection requests. Although the RTO/ISO was not obligated to calculate and pay interest on unused study deposits, it was obligated to calculate and pay interest on withdrawn study deposits. A request by a customer caused the RTO/ISO to review all its study deposits, which revealed that although the RTO/ISO was properly calculating and paying interest on unused study deposits, it had inadvertently failed to calculate and pay interest on withdrawn study deposits (a relatively small category of all study deposits). To correct this violation, the RTO/ISO calculated interest on the 186 deposits that had been at issue, and completed payment of interest to all but twelve, for whom the RTO/ISO was unable to make contact or determine a current address. The RTO/ISO also corrected its accounting procedures for withdrawn deposits on a going forward basis. Based on the ISO's corrective action, also designed to prevent recurrence of the violation, staff closed the self-report without further action.

Tariff/OATT Violation. A company self-reported a tariff violation arising from its failure to secure 1-2 MW of firm transmission capacity on a third-party transmission line to support network service for a period of two days. The tariff provision at issue required the company to make all arrangements necessary to deliver power from network resources not physically interconnected to the company's own transmission system. The violation arose because the company redirected a portion of transmission service necessary to import power from the network resource into the company's balancing area. Staff closed the self-report because the violation was isolated and inadvertent, did not cause harm, and was unlikely to reoccur.

Tariff/OATT Violation. A wholesale power and capacity provider self-reported a tariff violation for failing to bid its capacity into the RTO/ISO's Day Ahead Market for a single day. As a result of human error, the company inadvertently failed to bid its capacity into this market for a single day when an employee responsible for submitting bids to the RTO/ISO failed to do so. Staff closed the matter with no further action after finding that the company's violation was limited in time; found, self-reported, and promptly corrected; and did not result in financial gain or harm to the market. In addition, the company paid an uncontested penalty assessed by the RTO/ISO.

Standards of Conduct Violation. A natural gas company self-reported that during an audit of its standards of conduct training for the last two quarters of 2009 it had discovered that several employees had failed to complete annual training by the deadline imposed by section 358.8(c)(1) but completed the training shortly after the deadline. To prevent future violations, the company required its Human Resources department to make weekly reviews of training files. The lack of timely training did not result in the untrained individuals committing other standards of conduct violations. Given the minor nature of the incidents self-reported, the fact that they were found through a self-audit required by senior management, the remedial efforts taken and the lack of harm and economic benefit, staff closed the matter without further action.

Errors in Filed Electric Quarterly Reports (EQRs) and Market-Based-Rate Authority Violation. An electric company authorized to sell wholesale power at market-based-rates filed a self-report indicating that it failed to file several power-related filings, including applications for market-based-rate authorization for several subsidiaries. In addition to failing to obtain market-based-rate-authorization, these subsidiaries were also selling wholesale power into an organized market without also reporting their sales in quarterly EQR submissions. The companies properly filed and obtain market-based-rate-authorization from the Commission, and corrected their EQR filings in addition to filing notifications about the company's status and customers pursuant to Commission regulations. Because the late filings did not harm the market, and resources were implemented to prevent future violations with respect to timely filings, staff closed the matter with no further action.

Failure to Update Reference Levels. An RTO/ISO deactivated some of its automated software processes in order to install a security patch, and failed to reactivate it until the next morning. Thus the software did not perform its routine daily update of both Day Ahead Market and Real Time reference levels. As a result, one unit was improperly mitigated. The RTO/ISO backed out the mitigation and restored the appropriate payment to the unit and prices were not impacted. The RTO/ISO updated its software to include additional validation steps, and added system monitoring points to detect incidence of process failure. Because staff concluded that the error was inadvertent, all harms were corrected, and the error is unlikely to recur under the new review protocols, the matter was closed with no further action.

Undue Discrimination. An RTO/ISO self-reported possible violations of section 205 of the Federal Power Act (FPA). Several utilities within the RTO/ISO's service area requested authorization to sell energy from their generation resources in both the RTO/ISO's market and a neighboring RTO/ISO's market. The RTO/ISO granted the request, but did not notify other market participants of the availability of this option. Later, the RTO/ISO determined that by not notifying all other market participants of this opportunity, the RTO/ISO may have inadvertently engaged in undue discrimination under section 205 of the FPA. Staff found that these actions may have constituted undue discrimination, and that the RTO/ISO should have revised its tariff to apprise other market participants of this opportunity. Staff informed the RTO/ISO of its conclusions and obtained assurances from the RTO/ISO that it would not permit these authorizations in the future unless it modified its tariff to specifically allow such authorizations. Staff declined to open an investigation because: (1) the RTO/ISO withdrew its authorizations immediately upon discovering the potential violations; (2) only one of the market participants actually exercised its authority to offer energy in two RTO/ISO markets; (3) the violations did not cause any harm, were isolated; and (4) the violations are unlikely to recur because the ISO understands the requirement to make future authorizations only through its tariff.

Termination of Transmission Contracts. An electric utility self-reported that it had failed to file notices of termination with the Commission for four jurisdictional transmission contracts once the contracts expired, in violation of section 205 of the FPA. The company identified these errors through a new compliance program and check system that staff views as sufficient to ensure that no similar violations occur in the future. The company did not profit from the error and submitted requisite termination notices with the Commission. Based upon these representations and a review of the transmission contracts at issue, staff determined to close the self-report with no further action.

Transportation Service Agreement and Tariff Material Deviations Violations. A natural gas pipeline company failed to ensure that a number of its transportation service agreements (TSAs) and transportation-related agreements complied with the requirement that the language in such agreements adhere and conform to the specific language set forth in the pipeline's currently effective *pro-forma* TSA and tariff General Terms and Conditions of Service in violation of section 4(b) of the Natural Gas Act (NGA), and section 154.1(d) of the Commission's regulations. Following a comprehensive internal review of over 1,300 TSAs and transportation-related agreements, the company determined that there were 25 different types of deviations totaling 2,199 deviations of which 2,156 were typographical or inadvertent non-material deviations, and 43 deviations that were considered material and that may affect the substantive rights of market participants. The company promptly self-reported its findings to staff and embarked on a program that cured all of these violations by: (1) restating the non-conforming TSAs; (2) revising its *pro-forma* TSAs and tariff consistent with the non-conforming TSAs; (3) terminating certain non-conforming TSAs pursuant to contractual provisions contained in such agreements; and (4) filing certain non-conforming TSAs and transportation-related agreements with the Commission for approval. Notably, beginning in 2004, the pipeline implemented a comprehensive compliance plan that revamped its tariff and required all TSAs to be executed electronically in a form that adhered to the then currently effective *pro-forma* TSAs. Staff found no evidence that the non-conforming TSAs or transportation-related agreements contained material deviations that were unduly preferential or unduly discriminatory or caused harm to similarly situated market participants. Further, staff found no evidence that the failure to file the non-conforming TSAs was willful. Accordingly, staff closed the matter with no further action.

Failure to Timely Notify the Commission of the Acquisition of New Generation Capacity. An electric company with market-based rates and thirteen of its affiliates self-reported that they failed to notify the Commission of the acquisition of several sites for new generation capacity in PJM with a total potential maximum generation capacity of approximately 1,400 MW. The sites had been acquired between 2002 and 2008 and the company should have filed Notices of Change of Status reflecting the acquisition of each of these sites under § 35.42 of the Commission's regulations and their respective market-based rate authorizations. The companies explained that the control of these sites could not have affected eligibility for market-based rates or raised competitive concerns because the sites are not yet operational. The company claimed that it was an inadvertent omission that did not cause harm to market participants or an undue benefit to the company. The company became aware of the omissions based on its ongoing commitment to ensure compliance with all applicable rules and regulations. The company routinely reviews its regulatory compliance efforts for accuracy and completeness and devotes substantial resources towards compliance activities. In addition to procedures to prevent this type of omission from recurring, the company trains its staff in the applicable regulatory requirements.

The company promptly remedied the violations by filing Notices of Change in Status, which the Commission accepted. For all these reasons, staff recommended closing the self-report without further action.

Violation of Commission Order. A company self-reported its failure to comply with a 2001 Commission order that requires generators operating in the Western energy market to log their available generation capacity and to post their available generation capacity on their company website and on the website for the Western Systems Coordinating Council. The purpose of the Commission order, issued in the wake of the California energy crisis, was to ensure that all available generation capacity was known to potential purchasers in the Western market. Staff closed the self-report primarily because the violation caused no harm. The company communicated the availability of generation capacity to potential purchasers through methods other than those required by the Commission order, including posting supply offers on the Intercontinental Exchange, notifying brokers, and by direct communication with potential purchasers. The company remedied the violation by making the required postings and by logging its available generation, and implemented compliance procedures that made reoccurrence of the violation less likely.

Omission of Regulatory Filing. A company modified an existing TSA with its marketing affiliate, but inadvertently filed the modified TSA as part of its Electric Quarterly Report rather than with the Commission, as required by 18 C.F.R. § 35.13(a), which requires public utilities to file with the Commission modifications to certain agreements (including transmission agreements). Staff closed the self-report because the violation caused no harm, the company took sufficient efforts to remedy the violation, and the violation was isolated and inadvertent.

2. Illustrative Self-Reports Converted to Investigations but Closed with No Action

The following illustrations provide a short summary of the circumstances surrounding the self-reports that were closed in FY2010 for which investigations were opened but, upon investigation, were closed with no action.

Tariff/OATT Violation. An RTO/ISO self-reported violations of the company's Open Access Transmission Tariff (OATT) when it released certain financial transmission rights (FTRs) collateral to certain market participants prior to settlement of their FTR accounts. Staff's investigation revealed that the company violated the OATT, but because the violations were: (1) limited in volume and duration; (2) found, self-reported, and corrected; (3) were not done for financial gain; and (4) resulted in no harm to the market, staff closed the matter with no further action.

Standards of Conduct Violation. An electric generation and transmission company self-reported two potential violations of the Commission's Standards of Conduct for Transmission Providers. In the first event, the company's marketing employees contacted transmission employees regarding curtailment of a generator for a line outage and asked the RTO/ISO to have the outage postponed. Staff's investigation determined that there was no prohibited communication because the outage information was posted on OASIS, and there was no undue preference because the RTO/ISO cancelled the outage. There was no other generation facility attached to the line and affected by the outage, and the postponement did not otherwise affect other market participants. In the second event, a company transmission function included certain marketing function employees on an email regarding a planned outage. Staff closed the investigation without further action because: (1) there was no market harm because the outage never took place; (2) it was an isolated incident; (3) other company employees understood that the email violated the Standards of Conduct; (4) the company had a robust compliance plan; (5) the company notified the RTO/ISO immediately about the mistake; and (6) the company agreed to implement new staff training on the Commission's Standards of Conduct.

