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**ENERGY MARKETS AND
COMMODITY TRADING
ENFORCEMENT AND
LITIGATION:
2022 YEAR IN REVIEW**

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Presenters



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CFTC FY2022 Annual Enforcement Results

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CFTC Enforcement Priorities Relevant to Energy Markets

- Manipulative & Deceptive Conduct
 - Spoofing
- Fraud
- Inadequate Supervision & Recordkeeping Violations

Overview of CFTC Activity

- In FY2022, the CFTC obtained orders imposing over \$2.5 billion in restitution, disgorgement, and civil monetary penalties either through settlement or litigation.
- The Division of Enforcement brought 82 enforcement actions in FY2022.

Manipulative & Deceptive Conduct

- GlenCore
 - Allegation: Manipulation or attempted manipulation of four US-based S&P Global Platts physical oil benchmarks and related futures and swaps.
 - Status: Settled.
- Eric Schwartz
 - Allegation: Spoofing in calendar spreads involving natural gas and Reformulated Blendstock for Oxygenate Blending Gasoline (RBOB) futures contracts on the Chicago Mercantile Exchange on multiple occasions from approximately April 2020 to July 2020.
 - Status: Settled.

Inadequate Supervision & Recordkeeping Violations

- 11 Financial Institutions
 - Allegation: Firm employees had for years communicated both internally and externally through unapproved methods, in violation of both the firms' policies and procedures and the CFTC's recordkeeping requirements.
 - Status: Settled.

Expectations for CFTC Enforcement Efforts in FY2023

- Aggressive pursuit and investigation of wrongdoing to protect customers and ensure market integrity.
- Continued focus on how unprecedented financial conditions, emerging technological disruption, and growing retail investor participation are affecting markets and participant behaviors.



Role of Environmental Attributes

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Overview of Environmental Attribute Products

- Renewable Energy Credits
- Renewable Identification Numbers
- Carbon Credits
- Carbon Offsets

Potential CFTC Regulation of Carbon Offsets

- CFTC Voluntary Carbon Markets Convening
 - Discussion on issues related to supply and demand for high-quality carbon offsets
 - Transparency
 - Standardization
 - Additionality
 - Integrity
 - CFTC's potential role in the voluntary carbon markets and regulating carbon offsets



FERC FY2022 Annual Enforcement Report

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FERC FY2022 Enforcement Priorities

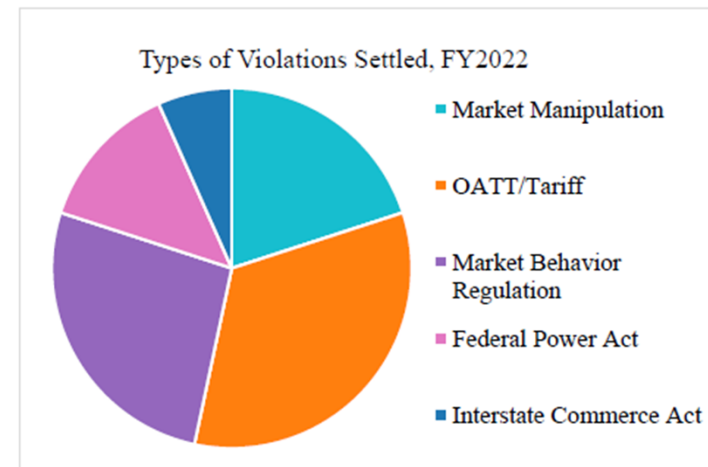
- Fraud and market manipulation;
- Serious violations of the Reliability Standards;
- Anticompetitive conduct;
- Threats to the nation's energy infrastructure and associated impacts on the environment and surrounding communities; and
- Conduct that threatens the transparency of regulated markets.

Overview of OE Activity

Division of Investigations

- DOI opened 21 new investigations and closed 7 pending investigations without further action (because staff found there was not enough evidence to conclude that a violation had occurred).
- DOI negotiated 11 settlements; 8 of the settlements resolved 7 investigations for a total of approximately \$55.54 million (\$23.59 million in civil penalties and \$31.95 million in disgorgement).
- DOI is actively engaged in litigation in federal courts and administrative proceedings before FERC.

