REPORT OF THE COMPLIANCE & ENFORCEMENT COMMITTEE

This report of the Compliance & Enforcement Committee summarizes key federal enforcement and compliance developments in 2014, including certain decisions, orders, actions, and rules of the Federal Energy Regulatory Commission, the U.S. Commodity Futures Trading Commission, the Pipeline and Hazardous Materials Safety Administration, the U.S. Department of Energy, and the U.S. Department of Justice.*

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I. THE FEDERAL ENERGY REGULATORY COMMISSION

A. *Reports and Rules*

1. Annual Enforcement Report

On November 20, 2014, the Federal Energy Regulatory Commission (FERC or Commission) Office of Enforcement (Enforcement) issued its Annual Report of Enforcement Staff activities during the fiscal year 2014 (2014 Report)[1] that identified priorities of "[(1)] [f]raud and market manipulation; [(2)] [s]erious violations of the reliability standards; [(3)] [a]nticompetitive conduct; and [(4)] [c]onduct that threaten[ed] the transparency of regulated markets."[2]

In pursuit of these priorities, Enforcement opened seventeen new investigations in fiscal year 2014, down from twenty-four investigations in 2013, while bringing fifteen to closure.[3] Enforcement obtained almost $25 million in civil penalties and disgorgement of approximately $4 million in unjust profits.[4]

Enforcement's penalty amount was significantly less than the $304 million it assessed in 2013, which was the Commission's largest civil penalty total to date.[5] The 2014 Report reaffirmed that Enforcement does not intend to change its priorities in the upcoming year.[6]

2. Direct Energy Self-Report

Direct Energy Services, LLC (Direct Energy) filed a self-report after its outside counsel gave a compliance training presentation to Direct Energy's traders regarding the FERC's Anti-Manipulation Rule.[7] One of Direct Energy's traders reported concerns after recognizing similarities between the trading activities discussed in the compliance training presentation and strategies that were being used by Direct Energy traders involving unusual natural gas trading at Transco Zone 6.[8] At nearly the same time, Direct Energy's back-room operations recognized a problem with certain trading.[9] Direct Energy immediately commenced an internal investigation, which eventually led to the self-report to the FERC describing unusual natural gas trading at Transco Zone 6 where large volumes of next-day gas were bought at index and sold at a lower, fixed price

1. STAFF OF THE OFFICE OF ENFORCEMENT, FERC, 2014 REPORT ON ENFORCEMENT, Docket No. AD07-13-008 (2014) [hereinafter 2014 REPORT].

2. *Id.* at 2.

3. *Id.* at 3; STAFF OF THE OFFICE OF ENFORCEMENT, FED. ENERGY REGULATORY COMM'N, 2013 REPORT ON ENFORCEMENT, Docket No. AD07-13-006, at 2 (2013) [hereinafter 2013 REPORT].

4. 2014 REPORT, *supra* note 1, at 3.

5. 2013 REPORT, *supra* note 3, at 2-3. The FERC's 2014 disgorgement amount was also significantly less than the 2013 amount, which was $141 million. *Id.*

6. 2014 REPORT, *supra* note 1, at 2.

7. Comments of FERC Staff at the 110th Open Commission Meeting, re: Docket. No. Ad07-13-008 (FERC issued Nov. 20, 2014).

8. *Id.*

9. *Id.*

resulting in losses and, in turn, a lower Gas Daily index price that benefited financial positions settling at that index held by Direct Energy.[10] The two traders involved were terminated.[11]

Direct Energy settled with the FERC for a civil penalty of $20,000, disgorgement of $31,935, and agreed to provide at least one monitoring report to Enforcement.[12] The settlement indicated that Direct Energy "fully and comprehensively" cooperated.[13] The 2014 Report stated that "Direct Energy received a relatively small civil penalty and disgorgement payments due to its self-reporting, strong compliance program, quick action, and full cooperation with Enforcement's investigation."[14]

3. The FERC and CFTC Cooperate on Large Trader Report Access

The Commission enhanced its surveillance capabilities over the natural gas and electric markets and increased its ability to "analyze individual market participant behavior by gaining access to the Commodity Futures Trading Commission's (CFTC) Large Trader Report (LTR) data."[15] In fiscal year 2014, the Commission began receiving a daily feed of data from the CFTC's LTR, which includes the open financial positions for natural gas and electric products that are traded on exchanges for each large trader.[16]

The 2014 Report stated LTR data is "particularly useful" to detect schemes in which "a market participant takes a loss or engages in sub-optimal trades in physical markets as the tool used to target a price index or indices, resulting in increased value for products in the market participant's financial portfolio, its benefiting position."[17] The 2014 Report stated that Enforcement's Division of Analytics and Surveillance "has integrated this information into its automated surveillance screens and uses it in its continuous surveillance of the natural gas and electric markets."[18]

B. Notices of Alleged Violations

1. Arizona Public Service, California Independent System Operator; Imperial Irrigation District; Southern California Edison; Western Area Power Administration-Desert Southwest & Western Electricity Coordinating Council Reliability Coordinator

On January 22, 2014, Enforcement Staff issued a notice alleging that Arizona Public Service, California Independent System Operator, Imperial Irrigation District, Southern California Edison, Western Area Power Administration-Desert Southwest, and the Western Electricity Coordinating Council Reliability

10. *Id.*; 2014 REPORT, *supra* note 1, at 11-12.
11. *Direct Energy Services, LLC*, 148 F.E.R.C. ¶ 61,114 at PP 6-9 (2014).
12. *Id.* at PP 17-21. *Id.* at P 1 (reflecting $31,935).
13. *Id.* at P 11.
14. 2014 REPORT, *supra* note 1, at 4.
15. *Id.* at 49.
16. 17 C.F.R. § 240.13h-l (2012) (defining Large Trader).
17. 2014 REPORT, *supra* note 1, at 49.
18. *Id.*

Coordinator violated various Reliability Standards Requirements.[19] In the notice, Enforcement Staff alleged that the violations in each of the six preliminary investigations related to an eleven-minute system disturbance in the Pacific Southwest, which led to cascading outages on September 8, 2011.[20] Following the outages, the Commission and the North American Electric Reliability Corporation (NERC) conducted an inquiry and subsequently published a report.[21]

2. Indianapolis Power & Light Co.

On April 1, 2014, Enforcement Staff issued a notice alleging that Indianapolis Power & Light Company had violated section 39.2.5(c) of the Open Access Transmission, Energy and Operating Reserve Markets Tariff of the Midcontinent Independent System Operator, Inc. (MISO) by failing twice to update the real-time offer for a generating unit to reflect a de-rate.[22] Enforcement Staff alleges that these violations occurred on July 5, 2012, and July 6, 2012.[23]

3. City Power Marketing, LLC & K. Stephen Tsingas

On August 25, 2014, Enforcement Staff issued a notice alleging that City Power Marketing, LLC (City Power) and K. Stephen Tsingas violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2, by engaging in manipulative Up To Congestion[24] trading in the PJM Interconnection, L.L.C. (PJM) market in July 2010.[25] Enforcement Staff alleged that Tsingas, on behalf of City Power, engaged in transactions that appeared to be spread trades but were actually transactions designed for the purpose of obtaining Marginal Loss Surplus Allocation (MLSA) payments.[26] Through these transactions, Enforcement Staff alleged that City Power sought to profit not from changes in price spreads but rather by "clearing large volumes of Up To Congestion transactions with the goal of collecting MLSA."[27]

In the notice, Enforcement Staff further alleged that Tsingas, on behalf of City Power, violated the FERC's Market Behavior Rules,[28] by "making false statements and omitting material information" in responding to deposition questions and data requests.[29]

19. Notice from Kimberly D. Bose, Sec'y, FERC, Staff Notice of Alleged Violations (Jan. 22, 2014), *available at* http://www.ferc.gov/enforcement/alleged-violation/notices/2014/noav-01-22-2014.pdf.