Shipper-Must-Have-Title Violation. A marketer entered into transactions among itself and two affiliates concerning shipments on a ten-mile long intrastate pipeline owned by a third affiliate. In the self-report, the marketer admitted to violations of the Commission's shipper-must-have-title requirement. Staff investigated and concluded the transactions constituted shipper-must-have-title violations. However, staff closed the investigation without sanctions based on mitigating factors including: (1) the violations occurred among affiliates of a single corporate entity and appear to have resulted from the lack of accounting controls assigning responsibility for purchases and sales to a specific affiliate; (2) due to the limited number of shippers on the pipeline, little, if any, harm occurred to other shippers because of the lack of posting available system capacity; (3) the self-report was comprehensive and thorough; (4) the company stated it has trained personnel so that future violations are unlikely to occur; and (5) since the transactions occurred entirely among affiliates of the same corporate entity and did not involve third parties, there were no unjust profits to disgorge.

Buy/Sell and Serial Release Violations. A natural gas local distribution company with an affiliated gas marketer self-reported potential violations of the Commission's capacity release rules. It reported its discovery that certain bundled sales from the company to the affiliate resembled prohibited "buy-sell" transactions, and that certain serial transactions to unaffiliated entities appeared to violate the prohibition against serial short-term capacity releases to the same or affiliated entities, 18 C.F.R. § 284.8(h)(2) (2010). The company also reported that the affiliate engaged in a small number of buy-sell transactions with unaffiliated entities. Staff investigated these activities and determined that the company's bundled sales to the affiliate were not structured as buy-sell transactions, with the exception of a small number that involved non-deliberate purchases of gas from the affiliate at the well-head in conjunction with a request from the Affiliate for a bundled sale. In addition, the serial short-term capacity releases did not involve roll-over of the same capacity. The buy-sell transactions between the affiliate and the unaffiliated entities involved negligible amounts on a small number of days. The company and affiliate re-trained personnel on the capacity release rules and regulations, and demonstrated no further violations after discovery and internal investigation. Staff closed this matter with no further action.

E. Investigations

During FY2010, staff opened 15 non-self-reported investigations, as compared to the 10 non-self-reported investigations opened in FY2009. As discussed below, the alleged violations in these cases involve market manipulation, tariff violations, market based rate violations, and reliability standards violations

1. Statistics on Investigations

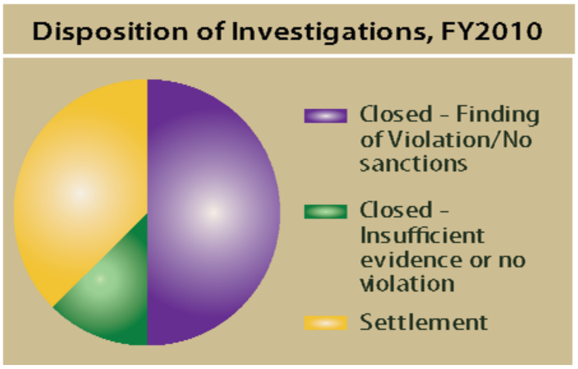
Of the 15 investigations staff opened this fiscal year, eight addressed tariff violations, five involve market manipulation, three relate to violations of the reliability standards, three involve market based rate violations, and one relates to the Commission's capacity release requirements. Five investigations opened this year entail more than one type of violation.

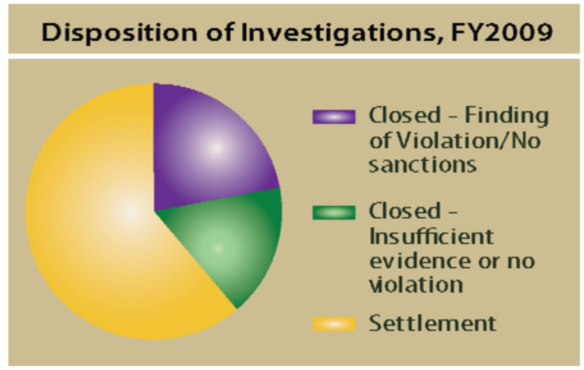
Five of the investigations staff opened in FY2010 were referred to the Commission by RTO or ISO market monitoring units (MMUs). Pursuant to Commission policy, MMUs are to refer potential misconduct to the Commission for investigation.[36] Of the remaining ten investigations opened in FY2010, four were referred to DOI by another division within Enforcement, three were initiated by DOI, two were referred to DOI by another office within the Commission, and one resulted from a hotline call.

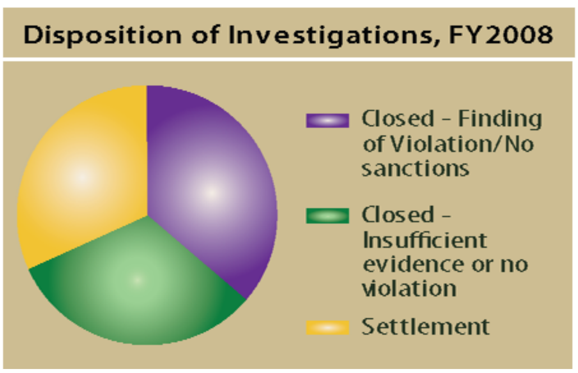
Staff closed a total of 16 investigations in FY2010 as compared to 36 during FY2009. Of the 16 investigations closed this fiscal year, two investigations, or 12.5 percent, were closed with no finding of a violation. In eight, or 50 percent of the investigations, staff found a violation, but the investigation was closed with no sanctions. As in FY2009, the number of investigations related to open access transportation violations continue to account for a majority of the investigations closed without penalty in FY2010. Finally, six, or 37.5 percent of the investigations, were concluded through settlement. For comparison purposes, in FY2009, six investigations, or 17 percent, were closed with staff finding no violation. Also during FY2009, eight investigations, or 22 percent, were closed with a finding of a violation, but closed with no sanctions, and 22 investigations, or 61 percent, were concluded through settlement. The following charts show the overall disposition of investigations from FY2007 through

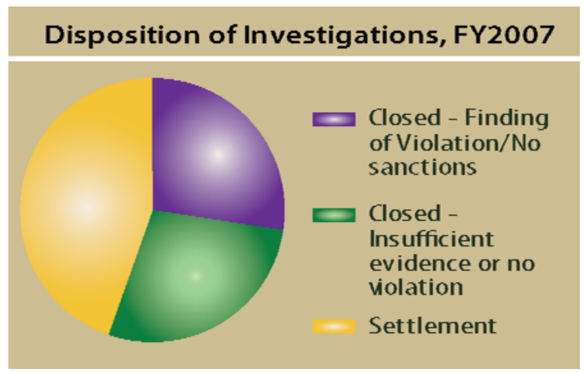
[36] *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009). *See also* Market Monitoring Units in Regional Transmission Organizations and Independent System Operators, 111 FERC ¶ 61,267 (2005).

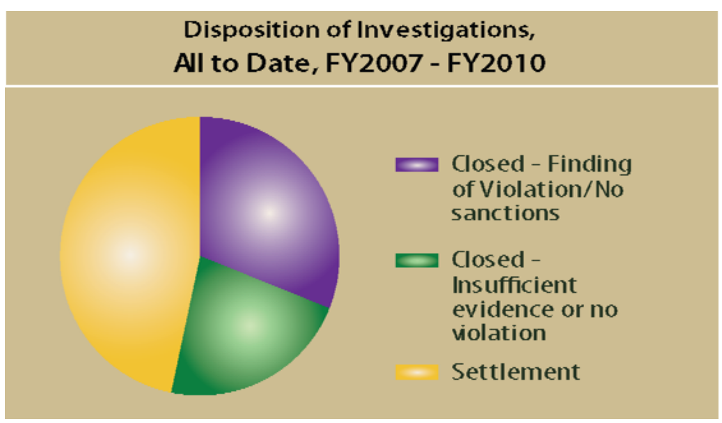
FY2010 and highlight the types of violations that staff examined for those investigations that were closed without sanctions from FY2007 through FY2010.



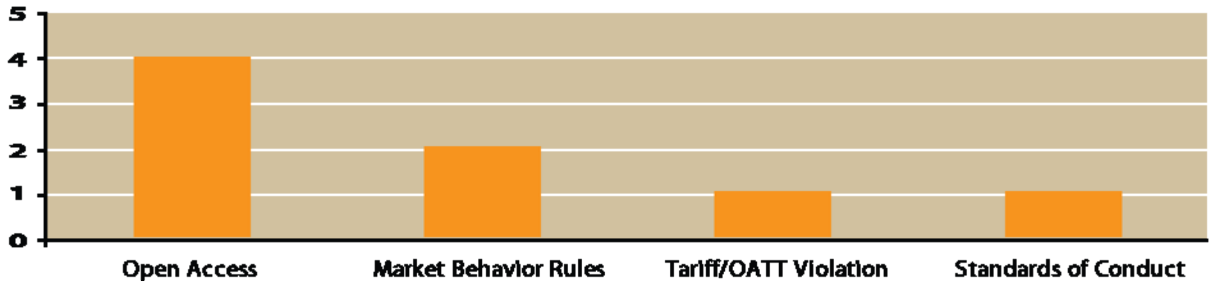




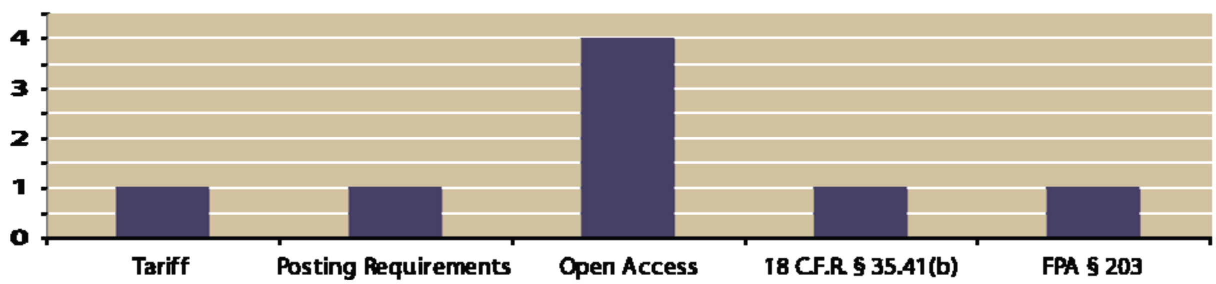




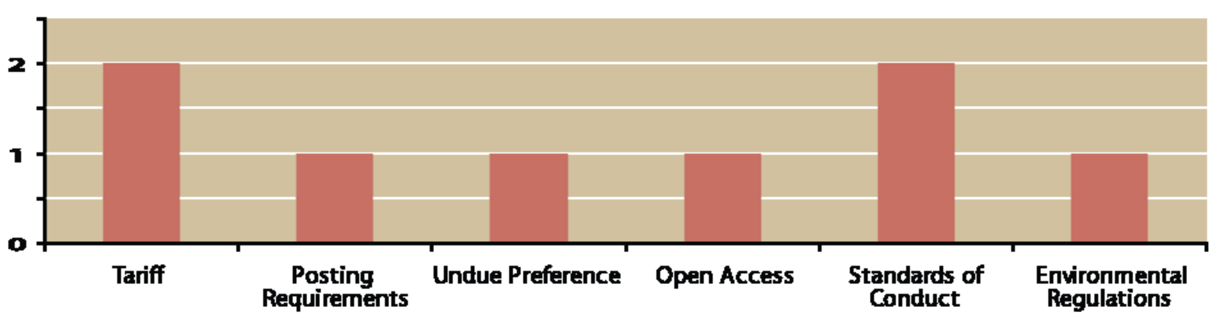
Investigations Closed Without Monetary Remedies by Type of Violation, FY2010



