

CLIENT ALERT

Hidden Insights in the FERC 2024 Report on Enforcement

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On November 21, 2024, the staff of the Federal Energy Regulatory Commission's Office of Enforcement ("**OE**" or "**Staff**") issued its 2024 Report on Enforcement ("**Report**") for the fiscal year ending on September 30, 2024.¹ The Commission requires OE to prepare the Report in order to inform the public of the activities of OE and its three Divisions: the Division of Investigations ("**DOI**"), the Division of Audits and Accounting ("**DAA**"), and the Division of Analytics and Surveillance ("**DAS**").²

OE's 2024 fiscal year priorities were:

- (1) Fraud and market manipulation;
- (2) Serious violations of the Reliability Standards;
- (3) Anticompetitive conduct;

¹ FERC, *FY2024 Report on Enforcement*, Docket No. AD07-13-018 (2024) ("**Report**") (available [here](#)). All references to yearly totals in this document refer to FERC's fiscal year ending September 30, 2024. The Commission's fiscal year begins October 1 and ends September 30 of the following year.

² *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 12 (2008).

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- (4) Threats to the nation’s energy infrastructure and associated impacts on the environment and surrounding communities; and
- (5) Conduct that threatens the transparency of regulated markets.³

We highlight below the most noteworthy insights from the Report.

More Investigations than in Fiscal Year 2023

Staff opened 30 new investigations in the 2024 fiscal year compared with 19 in fiscal year 2023. Seventeen of these new investigations involved issues of potential market manipulation, 16 involved potential tariff violations, and 13 involved potential misrepresentations of the Commission’s Duty of Candor Rule.⁴ Staff closed 10 investigations with no further action after it found that no violation had occurred, there was insufficient evidence to conclude that a violation had occurred, or a violation existed but should not be subject to sanctions.⁵

The Commission approved settlements for 11 investigations and one federal district court matter for a total of approximately \$18.98 million in civil penalties and \$61.9 million in disgorgement.⁶ In contrast, in fiscal year 2023, the Commission approved 12 settlements totaling approximately \$857.98 million in civil penalties and \$583.54 million in disgorgement.⁷ Staff also closed seven Market Monitoring Unit referrals without converting them into investigations.⁸

The 30 investigations opened in fiscal year 2024 mark a significant increase from the 19 opened in fiscal year 2023 and represent the greatest number of investigations opened in a year since 2017:

Fiscal Year	Number of New Investigations	Number of Settlements
2013	24	11+ ⁹
2014	17	8
2015	19	9
2016	17	6
2017	27	5
2018	24	6
2019	12	2

³ Report at 4.

⁴ *Id.* at 32-33.

⁵ *Id.* at 33.

⁶ *Id.* at 17.

⁷ FERC, *FY2023 Report on Enforcement*, Docket No. AD07-13-017, at 19 (2023) (“**2023 Report**”) (available [here](#)).

⁸ Report at 32.

⁹ The 2013 Report on Enforcement did not specify the number of settlements, but listed 11 example matters that settled in 2013.

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Fiscal Year	Number of New Investigations	Number of Settlements
2020	6	3
2021	12	9
2022	21	11
2023	19	12
2024	30	12

Self-Reporting

Staff received 159 new self-reports in fiscal year 2024, over half of which were submitted by ISOs and RTOs and involved minor tariff violations.¹⁰ The self-reports also covered issues related to Federal Power Act (“**FPA**”) violations, standards of conduct, and regulatory filings.¹¹ Staff closed 158 reports, 32 of which carried over from previous years, while 36 reports from fiscal year 2024 remain open.¹² The number of self-reports increased slightly from the 148 self-reports collected in fiscal year 2023.¹³

The Report summarizes self-reports that were closed with no further action. OE includes these summaries to provide guidance as to why OE chooses to pursue or declines to pursue an investigation or enforcement action and to promote transparency and encourage the compliance efforts of regulated entities. Below, we highlight a few of these examples. Note that many self-reports are closed with no action because the violations reported are inadvertent, minor, have little to no impact on the market, and were quickly remedied.

