

REPORT OF THE COMPLIANCE AND ENFORCEMENT COMMITTEE

This report summarizes key federal enforcement and compliance developments in 2021, including certain decisions, orders, actions, and rules of the Federal Energy Regulatory Commission (the FERC or Commission), the North American Electric Reliability Corporation (NERC), the Commodity Futures Trading Commission (CFTC), the Pipeline and Hazardous Materials Safety Administration (PHMSA), the U.S. Department of Energy (DOE), and the U.S. Department of Justice (DOJ).

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I. THE FEDERAL ENERGY REGULATORY COMMISSION

A. *Enforcement Litigation and Adjudication*

1. FERC v. Vitol, Inc.

On December 20, 2021, the U.S. District Court for the Eastern District of California issued a decision largely denying motions to dismiss the FERC’s January 6, 2020, complaint against Vitol, Inc. (Vitol) and one of its traders, Federico Corteggiano.¹ That complaint alleged that Vitol and Corteggiano violated Federal Power Act (FPA) section 222(a)² and the Commission’s anti-manipulation rule³ by engaging in unprofitable physical power sales in the California Independent System Operator Corporation (CAISO) market in order to avoid larger losses from Vitol’s congestion revenue rights position.⁴

The court rejected arguments that the FERC’s complaint should be dismissed for failure to state a claim under the FPA’s anti-manipulation provision. The court explained that “facially legitimate trades might be ‘manipulative’ . . . if those trades were intended to deceive” and concluded that the FERC had alleged that the defendants “acted with an improper intent to avoid losses in a different market” by alleging “specifically and plausibly that power prices, price differ-

1. FERC v. Vitol, Inc., No. 2:20-cv-00040-KJM-AC, 2021 WL 6004339 (E.D. Cal. Dec. 20, 2021).

2. 16 U.S.C. § 824v(a).

3. 18 C.F.R. § 1c.2.

4. *Vitol*, No. 2:20-cv-00040-KJM-AC, 2021 WL 6004339.

ences and losses were irrelevant to Corteggiano’s strategy and that congestion prices were his only target.”⁵ The court also rejected defendants’ argument that the FERC’s claim fails since the “FERC has not alleged they ‘controlled or artificially affected the price of power,’” explaining that other courts “have not demanded that public sector plaintiffs prove a manipulative or deceptive scheme affected markets.”⁶ And while defendants further argued that their trading was not deceptive because it corrected an “artificial” price, the court concluded that at the motion-to-dismiss stage—when inferences must be drawn in the FERC’s favor—it could not determine that the trading “actually drove power prices toward any competitive economic equilibrium.”⁷

The court also rejected several other defenses raised in defendants’ motions to dismiss. The court dismissed the argument that the FERC’s claims were time-barred because the FERC did not file suit within the applicable limitations period, concluding that the FERC’s issuance of a show-cause order initiated a “proceeding” that satisfied the relevant statute of limitations.⁸ The court also rejected the argument that the FERC failed to provide constitutionally required “fair notice” that the trades at issue would violate the FPA, citing FERC precedent as well as the conduct or statements of the California Independent System Operator (CAISO), Corteggiano, and another CAISO market participant.⁹ The court further held that Vitol could be held liable for Corteggiano’s conduct based on agency law principles and that, notwithstanding alleged withholding of information by Corteggiano, ignorance on the part of Vitol’s legal and compliance team is not an excuse.¹⁰ Additionally, the court concluded that Corteggiano could be held liable even though he “did not personally perform the allegedly wrongful trades” because the FERC alleges that he conceived of and gave instructions for the trading at issue.¹¹ The court also found that FPA’s anti-manipulation provision applies to natural persons such as Corteggiano even though it uses the term “entity,” that venue is proper based on the location of the interties involved in the disputed trading, and that the court has personal jurisdiction over claims against Corteggiano because the FPA permits nationwide service of process.¹²

The court did, however, agree with Corteggiano that the FERC exceeded its authority by assessing a \$1 million penalty against him after proposing an \$800,000 penalty in its show-cause order.¹³ The court concluded that the FERC’s statutory authority to “compromise, modify, or remit” a penalty does not mean that the FERC may increase the penalty proposed in an order to show cause.¹⁴ However, the court noted that “[i]f [the] FERC discovers new evidence

5. *Id.* at *17-18.

6. *Id.* at *19-20.

7. *Id.* at *18.

8. *Vitol*, No. 2:20-cv-00040-KJM-AC, 2021 WL 6004339, at *8-15.

9. *Id.* at *23.

10. *Id.* at *21-22.

11. *Id.* at *22-23.

12. *Vitol*, No. 2:20-cv-00040-KJM-AC, 2021 WL 6004339 at, *7-8.

13. *Id.* at *23-24.

14. *Id.*

suggesting a higher penalty is appropriate, it can seek to impose the higher amount after giving further notice under [16 U.S.C.] § 823b(d)(1) by amending its complaint in federal court.”¹⁵

2. FERC v. Powhatan Energy Fund, LLC

Following a court-mandated settlement conference, on October 29, 2021, the FERC issued an order approving a Stipulation and Consent Agreement resolving claims that Houlian Chen and two of his trading companies, HEEP Fund, Inc. and CU Fund, Inc. (collectively, the Chen Defendants), violated the FPA’s anti-manipulation provision by engaging in up to congestion (UTC) transactions in PJM Interconnection LLC (PJM) in 2010 in order to obtain marginal loss surplus allocation payments.¹⁶ In 2015, the FERC issued an order assessing penalties against the Chen Defendants and another company for whom Houlian Chen traded, Powhatan Energy Fund LLC (Powhatan), and then filed suit against the Chen Defendants and Powhatan in the U.S. District Court for the Eastern District of Virginia.¹⁷

In its suit, the FERC sought \$13 million in civil penalties and roughly \$1.25 million in disgorgement from the Chen Defendants.¹⁸ The Chen Defendants agreed to disgorge \$600,000 and agreed to certain stipulated facts regarding the trading at issue.¹⁹ The Stipulation and Consent Agreement resolved FERC’s claims against the Chen Defendants but not those against Powhatan, which remain pending in federal district court.²⁰ The FERC is still seeking \$16.8 million in civil penalties and roughly \$3.5 million in disgorgement from Powhatan.²¹

The parties engaged in discovery and filed several motions regarding discovery disputes in early 2021.²² In June 2021, the presiding judge referred the discovery disputes to a magistrate judge, who held several settlement conferences and status conferences regarding settlement in late summer and fall 2021.²³ Fact discovery and expert reports are to be completed by December 2021 and dispositive motions are due in April 2022.²⁴

15. *Id.* at *24.

16. *Houlian Chen*, 177 FERC ¶ 61,076 (2021).

17. *Houlian Chen*, 151 FERC ¶ 61,179 (2015); FERC v. Powhatan Energy Fund, LLC, No. 3:15-cv-00452 (E.D. Va. filed July 31, 2015) [hereinafter *Powhatan 1*]; see also FERC v. Powhatan Energy Fund, LLC, 949 F.3d 891 (4th Cir. 2020) (upholding denial of Chen Defendants’ motion to dismiss).

18. 151 FERC ¶ 61,179 at P 5.

19. *Id.* at PP 8-9.

20. See Order, *FERC v. Powhatan Energy Fund, LLC*, No. 3:15-cv-00452 (E.D. Va. Nov. 4, 2021), ECF No. 249 (dismissing civil action against the Chen Defendants).

21. *Powhatan 1*, *supra* note 17.

22. FEDERAL DISTRICT COURT BLOCKS FERC’S PATH TO DISGORGEMENT AND JOINT AND SEVERAL LIABILITY at 3 (2021), <https://www.willkie.com/-/media/files/publications/2021/12/federaldistrictcourtblocksfercspathtodisgorgementa.pdf>

23. *Id.*

24. *Powhatan 1*, *supra* note 17.

3. FERC v. Coaltrain Energy, L.P.

On November 29, 2021, the U.S. District Court for the Southern District of Ohio issued an order holding that the FERC may not pursue joint and several liability or disgorgement as part of its pending suit in *FERC v. Coaltrain, L.P., et al.*, a case in which the FERC is seeking civil penalties of \$38 million and disgorgement of \$4.12 million for alleged market manipulation and subsequent violation of 18 C.F.R. § 35.41(b) during the investigation.²⁵ The FERC sought to hold Coaltrain L.P. and certain individual defendants jointly and severally liable for the roughly \$4.12 million in disgorgement and \$26 million in civil penalties.²⁶

The FERC and the defendants disagreed on whether the FERC has authority, under FPA section 309 (16 U.S.C. § 825h), to order joint and several liability and disgorgement.²⁷ The court, however, did not reach that question. Instead, the court held that, as a federal district court, it lacks jurisdiction to review such awards because the FPA generally grants federal courts of appeals exclusive jurisdiction over challenges to FERC orders.²⁸ While 16 U.S.C. § 823b provides for federal district court review of civil penalties for violations of the FPA, the court concluded that it lacks authority to enforce awards of disgorgement or joint and several liability.²⁹

On December 10, 2021, the FERC moved to amend the November 29, 2021 order to certify it for interlocutory appeal and to stay it pending resolution of appeal.³⁰ The FERC argued that the order merits interlocutory appeal and contended that the order would have a “profound impact . . . on the Commission’s entire enforcement program” and creates uncertainty “about the proper procedure for the Commission to follow in [FPA] enforcement cases.”³¹ In addition to advancing arguments about the statutory scheme, the FERC asserted that the order would require district court proceedings for civil penalty claims and parallel court of appeals proceedings for disgorgement and joint and several liability, and thus “would create an unworkable procedural quagmire.”³²

25. Opinion and Order, *FERC v. Coaltrain Energy, L.P.*, No. 2:16-cv-732 (S.D. Ohio Nov. 29, 2021), ECF No. 115.

26. Petition for an Order Affirming the Federal Energy Regulatory Commission’s May 27, 2016 Order Assessing Civil Penalties against Coaltrain Energy, L.P., Peter Jones, Shawn Sheehan, Robert Jones, Jeff Miller, and Jack Wells, *FERC v. Coaltrain Energy, L.P.*, No. 2:16-cv-732 (S.D. Ohio July 27, 2016), ECF No. 1.