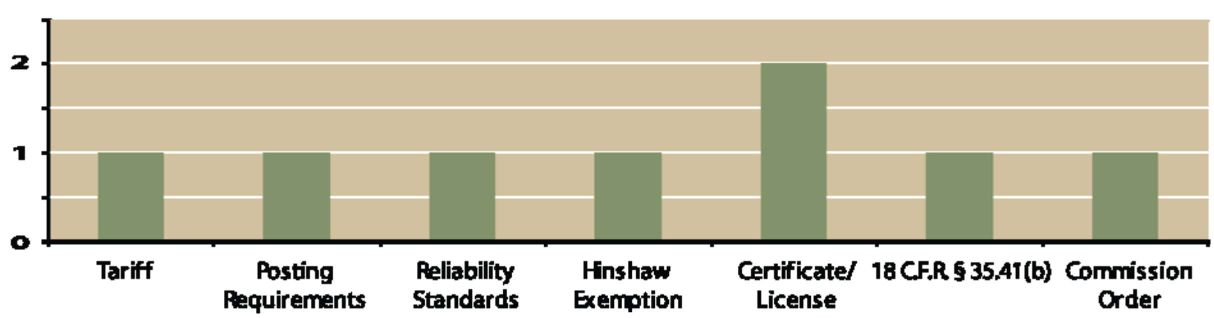
Investigations Closed Without Monetary Remedies by Type of Violation, FY2009



Investigations Closed Without Monetary Remedies by Type of Violation, FY2008



Investigations Closed Without Monetary Remedies by Type of Violation, FY2007



2. Illustrative Investigations Closed with No Action

The following illustrations describe the circumstances surrounding selected investigations that were closed in which staff found a violation, but did not take any enforcement action. Like the self-report illustrations, these are intended to provide guidance to the public, while still preserving the non-public nature of DOI's investigations.

Tariff/OATT Violation and Reliability Standards. Staff investigated whether a company may have violated provisions of RTO/ISO's tariff, Commission regulations, and NERC reliability standards by failing to timely update power supply offers into the RTO/ISO energy market to reflect a reduced generating capability of its generating units. Staff identified isolated violations, but determined that under the totality of the circumstances, sanctions were not warranted and the investigation should be closed. Staff found substantial compliance by the company and that the violations were inadvertent and infrequent.

Capacity Release. Staff opened this investigation after finding that a natural gas company's affiliates were replacement shippers with another natural gas company in flipping transactions. The investigation uncovered additional instances of flipping by affiliates, almost all of which occurred prior to 2006. In addition, the company voluntarily identified certain buy/sell transactions which occurred from 2003 to 2007 in connection with supplying gas for the company's power generation requirements. Staff determined that affiliates did engage in flipping to avoid competitive bidding for discounted rate capacity, but that the transactions predated the Commission's authority to impose civil penalties for affiliate's conduct as a replacement shipper. Staff's investigation determined that the company engaged in prohibited buy/sells, but that only a small portion of the transactions occurred after the Commission received civil penalty authority. In light of the fact that company had no unjust profits in either the flipping or the buy/sell transactions, staff closed the investigation with no action. Since the investigation, the company has increased and improved training procedures to ensure that similar violations do not occur.

Capacity Release. Staff investigated transactions in which it appeared that a natural gas company violated the Commission's posting and bidding regulations for discounted pipeline capacity codified in 18 C.F.R. § 284.8, in transactions with four sets of replacement shippers. Staff decided to close the investigation without sanctions based on mitigating factors presented by company including the facts that the company took delivery of all volumes of capacity released, the releases took place under an asset management-like structure, somewhat similar to those now accommodated by Order No. 712,[37] and the entire financial benefit from optimization activity by the company's counterparties was directed to the company's retail customers; therefore, there was no unjust profit retained by the company. The company also implemented various measures to prevent future violations such as updating a policy manual to comply with Order 712, modifying compliance protocols such that each section of 18 CFR is reviewed by departmental management for applicability to departmental operations, establishing a compliance network of individuals who are accountable for their respective officer's area, and adding four line items to its employee job performance evaluation process dealing with compliance and ethics.

Market Manipulation. Staff investigated twelve entities or individuals trading Natural Gas Futures Contracts on the New York Mercantile Exchange. This investigation focused on trading during the period of January 2005 to March 2007. For each of these 27 months, staff reviewed trading during the 30-minute final settlement period for the futures contract expiring that month. The investigation focused on entities that had traded enough contracts during the final settlement period to substantially affect the volume-weighted average price. Staff has now completed its inquiry into the last of these entities. Staff sought to determine whether that entity held an overall position that would benefit if it used its large

[37] *Promotion of a More Efficient Capacity Release Market*, Order No. 712, FERC Stats. & Regs. ¶ 31,271 (2008).

futures position to manipulate the settlement price. The entity's positions and trading behavior, upon closer examination, did not present sufficient evidence to conclude that the trading behavior was manipulative. With the closure of this inquiry, staff has closed this investigation with no further action.

F. Reliability

Pursuant to the Electric Reliability Organization's (ERO) Compliance Monitoring and Enforcement Program, NERC files NOPs with the Commission that reflect violations of the Reliability Standards found by NERC or one of the eight Regional Entities after investigation. Each NOP indicates resolution of a violation or alleged violation through a penalty and mitigation plan, which may result from an assessment by the Regional Entity or NERC, or from settlement negotiations with the registered entity. The NOP becomes effective by operation of law thirty days after filing with the Commission if the Commission takes no action within that time either to request more information or to open the matter for further review. In addition, the Commission can investigate alleged violations of reliability standards on its own or in coordination with NERC.[38] Several such investigations are pending.

In FY2010, the Commission received 190 NOPs, encompassing approximately 1,300 violations.[39] This includes the Omnibus I filing (NP10-2-000) encompassing 564 violations, and the Omnibus II filing (NP10-160-000) encompassing 62 violations. DOI staff, together with staff from OER and OGC, reviewed the NOPs as they were filed and recommended the Commission take action or decline further review. In FY2010, the Commission declined to review 154 of 190 NOPs, 31 NOPs were pending initial consideration, three NOPs were pending after request for additional information, and one NOP was under review. In FY2010, excluding Omnibus I and II, which both included zero and non-zero penalties, there were 20 zero dollar penalties and 168 non-zero penalties totaling $4,487,300 filed with the Commission. The largest single penalty of FY2010, which arose from a settlement between PPL Electric Utilities and RFC in NP10-171-00 was $290,000 and related to violations of reliability standards FAC-003-1 R2, EOP-004-1 R3.1, and PRC-005-1 R2.1. In FY2010, the Commission also reviewed 45 NOPs involving violations of the Critical Infrastructure Protection (CIP) Reliability Standards.

In FY2010, the Director of Enforcement issued requests for data and documentation on 10 NOPs, and three were still pending at the end of the fiscal year. Of the remaining seven NOPs, the Commission declined to review six NOPs, and initiated review on one NOP, NP10-18-000. That Notice proposes an $80,000 penalty against Turlock Irrigation District (Turlock) pursuant to a settlement agreement between it and WECC. The penalty is for multiple violations, of which the most severe is a violation of FAC-003-1 R2 related to a vegetation-caused outage and loss of load of 270 MW for more than an hour on August 29, 2007. This NOP was the first in which a vegetation contact that led to the outage of a transmission line resulted in a loss of load.

By comparison, staff reviewed 97 violations in 46 NOPs filed by NERC in FY2009, all of which became effective after filing without further review by the Commission.

G. Enforcement Hotline

DOI staff operates the Enforcement Hotline. The Hotline is an anonymous means for persons to inform Enforcement staff of potential violations of Commission statutes, rules, regulations, and orders.

[38] *See 2008 Florida Blackout*, 122 FERC ¶ 61,244 (2008); *Florida Blackout,* 129 FERC ¶ 61,016 (2009); *Florida Blackout*, 130 FERC ¶ 61,163 (2010).
[39] All Notices of Penalty are available on the NERC website at http://www.nerc.com/filez/enforcement/index.html.

The Hotline is also a means by which the public can obtain informal guidance and nonbinding opinions on matters within the Commission's jurisdiction, including applicability of Commission orders and policies to particular circumstances. When staff members receive calls concerning possible violations, such as allegations of market manipulation, abuse of an affiliate relationship, or violation of a tariff or order, DOI staff researches the issue presented and consults other members of the Commission's staff with expertise in the subject matter of the inquiry. In some cases, the Hotline calls lead to investigations by DOI. Hotline staff also provides informal dispute resolution services.

The Commission issued an instant final rule[40] revising its regulations under Parts 1b and 157 to substitute the Commission's Dispute Resolution Service (DRS) for the Commission's Enforcement Hotline as the point of contact for handling dispute-related calls pertaining to the construction and operation of jurisdictional infrastructure projects, including all certificated construction projects under the NGA and licensed or exempt hydroelectric projects under the FPA. The Commission issued the rule, effective May 1, 2010, so that Enforcement could focus more on priorities involving: (1) fraud and market manipulation; (2) serious violations of the reliability standards; (3) anticompetitive conduct; and (4) conduct that threatens the transparency of regulated markets. By transferring the responsibility of dispute-related calls pertaining to the construction and operation of jurisdictional infrastructure projects to DRS with its expertise in conflict resolution, and allowing Enforcement to focus on its priorities, the Commission stated that it would ensure an efficient allocation of its resources that will better serve the public interest.

In FY2010, Enforcement received 301 Hotline calls and inquiries, and a total of 298 Hotline matters were resolved (including matters that remained open at the end of FY2009). The most common category of calls (108) concerned landowner complaints about natural gas pipeline construction. These calls were received prior to the transfer of these matters to DRS, effective May 1, 2010. Many Hotline calls were resolved with the provision of information concerning the subject of the call, and in other instances staff informally assisted callers in resolving disputes, often with the assistance of subject matter experts from other Commission offices. In FY2010, one Hotline call was converted to a preliminary investigation, and one call was referred to an existing investigation relating to the subject of the call.

[40] *Instant Final Rule Transferring Certain Enforcement Hotline Matters to the Dispute Resolution Service*, Order No. 734, 131 FERC ¶ 61,018 (2010).