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Overview of OE Activity

Division of Audits and Accounting

- DAA completed 12 audits of public utility, natural gas, oil, and regional transmission organization companies on a wide variety of topics.
 - 51 findings of noncompliance; 258 recommendations for corrective action
 - \$158 million in refunds and other recoveries

Division of Analytics and Surveillance

- DAS identified and reviewed numerous instances of potential misconduct, some of which resulted in DAS opening a surveillance inquiry or an in-depth review of a market participant's conduct.
- DAS provided analytical support on approximately 50 investigations with DOI and 15 other matters involving inquiries or litigation.

Fraud and Market Manipulation

- Golden Spread Electric Cooperative, Inc.
 - Allegation: Offering a generating unit into the SPP market in a manner that improperly targeted and increased Day-Ahead Market make-whole payments.
 - Status: Settled.
- Powhatan Energy Fund LLC
 - Allegation: Engaging in fraudulent Up-To Congestion (UTC) trades in the PJM market during the summer of 2010.
 - Status: District court matter stayed pending bankruptcy proceedings.
- Total Gas & Power North America, Inc.
 - Allegation: Engaging in a scheme to manipulate the price of natural gas at four locations in the southwest United States between June 2009 and June 2012.
 - Status: Hearing before FERC ALJ scheduled to commence on January 23, 2023.

Conduct That Threatens the Transparency of Regulated Markets

- Salem Harbor Power Development LP and ISO New England Inc.
 - Allegation: ISO-NE made over \$100 million in capacity payments to Footprint for its New Salem Harbor Generating Station project even though the project had not yet been constructed or started commercial operation.
 - Status: Settled.
- Dynegy Marketing and Trade, LLC
 - Allegation: Real-time energy market offers for ten GE 7FA dual-fuel combustion turbines in the PJM market misrepresented that the units could ramp to their maximum oil-based output attained during their capacity tests while running on gas.
 - Status: Settled.
- M3 Ohio Gathering LLC
 - Allegation: Failing to submit annual and quarterly Form No. 6s during the period of 2013-2019.
 - Status: Settled.

Threats to Nation's Energy Infrastructure

- Rover Pipeline
 - Allegation: Intentionally including diesel fuel and unapproved additives in the drilling mud during horizontal directional drilling (HDD) operations, failing to adequately monitor the right-of-way at the site of the HDD operation, and improperly disposing of inadvertently released drilling mud contaminated with diesel fuel and hydraulic oil.
 - Status: Order to show cause proceeding pending before FERC.
- Ampersand Cranberry Lake Hydro, LLC
 - Allegation: Failing to retain possession, as required by hydropower project license, of all property of the project dam, the failure of which would result in a probable loss to human life.
 - Status: Civil penalty assessed by FERC.
- sPower Development Company, LLC
 - Allegation: Submitting to PJM two interconnection study agreements that inaccurately stated that sPower had site control over property for a proposed interconnection.
 - Status: Settled.

Serious Violations of the Reliability Standards

- PacifiCorp
 - Allegation: Engaging in potentially violative conduct of failing to comply with a Commission-approved Reliability Standard requiring transmission owners to establish and have ratings for their transmission lines that are consistent with the company's methodology for establishing those ratings.
 - Status: Order to show cause proceeding pending before FERC.