27. 16 U.S.C. § 825h.

28. Opinion and Order, 6, *FERC v. Coaltrain Energy, L.P.*, No. 2:16-cv-732 (S.D. Ohio Nov. 29, 2021), ECF No. 115.

29. *Id.*

30. Plaintiff Federal Energy Regulatory Commission’s Motion to Amend the Court’s November 29, 2021 Order to Certify it for Interlocutory Appeal and for a Stay Pending Resolution of Appeal, and Memorandum in Support, *FERC v. Coaltrain Energy, L.P.*, No. 2:16-cv-732 (S.D. Ohio, Dec. 10, 2021), ECF No. 116.

31. *Id.* at 2.

32. *Id.* at 5.

4. BP America, Inc. v. FERC

BP America, Inc., BP Corporation North America, Inc., BP America Production Company, and BP Energy Company (collectively, BP) and the FERC filed briefs with the U.S. Court of Appeals for the Fifth Circuit this spring and summer in connection with BP's petition for review of the FERC's orders assessing penalties and disgorgement against BP for natural gas trading at the Houston Ship Channel in the wake of Hurricane Ike in 2008 that allegedly violated the Natural Gas Act (NGA)'s anti-manipulation provision.³³ BP's May 2021 initial brief argued that (1) "[the] FERC improperly asserted jurisdiction over BP's intrastate and other non-jurisdictional activity"; (2) "[the] FERC failed to clearly articulate an intelligible decisional standard and refused to define the precise conduct that constitutes market manipulation"; (3) the FERC failed "to prove that BP's trading was manipulative under [the] FERC's vague standard"; and (4) that the FERC's civil penalty and disgorgement determinations are arbitrary and capricious.³⁴ In its July 2021 brief, the FERC argued that its interpretation of the NGA's anti-manipulation provision is reasonable and warrants deference, and that its decisions were supported by substantial record evidence.³⁵ BP filed a reply brief in August 2021.³⁶ The case is calendared for oral argument on January 31, 2022.³⁷

5. Total Gas & Power North America, Inc.

On July 15, 2021, the FERC issued an order establishing a hearing before an administrative law judge (ALJ) regarding allegations that Total Gas & Power North America, Inc. (TGPNA), Total, S.A., Total Gas & Power, Ltd. and two traders (collectively, Respondents) violated the NGA's anti-manipulation provision.³⁸ The matter relates to natural gas trading at four locations in the southwestern United States between June 2009 and June 2012 that was allegedly intended to affect natural gas indexes in a way that would benefit Respondents' derivative positions.³⁹ In 2016, the FERC issued an order directing Respondents to show cause why they should not be subject to \$216.6 million in civil penalties and roughly \$9.2 million in disgorgement.⁴⁰

In its July 2021 order, the FERC denied Respondents' motion to terminate the matter and established a hearing to consider the sufficiency of the evidence supporting the allegations by the Office of Enforcement (Enforcement), "including the credibility of the witnesses and the validity of [Enforcement] Staff's

33. See Opinion No. 549-A, *BP Am., Inc., et al.*, 173 FERC ¶ 61,239 (2020).

34. Initial Brief of Petitioners, *BP Am., Inc. v. FERC*, Nos. 16-60604, 21-60083, 15, 32, 37-38, 46 (5th Cir. May 26, 2021).

35. Brief for Respondent Federal Energy Regulatory Commission, *BP Am., Inc. v. FERC*, Nos. 16-60604, 21-60083, 18-32, 36-67 (5th Cir. July 27, 2021).

36. See generally Reply Brief of Petitioners, *BP Am., Inc. v. FERC*, Nos. 16-60604, 21-60083 (5th Cir. Aug. 17, 2021).

37. Order, *BP Am., Inc. v. FERC*, Nos. 16-60604, 21-60083 (5th Cir. Dec. 20, 2021).

38. *Total Gas & Power N. Am., Inc.*, 176 FERC ¶ 61,026 (2021).

39. *Id.* at P 4.

40. *Total Gas & Power N. Am., Inc.*, 155 FERC ¶ 61,105 (2016).

analysis of the trading data,” and to determine whether TGPNA’s ultimate parent company and an affiliate are subject to FERC’s specific jurisdiction “as alter egos of TGPNA” and thus can be held liable for TGPNA’s trading.⁴¹ The FERC did not make a determination regarding penalties or disgorgement but directed the ALJ “to make factual findings on the statutory factors relevant to a civil penalty and to the factors set forth in the Penalty Guidelines.”⁴²

The order also rejected several arguments raised in response to the show-cause order. With respect to the manipulation standard, the FERC stated that “open-market transactions . . . undertaken with manipulative intent can constitute manipulation, as such transactions can send inaccurate price signals to, or otherwise impair, a well-functioning market, even in the absence of some other deceptive conduct,” and explained that it was “not persuaded by Respondents’ argument that manipulative intent must be a ‘but for’ cause of an open market transaction to constitute manipulation.”⁴³ The FERC further concluded that individual traders qualify as “entities” subject to the NGA’s anti-manipulation provision.⁴⁴ The FERC also rejected Respondents’ arguments that the matter is time-barred, concluding that the show-cause order commenced a “proceeding” that satisfied the applicable statute of limitations and that tolling agreements between Respondents and Enforcement were binding.⁴⁵ Additionally, the FERC declined to find that the matter should be adjudicated in federal district court rather than before an ALJ, rejecting the argument that such an approach is required under the NGA and the Constitution as well as the argument that the appointment of FERC ALJs violates the Constitution’s Appointments Clause.⁴⁶ The FERC also did not credit Respondents’ arguments regarding notice, due process, and procedural fairness, including arguments regarding constitutional requirements, Commission regulations on complaints and show-cause orders, and *ex parte* rules.⁴⁷

Commissioners Chatterjee and Danly issued concurrences, emphasizing (respectively) that the hearing should be “an impartial venue to consider the credibility of the evidence and the validity of the claims”⁴⁸ and that the ALJ should “carefully assess witness credibility at the hearing” because “the Respondents have presented evidence that raises grave concerns as to the credibility of [Enforcement] Staff’s witnesses.”⁴⁹

41. 176 FERC ¶ 61,026 at PP 15-16.

42. *Id.* at P 251.

43. *Id.* at PP 30-31.

44. *Id.* at P 103.

45. 176 FERC ¶ 61,026 at PP 142-163.

46. *Id.* at PP 164-229.

47. *Id.* at 230-247.

48. *Id.* at P 2 (Comm. Chatterjee, concurring).

49. *Id.* at P 2 (Comm. Danly, concurring).

B. Show Cause Orders and Orders Assessing Civil Penalties

1. GreenHat Energy, LLC

On May 20, 2021, the FERC issued an Order to Show Cause and Notice of Proposed Penalty regarding alleged violations of the FERC's anti-market manipulation rule and PJM's tariff by GreenHat Energy, LLC (GreenHat) and its three principals.⁵⁰ Following submissions from the respondents and Enforcement staff in July and August 2021, on November 5, 2021, the FERC issued an order assessing roughly \$179.6 million in civil penalties against GreenHat and \$25 million in civil penalties against each of the two surviving principals.⁵¹ The FERC also directed GreenHat, the two surviving principals, and the estate of the third, deceased principal to disgorge roughly \$13.1 million in allegedly unjust profits, for which it sought to hold the respondents jointly and severally liable.⁵²

GreenHat accumulated a large portfolio of PJM financial transmission rights (FTRs) while posting relatively small amounts of collateral with PJM.⁵³ After engaging in bilateral transactions in which it sold off some of its FTRs, GreenHat's portfolio of FTRs turned out to be unprofitable, and, in June 2018, the company defaulted.⁵⁴ According to FERC, GreenHat's default ultimately "resulted in other PJM members paying a total of \$179,600,573."⁵⁵

In the order assessing penalties, the FERC concluded that GreenHat and its principals committed market manipulation in "four related but distinct ways":

(1) engaging in a manipulative scheme in PJM's FTR market consisting of acquiring an FTR portfolio made up of primarily long-term FTRs with virtually no supporting, upfront capital, planning not to pay for losses at settlement, and obtaining cash for the individual Respondents by selling profitable FTRs to third parties at a discount; (2) purchasing FTRs based not on market considerations but to amass as many FTRs as possible with minimal collateral, thereby engaging in a course of conduct for the purpose of impairing, obstructing, or defeating a well-functioning market; (3) making false statements to PJM regarding money purportedly owed by Shell with the intent to convince PJM not to proceed with a planned margin call; and (4) submitting inflated bids into the PJM long-term FTR auction with the intent to artificially raise the clearing price of FTRs that Shell had purchased from GreenHat and offered for sale in the auction.⁵⁶

The FERC also concluded that GreenHat and its principals violated the provision of PJM's tariff requiring members to make "full and timely payment" of their bills and further violated the tariff by making false certifications in officer certification forms that were submitted to PJM.⁵⁷

The FERC rejected arguments by GreenHat and its principals that (1) the investigative process was tainted by misconduct on the part of Enforcement staff;

50. *GreenHat Energy, LLC*, 175 FERC ¶ 61,138 (2021).

51. *GreenHat Energy, LLC*, 177 FERC ¶ 61,073 at P 1(2021).

52. *Id.*

53. *Id.* at PP 39-41.

54. *Id.* at PP 58-64.

55. 177 FERC ¶ 61,073 at P 64.

56. *Id.* at P 69.

57. *Id.* at PP 217-240.