20. *Id.*

21. *Id.*

22. Notice from Kimberly D. Bose, Sec'y, FERC, Staff Notice of Alleged Violations (Apr. 1, 2014), *available at* http://www.ferc.gov/enforcement/alleged-violation/notices/2014/ILP-04-01-2014.pdf.

23. *Id.*

24. "Up To Congestion" is a financial product that allows for hedging of congestion and losses throughout the system. There is no energy component associated with the product, and no physical delivery of energy.

25. Notice from Kimberly D. Bose, Sec'y, FERC, Staff Notice of Alleged Violations (Aug. 25, 2014), *available at* http://www.ferc.gov/enforcement/alleged-violation/notices/2014/tsingas-08-25-2014.pdf.

26. *Id.*

27. *Id.*

28. 18 C.F.R. § 35.41.

29. *Id.* *See infra* section I.D.3 for a discussion of related subpoena enforcement proceedings.

4. Maxim Power Corp., John Bobenic, & Kyle Mitton

On November 3, 2014, Enforcement Staff issued a notice alleging that Maxim Power Corporation (Maxim) engaged in three schemes in ISO-New England (ISO-NE) that violated section 222(a) of the Federal Power Act (FPA) and the Commission's Anti-Manipulation Rule,[30] in periods between 2010 and 2013.[31] Enforcement Staff also alleged that "Maxim executives John Bobenic and Kyle Mitton engaged in certain of these schemes."[32]

In the notice, Enforcement Staff alleges that the schemes involved (1) gaming an ISO-NE rule that mitigates the market power of generators needed for reliability, and receiving millions of dollars of inflated make-whole payments as a result; (2) telling ISO-NE that Maxim needed to offer based on high oil prices because of gas supply problems, and collecting make-whole payments based on those prices while burning less expensive natural gas; and (3) obtaining inflated capacity payments from ISO-NE by artificially raising the reported output of three generators.[33]

In the notice, Enforcement Staff also alleged that through the second and third schemes, Maxim violated 18 C.F.R. section 35.41(b), which bars "false and misleading statements and material omissions in communications with . . . Independent System Operators and Market Monitors."[34]

C. Show Cause Proceedings

1. Houlian Chen; Powhatan Energy Fund, LLC; HEEP Fund, LLC, & CU Fund, Inc.

The FERC issued an order to show cause (OSC) and notice of proposed penalty to Houlian "Alan" Chen, HEEP Fund, Inc. (HEEP), CU Fund, Inc. (CU Fund), and Powhatan Energy Fund, LLC (Powhatan, and together with Chen, HEEP, and CU Fund, the Powhatan Respondents) to show cause why they should not be found to have violated section 1c.2 of the Commission's regulations and section 222 of the FPA by engaging in allegedly fraudulent Up-To Congestion (UTC) transactions in PJM Interconnection L.L.C.'s (PJM) energy markets.[35] The Commission notice proposed civil penalties of $16,800,000 for Powhatan, $10,080,000 for CU Fund, $1,920,000 for HEEP, and $1,000,000 for Chen, which was comprised of "$500,000 for trades executed through and on behalf of HEEP Fund and Powhatan" and "$500,000 for trades executed through and on behalf of CU Fund." [36]

The OSC included an Enforcement Staff report that alleged Chen had entered into large volumes of "wash-like" trades by doing equal and opposite UTC transactions between the same two points (i.e., A to B and B to A) in order to

30. 18 C.F.R. § 1c.2.

31. Notice from Kimberly D. Bose, Sec'y, FERC, Staff Notice of Alleged Violations (Nov. 3, 2014), *available at* http://www.ferc.gov/enforcement/alleged-violation/notices/2014/maxim-nav-11-03-2014.pdf.

32. *Id.*

33. *Id.*

34. *Id.*

35. Order to Show Cause and Notice of Proposed Penalty, *Houlian Chen*, 149 F.E.R.C. ¶ 61,261 (2014).

36. *Id.* at P 1.

benefit from MLSA, also called "transmission loss credits," allocated based on the transmission reservations made in conjunction with the UTC transactions.[37] Enforcement Staff alleged that the Powhatan Respondents "manipulated the nation's largest RTO by entering into enormous volumes of transactions, lacking any legitimate business purpose, with the effect and intent of 'moving electricity in a circle' in order to fraudulently collect transmission loss credits."[38]

D. Enforcement Litigation and Adjudication

1. Barclays Bank PLC; Daniel Brin; Scott Connelly; Karen Levin; & Ryan Smith

On July 16, 2013, the FERC assessed civil penalties of $435 million against Barclays and $18 million against the traders.[39] This was preceded by an OSC and notice of proposed penalty, issued on October 31, 2012, to Barclays Bank PLC (Barclays) and four individuals, directing them to show cause why they did not violate section 1c.2 of the FERC's regulations and section 222 of the FPA.[40] As stated in the OSC, Barclays and the individual traders "are alleged to have violated section 1c.2 by manipulating the electricity markets in and around California from November 2006 to December 2008."[41] On November 29, 2012, Barclays and the individual traders elected for an immediate penalty assessment and *de novo* review in federal district court under section 31(d)(3) of the FPA.[42]

In the July 16, 2013 order, the FERC also ordered Barclays to disgorge $34.9 million plus interest arising from the matter.[43] The FERC's assessment represented the largest penalty it has assessed to date.

On October 9, 2013, the FERC filed an action to enforce the penalty in the United States District Court for the Eastern District of California.[44] Barclays filed a motion to dismiss the FERC's suit on December 16, 2013.[45] In the event the suit is not dismissed, Barclays requested that the case be transferred to New York.[46]

On February 14, 2014, the FERC filed an Opposition to the Motion to Dismiss, arguing that Barclays' motion to dismiss would impair regulation of wholesale electricity markets, would create a regulatory gap, and was without

37. *Id.*

38. *Id.* at App'x A, § IV.

39. *Barclays Bank PLC*, 144 F.E.R.C. ¶ 61,041 at P 8 (2013).

40. *Barclays Bank PLC*, 141 F.E.R.C. ¶ 61,084 at P 1 (2012) (noting alleged violations of 16 U.S.C. § 824v(a) (2006) and 18 C.F.R. § 1c.2 (2012)).

41. 141 F.E.R.C. ¶ 61,084 at P 1.

42. *See, e.g.*, Notice of Election of Barclays Bank PLC, *Barclays Bank PLC*, No. IN08-8-000 (Nov. 29, 2012) (referencing the alleged violation of the FPA, Federal Power Act § 31(d)(3), 16 U.S.C. § 823b(d)(1) (2012)). All five parties filed a separate Notice of Election on Nov. 29, 2012, in FERC Docket No. IN08-8-000. *See, e.g.*, filings in Docket No. IN08-8-000 (including the filing, *available at* http://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=14070415).

43. 144 F.E.R.C. ¶ 61,041 at P 151.

44. Petition for an Order Affirming July 16, 2013 Order, *FERC v. Barclays Bank PLC*, No. 2:13-cv- 02093 (E.D. Cal. Oct. 9, 2013).

45. Notice of Motion and Motion to Dismiss, *FERC v. Barclays Bank PLC*, No. 2:13-cv-02093 (E.D. Cal. Dec. 16, 2013).

46. *Id.* at 1.

merit.[47] The FERC requested that Barclays' motion should be denied.[48] Since February, the parties have filed additional evidence and pleadings, but as of the end of 2014, the court has yet to decide on either the motion to dismiss or the request to transfer the case.