- *Tariff/OATT Violation (Electric)*.¹⁴ The party to a power purchase agreement self-reported that it received unearned payments from an ISO/RTO in violation of the ISO/RTO’s tariff after the scheduling coordinator mistakenly submitted energy bids the system could not meet. This self-report was closed with no action because the party returned the unearned charges with interest to the ISO/RTO and implemented measures to prevent the problem from occurring again.
- *Tariff/OATT Violation (Electric)*.¹⁵ An independent power producer self-reported that its solar-battery facility was unable to remain online during a voltage disturbance because the facility failed to comply with voltage requirements detailed in the relevant tariff. This self-report was closed with no action because after this incident,

¹⁰ Report at 24.

¹¹ *Id.* at 27.

¹² *Id.* at 24.

¹³ 2023 Report at 27.

¹⁴ Report at 28-29.

¹⁵ *Id.* at 27.

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the power producer upgraded its equipment to meet the tariff requirements and the violation did not impact customers or reliability.

- *Regulatory Filing Violation (FERC Form 552)*.¹⁶ Two related local distribution companies self-reported errors in their Form 552 filings that resulted from both entities overreporting the volume of certain transactions by inadvertently including ineligible transactions. The entities agreed to correct the erroneous filings and implemented measures to prevent this kind of error in the future. The self-report was closed with no action because the error was inadvertent and posed a negligible amount of harm to market participants.
- *Reporting Violation (Market-Based Rate Authority)*.¹⁷ A non-profit energy company self-reported that two resources it owns engaged in jurisdictional sales without first obtaining Market-Based Rate Authority from the Commission or filing a jurisdictional rate with the Commission. This self-report was closed with no action because the non-profit's actions were based on inaccurate advice from a consultant and therefore inadvertent, the violation was detected through the company's internal controls, there was no harm to the market, and the violation was self-reported.

Staff Reported on the Status of Significant Matters

District Court Litigation

- ***FERC v. Powhatan Energy Fund, LLC, et al., No. 3:15-cv-00452 (E.D. Va.)***.¹⁸ The Commission found that the defendants violated the Anti-Manipulation Rule by engaging in fraudulent Up-To Congestion trades to improperly collect market payments in 2010. In May 2015, the Commission issued an Order Assessing Civil Penalties and Staff filed a petition in the United States District Court for the Eastern Division of Virginia to enforce the Commission's order. In February 2022, Powhatan filed for Chapter 7 bankruptcy and the case before the Eastern District was stayed. In March 2023, the stay was lifted and the Eastern District granted a Motion for Default Judgement to the Commission. This case is notable because it marks the first time a federal district court issued a final judgement against an entity the Commission found to have committed market manipulation. Staff continues to work with the U.S. Department of Justice to pursue remedies in the bankruptcy court proceeding.
- ***FERC v. Vitol, Inc. and Federico Corteggiano, No. 2:20-CV-00040-KJM-AC (E.D. Cal.)***.¹⁹ Here, the Commission found that the defendants violated the Anti-Manipulation Rule and section 222 of the FPA by selling physical power at a loss to eliminate congestion costs related to their Congestion Revenue Rights positions in the CAISO day-ahead market in 2013. In 2019, the Commission issued an Order Assessing Civil Penalties and in

¹⁶ *Id.* at 30.

¹⁷ *Id.* at 31.

¹⁸ *See id.* at 10-11.

¹⁹ *See id.* at 11-12.

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2020, Staff filed a complaint in the United States District Court for the Eastern District of California to enforce the Commission's order. In 2023, following a challenge by defendants, the Ninth Circuit joined the Fourth Circuit and held that the Commission's five-year statute of limitations to bring an action in federal district court does not begin to run until it issues an Order Assessing Civil Penalties. In 2024, the Commission approved a settlement agreement in which defendants were charged a total civil penalty payment of \$2,300,000. The Commission then dismissed the litigation with prejudice.