(2) claims based on certain misconduct are time-barred under the applicable statute of limitations; and (3) GreenHat and its principals did not have “clear prior notice” that their conduct was unlawful, as required by the Constitution.⁵⁸ The FERC also rejected the argument that it lacks authority to direct disgorgement of unjust profits in light of a recent Supreme Court case limiting the Federal Trade Commission’s disgorgement authority, contending that the decision “does not offer any relevant guidance” regarding the FERC’s authority.⁵⁹

Commissioner Danly dissented from the Order Assessing Penalties, arguing that “Enforcement failed to provide the proof necessary” to “prove its case to a preponderance of the evidence in order to make out a claim of market manipulation.”⁶⁰ Commissioner Danly also argued that the estate of the deceased principal should not have been held jointly and severally liable for the roughly \$13 million in disgorgement.⁶¹

2. PacifiCorp

On April 15, 2021, the FERC issued an Order to Show Cause and Notice of Proposed Penalty regarding alleged violations of a reliability standard on facility ratings by PacifiCorp.⁶² The order concerns Enforcement’s allegations that, between 2007 and 2017, many PacifiCorp transmission line ratings were inconsistent with the company’s facility ratings methodology because that methodology “required the consideration of clearance measurements consistent with the National Electric Safety Code (NESC),” yet “clearance measurements on a majority of PacifiCorp’s bulk electric system transmission lines were incorrect under the NESC.”⁶³ The order directed PacifiCorp to explain why it should not be assessed a civil penalty of \$42 million.⁶⁴

Commissioner Chatterjee wrote a concurrence in which he “urge[d] the Commission to carefully consider in any future order in this proceeding whether the recommended \$42 million civil penalty is appropriate.”⁶⁵ The concurrence noted that, to date, the highest penalty ever assessed for alleged violations of reliability standards was a \$25 million penalty for numerous violations that led to a major blackout and stated that Enforcement staff’s arguments in favor of the \$42 million penalty were “confounding,” particularly with respect to the relevance of a fire that began in the vicinity of two PacifiCorp transmission lines.⁶⁶

PacifiCorp submitted an answer on July 19, 2021, in which it argued, *inter alia*, that (1) the Company did not violate the relevant reliability standard because neither that standard nor PacifiCorp’s facility ratings methodology required facility ratings to be calculated using actual in-the-field clearances; (2)

58. 177 FERC ¶ 61,073 at PP 241-245.

59. *Id.* at PP 300-305 (discussing AMG Cap. Mgmt., LLC v. FTC, 141 S. Ct. 1341 (2021)).

60. *Id.* at PP 3-4 (Comm’r Danly, dissenting).

61. *Id.* at PP 43-44 (Comm’r Danly, dissenting).

62. *PacifiCorp*, 175 FERC ¶ 61,039 (2021).

63. *Id.* at P 3.

64. *Id.* at P 1.

65. *Id.* at P 1 (Comm’r Chatterjee, concurring).

66. 175 FERC ¶ 61,039 at P 3 (Comm’r Chatterjee, concurring).

penalizing PacifiCorp would violate due process because PacifiCorp acted in reasonable reliance on guidance from NERC and the Western Electricity Coordinating Council; and (3) the proposed penalty amount is unsupportable.⁶⁷ Enforcement staff submitted a reply on September 14, 2021.⁶⁸

3. Rover Pipeline, LLC and Energy Transfer Partners, L.P.

On March 18, 2021, the FERC issued an Order to Show Cause and Notice of Proposed Penalty regarding allegations that Rover Pipeline, LLC, and Energy Transfer Partners, L.P. (jointly, Rover) misled the FERC in application for a certificate of public convenience and necessity and, thereby, violated the FERC regulation requiring full, complete, and forthright applications.⁶⁹ Enforcement alleges that Rover stated in its application that it was “committed to a solution that results in no adverse effects” to a historic farmstead located near a proposed compressor station in Ohio, yet “Rover was simultaneously planning to purchase the house with the intent to demolish it, if necessary, to complete its pipeline.”⁷⁰ The order directed Rover to show cause why it should not be assessed civil penalties of roughly \$20.2 million.⁷¹

Rover submitted an answer on June 21, 2021, in which it argued that it purchased the farmstead for use by its operations group and that the application filings were not misleading.⁷² Rover also argued that the claims are time barred under the applicable statute of limitations, that any claims need to be adjudicated in the first instance in federal district court, and that the recommended penalty is excessive.⁷³ Enforcement submitted a reply on July 21, 2021,⁷⁴ to which Rover submitted a reply on September 15, 2021.⁷⁵

On December 16, 2021, the FERC issued a second Order to Show Cause and Notice of Proposed Penalty regarding allegations that Rover violated NGA section 7(e), Commission regulations, and the FERC order issuing Rover a certificate of public convenience and necessity by

- (1) intentionally including diesel fuel and other toxic substances and unapproved additives in the drilling mud during its horizontal directional drilling (HDD) operations under the Tuscarawas River in Stark County, Ohio, (2) failing to adequately monitor the right-of-way at the site of the Tuscarawas River HDD operation, and (3) improperly disposing of inadvertently released drilling mud that was contaminated with diesel fuel and hydraulic oil.⁷⁶

The order directed Rover to show cause why it should not be assessed civil penalties of \$40 million for these alleged violations.⁷⁷

67. See generally FERC Docket No. IN21-6-000 (July 19, 2021).

68. See generally FERC Docket No. IN21-6-000 (Sept. 14, 2021).

69. *Rover Pipeline, LLC*, 174 FERC ¶ 61,208 (2021).

70. *Id.* at P 4.

71. *Id.* at P 1.

72. See generally FERC Docket No. IN19-4-000 (June 21, 2021).

73. *Id.*

74. FERC Docket No. IN19-4-000 (July 21, 2021).

75. FERC Docket No. IN19-4-000 (Sept. 15, 2021).

76. *Rover Pipeline, LLC*, 177 FERC ¶ 61,182 at P 1 (2021).

77. *Id.*

4. Boyce Hydro Power, LLC

On April 15, 2021, the FERC issued an order assessing \$15 million in civil penalties against Boyce Hydro Power, LLC (Boyce Hydro) for alleged violations of “numerous FERC staff orders and license provisions addressing safety of project facilities and surrounding communities.”⁷⁸ In particular, the FERC concluded that following catastrophic failures of the Sanford Dam and the non-jurisdictional Edenville Dam [in May 2020], Boyce Hydro failed to begin a Commission-directed forensic study of the dam failures and ignored staff’s orders to conduct engineering safety studies and to file certain required reports with the Commission to ensure homes and other buildings surrounding the Boyce Projects were not at risk of further damage.⁷⁹

The FERC rejected Boyce Hydro’s arguments (1) that it could not afford to comply with the FERC’s directives and (2) that it had constructively abandoned the projects because the properties at issue were condemned.⁸⁰

Commissioner Danly wrote a concurrence in which he expressed support for the Commission’s decision to stipulate that the civil penalties “shall not displace any direct recovery of damages by victims of the dam breaches and flooding in ongoing bankruptcy proceedings” and urged the Commission to strengthen financial assurance measures for hydroelectric licensees.⁸¹

5. Ampersand Cranberry Lake Hydro, LLC

On October 21, 2021, the FERC issued an Order to Show Cause and Notice of Proposed Penalty regarding the allegation that Ampersand Cranberry Lake Hydro, LLC (Ampersand Cranberry Lake) violated an article of its project license “by failing to retain the possession of all project property covered by the license.”⁸² The order alleged that Ampersand Cranberry Lake’s lease for Cranberry Lake Project No. 9685, for which it is the FERC licensee, was terminated in July 2021 after the company failed to make rent, water tax, and interest payments required under the lease.⁸³ According to the order, termination of the lease will prevent Ampersand Cranberry Lake “from complying with the Commission’s dam safety orders,” including several orders regarding much-delayed dam safety work on the project’s fuse plug spillway and embankment.⁸⁴ In the order, the FERC proposed a civil penalty of \$600,000.⁸⁵

Commissioner Danly wrote a concurrence in which he emphasized that “the Commission cannot allow licensees to thwart their license obligations by forfeiting the property rights necessary to comply with those obligations” and argued that this matter shows “how critical it is for the Commission to ensure that licen-

78. *Boyce Hydro Power, LLC*, 175 FERC ¶ 61,049 at P 1 (2021) (citing 16 U.S.C. § 823b(c) (2018)).

79. *Id.*

80. *Id.* at PP 35-40.

81. *Id.* at PP 2-3 (Comm’r Danly, concurring).

82. *Ampersand Cranberry Lake Hydro, LLC*, 177 FERC ¶ 61,028 at P 1 (2021).

83. *Id.* at PP 8, 20.

84. *Id.* at PP 7, 21, 23.

85. *Id.* at P 26 (citing 16 U.S.C. § 823b(c); 18 C.F.R. § 385.1505 (2021)).

sees have the financial wherewithal (and incentive) to physically maintain their facilities.”⁸⁶

Ampersand Cranberry Lake submitted an answer on November 22, 2021, in which the company argued that the FERC should determine that there was “either constructive termination of the Project license or termination of the license by implied surrender” and further argued that if FERC nonetheless decides to impose a civil penalty, such a penalty should be significantly less than the \$600,000 proposed in the Order to Show Cause.⁸⁷ Enforcement submitted a reply on December 22, 2021.⁸⁸

C. Settlements

1. Algonquin Power Windsor Locks LLC

On January 5, 2021, the FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and Algonquin Power Windsor Locks, LLC (Windsor Locks) regarding alleged violations of the company’s offer obligations in the ISO-New England, Inc. (ISO-NE) energy markets.⁸⁹ Enforcement alleged that between July 2012 and September 2013, Windsor Locks participated in ISO-NE’s forward capacity market and forward reserve market, but failed to make offers in the energy market consistent with its capacity supply and must-offer obligations.⁹⁰ Enforcement alleged that this conduct represented a violation of certain ISO-NE tariff provisions as well as 18 C.F.R. § 35.41(a), which requires sellers in FERC-approved organized markets to “commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable market.”⁹¹ “Windsor Locks agree[d] to pay a civil penalty of \$1 million and disgorgement of \$1,119,073.15” (including interest) in capacity payments for which the company’s energy market offers allegedly fell short of its forward capacity market offer obligations.⁹² Windsor Locks also agreed to compliance monitoring.⁹³

2. NRG Power Marketing LLC

On January 8, 2021, the FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and NRG Power Marketing, LLC regarding allegedly inaccurate de-list bids the company submitted for two genera-

86. 177 FERC ¶ 61,028 at PP 2-3 (Comm’r, Danly concurring) (citing Notice of Inquiry, *Financial Assurance Measures for Hydroelectric Projects*, 174 FERC ¶ 61,039 (2021); 175 FERC ¶ 61,049 at P 3 (Comm’r, Danly concurring)).