IV. DIVISION OF AUDITS

A. Overview

The Division of Audits (DA) within Enforcement operates and maintains the Commission's audit program. DA conducts compliance, performance, and other types of audits and related activities to ensure that jurisdictional companies comply with the Commission statutes, orders, rules, tariffs, and regulations.

DA's audit process is instrumental in promoting and ensuring compliance. During the course of an audit, audit staff works closely with audited entities to improve their performance and bring them in compliance with the Commission statutes, orders, rules, tariffs, and regulations. Audit staff discusses and provides informal compliance guidance to audited entities during the course of the audit engagement. If applicable, areas of noncompliance and performance enhancements are discussed throughout the audit engagement.

Transparency and outreach continue to be critical elements in how audit staff promotes and educates audited entities about compliance. Audit transparency is bolstered through public postings of audit commencement letters and final audit reports on the Commission's eLibrary system and through information about the audit process posted on the Commission's website.[41] Public disclosure of these documents provides the public, audited entities, and others with valuable insights into the compliance areas of interest to the Commission. Also, DA conducts outreach activities to promote compliance through formal speaking engagements, industry liaison meetings, meetings with audited entities and their outside counsel, and informal discussions of compliance matters with audited entities.

In January 2010, as part of a reorganization of Enforcement, the Regulatory Accounting Branch and its Chief Accountant function were merged into DA. The Regulatory Accounting Branch administers the Commission's Uniform System of Accounts (USofA), provides expert accounting advice to the electric, natural gas, and oil industries about meeting Commission accounting requirements, and reviews proposed accounting submissions from entities in certificate and merger and acquisition proceedings. DA accounting staff also advises the Commission on current accounting issues affecting jurisdictional industries and reviews exposure drafts and other publications of the Financial Accounting Standards Board (FASB) for items that may affect the Commission or jurisdictional entities.

B. Significant Audit and Accounting Matters

In FY2010, DA conducted notable audits of: Florida Reliability Coordinating Council, Inc.; Texas Regional Entity; Western Electric Coordinating Council; Virginia Electric Power Company; and Entergy Corporation. DA also addressed several significant accounting issues including: International Financial Reporting Standards and Capitalization of Interest During Construction.

1. Independence Audits

DA conducted three independence audits of Regional Entities (RE): Texas Regional Entity (Texas RE), then a division of the Electric Reliability Council of Texas, Inc. (ERCOT); Florida Reliability Coordinating Council, Inc. (FRCC); and Western Electric Coordinating Council (WECC). Each audit reviewed the Regional Entity's compliance with its Bylaws and Delegation Agreement between NERC and the Regional Entity, as well as conditions included in relevant Commission orders.

Florida Reliability Coordinating Council, Inc. While audit staff found that FRCC had taken steps to improve the separation between FRCC RE and FRCC Member Service activities, it nonetheless expressed

[41] The Office of Enforcement audit process is available at www.ferc.gov/enforcement/audits/audit-process.pdf.

concerns with: (1) the FRCC stakeholder Compliance Committee exerting improper influence over the FRCC RE's implementation of certain aspects of the compliance monitoring and enforcement program (CMEP); (2) FRCC RE's lack of oversight of the reporting of misoperations; (3) FRCC's lack of an agreement with a third party to perform compliance activities for all FRCC-registered reliability functions; (4) FRCC RE's perfunctory review of reliability assessments; (5) FRCC's estimated cost assignment of statutory and non-statutory activities; and (6) the absence of adequate periodic evaluations of FRCC RE staffing needs. In a June 23, 2010 order issued in Docket No. PA09-7-000, the Commission accepted the audit findings and directed FRCC to implement 10 audit staff recommendations to ensure FRCC's independence in its performance of its NERC-delegated functions and eight recommendations to ensure FRCC's RE independence and provide adequate separation between its RE and Member Services functions.[42]

Texas Regional Entity. The audit identified concerns with: (1) Texas RE and ERCOT sharing a Board of Directors, which includes the ERCOT ISO CEO; (2) real or perceived conflicts of interest related to Texas RE's role in compliance monitoring of another division of ERCOT, the ISO; (3) Texas RE's cursory review of reliability assessments prepared by ERCOT; and (4) Texas RE's controls over certain ERCOT employees and other IT professionals' access to confidential information. Texas RE acted promptly to address these areas of concern. Of particular note, Texas RE legally separated from ERCOT and is now an independent entity known as Texas Reliability Entity, Inc. Also, Texas RE created a position for a Senior Regional Planning Engineer with responsibility for monitoring ERCOT regional planning assessments. This audit was completed with a Commission order approving the audit report on January 8, 2010 in Docket No. PA09-6-000.[43]

Western Electric Coordinating Council. During this audit, DA found five areas of concerns involving: (1) WECC's inability to track and segregate statutory and non-statutory monies in its accounting system; (2) WECC's registration as and performance of the Interchange Authority for the Western Interconnection as a statutory duty without prior Commission review and approval; (3) the need to ensure the independence of the Regional Entity's performance of CMEP functions and the protection of confidential information with respect to the oversight of the WECC Compliance Committee (WCC); (4) the reduction of the backlog of WECC's current caseload of compliance matters and verification of the completion of mitigation plans; and (5) the lack of a procedure to address improper communication between WECC staff and the registered entities. WECC accepted all of DA's recommendations as a way to strengthen its internal controls, and acted promptly to address the areas of concern. For example, as part of the revised 2010 Business Plan and Budget filing, WECC requested a revision to Exhibit E of the Delegation Agreement to clarify the status of statutory and non-statutory activities. The Commission issued an order approving the audit report on August 20, 2010, in Docket No. PA09-5-000.[44]

2. Virginia Electric Power Company

At Virginia Electric Power Company (VEPCO), audit staff identified five areas of noncompliance with VEPCO's implementation of its Fuel Adjustment Clause (FAC).[45] Audit staff determined that VEPCO improperly included wood chips and interim oil storage costs in calculating fuel costs for FAC billings to wholesale customers. As a consequence of this audit, the Commission ordered VEPCO to refund $1.8 million to the three wholesale customers billed under its wholesale FACs. However, audit staff's inquiry into VEPCO's use of wood chips as a fuel and its authority to pass the expense through its FAC mechanism led VEPCO to file modifications to its FAC to expressly permit the recovery of the cost of any type of fuel through the operation of its FAC.

[42] *Florida Reliability Coordinating Council*, 131 FERC ¶ 61,262 (2010).
[43] *Texas Regional Entity*, 130 FERC ¶ 61,025 (2010).
[44] *Western Electricity Coordinating Council*, 132 FERC ¶ 61,149 (2010).
[45] *Virginia Electric and Power Company*, Letter Order, Docket No. FA08-17-000 (January 12, 2010).

3. Entergy Corporation

At Entergy, audit staff evaluated compliance with Commission cross-subsidization restrictions on affiliate transactions; accounting, recordkeeping, and reporting requirements for holding companies; records preservation requirements for holding companies; and USofA for centralized service companies. Overall, audit staff identified four areas of noncompliance related to cost allocation, accounting classification, EQR reporting, and accrual of allowances for funds used during construction (AFUDC) that resulted in a recovery of $2.3 million that arose from a reduction in utility plant.[46]

4. International Financial Reporting Standards

In FY2010, DA accounting staff actively participated in the pending move to International Financial Reporting Standards (IFRS) from traditional GAAP accounting.[47] IFRS began as an effort by industrialized nations to create standards that could be used by smaller, developing nations unable to establish their own accounting standards. As business and finance became more global, regulators, investors, large companies, and auditing firms began to realize the importance of having common standards in all areas of the financial reporting chain.

Accounting leaders from around the world see a single set of international standards as important for economic growth and allowing, among other benefits, greater access to capital markets, simplified comparisons of reporting entities from different countries, and a single accounting language for large public companies with subsidiaries in multiple jurisdictions. Since the adoption of IFRS by the 27 European Union member states in 2005, the vast majority of industrialized countries has converted to IFRS or has plans to do so in the near future. In late 2008, the Securities and Exchange Commission (SEC) published its *Roadmap for the Potential Use of Financial Statements Prepared in Accordance With International Financial Reporting Standards by U.S. Issuers*,[48] stating its support for a single set of high-quality financial statements to be used by public companies globally and establishing a timeline for possible adoption of IFRS by U.S. public companies. The change to IFRS would have a major impact on Commission jurisdictional pubic companies, as IFRS lacks the fundamental principles to allow rate-regulated entities to recognize the economic effects of rate regulation in their publicly issued financial statements.

In July 2009, the IASB issued an exposure draft entitled "Rate Regulated Activities" (Exposure Draft) seeking comment on the need for a standard to recognize the economic effects of regulation in publicly issued financial statements. In November 2009, the Commission's Chief Accountant submitted comments on the Exposure Draft voicing strong support for the recognition of the economic effects of regulation (principally, regulatory assets and liabilities) in financial statements prepared using IFRS, among other comments. In response to the comments received from the Chief Accountant and other stakeholders from around the globe, the IASB directed its staff to continue researching the issue.

DA has continued to provide support to the Commission on the international accounting standards. In May 2010, a Commissioner, along with industry representatives, met with the IASB to voice further strong support for, and to reiterate the importance and appropriateness of, allowing for the economic effects of rate regulation in financial statements prepared using IFRS. When IASB staff published its Agenda Papers 12-12D in September 2010 it recommended that regulatory assets and liabilities not be

[46] *Entergy Corporation*, Letter Order, Docket No. FA09-9-000 (December 9, 2009).
[47] GAAP stands for Generally Accepted Accounting Principles. These are the standards, conventions, and rules accountants follow in recording and summarizing transactions, and in the preparation of financial statements. GAAP was first set forth by the Accounting Principles Board of the American Institute of Certified Public Accountants, which was superseded by the Financial Accounting Standards Board in 1973. GAAP has been the standard for accounting in the United States for more than half a century.
[48] *See* SEC Release No. 33-8982; (November 14, 2008) [73 FR 70816 (November 21, 2008)] at http://www.sec.gov/rules/proposed/2008/33-8982.pdf.

recognized in financial statements prepared in accordance with IFRS, but instead be disclosed in notes to the financial statements. In a letter submitted to the IASB on September 14, 2010, the Commission disagreed with the IASB recommendation and argued for the recognition of regulatory assets and liabilities. At its meeting, many IASB members disagreed with the recommendations of the Agenda Papers, and the IASB decided that further analysis needed to be done before any final decisions were made relating to the recognition of regulatory assets and liabilities.

During FY2010, DA also initiated communication with the SEC and stakeholders, including state regulators and electric and natural gas industry representatives, to disseminate information about the pending change to IFRS. DA staff continues to monitor IASB developments and meet with concerned stakeholders about IFRS and its potential impact on the Commission and its regulated entities.