2. BP America Inc. and Affiliates

The FERC issued an OSC to BP America Inc. (BP) and multiple affiliates on August 5, 2013, and sought a $28 million civil penalty plus disgorgement of $800,000.[49] The OSC alleged that BP's trading conduct, involving next-day fixed-price natural gas at the Houston Ship Channel (HSC), violated the FERC's anti-manipulation rule.[50]

The order included an Enforcement Staff report and alleged that BP's trading desk "uneconomically used BP's transportation capacity between Katy and HSC, made repeated early uneconomic sales at HSC, and took steps to increase BP's market concentration at HSC as part of a manipulative scheme" between mid-September 2008 and November 2008.[51]

On October 4, 2013, BP filed its answer, denying the FERC's allegations, and requested that the FERC dismiss the proceeding, or alternatively that BP have a full evidentiary hearing before an Administrative Law Judge (ALJ) to contest issues of material fact.[52]

On December 4, 2013, Enforcement Staff filed a reply urging the FERC to find that BP failed to rebut the Enforcement Staff report and to order BP to pay the proposed penalty.[53] In the alternative, Enforcement Staff requested that the FERC set for hearing the question of whether BP violated the Anti-Manipulation Rule and reserve for itself the determination of any penalty amount.[54]

On May 15, 2014, the FERC issued an Order Establishing Hearing. The FERC rejected BP's motion to dismiss the proceeding, and instead found that there were "genuine issues of material fact in dispute that warrant a hearing before an [ALJ]."[55] The FERC ordered that an ALJ "determine whether BP violated section 4A of the [Natural Gas Act (NGA)] and the Commission's Anti-Manipulation Rule."[56] The FERC reserved for later consideration whether any penalty should be imposed, instead directing the ALJ to "make factual findings on the statutory

47. Petitioner's Opposition to Respondent's Motion to Dismiss or Transfer, *FERC v. Barclays Bank PLC*, No. 2:13-cv-02093-TLN-DAD (E.D. Cal. Feb. 14, 2014).

48. David Perlman, Jennifer Lias & Robert E. Pease, *FERC Responds to Barclays Motion to Dismiss as Without Merit and so Aggressive That if Granted it Could "Eviscerate" FERC's Ability to Regulate Wholesale Power Markets*, ENERGY LEGAL BLOG (Feb. 26, 2014, 2:14 PM), http://www.energylegalblog.com/archives/2014/02/26/5154.

49. *BP Am. Inc.*, 144 F.E.R.C. ¶ 61,100 at P 1 (2013).

50. *Id.* (alleging violations of 18 C.F.R. § 1c.1 (2013)).

51. *Id.* at P 2.

52. *BP Am. Inc.*, 147 F.E.R.C. ¶ 61,130 at P 5 (May 15, 2014).

53. *Id.* at P 6.

54. *Id.*

55. *Id.* at PP 13-14.

56. *Id.* at P 47.

factors relevant to a civil penalty and to the factors set forth in the Penalty Guidelines regardless of the ultimate determination of the manipulation claim."[57]

On June 3, 2014, the ALJ issued an initial schedule for the proceeding,[58] which was subsequently modified to close discovery on March 10, 2015, begin the hearing on March 30, 2015, and issue an initial decision on August 14, 2015.[59]

3. City Power Marketing, LLC

On July 21, 2014, the United States District Court for the District of Columbia ordered City Power and Tsingas to comply with open subpoena items in two subpoenas issued by the Office of Enforcement, and ordered Tsingas to appear for a deposition.[60] In its memorandum in support of the petition to enforce the subpoenas for testimony and production of documents, the Commission alleged that, during the course of its investigation to determine whether City Power and Tsingas violated section 222(a) of the FPA,[61] and the Commission's Anti-Manipulation Rule,[62] by manipulating a regional wholesale power market, and whether City Power violated 18 C.F.R. section 35.41(b) by making false and misleading statements to Enforcement Staff, City Power and Tsingas refused to comply with multiple subpoenas requests for documents.[63] In addition, the Commission alleged that Tsingas received subpoenas for and agreed to several deposition dates, but later refused to appear at any of the agreed upon times.[64]

4. Competitive Energy Services, LLC; Richard Silkman; & Lincoln Paper & Tissue, LLC

On August 29, 2013, the FERC issued orders assessing civil penalties against Richard Silkman (Silkman), Competitive Energy Services, LLC (CES), and Lincoln Paper and Tissue, LLC (Lincoln) for violations of the FERC's anti-manipulation rule stemming from the parties' participation in ISO-NE's Day-Ahead Load Response Program (DALRP).[65] The FERC found that Lincoln fraudulently inflated its baseline energy consumption to "be paid for demand response that it never intended to provide or actually provided."[66] The FERC concluded that Silkman and CES developed a scheme to help a CES client,

57. *Id.* at PP 48-49.

58. Order Establishing Procedural Schedule, *BP Am. Inc.*, Docket No. IN13-15-000 (June 3, 2014).

59. Order of Chief Judge Modifying Procedural Schedule, *BP Am. Inc.*, Docket No. IN13-15-000 (Oct. 29, 2014), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13670845.

60. FERC v. City Power Mktg., LLC, No. 14-mc-263 (KBJ) (order initially issued under seal, the public order was issued Oct. 23, 2014).

61. 16 U.S.C. § 824v(a).

62. 18 C.F.R. § 1c.2.

63. Memorandum in Support of Petition by Federal Energy Regulatory Commission for an Order to Show Cause Why This Court Should Not Enforce Subpoenas for Testimony and Production of Documents, FERC v. City Power Mktg., LLC, No. 14-mc-263 (KBJ) (filed Oct. 23, 2014).

64. *Id. See generally supra* part I.B.3 for a discussion of the Notice of Alleged Violation, issued Aug. 25, 2014, and the manipulation and false statements allegations therein.

65. *Richard Silkman*, 144 F.E.R.C. ¶ 61,164 at PP 1-2 (2013); *Competitive Energy Servs., LLC*, 144 F.E.R.C. ¶ 61,163 at PP 1-2 (2013); *Lincoln Paper & Tissue, LLC*, 144 F.E.R.C. ¶ 61,162 at PP 1-2 (2013).

66. 144 F.E.R.C. ¶ 61,162 at P 30.

Rumford Paper Company (Rumford), inflate its baseline energy consumption to receive payments for non-existent demand response.[67]

On December 2, 2013, the FERC petitioned the United States District Court for the District of Massachusetts for orders affirming its orders assessing civil penalties against Silkman, CES, and Lincoln.[68] The FERC requested orders affirming civil penalties of $1.25 million against Silkman, $7.5 million against CES, $5 million against Lincoln, and disgorgement of $166,841.13 from CES and $379,016.03 from Lincoln.[69] The FERC has requested jury trials on all triable issues but asserts that its penalty assessments can and should be affirmed on the basis of a review of its orders assessing civil penalties and the materials presented in the penalty assessment process.[70] The petitions were still pending before the court at the end of 2014.

E. Settlements

1. Miso Cinergy Hub Transactions (Twin Cities Power-Canada, Ltd.; Twin Cities Energy, LLC; Twin Cities Power, LLC; Jason F. Vaccaro; Allan Cho; Guarav Sharma)

The FERC approved four Stipulation and Consent Agreements: one with Twin Cities Power–Canada, Ltd; Twin Cities Energy, LLC; and Twin Cities Power, LLC (collectively, Twin Cities); and one each with Jason F. Vaccaro, Allan Cho, and Gaurav Sharma (collectively, Traders).[71] The settlements resolved an investigation into "Twin Cities and the Traders violat[ing] the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 by manipulating electricity prices in [MISO] from January 2010 through January 2011 in order to benefit their related financial positions."[72]

Enforcement Staff determined that over 144 days,

> Twin Cities engaged in a consistent pattern of flowing physical power in the direction of its financial swaps. Twin Cities imported power into MISO when it held a short swap position, or exported power from MISO when it held a long swap position . . . . [The] financial positions were larger than its physical positions, such that the increase in the value of Twin Cities' swaps exceeded the losses from its physical flows."[73]

The Enforcement Staff determined that, the "physical power flows were not intended to get the best price and were not in response to market fundamentals [but were intended] to move prices at the MISO Cinergy Hub in order to benefit

67. 144 F.E.R.C. ¶ 61,164 at P 43; 144 F.E.R.C. ¶ 61,163 at P 43. The FERC's investigation into Rumford's participation in the DALRP was resolved pursuant to a stipulation and consent agreement that the FERC approved on March 22, 2013. *Rumford Paper Co.*, 142 F.E.R.C. ¶ 61,218 (2013).