87. See Answer of Ampersand Cranberry Lake Hydro, LLC to Order to Show Cause and Notice of Proposed Penalty, Project No. 9685-034, at 1 (Nov. 22, 2021).

88. See OE Staff Reply to Answer Filed by Respondent Ampersand Cranberry Lake Hydro, LLC, Project No. 9685-034 (Dec. 22, 2021).

89. *Algonquin Power Windsor Locks LLC*, 174 FERC ¶ 61,001 at P 1 (2021).

90. *Id.* at PP 8-15.

91. *Id.* at P 21 [*sic*] (quoting 18 C.F.R. § 35.41(a) (2011)).

92. *Id.* at PP 2, 24 [*sic*].

93. 174 FERC ¶ 61,001 at PP 2, 25 [*sic*].

tors in ISO-NE's forward capacity auction in 2016.⁹⁴ Enforcement alleged that NRG's de-list bids overstated the company's expectations regarding scarcity hours and misstated the generators' net going forward costs due to inconsistent treatment of mothball costs.⁹⁵ According to Enforcement, the company's delist bids violated provisions of ISO-NE's tariff and 18 C.F.R. § 35.41(b), which requires accuracy in communications with FERC-approved grid operators.⁹⁶ NRG Power Marketing, LLC "agree[d] to pay a civil penalty of \$85,000 and agree[d] to compliance monitoring."⁹⁷

3. Tres Palacios LLC

On January 19, 2021, the FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and Tres Palacios LLC regarding alleged violations of a condition of the company's certificate of public convenience and necessity (Certificate).⁹⁸ According to the order, Tres Palacios, LLC failed to conduct sonar surveys of its natural gas storage facility in accordance with the schedule set forth in an engineering condition in the 2007 FERC order issuing Tres Palacios the Certificate.⁹⁹ Enforcement alleged that the company violated that 2007 order as well as NGA section 7(e), which authorizes the Commission to "attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require."¹⁰⁰ Tres Palacios, LLC agreed to pay a civil penalty of \$700,000 and agreed to compliance monitoring.¹⁰¹

4. Freeport LNG Development, L.P.

On January 28, 2021, the FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and Freeport LNG Development, L.P. (Freeport) related to unsanctioned clearing and stabilization activities in connection with the construction of a LNG receiving and regasification terminal.¹⁰² According to the order, due to a contractor's error, Freeport in 2015 engaged in clearing and stabilization activities outside of the area in which such activities were permitted in the 2014 FERC order authorizing construction of the company's facility.¹⁰³ The order also claimed that when Freeport initially explained the issue in a construction report filed with the Commission in April 2016, its filing "contained statements that were inconsistent with materials Freeport had gathered as part of an internal investigation" prior to the filing.¹⁰⁴ Enforcement al-

94. *NRG Power Mktg. LLC*, 174 FERC ¶ 61,016 at P 1(2021).

95. *Id.* at PP 26-28.

96. *Id.* at PP 12-13; *see* 18 C.F.R. 35.41(b).

97. *Id.* at PP 2, 16-17.

98. *Tres Palacios LLC*, 174 FERC ¶ 61,060 at P 1(2021) (citing *Tres Palacios Gas Storage LLC*, 120 FERC ¶ 61,253 app. A at PP 4, 8 (2007)).

99. *Id.* at PP 4-9, 13 (citing 120 FERC ¶ 61,253 app. A, at PP 4, 8).

100. *Id.* at P 13 (quoting 15 U.S.C. § 717f(c)(1)(A) (2018)). *See* 120 FERC ¶ 61,253 app. A, at PP 4, 8.

101. *Id.* at PP 2, 17-19.

102. *Freeport LNG Dev., L.P.*, 174 FERC ¶ 61,055 at PP 1, 3-6 (2021).

103. *Id.* at PP 1, 4-6. *See Freeport LNG Dev., L.P.*, 148 FERC ¶ 61,076 (2014).

104. 174 FERC ¶ 61,055 at P 7.

leged that Freeport violated the 2014 order authorizing construction of Freeport's facility as well as NGA section 3(e), pursuant to which that order was effectuated.¹⁰⁵ Freeport "agree[d] to pay a civil penalty of \$550,000."¹⁰⁶

5. Alliance NYGT LLC

On February 8, 2021, the FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and Alliance NYGT LLC (NYGT) regarding offers and information submitted by NYGT to the New York Independent System Operator (NYISO).¹⁰⁷ According to the order, between 2012 and 2016, NYGT used reference prices for two generators that were based on fuel oil even though the generators primarily ran on natural gas.¹⁰⁸ The order also claimed that, in September 2013, when NYISO began communicating with NYGT about the fuel used by the generators, "NYGT's responses were untimely, inaccurate, or incomplete."¹⁰⁹ Enforcement alleged that NYGT violated certain provisions of NYISO's tariff as well as 18 C.F.R. § 35.41(a), which requires sellers to "commit or otherwise bid supply in a manner that complies with Commission-approved rules," and 18 C.F.R. § 35.41(b), which requires sellers to "provide accurate and factual information and not submit false or misleading information, or omit material information" in communication with grid operators.¹¹⁰ NYGT agreed to pay a civil penalty of \$420,000 and to pay disgorgement of \$369,264.19 (plus interest); NYGT also agreed to compliance monitoring.¹¹¹

6. Shell Energy North America (US), L.P.

On June 15, 2021, the FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and Shell Energy North America (US), L.P. (SENA) regarding allegations that SENA engaged in related-positions manipulation in California natural gas markets in 2016.¹¹² According to the order, a junior trader at SENA—who had "executed basis and index swap derivative transactions . . . that settled on May 2016 [Natural Gas Intelligence (NGI)] monthly index prices"—"engaged in physical fixed-price gas trading" that "had the net effect of moving the published NGI monthly index prices in directions that benefited derivative financial positions in Junior Trader's speculative book."¹¹³ Enforcement alleged that this constituted "related-positions fraud" and violated NGA section 4A as well as the anti-manipulation rule.¹¹⁴ SENA

105. *Id.* at PP 1, 8-9 (citing 15 U.S.C. § 717b(e) (2012); 148 FERC ¶ 61,076, at P 1.

106. *Id.* at PP 2, 12.

107. *Alliance NYGT LLC*, 174 FERC ¶ 61,086 at P 1 (2021).

108. *Id.* at PP 4-8.

109. *Id.* at P 7.

110. *Id.* at PP 9-10 (quoting 18 C.F.R. § 35.41(a)-(b)).

111. *Id.* at PP 2, 18.

112. *Shell Energy N. Am. (US), L.P.*, 175 FERC ¶ 61,201 at PP 1, 4 (2021).

113. *Id.* at PP 7, 8.

114. *Id.* at PP 13-16; *see* 15 U.S.C. § 717c-1 (2020); 18 C.F.R. § 1c.1 (2021).

“agree[d] to pay a civil penalty of \$951,683”, a disgorgement of \$48,317 (plus interest), and SENA also agreed to compliance monitoring.¹¹⁵

7. Terra-Gen, LLC

On August 2, 2021, the FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and Terra-Gen, LLC (Terra-Gen) regarding the bidding and operation of one of the company’s wind generation facilities.¹¹⁶ According to the order, in order to qualify for a special settlement treatment, in 2014, a Terra-Gen subsidiary represented to CAISO that more than fifty percent of the wind facility “was comprised of technology that was physically unable to curtail output, and could not be made to do so without significant investment.”¹¹⁷ However, according to the order, the subsidiary “formulated and implemented a practice to reduce [the facility’s] output in response to negative prices,” and on eighty-six days between 2014 and 2017, it “shut down some or all of its production in response to price.”¹¹⁸ Enforcement alleged that this conduct violated a provision of CAISO’s tariff requiring market participants to “fully and promptly comply with Dispatch Instructions, consistent with their capability to do so,” as well as 18 C.F.R. § 35.41(b), which requires sellers to “provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with [grid operators].”¹¹⁹ Terra-Gen agreed to pay a civil penalty of \$510,962.43, a disgorgement of \$117,231, and also agreed to compliance monitoring.¹²⁰

8. Houlian Chen

As discussed in greater detail in Part I.A.2, on October 29, 2021, the FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and Houlian Chen, HEEP Fund, Inc. and CU Fund, Inc. (collectively, the Chen Defendants) regarding allegations that the Chen Defendants violated the FERC’s anti-market manipulation rule by engaging in Up To Congestion transactions in the PJM Interconnection, LLC in 2010 in order to obtain marginal loss surplus allocation payments.¹²¹

9. Golden Spread Electric Cooperative, Inc.

On November 18, 2021, the FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and Golden Spread Electric Cooperative, Inc. (Golden Spread) regarding make-whole payments from the Southwest Power Pool (SPP).¹²² According to the order, eligibility for day-ahead market make-whole payments in SPP are calculated based on daily aggregated

115. 175 FERC ¶ 61,201 at PP 2, 19-21.

116. *Terra-Gen, LLC*, 176 FERC ¶ 61,071 at P 1 (2021).

117. *Id.* at P 7.

118. *Id.* at PP 8-9.

119. *Id.* at PP at 11-12.

120. 176 FERC ¶ 61,071 at PP 2, 15-16.

121. *See supra* Part I.A.2.