5. Revision of Accounting Release No. 5, Capitalization of Interest During Construction (AR-5)

The Commission allows jurisdictional entities to include the cost of financing the construction of a utility plant in the cost of plant through AFUDC. The Commission has relied on the guidance issued by the Commission's Chief Accountant in AR-5 to address when a company may begin to include AFUDC in the cost of construction. Under AR-5, natural gas pipelines generally could not begin construction until after a pipeline filed an application with the Commission for a certificate of public convenience and necessity. However, many natural gas pipelines now participate in pre-filing activities with the Commission and stakeholders, and engage in activities that require them to incur significant project-related expenditures prior to filing a certificate application. As a result, natural gas pipelines may be at risk of being unable to capture all of the costs of financing construction projects if they cannot accrue AFUDC on expenditures made prior to the filing of a certificate application.

Accounting staff worked with the OEP and OGC to revise Commission policy on when AFUDC can begin to be included in the cost of construction in order to reflect recent developments in the natural gas industry. The revised policy allows natural gas pipelines to begin accruing AFUDC on projects when capital expenses for a project are incurred and activities necessary to get a project ready are progressing. This new policy promotes infrastructure development by allowing natural gas pipelines to recover all monies invested in the construction of interstate facilities. The AFUDC policy was issued on March 18, 2010, in orders to Southern Natural Gas Co. and Florida Gas Transmission LLC.[49]

C. Statistics

In FY2010, DA completed 52 audit activities. Of these, 25 were DA-directed audits of public utilities, natural gas pipeline and storage companies, and Regional Entities. The audits consisted of nonfinancial and financial audits. Eighteen of the 25 were nonfinancial audits focused on ensuring compliance with requirements for: open access transmission tariffs and market-based rates, mergers and acquisitions, pipeline capacity releases, and independence of Regional Entities. The remaining seven financial audits addressed: affiliated transactions and the Public Holding Company Act of 2005 (PUHCA 2005), fuel cost recovery mechanisms, and EQRs.

These 25 audits resulted in 210 recommendations for corrective action and included $4.1 million in monetary recoveries. Specifically, audit staff identified $1.8 million in refunds from accounting and billing adjustments, with interest, to wholesale fuel-adjustment clause customers. Other monetary

[49] *Florida Gas Transmission Co. LLC*, 130 FERC ¶ 61,194 (2010); *Southern Natural Gas Co.*, 130 FERC ¶ 61,193 (2010).

recoveries of $2.3 million resulted from accounting adjustments involving reductions in utility plant. Other corrective actions included: (1) structural and other remedies to achieve independence; (2) process enhancements; (3) improvements to business procedures and practices relating to Commission requirements; and (4) accounting and reporting corrections.

Audit staff continues to require that jurisdictional companies implement compliance plans to ensure that Commission regulatory requirements are met, including those undertaken for comprehensive employee training, periodic self-auditing, and establishing and monitoring of processes, practices, and procedures. To assess whether jurisdictional companies and entities properly implement corrective action, DA staff often conducts a post-audit site visit to examine whether the subject of an audit has implemented DA's recommendations. Audit staff tracks all audit recommendations to ensure that they are implemented.

In addition to 25 DA-directed audits, audit staff joined OER staff to observe 27 reliability audits conducted by the eight Regional Entities and two Agreed-Upon Procedures (AUP) audits conducted on behalf of NERC. As observers on the reliability audits, DA and OER's role on these audits was to understand the Regional Entity audit process and engage in discussions with Regional Entity audit team members to examine lessons learned about audit processes, methods, and techniques. On the AUP audits, DA and OER staff also examined audit processes, methods, and techniques, but from the perspective of NERC's role as monitor of the Regional Entities.

D. Accounting Statistics

The Commission requires that electric utilities, natural gas companies, centralized service companies and oil pipelines subject to its jurisdiction keep financial and related records in accordance with the rules and regulations contained in the applicable USofA to aid in the establishment and monitoring of just and reasonable rates. DA accounting staff develops and maintains uniform regulations and requirements for accounting, financial reporting, and preservation of records. In addition, accounting staff advises the Commission on current accounting issues affecting jurisdictional industries and provides its accounting expertise to the Commission's program offices in the development of Commission policies and proposed rulemakings and the review of electric rate, merger, and natural gas certificate filings before the Commission. In FY2010, accounting staff reviewed approximately 200 filings to ensure that accounting is consistent with the applicable USofA.

Accounting staff also provides accounting advice to the electric, gas, and oil industries with regard to meeting the Commission's accounting requirements, and participates in liaison meetings with these industries to stay abreast of current and emerging accounting and financial reporting issues. Accounting staff monitors and participates in projects initiated by the Financial Accounting Standards Board, the SEC, and the International Accounting Standards Board for items that may impact the Commission or its jurisdictional entities.

1. Requests for Approval of the Chief Accountant

Accounting staff reviews and responds to all requests for approval submitted to the Chief Accountant. Requests span the breadth of Commission accounting and reporting requirements and regulations for electric, natural gas, oil, and centralized service companies, and may involve anything from statutorily required filings to unique topics involving issues of first impression, items of questionable interpretation, or implementation of new or evolving generally accepted accounting principles. In FY2010, the Chief Accountant responded to 50 requests for approval by the Chief Accountant. Many of these filings include the accounting requests related to Commission-approved mergers, transfers of jurisdictional assets, prior period adjustments, corporate re-organizations, and the filing of a FERC Form No. 1 that consolidates the financial information of two jurisdictional entities.

2. Certificate Proceedings

Pursuant to section 7 of the NGA, natural gas pipelines must file for a certificate of public convenience and necessity from the Commission to construct or abandon natural gas facilities and to initiate or abandon natural gas service. Also, in authorizing the construction of natural gas pipeline facilities, the Commission establishes an initial rate for the new service. A certificate application contains, in part, cost and accounting information related to the construction and operation of natural gas facilities used to determine initial rates charged to customers.

Working with the OEP, OGC, and OEMR, accounting staff reviews all items used to determine initial rates, such as operation and maintenance expenses, depreciation, depletion, amortization, taxes, and return on investment to assure the Commission will set "just and reasonable" rates that are in the public interest. In its review of these items, DA ensures the applicant follows the Commission's accounting rules and regulations, and frequently addresses accounting issues related to AFUDC calculations, contributions in aid of construction, regulatory assets and liabilities, capacity leases, and sale and lease-back transactions. In FY2010, accounting staff reviewed 26 natural gas pipeline certificate applications.

3. Merger and Acquisition Proceedings

Accounting staff reviews all merger and acquisition filings made under section 203 of the FPA to ensure the proposed accounting for business combinations conforms to the Commission's regulations. DA works with OGC and OEMR in providing critical accounting direction addressing all accounting concerns raised in the filing to ensure accounting does not result in an unjust and unreasonable rate. For example, DA provides direction on the proper accounting for merger transaction costs, acquisition adjustments, and goodwill, ensuring filers maintain appropriate original cost records of assets, and by addressing emerging accounting issues (*e.g.*, fair value accounting and reporting of long-term debt) for cost-of-service rate regulated entities. After the Commission approves the business combination, DA continues its accounting monitoring by reviewing and approving filings made by applicants under the Commission's accounting regulations to ensure filers properly implement all accounting direction in the order. During FY2010, accounting staff reviewed 95 merger and acquisition filings.

4. Rate Proceedings

Accounting staff provides accounting insight and support to OEMR in reviewing electric, natural gas, and oil pipeline rate filings before the Commission. These filings may encompass a host of issues requiring input on a range of complex accounting and ratemaking issues (*e.g.*, inclusion of pre-commercial costs, construction costs, carrying charges, and large acquisition premiums in the development of rates). Also, accounting staff advises the Commission on how new accounting pronouncements issued by the Financial Accounting Standards Board and others affect the ratemaking process. Accounting staff's input on these and other matters ensures uniform accounting and financial reporting for new and emerging issues, and aids in the development of just and reasonable rates. During FY2010, accounting staff participated in 28 rate proceedings.

E. Summary of Audit Results and Accounting Matters

The section below highlights the results of several major categories of audits completed in FY2010.

1. Reliability Audits

In FY2010, DA expanded its reliability efforts and joined OER staff to observe 27 reliability audits conducted by the eight Regional Entities. As observers, DA and OER's role on these audits was to understand the Regional Entity audit process and engage in discussions with Regional Entity audit team members to examine lessons learned about audit processes, methods, and techniques.

Also, DA and OER observed NERC and its outside contractor on two audit engagements in which NERC evaluated the Regional Entity's performance under its delegation agreements, using a selected set of AUPs developed to assess compliance. DA and OER attended site visits to observe the audits, which included interviews of Regional Entity employees, evaluation of the evidentiary record, and NERC review of confidential data.

2. MBR, OATT, and RTO/ISO Audits

PJM Interconnection, LLC. The focus of this audit was an evaluation of whether PJM complied with its Operating Agreement, Open-Access Transmission Tariff, and USofA regulations. Audit staff identified findings involving employees' acceptance of gifts from vendors and procurement policies for purchases over $50,000. Audit staff also found that PJM inconsistently applied procedures for identifying potential price errors in real-time Locational Marginal Prices and did not always charge time for services performed on behalf of its subsidiaries, or for subsidiaries' use of PJM data. Finally, audit staff found that PJM provides generators' zonal dispatch rate data through dispatch instructions about five seconds before posting the information on its website for all market participants. In its order, the Commission adopted 25 audit staff recommendations that PJM was required to implement to bring the organization into compliance with respect to audit staff's findings.[50]

3. PUHCA and Other Accounting Audits

Duke Energy Corporation. Audit staff examined whether Duke Energy Corporation (Duke Energy) complied with Commission cross-subsidization restrictions on affiliate transactions; accounting, recordkeeping, and reporting requirements; the USofA for centralized service companies; and preservation of records requirements for holding companies and service companies. Audit staff identified six areas of noncompliance. They ranged from failing to report wholesale sale transactions with the Midwest Independent Transmission System Operator (MISO) for 2008 in its Electric Quarterly Report (EQR) filings to untimely notification to the Commission of a premature loss of records. In its order, the Commission adopted 16 audit staff recommendations, including Duke Energy's refiling of all 2008 EQRs in which MISO transactions were unreported. The Commission also ordered Duke Energy to strengthen its processes and procedures to ensure that it makes timely filings to the Commission when reporting a premature loss or deletion of records, and to submit those policies and procedures to audit staff.[51]

American Electric Power, Inc. In this audit, audit staff evaluated whether American Electric Power, Inc. (AEP) complied with FERC cross-subsidization restrictions on affiliate transactions; accounting, recordkeeping, and reporting requirements; the USofA for centralized service companies; and preservation of records requirements for holding companies and service companies. The audit identified ten areas of noncompliance addressing accounting and reporting issues. Five issues required corrections (*i.e.*, reductions) to AEP's formula rate tariff billing in the amount of $116,760.[52]

---

50 *PJM Interconnection, LLC*, 132 FERC ¶ 61,173 (2010).
51 *Duke Energy Corporation*, Letter Order, Docket No. FA09-8-000 (March 3, 2010).
52 *American Electric Power Company, Inc.*, Letter Order, FA09-7-000 (April 23, 2010).