68. Petition for an Order Affirming August 29, 2013 Orders, FERC v. Richard Silkman, No. 1:13-cv-13054 (D. Mass Dec. 2, 2013); Petition for an Order Affirming August 29, 2013, FERC v. Lincoln Paper & Tissue, LLC, No. 1:13-cv-13056 (D. Mass. Dec. 2, 2013).

69. *Richard Silkman*, *supra* note 68, at 5; *Lincoln Paper & Tissue, LLC*, *supra* note 68, at 4.

70. *Richard Silkman*, *supra* note 68, at 23; *Lincoln Paper & Tissue, LLC*, *supra* note 68, at 22.

71. *MISO Cinergy Hub Transactions*, 149 F.E.R.C. ¶ 61,278 at P 1 (Dec. 30, 2014).

72. *Id.*

73. *Id.* at P 7.

[Twin Cities'] financial swap positions."[74] Over time the physical power flows resulted in significant losses. "However, Twin Cities' physical power flows consistently resulted in gains to, or avoided losses from, its financial swap positions. Enforcement determined that, during the Relevant Period, the Traders' financial swap positions benefitted by $978,186 from the manipulative scheme."[75]

> Enforcement concluded that Twin Cities and the Traders each violated the Commission's Anti-Manipulation Rule, 18 C.F.R. 1c.2 (2014). That rule prohibits any entity from using a fraudulent device, scheme or artifice, or engaging in any act, practice, or course of business that operates or would operate as a fraud; with the requisite scienter; in connection with a transaction subject to the jurisdiction of the Commission.[76]

Under the agreement, "Twin Cities admit[ted] to the violations and agree[d] to pay a civil penalty of $2,500,000 and disgorgement of $978,186 plus interest."[77] It also agreed to "implement measures designed to ensure compliance in the future, including submitting compliance reports for four years."[78] The Traders neither admitted nor denied the violations, and "agreed to pay the civil penalties as follows: Jason Vaccaro, $400,000[;] Allan Cho, $275,000[;] and Gaurav Sharma, $75,000. . . . [T]he Traders [also] agree[d] to physical trading bans as follows: Jason Vaccaro for five years[;] Allan Cho for four years[;] and Gaurav Sharma for four years."[79] The Traders agreed to "implement measures designed to ensure compliance in the future, including submitting compliance reports."[80]

The FERC also "emphasize[d] that using physical power flows to influence physical prices for the purpose of enhancing the value of financial positions violates the Commission's Anti-Manipulation Rule."[81]

2. Cases Related to a September 8, 2011 System Disturbance in the Pacific Southwest

On January 22, 2014, the FERC issued a Staff Notice of Alleged Violations to several parties, after preliminarily determining that those parties may have violated various reliability standards, leading to a system disturbance that occurred on September 8, 2011, in the Pacific Southwest and left millions without power.[82] Those parties, other than the Western Electricity Coordinating Council Reliability Coordinator, reached settlements with the FERC's Office of Enforcement.[83]

a. California Independent System Operator Corporation

The FERC approved a Stipulation and Consent Agreement between the Office of Enforcement, the NERC, and the California Independent System

74. *Id.* at P 8.
75. *Id.*
76. *Id.* at P 9.
77. *MISO Cinergy Hub Transactions*, 149 F.E.R.C. ¶ 61,278 at P 2.
78. *Id.*
79. *Id.* at P 3.
80. *Id.*
81. *Id.* at P 18.
82. *See generally supra* I.B.1 for a discussion of the Notice of Alleged Violation issued Jan. 22, 2014.
83. Kimberly D. Bose, FERC, Staff Notice of Alleged Violations (Jan. 22, 2014), *available at* http://www.ferc.gov/enforcement/alleged-violation/notices/2014/noav-01-22-2014.pdf.

Operator Corporation (CAISO). The settlement resolved an investigation into "possible violations of Reliability Standards associated with CAISO's operation of a portion of the Bulk-Power System (BPS) and a blackout that occurred on September 8, 2011."[84]

The Enforcement Staff and NERC alleged that:

> CAISO violated the Transmission Operations (TOP-) and Facilities Design, Connection and Maintenance (FAC-) groups of Reliability Standards. The TOP standards cover the responsibilities and decision-making authority for reliable operations and aim to ensure that the transmission system is operated within operating limits. The FAC standard involved aims to ensure that [System Operating Limits (SOLs)] are determined based on an established methodology.[85]

Under the agreement, CAISO stipulated to a set of facts set forth in the settlement and agreed to pay a civil penalty of $6,000,000.[86] Of that amount, "$2,000,000 will be paid to the United States Treasury and [the] NERC, divided in equal amounts, and $4,000,000 will be invested in reliability enhancement measures that go . . . beyond mitigation of the violations and the requirements of the Reliability Standards."[87] CAISO neither admitted nor denied "that its actions constituted violations of the Reliability Standards."[88] "CAISO also agree[d] to commit to mitigation and compliance measures necessary to mitigate the violations described in the Agreement, and to make semi-annual compliance reports to Enforcement and [the] NERC for at least one year."[89]

b. Imperial Irrigation District

The FERC approved a Stipulation and Consent Agreement between the Office of Enforcement, the NERC, and Imperial Irrigation District (IID). The settlement resolved an investigation into "possible violations of Reliability Standards associated with IID's operation of a portion of the [BPS] and a blackout that occurred on September 8, 2011."[90]

The Enforcement Staff and NERC alleged that IID:

> violated the [TOP-] and Transmission Planning (TPL-) groups of Reliability Standards. The TOP standards cover the responsibilities and decision-making authority for reliable operations and aim to ensure that the transmission system is operated within operating limits. The TPL standards mandate periodic assessments to ensure that the system can meet performance requirements upon the loss of one or more BES elements, allowing sufficient lead time for upgrades to meet future system needs. Enforcement and [the] NERC found these violations to be serious deficiencies undermining reliable operation of the [system].[91]

Under the agreement, IID stipulated to a set of facts set forth in the settlement and agreed to pay a civil penalty of $12,000,000. Of that amount, "$3,000,000 will be paid to the United States Treasury and [the] NERC, divided in equal

84. *Cal. Ind. Sys. Operator Corp.*, 149 F.E.R.C. ¶ 61,189 at P 1 (2014).

85. *Id.* at P 10.

86. *Id.* at P 1.

87. *Id.*

88. *Id.* at P 14.

89. *Id.* at P 1.

90. *Imperial Irrigation District*, 148 F.E.R.C. ¶ 61,108 at P 1 (2014).

91. *Id.* at P 14.

amounts, and $9,000,000 will be invested in reliability enhancement measures" that go beyond mitigation of the violations and the requirements of the Reliability Standards.[92] "IID neither admit[ted] nor denie[d] that its actions constituted violations of the Reliability Standards."[93] "IID also agree[d] to commit to mitigation and compliance measures necessary to mitigate the violations described in this Agreement, and to make semi-annual compliance reports to Enforcement and [the] NERC for at least one year."[94]

c. Arizona Public Service Co.