122. *Golden Spread Elec. Cooperative, Inc.*, 177 FERC ¶ 61,109 at P 1(2021).

profits or losses for the hours in which a generator submits “market” offers; the calculation excludes hours in which a generator submits “self-commit” offers.¹²³ The order alleged that, between March and September 2016, Golden Spread maximized make-whole payments by submitting “market” offers for its Mustang Station generating unit for hours in which the unit was expected to be unprofitable and submitting “self-commit” offers for hours in which the unit was expected to be profitable.¹²⁴ Enforcement alleged that this conduct violated the FERC’s anti-market manipulation rule.¹²⁵ Golden Spread “agree[d] to pay a civil penalty of \$550,000, a disgorgement of \$375,000 plus interest, as well compliance monitoring and implementing additional training requirements as part of its compliance program.”¹²⁶

10. Amendment to CAISO Settlement

On February 26, 2021, the FERC issued an order amending a 2014 Stipulation and Consent Agreement among CAISO, Enforcement, and NERC to relieve one of the conditions of the agreement.¹²⁷ CAISO had agreed to complete a “Contingency Modeling Enhancement” (CME) and other reliability enhancements to justify a \$4 million credit against what would otherwise be a \$6 million civil penalty, but, in September 2021, CAISO asked the FERC to amend the agreement to remove this requirement “because the circumstances that led to proposing the CME no longer exist, CAISO has implemented all other reliability enhancements, and CAISO has spent substantially more than \$4 million implementing the other reliability enhancements.”¹²⁸

D. Reports, Policy Statements, and Rules

1. Annual Enforcement Report

On November 18, 2021, Enforcement issued its annual report of Enforcement staff activities, covering fiscal year 2021.¹²⁹ The report identified Enforcement’s priorities as focusing on: (1) “Fraud and market manipulation;” (2) “Serious violations of the Reliability Standards;” (3) “Anticompetitive conduct;” (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.”¹³⁰ While most of these priorities were also identified in previous years’ reports, the fourth priority regarding

123. *Id.* at PP 5-7.

124. *Id.* at PP 8-12.

125. *Id.* at P 2, 18-19 (citing 18 C.F.R. § 1c.2).

126. 177 FERC ¶ 61,109 at PP 2, 22-24.

127. *Cal. Indep. Sys. Operator Corp.*, 174 FERC ¶ 61,164 at P 1 (2021).

128. *Id.* at PP 2-3.

129. FERC, 2021 REPORT ON ENFORCEMENT 5 (Nov. 18, 2021) (Docket No. AD07-13-015) [hereinafter 2021 REPORT ON ENFORCEMENT].

130. *Id.* at 6.

“threats to . . . energy infrastructure and . . . impacts on the environment and surrounding communities” was newly added in this year’s report.¹³¹

In pursuit of these priorities, Enforcement Staff opened twelve new investigations in fiscal year 2021, up from six investigations in fiscal year 2020, and closed four pending investigations with no action.¹³² In addition, Enforcement resolved eight cases through settlement, obtaining approximately \$4.6 million in civil penalties and disgorgement of \$1.8 million in allegedly unjust profits.¹³³ Enforcement’s penalty and disgorgement amounts were significantly higher than the \$437,500 and \$115,876, respectively, collected in connection with settlements in fiscal year 2020.¹³⁴

2. Staff Review of NERC Enforcement Programs

On August 24, 2021, the FERC released its summary of staff’s annual oversight review of NERC’s Fix, Track and Report (FFT) and Compliance Exception (CE) programs.¹³⁵ Staff reviewed a sample of 29 FFT possible violations out of 215 FFT possible violations posted by NERC between October 2019 and September 2020, as well as a sample of 34 CE instances of noncompliance out of 1,103 CE instances of noncompliance “posted by NERC between October 2019 and September 2020.”¹³⁶ Staff concluded that the FFT and CE programs are generally meeting expectations.¹³⁷

3. Final Rule on Civil Monetary Inflation Adjustments

On January 8, 2021, the FERC issued Order No. 875, its Final Rule on Civil Monetary Penalty Inflation Adjustments.¹³⁸ The FERC indicated that the Federal Civil Penalties Inflation Adjustment Act of 1990,¹³⁹ as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act),¹⁴⁰ “required . . . each Federal agency to issue a rule by July 2016 adjusting for inflation each ‘civil monetary penalty’ . . . within the agency’s jurisdiction.”¹⁴¹ The FERC stated that the 2015 Act requires it to make an initial inflation adjustment to its civil monetary penalties, and adjust each such penalty on

131. *Id.*; See FERC, 2020 REPORT ON ENFORCEMENT 6 (Nov. 19, 2020) (Docket No. AD07-13-014) [hereinafter 2020 REPORT ON ENFORCEMENT].

132. *Id.*; 2021 REPORT ON ENFORCEMENT, *supra* note 129, at 7.

133. 2021 REPORT ON ENFORCEMENT, *supra* note 129, at 6.

134. *Id.*; 2020 REPORT ON ENFORCEMENT, *supra* note 131, at 7.

135. Notice of Staff Review of Enforcement Programs, *N. Am. Elec. Reliability Corp.*, 86 Fed. Reg. 48422-02 (2021).

136. *Id.*

137. *Id.* at 48422-23.

138. Order No. 875, *Civil Monetary Penalty Inflation Adjustments*, 86 Fed. Reg. 8131, 8131-32 (2021) (to be codified at 18 C.F.R. pts. 250, 385) [hereinafter *Order No. 875*].

139. Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (codified as amended at 28 U.S.C. § 2461 note) [hereinafter *1990 Act*].

140. Federal Civil Penalties Inflation Act Adjustment Improvements Act of 2015, Pub. L. No. 114-74 § 701, 129 Stat. 584, 599 (codified as amended at 28 U.S.C. § 2461 note) [hereinafter *Act of 2015*].

141. Order No. 875, *supra* note 138, at 8131-32.

an annual basis every January 15 thereafter.¹⁴² The FERC indicated that Order No. 865 is intended to implement the annual adjustment.¹⁴³

The Energy Policy Act of 2005¹⁴⁴ initially granted the Commission the authority to assess civil penalties under Part II of the FPA, the NGA, and the Natural Gas Policy Act (NGPA), in amounts up to \$1,000,000 per violation for each day that the violation continues.¹⁴⁵ The FERC stated that applying the requisite inflation adjustments resulted in a maximum civil penalty of \$1,307,164 per violation per day.¹⁴⁶ The FERC also adjusted other civil monetary civil penalties it is authorized to assess under these and other statutes.¹⁴⁷ Order No. 875 became effective February 4, 2021—the date it was published in the Federal Register.¹⁴⁸

E. Requests Regarding Enforcement and Investigations

1. Examination of Market Conduct During Winter Storm Uri

In the wake of Winter Storm Uri, which caused widespread power outages in Texas and the South-Central United States, on February 22, 2021, the FERC announced that Enforcement would examine “wholesale natural gas and electricity market activity during [the prior] week’s extreme cold weather to determine if any market participants engaged in market manipulation or other violations.”¹⁴⁹ In November 2021, Enforcement provided additional information about this examination in its annual report.¹⁵⁰ The report explained that Enforcement’s Division of Analytics and Surveillance (DAS) conducted inquiries into the behavior of ten natural gas market participants and four electric market participants.¹⁵¹ DAS noted that it referred to natural gas market participants for investigation by the Enforcement Division of Investigations and that it is continuing to analyze one natural gas matter and one electric market participant.¹⁵²

In addition to DAS’s examination of market activity, staff from the FERC, NERC, and the Regional Entities conducted a joint inquiry on the outages associated with Winter Storm Uri, although the purpose of the inquiry “was not to determine whether there may have been violations of applicable regulations, re-

142. *Id.*

143. *Id.*

144. Energy Policy Act of 2005, 109 Pub. L. No. 109-58, 119 Stat. 594, 690-91, 980.

145. *See generally* 16 U.S.C. § 825o-1(b) (2020); 15 U.S.C. § 717t-1(a) (2020); 15 U.S.C. § 3414(b)(6)(A)(i) (2020).

146. Order No. 875, *supra* note 138, at 8132.

147. *Id.*

148. *Id.* at 8131, 8133.

149. FERC, *FERC to Examine Potential Wrongdoing in Markets During Recent Cold Snap* (Feb. 22, 2021), <https://www.ferc.gov/news-events/news/ferc-examine-potential-wrongdoing-markets-during-recent-cold-snap>.

150. 2021 REPORT ON ENFORCEMENT, *supra* note 129, at 79-80.

151. *Id.*

152. *Id.* at 80-82

quirements, or standards subject to the Commission’s jurisdiction, but to make findings and recommendations with the aim of preventing future events.”¹⁵³

On May 26, 2021, the FERC issued an order denying a complaint that asked it to direct NERC to investigate potential violations of Reliability Standards during Winter Storm Uri.¹⁵⁴ The Commission explained that the complaint did “not contain facts demonstrating violations of specific Reliability Standards”¹⁵⁵ and highlighted existing efforts—including the examination of wholesale market activity and the joint FERC/NERC inquiry—that “appear to address certain relief that was requested by the [c]omplaint.”¹⁵⁶

2. *State of California v. British Columbia Power Exchange Corporation, et al.*

On May 20, 2021, the FERC issued an order on the 2017 initial decision of an ALJ regarding claims that violations of quarterly reporting requirements resulted in unjust and unreasonable rates during the 2000-2001 Western Energy Crisis.¹⁵⁷ The long-running proceeding was initiated by a 2002 complaint by the California Attorney General and the only remaining respondents in the case are Hafslund Energy Trading L.L.C. and TransCanada Energy Ltd.¹⁵⁸ In its order, the Commission affirmed the ALJ’s initial decision, concluding that “Respondents’ reporting violations did not mask manipulation or market power by Respondents that resulted in unjust and unreasonable prices being charged by either Respondent,” and therefore declined to order refunds.¹⁵⁹ The Commission explained that the California Parties seeking refunds “impermissibly relie[d] on a theory of vicarious liability” by arguing that “the misconduct masked by reporting violations could be that of a Respondent *or* the Respondent’s trading partner.”¹⁶⁰ The Commission also agreed with the initial decision’s conclusion “that noncompliant quarterly reports did not inhibit the Commission’s identification of manipulative trading strategies in this case,” noting that “relevant and critical information, which would have alerted the Commission to potential market power issues, was available to the Commission through . . . other public sources.”¹⁶¹

A petition for review of the order was filed with the U.S. Court of Appeals for the Ninth Circuit in July 2021.¹⁶² Petitioners’ opening brief was filed in November 2021, and the FERC’s answering brief is due February 25, 2022.¹⁶³

153. FERC, NERC AND REGIONAL ENTITY STAFF REPORT, THE FEBRUARY 2021 COLD WEATHER OUTAGES IN TEXAS AND THE SOUTH CENTRAL UNITED STATES 21 (2021) [hereinafter THE FEBRUARY 2021 REPORT], <https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and>.