4. Natural Gas

Questar Pipeline Company. This audit was the first multi-objective probe of a pipeline's compliance with selected reporting and accounting requirements in Order No. 581.[53] Audit staff identified a dozen noncompliance findings on the company's implementation of Order No. 581, including improper accounting and reporting errors in FERC Form No. 2. The report also identified reporting errors in the Index of Customers; errors complying with North American Energy Standards Board standards; and the failure to file a single nonconforming contract.

The Commission approved all 23 audit staff recommendations. The recommendations range from filing with the Commission all outstanding contracts with material deviations and negotiated rates to establishing, implementing, and updating written policies and procedures to ensure that Questar complies with Commission rules and regulations, and NAESB standards. Also, Questar was ordered to comply with Order No. 581 and the USofA by recording all cash-out transactions and revising accounting procedures to classify properly the appropriate account the amounts for fuel received in-kind.[54]

5. Audits Closed with No Findings and Recommendations

During FY2010, DA completed seven audits and determined that no audit findings and recommendations were warranted. These audits involved the examination of transactions associated with capacity release, fuel-adjustment clause, and mergers, acquisitions, and dispositions. Even when audits result in no findings and recommendations, the audit reports provide insights into the type of audit topics and testing performed by DA in reaching its conclusions.

Capacity Release Audits. DA conducted five capacity release audits to determine compliance with Order No. 712, which relaxed and waived certain regulations to improve the efficiency of the Commission's capacity release program. The companies audited were: (1) Southwest Gas Corporation; (2) Cascade Natural Gas Corporation; (3) Berry Petroleum Company; (4) National Grid; and (5) UNS Gas, Inc. Each audit evaluated the company's compliance with the capacity release requirements under 18 C.F.R. § 284.8 for firm capacity held and released by the company on interstate natural gas pipelines. After thorough evaluations, audit staff did not identify non-compliance with the Commission's capacity release requirements by any of the five companies. On May 7, 2010, all five audits were completed with no findings of noncompliance.[55]

Mergers, Acquisitions, and Dispositions. DA commenced audits of Texas Energy Future Holdings L.P. (Texas Holdings) and U.S. Power Generating Company to determine whether each company had complied with regulations on blanket authorizations under 18 C.F.R. § 33.1(c), and conditions in the Commission's merger orders. These audits paid particular attention to each company's compliance with hold-harmless commitments, among other conditions, in the Commission merger order. On August 5, 2010, both audits were completed with no findings of noncompliance.[56]

[53] *Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies*, Order No. 581, 60 FR 53019, 53050-51, FERC Stats. & Regs. ¶ 31,026 (1995), *order on reh'g*, Order No. 581-A, FERC Stats. & Regs. ¶ 31,032 (1996).

[54] *Questar Pipeline Company*, Letter Order, Docket No. PA09-4-000 (March 18, 2010).

[55] *Southwest Gas Corporation*, Letter Order, Docket No. PA10-7-000 (May 7, 2010); *Cascade Natural Gas Corporation*, Letter Order, Docket No. PA10-8-000 (May 7, 2010); *Berry Petroleum Company*, Letter Order, Docket No. PA10-6-000 (May 7, 2010); *Keyspan Gas East Corporation d/b/a National Grid*, Letter Order, Docket No. PA10-9-000 (May 7, 2010); and *UNS Gas, Inc.*, Letter Order, Docket No. PA10-8-000 (May 7, 2010).

[56] *Texas Energy Future Holdings L.P.*, Letter Order, Docket No. PA10-14-000 (August 5, 2010); *US Power Generating Company*, Letter Order, Docket No. PA10-4-000 (August 5, 2010).

Fuel Recovery Mechanisms. DA initiated an audit of Allete, Inc. to evaluate its compliance with FAC requirements under 18 C.F.R § 35.14 and the company's respective FAC tariffs. Audit staff identified no areas of noncompliance with Allete's FAC calculations and underlying accounting and issued a "no-findings" audit report on August 5, 2010.[57]

F. Division of Audits Compliance Program

DA has a long-standing history of promoting compliance through transparency and outreach. Transparency has been achieved through public postings on the Commission's eLibrary system of audit commencement letters and audit reports. This freely available document display provides the public and jurisdictional entities with information about compliance areas that the Commission is emphasizing. In addition, DA has provided greater detail in its reports to enable companies to be better informed and prepared for similar audits of their operations.

Likewise, outreach serves as an important avenue for audit and accounting staff to provide compliance guidance to the public and jurisdictional companies. DA responds daily to questions from jurisdictional entities, industry stakeholders, and consultants. These inquiries are directed to DA from the Commission's Compliance Help Desk, Office of External Affairs, Enforcement Hotline, other offices within the Commission, or directly from interested parties. In responding to more than 120 such questions during FY2010, DA provided informal staff advice on all aspects of Commission accounting, financial reporting, and record retention regulations.

DA also oversees accounting liaison activities with industry groups, such as Edison Electric Institute, American Gas Association, Interstate Natural Gas Association of America, and Association of Oil Pipelines. Through meetings with industry groups and jurisdictional entities, and responding to inquiries, DA staff helps provide regulatory certainty on accounting and reporting matters, which reduces regulatory risk to jurisdictional entities.

Collectively, transparency and outreach provide jurisdictional entities the information and tools needed for developing and enforcing their own compliance programs using: DA's publicly available audit commencement letters, audit reports, audit process, detailed scope and methodology, frequently asked questions (FAQs) on the Commission website, and feedback from reliability observation audits.

In FY2010, DA continued to support the Commission's goal of promoting internal compliance programs at jurisdictional entities. DA enhanced its review of internal controls and compliance programs and has provided feedback to companies when shortcomings are noted. Audit staff has already seen positive signs of improvement, such as companies enhancing their measures to comply with Commission regulations even prior to the commencement of audits.

[57] *Allete, Inc.*, Letter Order, Docket No. FA10-7-000 (August 5, 2010).

V. DIVISION OF ENERGY MARKET OVERSIGHT

A. Overview

The Division of Market Oversight within the Office of Enforcement is responsible for monitoring, oversight, and analysis of the nation's natural gas and electric power markets. Market Oversight continuously examines and monitors the structure and operation of these markets to maintain market intelligence, to identify market anomalies, and to follow market events as they arise. Market Oversight develops, examines, and disseminates its analysis through daily morning meetings in the Division's Market Monitoring Center. Market Oversight reviews market developments for issues and events which are then included in internal documents as well as publications posted on the Oversight website, and in presentations at open Commission meetings and other public conferences, briefings of state regulatory agencies, and discussions with industry and foreign delegations. Market Oversight's outreach efforts include monthly calls with State commissions, as well as meetings with market stakeholders. In January 2010, as part of a reorganization in Enforcement, the Forms Administration and Data Branch of the former Division of Financial Regulation merged into Market Oversight. Market Oversight now administers and ensures compliance with the filing requirements for the Electric Quarterly Report (EQR) and other FERC financial forms required of and filed by jurisdictional companies. The data collected is complementary to the market monitoring and analysis functions of Market Oversight.

Market Oversight regularly performs market surveillance, in part, to identify potentially improper market participant behavior and anomalous market outcomes. Market Oversight accesses a large variety and quantity of data on an ongoing basis, studying changes in trends highlighting market outcomes that cannot be readily explained by supply and demand fundamentals. Market Oversight staff examines such anomalies to determine, among other things, whether there are indications of possible fraud or manipulation. In support of the Commission's market-based rate program, Market Oversight analyzes the EQR price, volume, and contract data for market-based rate sales to determine whether reported sales indicate that a seller may be charging excessive rates. Market Oversight provides technical expertise and analyses to DOI, particularly in investigations involving possible market manipulations.

Market Oversight staff plays an integral role in Commission efforts to increase transparency in the energy markets. In 2006, Commission staff conducted an extensive outreach effort to formulate options for implementing EPAct 2005's transparency provisions for wholesale natural gas and electric markets. Market Oversight staff has continued to support Commission efforts to adopt additional filing and posting requirements for the sale or transportation of physical natural gas in interstate commerce.

B. Market Monitoring

Market Oversight staff continuously examines the structure, operation, and interaction of natural gas and electric markets. On an ongoing basis, Market Oversight staff accesses and surveils numerous data sets from a variety of sources to review market fundamentals and emerging trends; staff holds daily meetings in the Market Monitoring Center to track and consider market events as they occur.

As developments warrant, Market Oversight staff initiates projects designed to understand market patterns, to evaluate participant behavior, and to identify potential manipulation. During FY2010, such projects included analyses of natural gas price formation and an assessment of financial transmission rights (FTRs) in RTO markets. Staff may also initiate analyses based upon the request of the Chairman, other Commissioners, or other offices within the Commission. During FY2010, such analyses included:

1. State of the Markets Report 2009, April 15, 2010

Each year, Market Oversight presents a State of the Market report reviewing how the significant events of the past year better inform our understanding of the current and future energy markets. Energy markets underwent considerable change in 2009. In its annual review of the prior year's markets, Market Oversight reviewed the unprecedented drop in electric demand (2009 vs. 2008) that occured after the economic downturn, mild weather and, possibly, increasing energy efficiency. The deep global recession was reflected in reduced demand, lower prices, and slowed investment. Staff presented the report to the Commission and discussed developments in the gas market in 2009, particularly the significant upward reassessment of the U.S. resource base, the completion of significant pipeline projects and the movement toward gas/coal price parity in several regions. During the year, a new gas market paradigm emerged into clearer focus. Finally, the report noted the initiation of California ISO's new nodal market as well as the new ancillary services market in MISO.[58]

2. Seasonal Market Assessments

Market Oversight makes seasonal assessments which are presented at Commission meetings and made available to the public on the FERC website. In FY2010, the following annual assessments were presented by Market Oversight staff:

2009/2010 Winter Energy Market Assessment, November 19, 2009. Market Oversight staff presented the outlook for natural gas markets and noted how improved infrastructure and increased shale gas production were reducing volatility and regional disparities in gas prices. The continued effects of the economic downturn, combined with the gas outlook, were expected to hold electric prices down.[59]

Summer 2010 Energy Market and Reliability Assessment, May 20, 2010. This assessment reviewed the outlook for the electric market for the coming summer. The Office of Electric Reliability contributed a summary of NERC's market review, which raised little concern for reliability for the coming season. On the market side, the most significant concern was caused by low snowpack in the Pacific Northwest, combined with a forecast for a warm summer on the West Coast.[60]

3. Capacity Reassignment Reporting

Market Oversight staff provided a report summarizing the findings of a 30-month study of the competitive effects of removing the price cap for reassigned electric transmission capacity. In Order No. 890, the Commission removed the price cap on reassignments of transmission capacity.[61] In Order No. 890-A, issued in December 2007, FERC removed the price cap for a limited period ending Oct. 1, 2010, and directed staff to study the developing market.[62] In April, staff completed the report and presented findings at the April 15, 2010 Commission meeting.