Agency Proceedings

On June 27, 2024, the Supreme Court issued its opinion in *SEC v. Jarkesy*, which severely limits the ability of federal agencies to adjudicate matters before administrative law judges (“ALJs”).²⁰ The Supreme Court held in a 6-3 decision that if an agency's claim is akin to a common law claim (such as a fraud), defendants are entitled to a jury trial in federal court. This ruling has impacted the Commission's ability to pursue enforcement actions before an ALJ and has resulted in at least two stayed actions. These and other administrative matters from fiscal year 2024 are summarized below.

- ***Total Gas & Power North America, Inc., et al.*, Docket No. IN12-17-000.**²¹ In April 2016, the Commission issued an Order to Show Cause (“OSC”) that directed Total Gas & Power North America, Inc. to show cause why it should not pay a civil penalty of \$213,600,000 and a disgorgement of \$9,180,000 for violations of the Anti-Manipulation Rule and section 4A of the Natural Gas Act (“NGA”), and directed certain individuals to pay up to \$3,000,000 in civil penalties for the same allegations. The Commission ordered a hearing before an ALJ in July 2021. In March 2023, the District Court for the Southern District of Texas stayed the Commission's proceedings pending the Supreme Court's decision in *SEC v. Jarkesy*. After the Supreme Court issued its ruling, the Commission issued an order that terminated the ALJ hearing procedures pending the stay and stated that no ALJ would conduct a trial-type proceeding or make any subsequent initial decisions, findings, or determinations. The ALJ proceeding remains stayed.
- ***Rover Pipeline, LLC and Energy Transfer Partners, LP*, Docket No. IN19-4-000.**²² In March 2021, the Commission issued an OSC directing Rover Pipeline, LLC to show cause why it should not pay \$20,160,000 in civil penalties for violating 18 C.F.R. § 157.5 by misleading the Commission in its Application for a Certificate of Public Convenience and Necessity and attendant filings. The Commission set this matter for hearing before an ALJ in June 2022. In May 2022, the District Court for the Northern District of Texas stayed the Commission's proceedings, which have remained stayed as of the end of fiscal year 2024.

²⁰ See *SEC v. Jarkesy*, 144 S. Ct. 2117 (2024). For more information on how *SEC v. Jarkesy* affects Commission Enforcement cases, see our client alert “*Jarkesy* Deep-Sixes Administrative Hearing Procedures in the Total Case and Likely Future FERC Enforcement Cases Under the Natural Gas Act,” available [here](#).

²¹ See Report at 12-14.

²² See *id.* at 14-15.

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- **Rover Pipeline, LLC and Energy Transfer Partners, LP, Docket No. IN17-4-000.**²³ In December 2021, the Commission issued an OSC directing Rover Pipeline, LLC and Energy Transfer Partners, LP to show cause why they should not be found to have violated section 7(e) of the NGA; section 157.20 of the Commission's regulations, 18 C.F.R. § 157.20; and the Commission's Order Issuing Certificates. In March 2022, Rover filed an answer to the OSC; in April 2022, Staff filed a response; and in May 2022, Rover filed a surreply. The matter is pending before the Commission.
- **Ketchup Caddy, LLC and Philip Mango, Docket No. IN23-14-000.**²⁴ In February 2024, the Commission issued an OSC that directed Ketchup Caddy, LLC to show cause why it should not pay \$25,000,000 in civil penalties for violations of section 222 of the FPA and market manipulation rules, and directed Philip Mango to show cause why he should not pay \$1.5 million in civil penalties and \$506,502 in disgorgement, plus interest, for the same allegations. Staff filed a motion for summary disposition with the Commission in April 2024. In July 2024, the Commission ordered the Secretary of the Commission to serve both parties. Neither party filed an answer to the OSC. In December 2024, the Commission issued an Order Assessing Civil Penalties for the amounts listed in the OSC against Ketchup Caddy, LLC and Mango.