154. *Complaint of Michael Mabee Related to Reliability Standards*, 175 FERC ¶ 61,163 at P 1 (2021).

155. *Id.* at P 14.

156. *Id.* at P 16.

157. *State of Cal. ex rel. Lockyer v. British Columbia Power Exch. Corp.*, 175 FERC ¶ 61,124 at P 1 (2021).

158. *Id.* at PP 2, 4.

159. *Id.* at P 3.

160. *Id.* at P 35.

161. 175 FERC ¶ 61,124 at PP 99, 105.

162. *Cal. ex rel. Bonta v. FERC*, No. 21-71199, 2021 WL 5754979 (9th Cir. July 28, 2021).

3. Public Utilities Commission of the State of California v. Sellers of Long-Term Contracts to the California Department of Water Resources

On June 17, 2021, the FERC issued an order remanding to an ALJ specific issues raised in the ALJ's 2016 initial decision about whether a long-term contract between the California Department of Water Resources and Shell Energy North America (US), L.P. (Shell), executed during the Western Energy Crisis, can be abrogated "due to fraud on Shell's part at the contract formation stage such that the contract was not the result of legitimate arms' length negotiations."¹⁶⁴ The Commission remanded this issue to allow for full briefing, explaining that the ALJ "erred by raising [a] fraud-in-the-inception theory *sua sponte* in the Initial Decision," but noting that the Commission found "potential merit to the argument that Shell's spot market activity could have contributed to inherent unfairness that tainted negotiation of the Shell Contract" and explaining that the Commission is "reluctant to ignore evidence in the record that has not been fully considered."¹⁶⁵

Shell petitioned the U.S. Court of Appeals for the D.C. Circuit for review of the order on September 16, 2021, and the case was transferred to the Ninth Circuit on December 8, 2021.¹⁶⁶

4. Public Citizen, Inc. v. Midcontinent Independent System Operator, Inc.

On August 6, 2021, the U.S. Court of Appeals for the D.C. Circuit remanded to the FERC a July 2019 order in which the Commission had dismissed complaints regarding the conduct of certain capacity sellers in Illinois in connection with the Midcontinent Independent System Operator, Inc. (MISO) 2015/16 Planning Resource Auction.¹⁶⁷

In MISO's 2015/2016 auction, the clearing price for the zone covering much of Illinois was \$150/MW-day, significantly higher than that zone's prior year clearing price of \$16.75/MW-day.¹⁶⁸ In the wake of complaints regarding the auction results and allegations that Dynegy committed market manipulation in the form of economic withholding, the FERC "identified numerous problems with the existing auction rules" and conducted a three-year investigation of possible market manipulation.¹⁶⁹ However, in its July 2019 order, the FERC explained that Enforcement's investigation had been closed and, based on that investigation, the conduct at issue did not violate rules against market manipulation.¹⁷⁰ The Commission also found that the results of the auction were

163. Opening Brief of the California Parties, Cal. ex. rel. Bonta v. FERC, No. 21-71199, 2021 WL 5754979 (9th Cir. July 28, 2021).

164. *Pub. Utils. Comm'n of the State of Cal. v. Sellers of Long-Term Contracts to the Cal. Dep't of Water Res.*, 175 FERC ¶ 61,233 at PP 1, 10 (2021).

165. *Id.* at PP 22, 24.

166. *Shell Energy N. Am. (US), L.P. v. FERC*, 2021 U.S. App. LEXIS 36,237, 36,237 (D.C. Cir. 2021); *Shell Energy N. Am. (US), L.P. v. FERC*, No. 21-71418 (9th Cir. Dec. 8, 2021).

167. *Pub. Citizen, Inc. v. FERC*, 7 F.4th 1177, 1182, 1187 (D.C. Cir. 2021).

168. *Id.* at 1182, 1188.

169. *Id.* at 1182, 1199.

170. *Id.* at 1190 (quoting *Pub. Citizen, Inc.*, 168 FERC ¶ 61,042 at PP 30, 32 (2019)).

just and reasonable.¹⁷¹ Then-Commissioner Glick dissented from the July 2019 order, focusing on the fact that the Office of Enforcement’s investigation had been unilaterally closed by then-Chairman Chatterjee.¹⁷²

The D.C. Circuit found that it “lack[ed] the power to review the Commission’s discretionary decision to close its investigation into market manipulation in the 2015 Auction,” noting that “nothing in the Federal Power Act reins in the Commission’s enforcement discretion or provides a meaningful standard for reviewing its unexplained conclusion” that Dynegy did not engage in market manipulation.¹⁷³ However, the court held that the FERC acted arbitrarily and capriciously by failing to consider the effect of flaws in the tariff that were later rectified and by failing to “provide any explanation for its determination that market manipulation did not lead to unjust and unreasonable rates.”¹⁷⁴ The court held that “Public Citizen more than adequately alleged that conduct during the 2015 Auction met the definition of ‘market manipulation’ and resulted in unjust and unreasonable rates” and concluded that the FERC for “ignored the chronological link between the [price] spike and Dynegy’s acquisition of pivotal sources of electrical generation” within the relevant zone.¹⁷⁵

5. Athens Utilities Board, et al. v. Tennessee Valley Authority

In an October 21, 2021, order declining to direct the Tennessee Valley Authority (TVA) to provide unbundled transmission service to certain municipal utilities and electric cooperatives, the FERC noted that the petitioners alleged that TVA “made statements that it is refusing to perform needed reliability upgrades due to Petitioners’ participation in the Petition.”¹⁷⁶ While the FERC found that such allegations were beyond the scope of the proceeding, the order stated that the Commission “takes seriously allegations concerning retaliatory conduct” and noted that “[t]he Chairman has asked the Office of Enforcement to consider whether this is a matter to be investigated.”¹⁷⁷

6. Midship Pipeline Company, LLC

On December 16, 2021, the FERC issued an order directing Midship Pipeline Company, LLC (Midship) to

show cause why the Commission (1) should not find that it has buried rock and construction debris in construction work areas along the Midcontinent Supply Header Interstate Pipeline Project (Midship Project) right-of-way, in violation of the environmental conditions of the Commission’s August 13, 2018 order issuing Midship a certificate of public convenience and necessity to construct the Midship Project, and (2) should not require immediate removal of such rock and construction debris.¹⁷⁸

171. *Pub. Citizen, Inc.*, 7 F.4th at 1190.

172. *Id.* at 1191 (quoting 168 FERC ¶ 61,042 at P 2 (Comm’r Glick, dissenting)).

173. *Pub. Citizen, Inc.*, 7 F.4th at 1182, 1196.

174. *Id.* at 1196.

175. *Id.* at 1199-1200.

176. *Athens Utils. Bd. v. Tenn. Valley Auth.*, 177 FERC ¶ 61,021 at P 92 (2021).

177. *Id.* at P 92, n.190.

178. *Midship Pipeline Co.*, 177 FERC ¶ 61,187 at P 1 (2021) (footnotes omitted).

In this order, the FERC also referred “issues related to Midship’s restoration of its right-of-way to the Office of Enforcement for further investigation.”¹⁷⁹

7. Public Utility District No. 2 of Grant County, Washington

On October 21, 2021, the FERC issued an order addressing arguments raised in a request for rehearing of an April 2021 letter order that found that the Public Utility District No. 2 of Grant County, Washington (Grant PUD) was in compliance with its recreation plan and license for the Priest Rapids Hydroelectric Project No. 2114.¹⁸⁰ The FERC rejected the argument that it should have assessed civil penalties against Grant PUD, explaining that Commission staff had investigated the compliance concerns that had been raised and that the Commission found that Grant PUD was in compliance with its license and recreation plan.¹⁸¹

8. Spire STL Pipeline LLC

On March 18, 2021, the FERC issued an order addressing allegations by the Illinois Department of Agriculture (Department) that the Spire STL Pipeline Project (Spire Project) “failed to comply with certain agricultural mitigation measures required by the Agricultural Impact Mitigation Agreement (AIMA)” between the Department and the Spire Project.¹⁸² The measures of the AIMA were incorporated as conditions of the Spire Project’s certificate of public convenience and necessity.¹⁸³

While certain landowners argued “that Spire’s violations of the AIMA warrant referral to enforcement staff and the imposition of civil penalties,” the FERC declined to take that step.¹⁸⁴ The Commission stated that it “takes landowner concerns seriously and expects Spire to continue to work directly with agencies, in this case the Department, and the landowners to address their concerns,” but concluded that the agricultural impact mitigation concerns in this case “do not warrant an enforcement referral or the imposition of civil penalties.”¹⁸⁵

II. THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

In 2021, NERC submitted notices of penalty to the FERC regarding 47 violations of reliability standards, for which registered entities agreed to pay roughly \$4.9 million in penalties.¹⁸⁶ This represents a decrease from increase in the number of violations identified in notices of penalty during the previous year, but an increase in the dollar value of penalties collected; during 2020, NERC submit-

179. *Id.*

180. *Pub. Util. Dist. No. 2 of Grant Cty., Wash.*, 177 FERC ¶ 61,044 (2021).

181. *Id.* at PP 17-18.

182. *Spire STL Pipeline LLC*, 174 FERC ¶ 61,219 at P 1 (2021).

183. *Id.*

184. *Id.* at P 41.