The report concluded that the secondary market for transmission capacity reassignments experienced strong growth during the study period, with the number of transactions growing from 200 to 32,000 and the volume of reassigned capacity expanding from 3,000 gigawatt hours (GWh) to 36,000 GWh. Only a few of the reassignments were at prices above the cost-based tariff rate. A comparison of the

[58] This presentation is available at http://www.ferc.gov/market-oversight/st-mkt-ovr/som-rpt-2009.pdf.

[59] This presentation is available at http://www.ferc.gov/market-oversight/mkt-views/2009/11-19-09.pdf.

[60] This presentation is available at http://www.ferc.gov/market-oversight/mkt-views/2010/05-20-10.pdf.

[61] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007).

[62] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), order on reh'g, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

reassignment prices to market price differentials suggested that resale prices reflect market fundamentals rather than the exercise of market power. Staff's report, along with a Notice of Proposed Rulemaking (NOPR) issued in April, served as the basis for Order No. 739 which permanently extends the lifting of the price cap on reassignments of firm transmission capacity.[63]

4. Pipeline Capacity Release Review

In Order No. 712, the Commission instructed staff to prepare a report reviewing the effects of removing the price cap on and changing the asset management rules for released pipeline capacity.[64] This report is due January 30, 2011. Staff began routine monitoring of the capacity release market with a focus on price and counterparty data to determine the prices charged for released capacity and to understand which market participants are releasing capacity and purchasing released capacity. This analysis is ongoing, allowing staff to present the Commission with capacity-release transactional trends, data, and analyses as required.

C. Technical Analysis

Market Oversight staff examines the structure, operation, and interaction of natural gas and electric markets. Staff performs technical analyses using available data including hourly prices at RTO nodes and hubs, prices and volumes traded on public exchanges, and electric transactional reporting in the Electric Quarterly Reports. Staff is constantly using these and other data to better understand how these markets work, to assess the economics of market behavior, and to identify possible anomalies. Market Oversight also evaluates behavior of specific market participants, including detailed portfolio examinations and market event review. Market Oversight works with Investigations throughout the lifecycle of market manipulation investigations providing detailed transaction analysis and subject matter expertise. Through the re-creation of positions and trading activities, staff reviews the interaction between physical and financial products within the portfolios of investigative subjects to uncover improper uses of jurisdictional markets. Market Oversight serves a key role during investigations, providing critical market context, specific trading portfolio review, and subject matter support in the areas of trading and markets.

D. Outreach and Communication

Market Oversight makes available to the public its analyses, posting reports on the Market Oversight website and in monthly snapshot presentations, and frequently provides briefings to industry participants, state and federal officials, and foreign delegations.

1. Website

Market Oversight publishes data and analysis on the Market Oversight website at http://www.ferc.gov/market-oversight/market-oversight.asp. The site is organized into pages for (a) national overviews of electricity and natural gas markets, and (b) ten regional electricity and five regional natural gas markets. The regional market pages provide descriptive information and statistics and a number of charts, tables and maps displaying market characteristics and outcomes. The Market Oversight

63 *Promoting a Competitive Market for Capacity Reassignment,* Order No. 739, 75 Fed Reg. 58293 (September 24, 2010), 132 FERC ¶ 61,238 (2010). See also page 8 herein.

64 *Promotion of a More Efficient Capacity Release Market,* Order No. 712, 73 Fed. Reg. 37,058 (June 30, 2008), FERC Stat. and Regs. ¶ 31,271(2008), order on reh'g, Order No. 712-A, 73 Fed. Reg. 72,692 (December 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008).

website also has information on several other relevant markets, including LNG, coal, and emissions markets.

2. Snapshot Calls

Market Oversight holds monthly conference calls with representatives of state agencies in four main regions of the country: Northeast, Midwest and SPP, Southeast, and West to provide a current "snapshot" of energy markets.

Regional Snapshot Reports are compiled on a monthly basis and serve as the basis for discussion on the calls. They include data on electricity, natural gas, LNG, and weather, and charts on other market-affecting developments. In addition, the Snapshot Report occasionally incorporates reports on special topics. In FY2010, special reports included in some of the Snapshot Reports included:

- Lessons Learned from the First Form No. 552 Submissions, a Form designed to promote greater transparency in gas and electric markets;
- Agenda Update on Order No. 720A, Electric Transparency Notice of Inquiry, Credit Notice of Proposed Rulemaking; and
- Transmission Capacity Release promoting a competitive market for capacity reassignments.

Snapshot Reports are available on the Market Oversight website at http://www.ferc.gov/market-oversight/mkt-snp-sht/mkt-snp-sht.asp, where they are archived back to 2007.

3. Domestic and Foreign Delegation Briefings

Market Oversight periodically hosts visitors to FERC including foreign and domestic delegations of regulators and industry participants. In FY2010, Market Oversight conducted a number of briefings in the Market Monitoring Center (MMC) including:

- Twenty domestic briefings. These included briefings to two Congressional delegations, nine groups of officials from federal or state agencies, and eight industry groups.
- 18 presentations to foreign delegations. These included delegations from Albania, Serbia, India, Saudi Arabia, Norway, China, Canada, Korea, and Kosovo, as well as regional delegations from Southeast Asia. Each briefing was tailored to the particular interests of the visiting delegation.

Market Oversight briefs new FERC employees, summer interns and special visitors on the uses of the MMC and the data to which we subscribe, demonstrating how Market Oversight monitors market fluctuations on a continuing basis.

E. Forms Administration and Filing Compliance

Market Oversight staff administers and ensures compliance with the Commission's filing requirements. The Commission requires companies subject to its jurisdiction to submit annual and quarterly reports regarding jurisdictional sales, financial statements, and operational data.

The Commission, as well as industry, uses these reports for a variety of purposes, including evaluation of whether existing rates continue to be just and reasonable. Accordingly, the accuracy of these reports is a critical aspect of monitoring the markets. During FY2010, approximately 3,000 respondents submitted FERC forms as shown below:

Form	Filing Frequency	Total Respondents in Last Collection
Form No. 1[65]	**Annually**	**201**
Form No. 1-F	**Annually**	**4**
Form No. 2[66]	**Annually**	**86**
Form No. 2A[68]	**Annually**	**51**
Form No. 6[67]	**Annually**	**171**
Form No. 60[68]	**Annually**	**35**
FERC-61[69]	**Annually**	**27**
Form No. 552[70]	**Annually**	**690**
FERC-730[71]	**Annually**	**34**
Form No. 3-Q major Electric[72]	**Quarterly**	**192**
Form No. 3-Q non-major Electric[72]	**Quarterly**	**4**
Form No. 3-Q major Gas[72]	**Quarterly**	**84**
Form No. 3-Q non-major Gas[72]	**Quarterly**	**43**
Form No. 6Q[69]	**Quarterly**	**146**
Electric Quarterly Report (FERC-516)[73]	**Quarterly**	**1,397**

Market Oversight performs a series of data validation checks for the various FERC forms to ensure that submissions comply with filing requirements and are intended to improve the accuracy and quality of the information filed with the Commission. Market Oversight contacted filers regarding issues with their submittals. The majority of issues were resolved, and, as appropriate, filings were resubmitted to address concerns. When a company fails to file as required and cannot be contacted, the Commission must take action to address non-compliance. For example, in FY2010, the Commission revoked the market-based

[65] Form No. 1 is a comprehensive financial and operating report submitted for electric rate regulation and financial audits.

[66] Form No. 2 is a compilation of financial and operational information from major interstate natural gas pipelines subject to the jurisdiction of the FERC. "Major" is defined as having combined gas transported or stored for a fee that exceeds 50 million dekatherms. Form No. 2 respondents must also file a CPA Certification by an independent certified public accountant. Form No. 2A is an abbreviated Form No. 2 filed by non-major interstate natural gas pipelines subject to the jurisdiction of the FERC. "Non-major" is defined as having total gas sales or volume transactions exceeding 200,000 dekatherms. Form No. 2A respondents must provide CPA Certification by an independent certified public accountant.

[67] Form No. 6 is filed by oil pipeline carriers with annual jurisdictional operating revenues of $500,000 or more. Oil pipeline carriers with revenues more than $350,000 but less than $500,000 must file pages 1, 301, and 700; oil pipeline carriers with revenues less than $350,000 must file page 1 and page 700.Oil pipeline carriers submitting FERC Form No. 6 (annual jurisdictional operating revenues of $500,000 or more) must submit FERC Form No. 6-Q.

[68] Form No. 60 contains financial information from centralized service companies subject to FERC jurisdiction.

[69] FERC-61 is a filing requirement for service companies in holding company systems (including special purpose companies) that do not have to file FERC Form No. 60.

[70] Form No. 552 provides information on natural gas transactions.

[71] FERC-730 is used by the Commission to determine the effectiveness of its rules and to provide it with an accurate assessment of the state of transmission investment by public utilities. This annual report includes projections, information that details the level and status of transmission investment, and the reason for delay, if any. Public utilities that have been granted incentive based rate treatment for specific transmission projects under provisions of 18 CFR § 35.35 must file FERC-730. The report must conform to the format prescribed in Order No. 679, Appendix A. Filers are strongly encouraged to submit the FERC-730 electronically via eFiling.

[72] Form No. 3-Q is a comprehensive quarterly financial and operating report which supplements Annual Report Forms No. 1 and No. 2 and is submitted for all "Major" and "Non-Major" Electric Utilities, Licensees, and Natural Gas Companies.

[73] All public utilities are required to electronically file Electric Quarterly Reports 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 transaction information for short-term and long-term market-based power sales and cost-based power sales during the most recent calendar quarter.

rate authorization of six sellers for failure to timely file their EQRs.[74] Additionally, the Commission also notified two companies of the Commission's intent to revoke their market-based rate authority for failure to file their EQRs; the 15 day compliance period expired on this notice as of October 6, 2010.[75]

F. Agenda Items: Transparency

Market Oversight staff played an integral role in Commission efforts to increase transparency in the energy markets during FY2010. In particular, Market Oversight provided technical support for the following:

1. Order No. 704-C Clarification Regarding Form No. 552

In FY2010, the Commission issued Order No. 704-C granting clarification on several issues.[76] In March 2010, Market Oversight held a technical conference to discuss Form No. 552; Market Oversight also spoke to numerous groups to understand market participant positions involving reporting requirements under Form No. 552. Wide open discussions regarding industry concerns resulted in the incorporation of some of the best ideas in Order No. 704-C, which revises Form No. 552 so as to (1) exempt from reporting any unexercised options to take gas under a take-or-release contract; (2) clarify the definition of exempt unprocessed natural gas transactions as those involving gas that is both not yet processed (to separate and recover natural gas liquids) and still upstream of a processing facility; (3) exempt from reporting cash-out and imbalance transactions, since they were burdensome to report and provided little market information; (4) drop reporting of transactions under blanket sales certificates, since this is burdensome to report and provides little market information (this has the effect of exempting small entities who were obligated to report solely by virtue of possessing a blanket sales certificate; and (5) make several non-substantive modifications to Form No. 552 in an effort to make it more user-friendly. The first filings under Order No. 704-C for calendar year 2009 were due on October 1, 2010.