The FERC approved a Stipulation and Consent Agreement between the Office of Enforcement, the NERC, and Arizona Public Service Company (APS). The settlement resolved an investigation into "possible violations of Reliability Standards associated with APS's operation of a portion of the Bulk Power System (BPS) and a blackout that occurred on September 8, 2011."[95]

The Enforcement Staff and NERC alleged that APS "violated the Transmission Operations (TOP-) group of Reliability Standards, which covers the responsibilities and decision-making authority for reliable operations and aims to ensure that the transmission system is operated within operating limits. Enforcement and [the] NERC found these violations to be serious deficiencies undermining reliable operation of the BPS."[96]

Under the agreement, APS stipulated to a set of facts set forth in the settlement and agreed to pay a civil penalty of $3,250,000.[97] Of that amount, "$2,000,000 will be paid to the United States Treasury and [the] NERC, divided in equal amounts, and $1,250,000 will be invested in reliability enhancement measures" that go beyond mitigation of the violations and the requirements of the Reliability Standards.[98] APS neither admitted nor denied that its actions constituted violations of the Reliability Standards.[99] "APS also agree[d] to commit to mitigation and compliance measures necessary to mitigate the violations described in this Agreement, and to make semi-annual compliance reports to Enforcement and [the] NERC for at least one year."[100]

d. Southern California Edison Co.

The FERC approved a Stipulation and Consent Agreement between the Office of Enforcement, the NERC, and Southern California Edison Company (SCE). The settlement resolved an investigation into "possible violations of Reliability Standards associated with SCE's operation of a portion of the Bulk Power System (BPS) and a blackout that occurred on September 8, 2011."[101]

92. *Id.* at P 18.
93. *Id.* at PP 18-19.
94. *Id.* at P 18.
95. *Ariz. Pub. Serv. Co.*, 148 F.E.R.C. ¶ 61,009 at P 1 (2014).
96. *Id.* at P 12.
97. *Id.* at P 14.
98. *Id.*
99. *Id.*
100. *Id.* at P 1.
101. *So. Cal. Edison Co.*, 149 F.E.R.C. ¶ 61,061 at P 1 (2014).

The Enforcement Staff and NERC alleged that SCE "violated the Protection and Control (PRC-) group of Reliability Standards. The PRC standards cover a range of topics related to the protection and control of power systems, including the design, coordination, and maintenance of functional protection systems."[102]

Under the agreement, SCE stipulated to a set of facts set forth in the settlement and agreed to pay a civil penalty of $650,000.[103] Of that amount, "$250,000 will be paid to the United States Treasury and [the] NERC, divided in equal amounts, and $400,000 will be invested in reliability enhancement measures" that go beyond mitigation of the violations and the requirements of the Reliability Standards.[104] SCE neither admitted nor denied that its actions constituted violations of the Reliability Standards.[105] "SCE also agree[d] to commit to mitigation and compliance measures necessary to mitigate the violations described in this Agreement, and to make semi-annual compliance reports to Enforcement and [the] NERC for at least one year."[106]

e. Western Area Power Administration-Desert Southwest Region

The FERC approved a Stipulation and Consent Agreement between the Office of Enforcement, the NERC, and Western Area Power Administration–Desert Southwest Region (Western–DSW). The settlement resolved an investigation into "possible violations of Reliability Standards associated with Western–DSW's operation of a portion of the Bulk Power System (BPS) and a blackout that occurred on September 8, 2011."[107]

The Enforcement Staff and NERC alleged that Western–DSW:

> violated the Transmission Operations (TOP-) and Voltage and Reactive Control (VAR-) groups of Reliability Standards. The TOP standards cover the responsibilities and decision-making authority for reliable operations and aim to ensure that the transmission system is operated within operating limits. The VAR standards aim to maintain BPS facilities within voltage and reactive power limits to protect equipment and ensure reliable operation of the Interconnection.[108]

Under the agreement, Western–DSW stipulated to a set of facts set forth in the settlement and agreed to undertake mitigation and compliance measures necessary to address the violations described in this agreement.[109] "Western–DSW neither admit[ted] nor denie[d] that its actions constituted violations of the Reliability Standards."[110]

3. Direct Energy Services, LLC

Under the agreement, Direct Energy neither admitted nor denied the allegations, but it agreed to a civil penalty of $20,000 and disgorgement of

102. *Id.* at P 12.
103. *Id.* at P 14.
104. *Id.*
105. *Id.*
106. *Id.* at P 1.
107. *W. Area Power Admin.–Desert Sw. Region*, 149 F.E.R.C. ¶ 61,157 at P 1 (2014).
108. *Id.* at P 11.
109. *Id.* at P 1.
110. *Id.* at P 15.

$31,935. In addition, Direct Energy agreed to continue to operate in accordance with compliance measures designed to ensure that it complies with all applicable Commission regulations and jurisdictional tariffs.[111]

4. International Transmission Co.; Michigan Electric Transmission Co., LLC; ITC Midwest LLC; ITC Great Plains, LLC

The FERC approved a Stipulation and Consent Agreement between the Office of Enforcement; International Transmission Company, d/b/a/ ITC Transmission (ITC*Transmission*); Michigan Electric Transmission Company, LLC (METC); ITC Midwest LLC (ITC Midwest); and ITC Great Plains, LLC (ITC Great Plains) (collectively, the ITC Companies). The settlement resolves an investigation into (i) whether the ITC Companies violated section 203 of the FPA by "acquiring certain []jurisdictional transmission assets without prior [FERC] approval during the period 2005 to 2011" and (ii) "whether ITC*Transmission*, METC, and ITC Midwest . . . violated Section 205 of the FPA and Part 35 of [FERC] regulations . . . by failing to timely file certain []jurisdictional documents between 2003 and 2011."[112]

"Enforcement opened an investigation of the ITC Companies in July 2011 after receiving a [report] from the ITC Companies identifying multiple failures to file jurisdictional agreements under FPA Section 205 and multiple failures to obtain prior [FERC] approvals for the acquisition of jurisdictional assets under FPA Section 203."[113] In December 2011, the ITC Companies submitted a more extensive written report.[114] More specifically, an internal audit identified 174 jurisdictional agreements that were not filed with the FERC, and twenty jurisdictional transmission assets transaction that were completed without prior FERC authorization.[115]

Under the agreement, the ITC Companies stipulated to the facts and admitted twenty violations of FPA section 203 and "174 violations of FPA Section 205 and Part 35 of the [FERC's] regulations."[116] They agreed to "pay a civil penalty of $750,000 and submit to at least one year of compliance monitoring, with another year of monitoring at Enforcement's discretion."[117] The size of the penalty was determined, in part, on the ITC Companies' failure to maintain an adequate compliance program, the significant volume of transactions and documents not timely submitted to the FERC, the self-reporting of certain violations, and the absence of direct market harm cause by the filing.[118]

5. MISO Virtual and FTR Trading (Louis Dreyfus Energy Services)

The FERC approved a Stipulation and Consent Agreement between Enforcement Staff and Louis Dreyfus Energy Services L.P. (LDES). The

111. *See generally supra* I.A.2 for description (including n.19).
112. *Int'l Trans. Co.*, 146 F.E.R.C. ¶ 61,172 at P 1 (2014).
113. *Id.* at P 4.
114. *Id.*
115. *Id.* at P 5.
116. *Id.* at P 9.
117. *Id.* at PP 9-10.
118. *Id.* at PP 13-14.

settlement resolved an investigation into "whether LDES violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2013), in connection with certain virtual trading within the Midcontinent Independent System Operator, Inc. (MISO) footprint from November 2009 through February 2010."[119]

Due to a request by the MISO Independent Market Monitor, Enforcement began an investigation into trades made by LDES's FTR Group.[120] The FTR Group's trading in MISO relied on two traders, Xu Cheng and Zhiyong Wu. Cheng was responsible for Financial Transmission Rights (FTR) trading in the western portion of MISO, while Wu was responsible for virtual trading throughout all of MISO.[121] The FTR Group allegedly used its virtual trades to affect market congestion and thereby affect FTR values.[122] From November 2009 through February 2010, "the FTR Group's virtual trading favorably affected its FTR positions approximately eighty percent of the time."[123] Originally, when the FTR Group started trading FTRs near Velva, it earned minimal profit. But profits on trades began to accrue in November 2009, once the FTR Group started creating virtual demand (DECs) at Velva.[124] While the DECs produced losses, they increased the value of the FTRs. "By the end of February 2010, the FTR Group had realized a profit of $3,334,000 on its FTRs that was directly attributable to its DECs at Velva."[125]