185. *Id.*

186. NERC, SEARCHABLE NOTICE OF PENALTY (NOP) SPREADSHEET (2021), <https://www.nerc.com/pa/comp/CE/Pages/Enforcement-and-Mitigation.aspx>.

ted notices of penalty to FERC regarding 108 violations of reliability standards, for which registered entities agreed to pay roughly \$4.3 million in penalties.¹⁸⁷

III. THE COMMODITY FUTURES TRADING COMMISSION

A. Litigation

1. CFTC v. EOX Holdings L.L.C., et al.

The U.S. District Court for the Southern District of Texas on September 30, 2021, issued an order largely denying cross motions for summary judgments in *CFTC v. EOX Holdings L.L.C., et al.*, a case in which the CFTC is seeking penalties from an energy broker accused of insider trading in connection with block trades of energy contracts.¹⁸⁸ The CFTC also alleged that defendant violated record-keeping and supervision requirements.¹⁸⁹

The court denied the CFTC's motion for summary judgment and denied in large part defendants' motion for summary judgment, concluding that the CFTC's allegations raise genuine issues of material fact to be resolved at trial.¹⁹⁰ The court granted defendants' motion for summary judgment in part as it related to certain CFTC allegations regarding record-keeping requirements.¹⁹¹ However, the court also denied defendants' motion with respect to affirmative defenses relating to fair notice and freedom of commercial speech under the First Amendment to the Constitution.¹⁹²

2. CFTC v. Byrnes, et al.

The U.S. District Court for the Southern District of New York on February 19, 2021, issued a consent order in which the CFTC and Ron Eibschutz, one of the defendants in *CFTC v. Byrnes, et al.*, agreed that Eibschutz will pay a \$75,000 civil penalty and be permanently banned from commodity trading.¹⁹³ The consent order resolves the CFTC's claims based on allegations that "on numerous occasions between 2008 and 2010, Eibschutz solicited and received" from two New York Mercantile Exchange employees "material nonpublic information" regarding trading activity in the crude oil and natural gas markets, including "the identifies of counterparties to specific options trades, whether a particular counterparty purchased or sold the option, whether it was call or a put, the volume of the contract traded, the expiry, the strike price, and the trade price."¹⁹⁴

187. *Id.*

188. *CFTC v. EOX Holdings L.L.C.*, No. H-19-2901, 2021 WL 4482145, at *1-5 (S.D. Tex. Sept. 30, 2021).

189. *Id.* at *18.

190. *Id.* at *48.

191. *Id.*

192. *EOX Holdings LLC*, 2021 WL 4482145, at *1-5.

193. *CFTC v. Byrnes*, No. 13-cv-1174 (VSB), 2021 WL 1267269, at *4 (S.D.N.Y. Feb. 19, 2021).

194. *Id.* at *3.

3. CFTC v. Banoczay, et al.

The U.S. District Court for the Northern District of Illinois on December 7, 2021, issued a consent order in which the CFTC and the defendants in *CFTC v. Banoczay, et al.*, agreed that Roman Banoczay Jr. will pay a \$750,000 civil penalty and that Banoczay Jr., Roman Banoczay Sr., and their company, BAZUR Spol. S.R.O., will be banned from commodity trading for two years.¹⁹⁵ The consent order resolves the CFTC's claims based on allegations that Banoczay Jr., acting as agent for the two other defendants, engaged in spoofing in the crude oil futures market in 2018.¹⁹⁶

4. CFTC v. Coquest Inc., et al.

On October 20, 2021, the CFTC filed a complaint with the U.S. District Court for the Northern District of Texas based on allegations that Coquest Inc. (Coquest), an energy broker, as well as its owners and their affiliated firms, committed fraud, unauthorized trading, and supervision violations by using "material nonpublic information relating to Coquest customers, such as their identities, trading activity, positions, and the prices at which they were willing to buy or sell, in order to broker and execute block trades opposite the Coquest customers on behalf, and to the benefit, of" companies owned and controlled by Coquest's owners.¹⁹⁷ The complaint seeks civil penalties, disgorgement, restitution, and trading bans.¹⁹⁸

5. CFTC v. Miller, et al.

On December 10, 2021, the CFTC filed a complaint with the U.S. District Court for the Southern District of Texas based on allegations that Peter Miller and his company, Omerta Capital LLC, engaged in an insider trading and kick-back scheme involving natural gas futures contracts.¹⁹⁹ The complaint alleged that Miller received information about an energy company's block trade order information from a trader at that company, entered into trades with the energy company based on such information, and then shared profits from the trades with the trader who provided the insider information.²⁰⁰ The complaint seeks civil penalties, disgorgement, restitution, and trading bans.²⁰¹

195. CFTC v. Banoczay, No. 1:20-cv-05777, 2021 WL 6072704 (N.D. Ill. December 7, 2021).

196. *Id.*

197. Complaint for Injunctive Relief, Civil Monetary Penalties, and Other Equitable Relief at 1-2, CFTC v. Coquest, Inc., No. 3:21-cv-2599 (N.D. Tex. Oct. 20, 2021).

198. *Id.* at 25-26.

199. Complaint for Injunctive Relief, Civil Monetary Penalties, Restitution, Disgorgement, and Other Equitable Relief at 1, CFTC v. Miller, No. 4:21-cv-04023 (S.D. Tex. Dec. 10, 2021).

200. *Id.*

201. *Id.*

B. Settlement Orders

The CFTC this year issued several settlement orders relating to energy markets.²⁰² These orders included the following:

- A March 25, 2021, order imposing a \$100,000 civil penalty and permanent ban on commodity trading for Emilio José Heredia Collado for seeking “to increase profits from . . . oil products trading by manipulating a U.S. price-assessment benchmark relating to physical fuel oil products”²⁰³;
- A May 18, 2021, order imposing a \$500,000 civil penalty on SummerHaven Investment Management LLC for engaging in “wash sales” by “enter[ing] bids and offers for the same quantities of the same futures contracts” for several commodities—including crude oil, heating oil, and gasoline—for trading accounts that had the same beneficial owner and which were intended to and did in fact offset each other upon execution²⁰⁴;
- A June 1, 2021, order imposing disgorgement of \$585,000 and permanent bans on commodity trading for Classic Energy LLC (Classic) and its owner, Mathew D. Webb, for “engag[ing] in a scheme to misappropriate material, nonpublic block trade order information of Classic’s institutional energy company customers (the ‘Energy Companies’), including information about the price and quantity at which the Energy Companies sought to execute block trades in certain natural gas futures contracts on both ICE and NYMEX”; paying kickbacks to traders at an energy company that was a client of Classic; failing to diligently supervise brokers; and making “false statements to ICE in connection with ICE’s investigation of certain block trades brokered by Classic”²⁰⁵;
- A September 28, 2021, order imposing a \$1.75 million civil penalty and restitution of \$82.57 million on Interactive Brokers LLC for failure “to diligently supervise its [futures commission merchant] activities with respect to its electronic trading system’s preparedness for and ability to handle negative crude oil futures prices on April 20, 2020”²⁰⁶; and
- A November 8, 2021, order imposing a \$2.5 million civil penalty on United States Commodity Funds LLC for failure “to fully dis-

202. *In re Emilio José Heredia Collado*, CFTC No. 21-04, 2021 WL 2182105 *6-7 (Mar. 25, 2021) [hereinafter *Emilio*]; *In re Summerhaven Investment Mgmt. LLC*, CFTC No. 21-07, 2021 WL 3195869, at *1, 6 (May 18, 2021) [hereinafter *Summerhaven*]; *In re Matthew D. Webb*, CFTC No. 21-09, 2021 WL 2534960, at *1-2, 13 (June 14, 2021) [hereinafter *Matthew*]; *In re Interactive Brokers LLC*, CFTC No. 21-19, 2021 WL 45014660, at *1, 6-7 (Sept. 28, 2021) [hereinafter *Interactive Brokers*]; *In re United States Commodity Funds LLC*, CFTC No. 22-06, 2021 WL 5263032, at *1, 9 (Nov. 8, 2021) [hereinafter *Commodity Funds*].

203. *Emilio*, supra note 202, at *6-7.

204. *Summerhaven*, supra note 202, at *1, 6.

205. *Matthew*, supra note 202, at *1-2, 13.

206. *Interactive Brokers*, supra note 202, at *1, 6-7.

close certain limitations on the operation of one of its commodity pools, United States Oil Fund LP.”²⁰⁷

III. THE PIPELINE & HAZARDOUS MATERIALS SAFETY ADMINISTRATION

The Pipeline & Hazardous Materials Safety Administration (PHMSA) initiated 236 pipeline safety enforcement cases in 2021, an increase from the 195 cases initiated in 2020.²⁰⁸ In addition, the PHMSA closed 222 enforcement actions in 2021, a slight increase over the 216 actions closed in 2020.²⁰⁹ The PHMSA also initiated 41 civil penalty cases in 2021 in which it proposed a total of roughly \$8.2 million in penalties, an increase from the 39 civil penalty cases initiated in 2020.²¹⁰

IV. THE DEPARTMENT OF ENERGY

The DOE’s Office of Enterprise Assessments (EA) supports the Secretary of Energy and other stakeholders by enhancing the DOE’s safety, security, and cybersecurity programs. The EA “independently evaluat[es] the effectiveness of requirements, performance, and risk management; conduct[s] objective and effective enforcement activities; and provid[es] high-quality training.”²¹¹ In addition, EA has been designated to implement congressionally authorized contractor enforcement programs pertaining to classified information security, nuclear safety, and worker safety and health.²¹² In 2021, EA’s Office of Enforcement issued two Consent Orders and one Settlement Agreement,²¹³ three Notices of Intent to Investigate,²¹⁴ two Notices of Violation,²¹⁵ and four Enforcement Letters.²¹⁶

V. THE DEPARTMENT OF JUSTICE

The United States Department of Justice (DOJ) announced several complaints and settlements regarding alleged criminal and civil matters involving the energy companies or markets.²¹⁷ DOJ made several

207. *Commodity Funds*, *supra* note 202, at *1, 9.

208. U.S. DEP’T OF TRANSP., PIPELINE & HAZARDOUS MATERIALS SAFETY ADMIN., SUMMARY OF ENFORCEMENT ACTIVITY- NATIONWIDE (2020).

209. *Id.*

210. U.S. DEP’T OF TRANSP., PIPELINE & HAZARDOUS MATERIALS SAFETY ADMIN., SUMMARY OF CASES INVOLVING CIVIL PENALTIES (2021).