Staff Concludes Inquiry into Various Winter Storms

During fiscal year 2024, Staff, the North American Electric Reliability Corporation (NERC), and regional entities led a joint inquiry into Winter Storm Elliott to determine the causes of the generation and natural gas system outages and develop recommendations to prevent these problems in the future.²⁵ The team concluded in its final report, released in November 2023, that 96% of all outages, derates, and failures to start were attributable to Freezing Issues, Fuel Issues, and Mechanical/Electrical Issues.²⁶ Notably, 20% of the Fuel Issues involved natural gas.²⁷

Staff, NERC, and regional entities also participated in a joint review that compared the performance of the natural gas and electric industries during Winter Storms Gerri and Heather, which took place in January 2024, to their performance during Winter Storms Uri and Elliott, which took place in 2021 and 2022, respectively.²⁸ The team found that the performance of these industries improved because the industries were more communicative and proactive in coordinating before the storm and, as a result, Winter Storms Gerri and Heather did not see operator-initiated load shed.²⁹

²³ See *id.* at 15.

²⁴ See *id.* at 15-16.

²⁵ *Id.* at 16.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

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DAS also completed its analysis on Winter Storm Elliott and the Winter 2022/2023 Western Energy Price Spike. DAS referred four additional matters regarding Winter Storm Elliott to DOI for nonpublic investigation and made no further referrals regarding the Winter 2022/2023 Western Energy Price Spike.³⁰

Division of Audits and Accounting

In fiscal year 2024, DAA completed 10 audits of public utility, natural gas, and oil companies that resulted in 55 findings of noncompliance involving the improper application of merger-related costs, lobbying, charitable donations, membership dues, employment settlement costs, improper labor overhead capitalization rates, accounting for production-, distribution-, or transmission-related expenses, pending income tax refunds treated as prepayments, and compliance with the Commission's Allowance for Funds Used During Construction regulations.³¹ DAA made 240 recommendations for corrective action, directed \$10,644,036 to be refunded to jurisdictional customers, and prevented approximately \$35,000,000 of inappropriate costs from being potentially collected through future customer rates.³² These numbers do not vary greatly from fiscal year 2023, when DAA completed nine audits that resulted in 68 findings of noncompliance and 332 recommendations for corrective action, directed \$19,758,618 to be refunded to jurisdictional customers, and prevented approximately \$13,575,724 of inappropriate costs from being potentially collected through future customer rates.³³

Division of Analytics and Surveillance

In fiscal year 2024, DAS did not open new enhanced surveillance matters, but did conclude its inquiry into Winter Storm Elliott and the 2022/2023 Western Energy Price Spike, as previously noted. DAS opened 16 inquires related to natural gas surveillance and closed 19 inquires with no referral, including five inquiries that carried over from fiscal year 2023.³⁴ DAS opened fewer inquiries than in fiscal year 2023, when it opened 27 new natural gas surveillance inquiries, closed 19 of these inquiries, and referred three matters to DOI for investigation.³⁵

DAS opened 47 inquiries related to electricity surveillance, 30 of which were closed with no referral, seven of which were referred to DOI for investigation, and 10 of which remain open.³⁶ In comparison, in fiscal year 2023, DAS made 43 inquiries related to electricity surveillance, six of which were referred to DOI for investigation and 25 of which were closed with no referral.³⁷

³⁰ *Id.* at 76-77.

³¹ *Id.* at 58.

³² *Id.*

³³ 2023 Report at 59.

³⁴ Report at 77.

³⁵ 2023 Report at 81.

³⁶ Report at 79.

³⁷ 2023 Report at 82.

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Finally, DAS worked with DOI on at least 65 investigations that involved allegations of manipulation in natural gas and electricity markets under Commission jurisdiction or violations of tariff provisions that foster open and competitive markets and 10 other matters involving inquiries or litigation.³⁸ These numbers remain fairly consistent with the 60 investigations and 15 other matters DAS participated in during fiscal year 2023. Interestingly, DAS reported that it was migrating Commission analytics into the cloud and that in the new cloud environment it was building state-of-the-art analytics tools and powerful data platforms to analyze data assets.³⁹

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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³⁸ Report at 81.

³⁹ *Id.* at 82.