2. Order No. 720 Clarifications on Non-Interstate Pipeline Posting Requirements

In FY2010, the Commission issued Order No. 720-A (January 21) which modified Order No. 720 to include a requirement that major non-interstate pipelines post information for receipt and delivery points at which design capacity is unknown.[77] On July 21, the Commission issued Order No. 720-B, which clarified its regulations requiring (1) major non-interstate pipelines to post daily scheduled volume information and other data points, and (2) interstate pipelines to post information regarding the provision of no-notice service. These clarifications include establishing the compliance deadline for major non-interstate pipelines after the effective date of this rule and clarifying the requirement for interstate pipelines to update posted no-notice service volumes. Staff answered numerous questions from industry about implementation of the Order, which became effective on October 1, 2010.

---

[74] Electric Quarterly Reports, G&G Energy, Inc.; NCSU Energy, Inc.; Primary Power Marketing L.L.C. and WASP Energy, LLC, 130 FERC ¶ 61,187 (2010); Electric Quarterly Reports, Strategic Energy Management Corp. and Solaro Energy Marketing Corporation, 131 FERC ¶ 61,272 (2010).

[75] The Notice of Revocation was issued on 10/7/2010. Electric Quarterly Reports, BM2 LLC and DJGW, LLC, 132 FERC ¶ 61,251 (2010).

[76] *Transparency Provisions of Section 23 of the Natural Gas Act, Order No. 704*, 73 Fed. Reg. 1,014, FERC Stats. & Regs. ¶ 31,260 (2007), *order on reh'g, Order No. 704-A,* 73 Fed. Reg. 55,726, FERC Stats. & Regs. ¶ 31,275 (2008), *order on reh'g, Order No. 704-B,* 125 FERC ¶ 61,302 (2008), *order on reh'g, Order No. 704-C,* 75 Fed. Reg. 35,632, 131 FERC ¶ 61,246 (2010).

[77] *Pipeline Posting Requirements under Section 23 of the Natural Gas Act, Order No. 720*, 73 Fed. Reg. 73494 (December 2,2008), FERC Stats. & Regs. 31,283 (2008), *Order No. 720-A*, 75 Fed. Reg. 5178 (Jan. 21, 2010), 130 FERC ¶ 61,040 (2010), *Order No. 720-B*, 75 Fed. Reg. 44,893 (July 30, 2010), 132 FERC ¶ 61,057 (2010).

3. Electric Transparency Notice of Inquiry

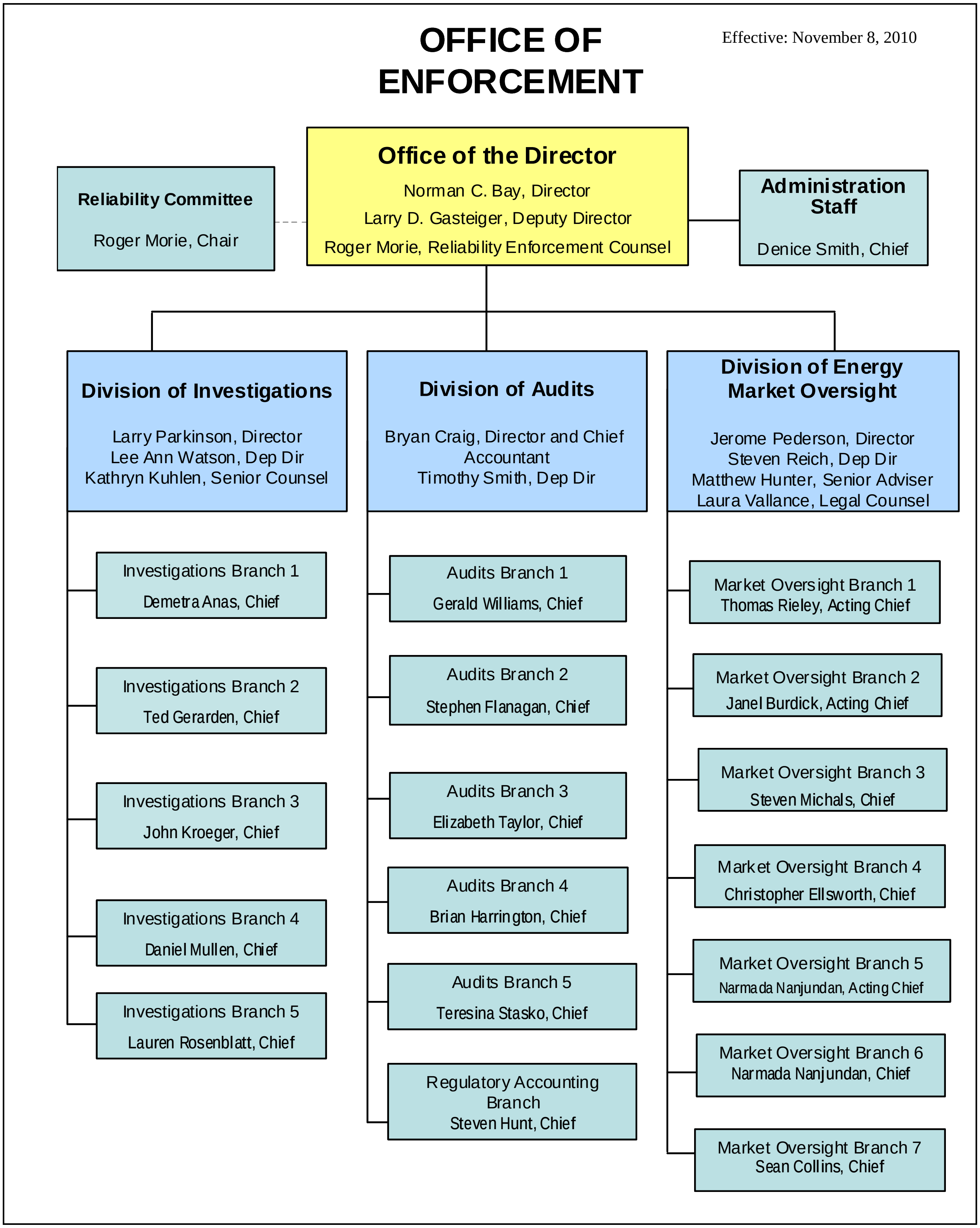
On January 21, 2010, the Commission issued a Notice of Inquiry (Docket No. RM10-12-000) seeking comment on whether the EQR filing requirements should extend to publicly owned utilities, municipal utilities, public utility districts, rural cooperatives, and federal entities pursuant to the electric market transparency provisions of section 220 of the FPA.[78] Additionally, the Commission sought comment on whether FERC should consider other refinements to the existing EQR filing requirements including reporting the trade date and type of rate; reporting resale of financial transmission rights in secondary markets; standardizing the unit for reporting energy and capacity transactions; and omitting the time zone from the contract section of the EQR. Comments were due March 30, 2010; staff is currently evaluating submitted comments and considering whether to issue a Notice of Proposed Rulemaking.

[78] *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act, Notice of Inquiry*, 75 Fed. Reg. 4,375 (Jan 27, 2010), FERC Stats. & Regs. ¶ 35,565 (2010).

VI. CONCLUSION

The information in this Report is provided to promote transparency and to encourage entities subject to Commission requirements to develop strong internal compliance programs. As discussed in this Report, Enforcement promotes compliance with the Commission's statutes, orders, rules, and regulations by investigating a wide variety of matters, auditing regulated entities for both compliance and performance issues, and actively overseeing the gas and electric markets to assist the Commission in ensuring reliable, efficient, and sustainable energy for customers. The Division of Investigations will continue to focus its efforts on helping to ensure the reliability of the bulk power system and keeping markets transparent, free, and competitive. The Division of Audits will continue to work closely with entities to improve compliance, while Market Oversight examines and monitors the structure and operation of natural gas and electric markets.

APPENDIX A: ORGANIZATION CHART



APPENDIX B: FY2010 CIVIL PENALTY ENFORCEMENT ACTIONS[79]

SUBJECT OF INVESTIGATION AND ORDER AND DATE	TOTAL PAYMENT (CIVIL PENALTY OR DISGORGEMENT)	EXPLANATION OF PAYMENTS AND COMPLIANCE PLANS
RRI ENERGY, INC., RRI ENERGY WHOLESALE GENERATION, LLC, 132 FERC ¶ 61,267 (SEPTEMBER 27, 2010)	$750,000 Civil Penalty	Civil penalty and compliance reporting resulting from violations of open access transportation policies, including competitive bidding requirements for long-term, discounted rate capacity releases, and the prohibition on buy/sell transactions.
SOUTH JERSEY GAS CO., SOUTH JERSEY RESOURCES GROUP, LLC, 132 FERC ¶ 61,266 (SEPTEMBER 27, 2010)	$950,000 Civil Penalty $120,551 Disgorgement	Civil penalty and compliance reporting resulting from violations of open access transportation policies, including competitive bidding requirements for long-term, discounted rate capacity releases, the shipper-must-have-title requirement, and the prohibition on buy/sell transactions.
IN RE PORTLAND GENERAL ELECTRIC CO., 131 FERC ¶ 61,224 (JUNE 4, 2010)	$375,000 Civil Penalty	Civil penalty and compliance reporting resulting from violations of Open Access Transmission Tariff, section 205 of FPA, and then-section 358.5(c)(5) of Commission Regulations.
IN RE NOBLE ENERGY, INC., 130 FERC ¶ 61,175 (March 12, 2010)	$4,000,000 Civil Penalty $160,487 Disgorgement	Civil penalty and compliance reporting resulting from violations of open access transportation policies, including circumvention of the posting and bidding requirements for released capacity, flipping, the shipper-must-have-title requirement, and violations of the prohibition on buy-sell transactions.
FLORIDA BLACKOUT, 130 FERC ¶ 61,163 (MARCH 5, 2010)	$350,000 Civil Penalty	Civil penalty against Florida Reliability Coordinating Council, Inc. resulting from violations of Mandatory Reliability Standards for the Bulk-Power System, Order No. 693, FERC Stats. & Regs. ¶ 31,242 (2007).
FLORIDA BLACKOUT, 129 FERC ¶ 61,016 (OCTOBER 8, 2009)	$25,000,000 Civil Penalty	Civil penalty against Florida Power & Light resulting from violations of Mandatory Reliability Standards for the Bulk-Power System, Order No. 693, FERC Stats. & Regs. ¶ 31,242 (2007).

[79] A list of all EPAct 2005 civil penalty orders is available at http://www.ferc.gov/enforcement/civil-penalties/civil-penalty-action.asp.