211. U.S. DEP’T OF ENERGY, MISSION (2021), <https://www.energy.gov/ea/mission>.

212. *Id.*

213. U.S. DEP’T OF ENERGY, CONSENT ORDERS AND SETTLEMENTS, <https://www.energy.gov/ea/listings/consent-orders-and-settlement-agreements> (last visited Jan. 19, 2021).

214. U.S. DEP’T OF ENERGY, NOTICE OF INVESTIGATION LETTERS, <https://www.energy.gov/ea/listings/notice-investigation-letters> (last visited Jan. 19, 2021).

215. U.S. DEP’T OF ENERGY, NOTICES OF VIOLATION, <https://www.energy.gov/ea/listings/notices-violation> (last visited Jan. 19, 2021).

216. U.S. DEP’T OF ENERGY, ENFORCEMENT LETTERS, <https://www.energy.gov/ea/listings/enforcement-letters> (last visited Jan. 19, 2021).

217. U.S. DEP’T OF JUSTICE, JUSTICE DEPARTMENT’S FALSE CLAIMS ACT SETTLEMENTS AND JUDGMENTS EXCEED \$5.6 BILLION IN FISCAL YEAR 2021 4 (2022), <https://www.justice.gov/opa/pr/justice-department-s-false-claims-act-settlements-and-judgments-exceed-56-billion-fiscal-year>.

announcements regarding environmental violations, including announcements regarding settlement agreements and sentences to address oil and produced water spills²¹⁸ and Clean Air Act violations involving refineries,²¹⁹ electric generating facilities,²²⁰ and a natural gas processing plant.²²¹ DOJ also announced guilty pleas or indictments in connection with an alleged insider trading and kickback scheme involving natural gas futures contracts,²²² an alleged conspiracy to manipulate fuel oil prices,²²³ and alleged securities fraud involving inflation of

218. U.S. DEP'T OF JUSTICE, CITGO PETROLEUM CORP. WILL PAY OVER \$19 MILLION FOR INJURIES TO NATURAL RESOURCES RESULTING FROM ITS OIL SPILL AT ITS REFINERY IN LAKE CHARLES, LOUISIANA 1 (2021), <https://www.justice.gov/opa/pr/citgo-petroleum-corp-will-pay-over-19-million-injuries-natural-resources-resulting-its-oil>; U.S. DEP'T OF JUSTICE, PIPELINE COMPANY TO PAY \$35 MILLION IN CRIMINAL FINES AND CIVIL PENALTIES FOR LARGEST-EVER INLAND SPILL OF PRODUCED WATER FROM OIL DRILLING 1 (2021), <https://www.justice.gov/opa/pr/pipeline-company-pay-35-million-criminal-fines-and-civil-penalties-largest-ever-inland-spill>; U.S. DEP'T OF JUSTICE, BUCKEYE AND WEST SHORE PIPELINES TO PAY \$8.7 MILLION IN CIVIL PENALTIES AND DAMAGES FOR INJURIES TO NATURAL RESOURCES RESULTING FROM 2010 CRUDE OIL SPILL NEAR LOCKPORT, ILLINOIS 1 (2021), <https://www.justice.gov/opa/pr/buckeye-and-west-shore-pipelines-pay-87-million-civil-penalties-and-damages-injuries-natural>; U.S. DEP'T OF JUSTICE, BARGE COMPANY WILL PAY OVER \$15 MILLION FOR INJURIES TO NATURAL RESOURCES RESULTING FROM OIL SPILL IN HOUSTON SHIP CHANNEL 1 (2021), <https://www.justice.gov/opa/pr/barge-company-will-pay-over-15-million-injuries-natural-resources-resulting-oil-spill-houston>; U.S. DEP'T OF JUSTICE, PIPELINE COMPANY SENTENCED FOR LARGEST-EVER INLAND OIL SPILL 1 (2021), <https://www.justice.gov/opa/pr/pipeline-company-sentenced-largest-ever-inland-oil-spill>; U.S. DEP'T OF JUSTICE, TAYLOR ENERGY COMPANY TO PAY OVER \$43 MILLION AND TRANSFER \$432 MILLION DECOMMISSIONING TRUST FUND TO THE UNITED STATES FOR GULF OF MEXICO OIL SPILL 1 (2021), <https://www.justice.gov/opa/pr/taylor-energy-company-pay-over-43-million-and-transfer-432-million-decommissioning-trust-fund>.

219. U.S. DEP'T OF JUSTICE, UNITED STATES FILES COMPLAINT AND REACHES AGREEMENT ON STIPULATION WITH LIMETREE BAY TERMINALS LLC AND LIMETREE BAY REFINING LLC RELATING TO PETROLEUM REFINERY IN ST. CROIX, U.S. VIRGIN ISLANDS 1 (2021), <https://www.justice.gov/opa/pr/united-states-files-complaint-and-reaches-agreement-stipulation-limetree-bay-terminals-llc>; U.S. DEP'T OF JUSTICE, U.S. GOVERNMENT AND STATE OF ILLINOIS ANNOUNCE AGREEMENT WITH EXXONMOBIL'S JOLIET REFINERY TO REDUCE AIR POLLUTION 1 (2021), <https://www.justice.gov/opa/pr/us-government-and-state-illinois-announce-agreement-exxonmobil-s-joliet-refinery-reduce-air>.

220. U.S. DEP'T OF JUSTICE, EPA AND THE STATE OF MICHIGAN REACH CLEAN AIR ACT SETTLEMENT WITH ARBOR HILLS ENERGY LLC 1 (2021), <https://www.justice.gov/opa/pr/justice-department-epa-and-state-michigan-reach-clean-air-act-settlement-arbor-hills-energy>; U.S. DEP'T OF JUSTICE, LOUISVILLE GAS & ELECTRIC COMPANY TO PERMANENTLY LIMIT HARMFUL AIR POLLUTION 1 (2021), <https://www.justice.gov/opa/pr/louisville-gas-electric-company-permanently-limit-harmful-air-pollution>.

221. U.S. DEP'T OF JUSTICE, WEST TEXAS GAS COMPANIES AGREE TO PAY \$3 MILLION CIVIL PENALTY IN FEDERAL SETTLEMENT REQUIRING \$5 MILLION IN SAFETY IMPROVEMENTS AND CLEAN AIR ACT COMPLIANCE AT EIGHT NATURAL GAS PROCESSING PLANTS 1 (2021), <https://www.justice.gov/opa/pr/west-texas-gas-companies-agree-pay-3-million-civil-penalty-federal-settlement-requiring-5>.

222. U.S. DEP'T OF JUSTICE, FORMER NATURAL GAS TRADER PLEADS GUILTY FOR ROLE IN COMMODITIES INSIDER TRADING SCHEME 1 (2021), <https://www.justice.gov/opa/pr/former-natural-gas-trader-pleads-guilty-role-commodities-insider-trading-scheme>; U.S. DEP'T OF JUSTICE, FORMER ENERGY BROKER PLEADS GUILTY TO INSIDER TRADING AND KICKBACK SCHEME 1(2021), <https://www.justice.gov/opa/pr/former-energy-broker-pleads-guilty-insider-trading-and-kickback-scheme>; U.S. DEP'T OF JUSTICE, TRADER INDICTED FOR COMMODITIES INSIDER TRADING SCHEME 1 (2021), <https://www.justice.gov/opa/pr/trader-indicted-commodities-insider-trading-scheme>.

223. U.S. DEP'T OF JUSTICE, FORMER OIL TRADER PLEADS GUILTY TO COMMODITIES PRICE MANIPULATION CONSPIRACY 1 (2021), <https://www.justice.gov/opa/pr/former-oil-trader-pleads-guilty-commodities-price-manipulation-conspiracy>.

the reported revenue of an oil-services company.²²⁴ Additionally, DOJ this year made announcements regarding matters involving alleged misconduct in connection with government contracts or benefits involving energy companies²²⁵ and the obstruction of an Occupational Safety and Health Administration investigation into the death of an oilfield worker.²²⁶

224. U.S. DEP'T OF JUSTICE, SENIOR EXECUTIVE OF OIL SERVICES COMPANY PLEADS GUILTY TO SECURITIES FRAUD SCHEME THAT CAUSED OVER \$866 MILLION IN SHAREHOLDER LOSSES 1 (2021), <https://www.justice.gov/opa/pr/senior-executive-oil-services-company-pleads-guilty-securities-fraud-scheme-caused-over-886>.

225. U.S. DEP'T OF JUSTICE, CALIFORNIA MAN PLEADS GUILTY TO SCHEME TO DEFRAUD AFGHAN GOVERNMENT ON U.S. FUNDED CONTRACT 1 (2021) <https://www.justice.gov/opa/pr/california-man-pleads-guilty-scheme-defraud-afghan-government-us-funded-contract> (guilty plea regarding alleged fraud in connection with U.S. Agency for International Development funds for electric grid development in Afghanistan); U.S. DEP'T OF JUSTICE, DEVON ENERGY COMPANIES AGREE TO PAY \$6.15 MILLION TO SETTLE FALSE CLAIMS ACT ALLEGATIONS FOR UNDERPAYING ROYALTIES ON GAS FROM FEDERAL LANDS 1 (2021) <https://www.justice.gov/opa/pr/devon-energy-companies-agree-pay-615-million-settle-false-claims-act-allegations-underpaying> (settlement regarding alleged underpayment of royalties for natural gas on federal lands); U.S. DEP'T OF JUSTICE, LOUISIANA MAN INDICTED FOR FRAUDULENTLY OBTAINING COVID-19 RELIEF FUNDS AND MONEY LAUNDERING 1 (2021) <https://www.justice.gov/opa/pr/louisiana-man-indicted-fraudulently-obtaining-covid-19-relief-funds-and-money-laundering> (fraud in connection with COVID-19 funds for oil and gas companies).

226. U.S. DEP'T OF JUSTICE, FORMER OILFIELD MANAGER PLEADS GUILTY IN CONNECTION WITH OSHA WORKER FATALITY INVESTIGATION 1 (2021), <https://www.justice.gov/opa/pr/former-oilfield-manager-pleads-guilty-connection-osha-worker-fatality-investigation>.