Under the agreement, LDES and Cheng each stipulated to the facts recited in the settlement, but the parties neither admitted nor denied violating the FERC's Anti-Manipulation Rule.[126] "LDES [agreed] to pay disgorgement of $3,340,000 plus interest to MISO, and a civil penalty of $4,072,257."[127] In addition, one of the traders, Xu Cheng, "will pay a civil penalty of $310,000."[128] "LDES will also implement measures designed to ensure compliance in the future, and submit compliance reports to the [FERC] for a minimum of two years."[129]

In its order approving the settlement, the FERC also emphasized "that using virtual trades to create artificial congestion in the Day-Ahead market for the purpose of enhancing the value of FTR positions violates the Commission's Anti-Manipulation Rule."[130]

6. Erie Boulevard Hydropower, L.P.

The FERC approved a Stipulation and Consent Agreement between Enforcement Staff, Erie Boulevard Hydropower, L.P. (Erie), and other settling parties that resolved Enforcement's investigation into Erie's alleged violations of

119. *MISO Virtual & FTR Trading*, 146 F.E.R.C. ¶ 61,072 at P 1 (2014).
120. *Id.* at P 2.
121. *Id.*
122. *Id.* at P 3.
123. *Id.* at P 4.
124. *Id.*
125. 146 F.E.R.C. ¶ 61,072 at P 5.
126. *Id.* at P 9; 18 C.F.R. § 1c.2 (2013).
127. 146 F.E.R.C. ¶ 61,072 at P 1.
128. *Id.*
129. *Id.* at PP 1, 10.
130. *Id.* at P 13.

part 12 of the FERC's regulations pertaining to the use and maintenance of certain safety equipment and facilities.[131]

Enforcement Staff alleged that Erie violated part 12 of the FERC's regulations pertaining to the safety of water power projects, including: failure to repair a safety camera;[132] failure to report that the safety camera was inoperable;[133] failure to repair or replace staggered-height flashboards at Varick;[134] insufficient staffing;[135] failure to file information on the recent failures of the staggered-height flashboard at various sites, including Varick;[136] failure to timely sound the Varick fisherman alert system (FAS) siren;[137] failure to utilize an on-site monitor to view fisherman activity;[138] and failure to provide adequate training to operators on the FAS procedures or public safety.[139]

Under the agreement, Erie agreed to pay a civil penalty of $4,000,000, while neither admitting nor denying violations of the FERC's rules, regulations, or policies.[140] In addition, Erie and its affiliate agreed "to budget $1,700,000 for public safety enhancements at their U.S. hydroelectric projects."[141] They also agreed to:

> (1) purchase and implement a computerized compliance management program in its New York West Region at a projected cost of greater than $500,000; and (2) retain an independent qualified Board of Consultants (BOC) to perform a review of system operator staffing levels at the centralized remote operations at a . . . [national control center], to make recommendations for any needed changes or improvements, and to submit such recommendations to the [FERC's] Director, Division of Dam Safety and Investigations (D2SI), for review and approval.[142]

II. THE COMMODITY FUTURES TRADING COMMISSION

A. Energy-Related Enforcement Cases

1. Parnon Energy Inc.; Arcadia Petroleum Ltd.; Arcadia Energy (Suisse) SA; and Crude Oil Traders

On August 4, 2014, the United States District Court for the Southern District of New York issued its Final Consent Order of Permanent Injunction, Civil Monetary Penalty, and Other Relief (the Parnon Settlement) against Parnon Energy Inc. (Parnon), Arcadia Petroleum Ltd. (Arcadia), Arcadia Energy (Suisse), SA (Arcadia Suisse), and crude oil traders Nicholas J. Wildgoose and James T.

131. Order Approving Stipulation and Consent Agreement, *In re Erie Blvd. Hydropower, L.P.*, 146 F.E.R.C. ¶ 61,027 at P 1 (2014).

132. *Id.* at P 22.

133. *Id.* at P 23.

134. *Id.* at P 24.

135. *Id.* at P 25.

136. 146 F.E.R.C. ¶ 61,027 at P 26.

137. *Id.* at P 27.

138. *Id.* at P 28.

139. *Id.* at P 29.

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

141. 146 F.E.R.C. ¶ 61,027 at 31.

142. *Id.* at P 2.

Dyer (together, the Defendants).[143] Under the Parnon Settlement, the Defendants agreed to jointly and severally pay a $13 million civil monetary penalty and accepted a three-year ban on holding "cash forward contract crude oil positions amounting to more than three (3) million barrels for prompt-month delivery at Cushing, Oklahoma, past the expiration of the prompt NYMEX Light Sweet Crude Oil (CL) futures contract."[144] The Parnon Settlement also enjoined the Defendants from engaging in conduct that "violates Sections 6(c), 6(d), and/or 9(a)(2) of the Commodity Exchange Act (the Act), 7 U.S.C. §§ 6(c), 6(d), 13(a)(2) (2006 & Supp. IV 2011)."[145]

The Parnon Settlement arose from a CFTC complaint filed on May 24, 2011.[146] According to the CFTC's complaint, Parnon, Arcadia, Arcadia Suisse, and the two named individuals engaged in a manipulative trading scheme that used futures and related derivatives contracts to drive the price of crude oil to artificial highs and then back down for the purpose of generating unlawful profits.[147] Specifically, the CFTC alleged that Dyer and Wildgoose repeatedly executed a manipulative strategy designed to exacerbate the tight supply of crude oil at Cushing in early 2008 by:

> (1) amassing a dominant position in WTI crude oil at Cushing to be delivered in the next month (even though they did not have a commercial need for crude oil);
>
> (2) simultaneously purchasing futures on NYMEX and ICE Futures Europe with the intent to artificially inflate the value of the physical position by driving WTI prices higher;
>
> (3) holding their dominant physical position to signal to other market participants that supply would remain tight as they sold their futures position for a profit;
>
> (4) establishing a short futures position at artificially high price; and
>
> (5) unexpectedly releasing the dominant supply of physical crude oil in order to drive down the market price as they closed out their short futures position at a more favorable price.[148]

According to the CFTC, Dyer and Wildgoose successfully used this strategy to drive the price of crude oil up and then back down in January and March 2008 (and unsuccessfully in February 2008), thereby realizing over $50 million in profits.[149] The complaint alleged that this activity violated sections 6(c), 6(d) and 9(a)(2) of the Commodity Exchange Act. Through the Parnon Settlement, the Defendants neither admitted nor denied the allegations in the complaint, except with respect to jurisdiction and venue.[150]

143. Final Consent Order of Permanent Injunction, Civil Monetary Penalty, and Other Relief, U.S. Commodity Futures Trading Comm'n v. Parnon Energy Inc., No. 11-cv-03543 (S.D.N.Y. Aug. 4, 2014) [hereinafter Final Consent Order].

144. *Id.* at 5-6.

145. *Id.* at 4.

146. Complaint, Commodity Futures Trading Comm'n v. Parnon Energy Inc., No. 11-cv-03543 (S.D.N.Y. May 24, 2011).

147. *Id.* ¶ 3.

148. *Id.*

149. *Id.* ¶ 4.