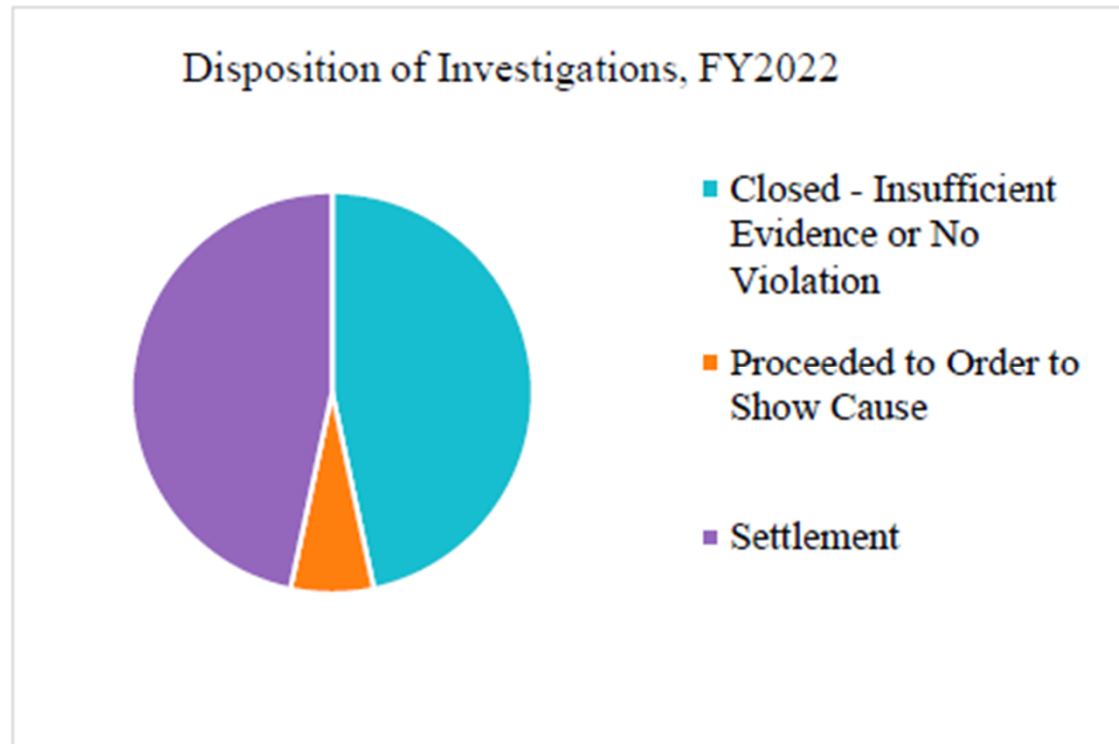
Audits

- DAA completed 12 audits of public utility, natural gas, and oil companies.
- Audits resulted in 51 findings of noncompliance, 258 recommendations for corrective action, and directed approximately \$158,359,820 in refunds and other recoveries.