150. Final Consent Order, *supra* note 143, at 3.

2. *In re* Brian Hunter Consent Order (civil penalty and ban)

On September 15, 2014, the CFTC entered into a consent order settling charges brought against Brian Hunter for attempting to manipulate the price of natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX) during the expiry on February 24 and April 26, 2006.[151] The settlement required that Hunter pay a $750,000 civil monetary penalty.[152] In addition, the settlement permanently banned Hunter from both trading in the settlement period for the last day of trading in all CFTC-regulated products and trading all CFTC-regulated natural gas products during the daily closing period.[153] The settlement also permanently prohibited Hunter from registering with the CFTC, or claiming exemption from registration.[154]

The settlement arose from a CFTC complaint filed on July 25, 2007.[155] In its complaint, the CFTC alleged, among other things, that defendants Amaranth Advisors, L.L.C. and Amaranth Advisors (Calgary) ULC (collectively, Amaranth) and Hunter attempted to manipulate the price of natural gas futures contracts traded on the NYMEX on February 24, 2006 and April 26, 2006.[156] The CFTC's complaint alleged that Hunter engaged in a manipulative scheme by trading natural gas futures contracts for the purpose of driving down the NYMEX settlement price in order to benefit Amaranth's significantly larger short swap positions, the value of which increased as the natural gas futures contract settlement price decreased.[157] The CFTC previously settled all charges against Amaranth by consent order entered on August 12, 2009, which ordered, among other things, that Amaranth pay a civil monetary penalty of $7.5 million.[158] In 2011, the FERC issued an order assessing a civil penalty of $30 million against Hunter for violation of the FERC's anti-manipulation rule related to the same allegations.[159] Hunter appealed the FERC's order to the United States Court of Appeals for the District of Columbia Circuit. On March 15, 2013, the D.C. Circuit ruled that the FERC acted outside its statutory jurisdiction in issuing an order of violation and civil penalty against Hunter, as the issues fell within the CFTC's exclusive jurisdiction.[160]

151. Consent Order for Civil Monetary Penalty and Other Equitable Relief Against Defendant Brian Hunter, U.S. Commodity Futures Trading Comm'n v. Brian Hunter, No.07-cv-6682 (S.D.N.Y. Sept. 15, 2014).

152. *Id.* at P 17.

153. *Id.* at PP 14-15.

154. *Id.* at P 16.

155. Complaint, U.S. Commodity Futures Trading Commission v. Amaranth Advisors, L.L.C., No. 07-cv-6682 (S.D.N.Y. July 25, 2007).

156. *Id.* at PP 1-2.

157. *Id.*

158. Consent Order of Permanent Injunction, Civil Monetary Penalty and Other Relief as to Defendants Amaranth Advisors, L.L.C. and Amaranth Advisors (Calgary) ULC, Commodity Futures Trading Commission v. Amaranth Advisors, L.L.C., et al., No. 07-cv-6682 (S.D.N.Y. Aug. 12, 2009).

159. *Hunter*, 135 F.E.R.C. ¶ 61,054 (2011), *reh'g denied*, 137 F.E.R.C. ¶ 61,146 (2011); 18 C.F.R. § 1c.1 (2013).

160. Hunter v. FERC, 711 F.3d 155, 156, 160 (D.C. Cir. 2013).

B. *Information Sharing MOU Between the FERC and CFTC*

On January 2, 2014, pursuant to sections 720(a) and (b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the FERC and the CFTC entered into two Memoranda of Understanding (MOUs) setting forth procedures to address circumstances of overlapping jurisdiction (Jurisdiction MOU),[161] and the sharing of information in connection with market surveillance and investigations into potential market manipulation, fraud, or abuse (Information Sharing MOU).[162] The 2014 MOUs supersede a 2005 MOU under which the FERC and the CFTC were permitted to exchange information related to oversights or investigations.[163]

The Jurisdiction MOU establishes an agreement that the agencies will notify each other when presented with activities in which the other may have a jurisdictional interest and will coordinate to resolve the agencies' concerns.[164] The Jurisdiction MOU specifies that when staff of either agency becomes aware of an issue that may involve the overlapping jurisdiction of the other agency, that staff will promptly notify the staff of the other agency of the matter.[165] Staff of both agencies then may confer informally regarding the matter and determine whether both agencies have an interest. In the event that there is overlapping jurisdiction and interest, staff of both agencies "will diligently and cooperatively communicate to coordinate and develop an approach that meets both agencies' regulatory concerns."[166] Any disputes that arise will be elevated first to the director-level and then to the respective Commissions.[167]

The Information Sharing MOU sets forth procedures for sharing information related to market surveillance and investigations. Specifically, it requires that the FERC request for the CFTC to obtain information for a FERC investigation from designated contract markets and derivatives clearing organizations, as well as the newly created swap execution facilities and swap data repositories. The CFTC in turn must request from the FERC information from Regional Transmission Organizations (RTO) or Independent System Operators (ISO), the independent market monitors of the RTO or ISO, the North American Electric Reliability Corporation, and interstate pipelines and gas storage facilities.[168] The CFTC also must direct to the FERC any requests for market participant information in the FERC's possession. Both agencies agree to take "all actions reasonably necessary

161. Memorandum of Understanding between the Federal Energy Regulatory Commission and the Commodity Futures Trading Commission (Jan. 2, 2014) [hereinafter Jurisdiction MOU], *available at* http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/cftcfercjmou2014.pdf.

162. Memorandum of Understanding between the Federal Energy Regulatory Commission and the Commodity Futures Trading Commission Regarding Information Sharing and Treatment of Proprietary Trading and Other Information (Jan. 2, 2014) [hereinafter Information Sharing MOU], *available at* http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/cftcfercismou2014.pdf.

163. Memorandum of Understanding between the Federal Energy Regulatory Commission and the Commodity Futures Trading Commission Regarding Information Sharing and Treatment of Proprietary Trading and Other Information (Oct.12, 2005), *available at* http://www.ferc.gov/legal/mou/mou-33.pdf.

164. Jurisdiction MOU, *supra* note 161, § II.A.

165. *Id.*

166. *Id.* § II.B.2.

167. *Id.* § II.C.

168. Information Sharing MOU, *supra* note 162, § II.

to preserve, protect, and maintain all privileges and claims of confidentiality related to non-public information provided pursuant to the MOU, in accordance with applicable law."[169] On March 5, 2014, the FERC and the CFTC announced that they completed the initial transmission of market data under the Information Sharing MOU.[170]

C. The Dodd-Frank Wall Street Reform and Consumer Protection Act

1. Exclusion of Utility Operations-Related Swaps with Utility Special Entities

On September 26, 2014, the CFTC published a final rule in the Federal Register, effective October 27, 2014, that excludes most swaps used for hedging purposes by municipal and other governmental utilities from counting against the $25 million swap dealer *de minimis* threshold that currently applies to swap dealing activities with "special entities" (i.e., governmental organizations, pension plans, and endowments).[171] Specifically, the final rule permits a person to exclude "utility operations-related swaps" entered into with "utility special entities" in "calculating the aggregate gross notional amount of the person's swaps positions, solely for purposes of the *de minimis* exception from swap dealer registration applicable to swaps with special entities."[172]

The rule defines "utility operations-related swap" as a swap that meets the following conditions:

> (i) A party to the swap is a utility special entity; (ii) A utility special entity is using the swap to hedge or mitigate commercial risk in the manner described in § 50.50(c) of this chapter; (iii) The swap is related to an exempt commodity [e.g., energy or metals commodity] as that term is defined in Section 1a(20) of the Act [] or an agricultural commodity insofar as such agricultural commodity is used for fuel for generation of electricity or is otherwise used in the normal operations of the utility special entity; and (iv) The swap is an electric energy or natural gas swap; or the swap is associated with: [t]he generation, production, purchase or sale of natural gas or electric energy, the supply of natural gas or electric energy to a utility special entity, or the delivery of natural gas or electric energy service to customers of a utility special entity; fuel supply for the facilities or operations of a utility special entity; compliance with an electric system reliability obligation; or compliance with an energy, energy efficiency, conservation, or renewable energy or environmental statute, regulation, or government order applicable to a utility special entity.[173]

The rule defines "utility special entity" as a special entity that:

> (i) Owns or operates electric or natural gas facilities, electric or natural gas operations or anticipated electric or natural gas facilities or operations; (ii) Supplies natural gas or electric energy to other utility special entities; (iii) Has public service obligations or anticipated public service obligations under Federal, State or local law or regulation to deliver electric energy or natural gas service to utility customers; or (iv)

169. *Id.* § II.D.1.