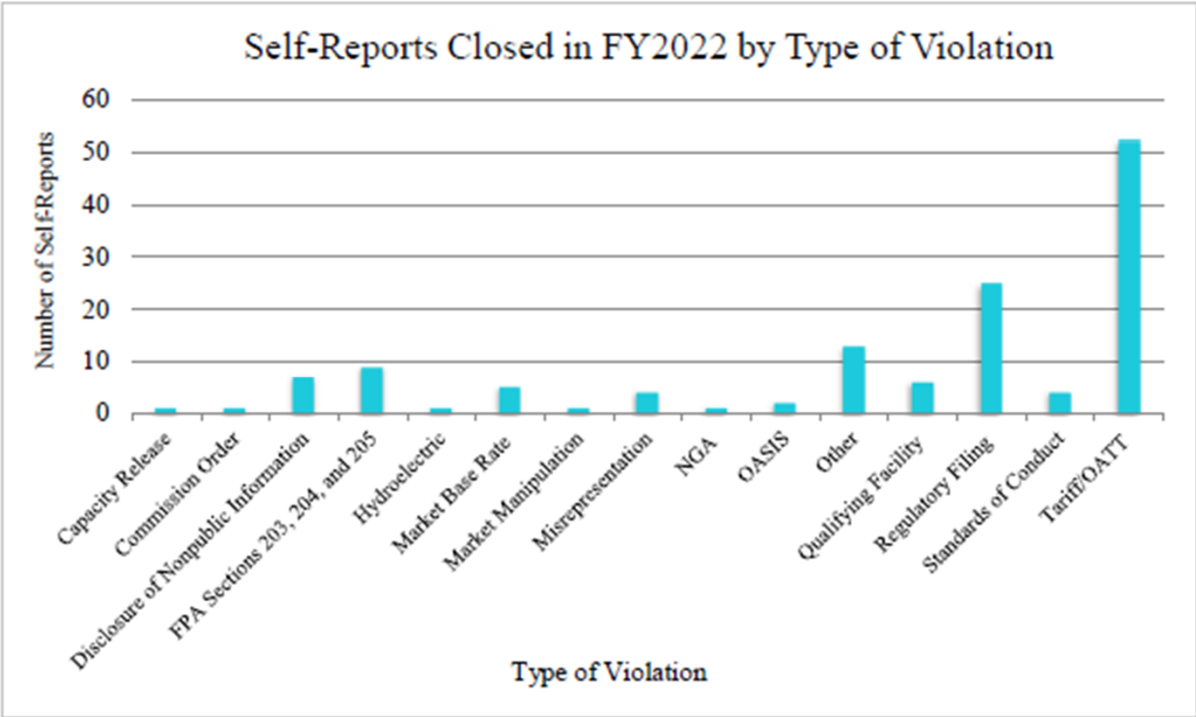
Audits

Electric	Gas	Oil
Formula Rate Matters <ul style="list-style-type: none"> • Capitalization of overhead labor costs and maintenance expenses • AFUDC and CWIP 	Gas Tariff Provisions <ul style="list-style-type: none"> • Reservation Charge Crediting Provisions • Penalty Revenue Collection and Distribution 	Carrier and Noncarrier Property
Allocated Labor	Accounting Issues	Operating and Nonoperating Expenses
Submitting Inaccurate Data to ISOs/RTOs	Compliance with Financial Reporting Requirements	Compliance with Reporting and Filing Requirements
Untimely Filing of Commission Reports	AFUDC and CWIP	Compliance with Oil Tariff Provisions

Investigations



Self Reports



Duty of Candor NOPR

- NOPR to Expand Duty of Candor Rule
 - Add requirement in 18 CFR Part 1 that any entity communicating with FERC or other specified organizations related to a matter that is subject to FERC's jurisdiction must submit accurate and factual information and must not submit false or misleading information or omit material information.
 - Exercising due diligence to prevent the submission of false or inaccurate information would be an affirmative defense to violations of the requirement.

Duty of Candor NOPR

- Response from Commenters and the Industry
 - Agreement that there is a need for accurate and truthful communications among industry participants, FERC, regulated bodies, and regulated entities.
 - However, NOPR was largely criticized as unduly burdensome, overly broad, and unnecessary.
 - Commenters provided numerous proposed modifications to the NOPR.

Expectations for FERC Enforcement Efforts in FY2023

- Aggressive pursuit and investigation of potential wrongdoing across the industry.
- Continued focus on activities in the power market.
- Inquiries into energy infrastructure and compliance with certificate obligations and environmental conditions/requirements.
- Inquiries and investigations stemming from referrals from RTO and ISO MMUs.

Biography



Levi McAllister

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Levi McAllister advises clients in the electric power, natural gas, and petrochemical sectors of the energy industry concerning regulatory compliance, asset development, and transactional matters. Levi addresses regulatory provisions administered by the Federal Energy Regulatory Commission (FERC), the Commodity Futures Trading Commission (CFTC), and state public utility commissions. He also counsels clients seeking to reduce their carbon footprints on federal and state regulatory issues arising in the development, acquisition, divestiture, and merger of energy infrastructure assets, focusing on electric vehicle (EV) infrastructure, energy storage resources, distributed energy resources, and utility-scale generating assets.

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Biography



Pamela T. Wu

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Pamela T. Wu represents producers, marketers, end users, and utilities in a broad range of matters involving rates, market rules and regulation, and energy commodity trading before the Federal Energy Regulatory Commission (FERC) and Commodity Futures Trading Commission (CFTC). Pam advises clients seeking to decarbonize their operations and reduce their carbon footprints through investing in and developing new infrastructure assets and clean energy technologies and transacting carbon credits and carbon offsets. Pam is an active member of the firm's Energy Commodity Trading and Compliance Working Group, the Hydrogen Working Group, the Electric Vehicles Working Group, and the Renewables Working Group.

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Biography



Timothy Birchfield

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Timothy Birchfield assists energy industry participants with matters before the Federal Energy Regulatory Commission (FERC) concerning regulatory compliance. He also supports nuclear plant operators with their claims against the government for its breach in failing to dispose of spent nuclear fuel.

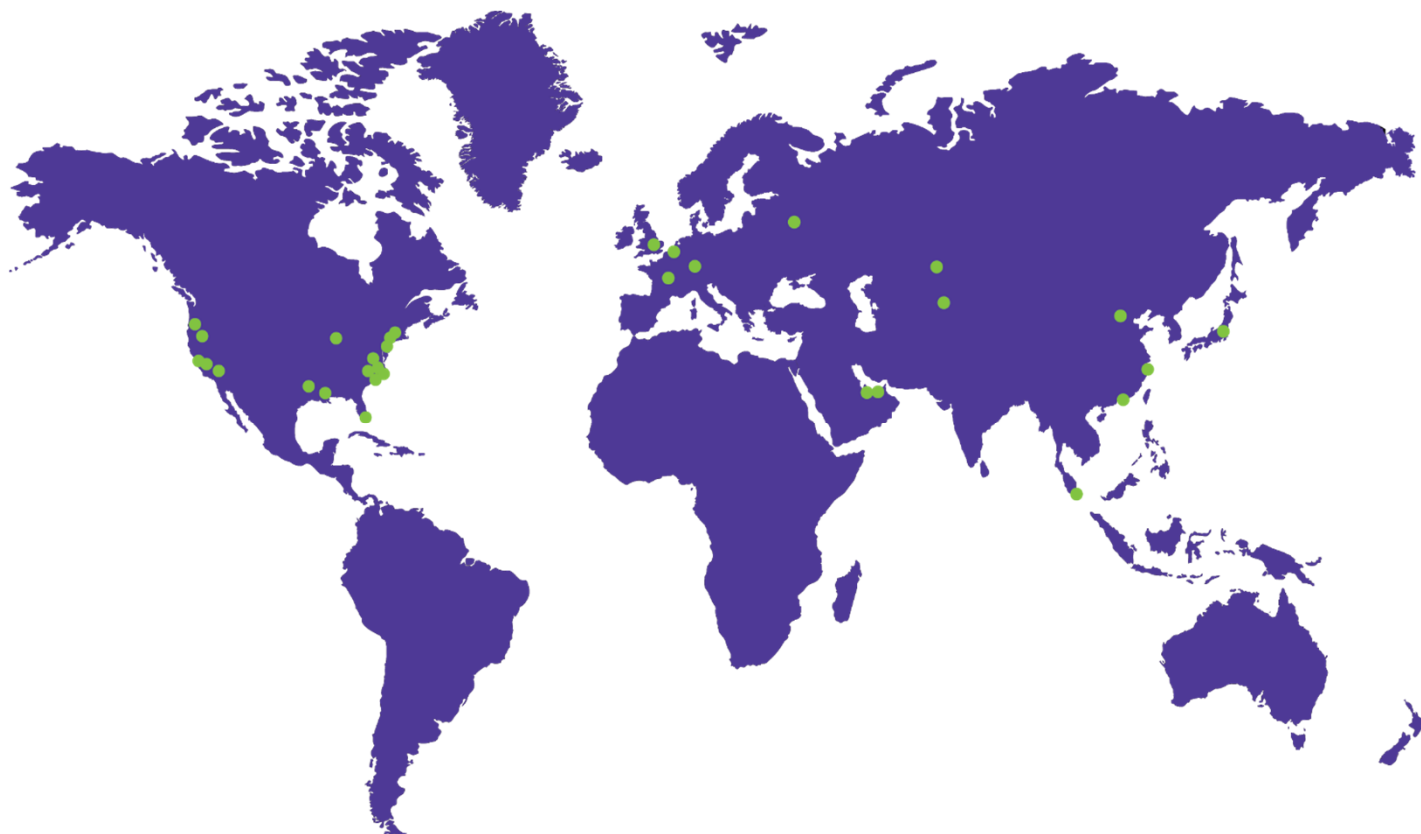
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