170. Press Release, U.S. Commodity Futures Trading Comm'n, CFTC, FERC Implements Information Sharing MOU (Mar. 5, 2014), http://www.cftc.gov/PressRoom/PressReleases/pr6873-14.

171. Exclusion of Utility Operations-Related Swaps with Utility Special Entities from De Minimis Threshold for Swaps with Special Entities, 79 Fed. Reg. 57,767 (CFTC Sept. 26, 2014).

172. *Id.*

173. *Id.* at 57,781.

> Is a Federal power marketing agency as defined in Section 3 of the Federal Power Act, 16 U.S.C. 796(19).[174]

The effect of the final rule is that "utility operations-related swaps" with "utility special entities" will only count against the general $8 billion *de minimis* threshold (which will be reduced to $3 billion at to-be determined phase-in date) applicable to a counterparty's aggregate gross notional amount of swap-dealing swaps during any 12-month period and not the much lower $25 million limit applicable to swap dealing with special entities.[175]

2. No-Action Relief with Respect to Certain Commodity Exchange Act Provisions that may apply to Southwest Power Pool, Inc. and/or its participants

On February 20, 2014, the CFTC Divisions of Clearing and Risk, Market Oversight, Swap Dealer, and Intermediary Oversight issued a No-Action Letter temporarily removing a regulatory barrier to Southwest Power Pool's (SPP) planned March 1, 2014, launch of its Integrated Marketplace.[176] The conditions and exemptions covered by the No-Action Letter are identical to the conditions in the RTO/ISO Exemption Final Order[177] issued last year, which exempts specified transactions of particular RTOs and ISOs from certain provisions of the Commodity Exchange Act and FERC regulations. The No-Action letter states that Market Participants in the Integrated Marketplace must qualify in any one of three categories (including being in the electric energy business) and the transactions must fall into specified categories in order to be eligible for the reduced regulatory burden.

On August 22, 2014, the CFTC issued a No-Action Letter extending the relief, which otherwise would have expired on August 31, 2014.[178] Under the current No-Action Letter, the relief will expire on the earlier of February 28, 2015, or the date on which the CFTC takes final action on Southwest Power Pool's request for exemptive relief.[179]

III. THE PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

The federal pipeline safety laws provide the U.S. Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) with the authority to establish and enforce minimum federal safety

174. *Id.*

175. *Id.*

176. DIV. OF CLEARING & RISK, U.S. COMMODITY FUTURES TRADING COMM'N, CFTC LETTER NO. 14-18, NO-ACTION RELIEF WITH RESPECT TO CERTAIN COMMODITY EXCHANGE ACT PROVISIONS THAT MAY APPLY TO SOUTHWEST POWER POOL, INC. AND/OR ITS PARTICIPANTS (2014), *available at* http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-18.pdf.

177. Final Order in Response to a Petition from Certain ISOs and RTOs to Exempt Specified Transactions, 78 Fed. Reg. 19,880 (CFTC Apr. 2, 2013) (The petitioning entities were the CAISO, the Electric Reliability Council of Texas, ISO-NE, PJM, MISO, and the NYISO).

178. DIV. OF CLEARING & RISK, U.S. COMMODITY FUTURES TRADING COMM'N, CFTC LETTER NO. 14-109, EXTENSION OF TIME-LIMITED NO-ACTION RELIEF WITH RESPECT TO CERTAIN COMMODITY EXCHANGE ACT PROVISIONS THAT MAY APPLY TO SOUTHWEST POWER POOL, INC. AND/OR ITS PARTICIPANTS (2014), *available at* http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-109.pdf.

179. *Id.*

standards for gas and hazardous liquid pipelines and liquefied natural gas (LNG) facilities.[180] Those safety standards, which are codified in 49 C.F.R. parts 190 to 199, apply to most pipelines and LNG facilities in the United States, and they are the only safety standards that apply to interstate pipeline facilities.[181]

A. Pipeline Safety Rulemaking Update

The PHMSA currently has eight separate pipeline safety rulemaking proceedings underway, including its proposals to adopt comprehensive revisions to the gas and hazardous liquid pipeline safety regulations.[182] The PHMSA submitted its proposed hazardous liquid rule to the Office of Management and Budget (OMB) for review and approval in May 2014.[183] The PHMSA's proposed gas transmission rule is currently undergoing review by the DOT Secretary.[184] The PHMSA expects to publish both proposed rules in the Federal Register in 2015.[185]

Several other proposed rules are also estimated to be published in 2015, including PHMSA's proposed rules addressing operator qualification, excess flow valves, and valve installation and minimum rupture detection standards.[186] In addition, PHMSA anticipates that its final rules on enforcement of state excavation damage laws and miscellaneous amendments to the pipeline safety regulations will be published in 2015.[187]

B. Administrative Enforcement

The PHMSA initiated 154 pipeline safety enforcement actions in 2014, slightly more than half of the 266 cases the agency initiated in 2013 and its lowest total since 2003.[188] The PHMSA also proposed approximately $2.7 million in total civil penalties in 2014, significantly less than the $9.7 million proposed in 2013 and the lowest total since 2004.[189] The PHMSA issued 71 orders and decisions on reconsideration in 2014, well below the average of 109 orders and decisions in the previous five years.[190]

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180. 49 U.S.C. §§ 60101-60140 (2012).

181. 49 C.F.R. pts. 190-199 (2013).

182. U.S. DEP'T OF TRANSP. REPORT ON DOT SIGNIFICANT RULEMAKINGS (2015), http://www.dot.gov/sites/dot.gov/files/docs/January%202015%20Internet%20Report.docx.

183. *Id.* at 96.

184. *Id.* at 98.

185. *Id.* at 96, 98.

186. *Id.* at 97, 100-01.

187. *Id.* at 93, 95.

188. *Summary of Enforcement Activity-Nationwide*, PIPELINE & HAZARDOUS MATERIALS SAFETY ADMIN. (Jan. 6, 2015), http://primis.phmsa.dot.gov/comm/reports/enforce/EnfHome.html?nocache=3353.

189. *Summary of Cases Involving Civil Penalties*, PIPELINE & HAZARDOUS MATERIALS SAFETY ADMIN. (Jan. 6, 2015), http://primis.phmsa.dot.gov/comm/reports/enforce/CivilPenalty_opid_0.html?nocache=975.

190. *Summary of Enforcement Actions*, PIPELINE & HAZARDOUS MATERIALS SAFETY ADMIN. (Jan. 6, 2015), http://primis.phmsa.dot.gov/comm/reports/enforce/Actions_opid_0.html?nocache=765#_TP_1_tab_2.

C. Advisory Bulletins & Guidance Documents

1. Construction Notification

On September 12, 2014, the PHMSA issued an advisory bulletin addressing the notifications required before an operator engages in certain construction-related activities.[191] The bulletin explains that the federal pipeline safety regulations require operators to notify PHMSA not later than sixty days prior to the occurrence of certain "construction-related" events and seeks to clarify what activities qualify as "construction" for purposes of the notification requirement.[192]

The advisory bulletin "strongly encourages" operators to contact PHMSA no later than sixty days prior to engaging in any of the following "construction-related activities," whichever occurs first: (1) material purchasing and manufacturing; (2) right-of-way acquisition; (3) construction equipment move-in activities; (4) onsite or offsite fabrications; or (5) right-of-way clearing, grading, and ditching.[193]

2. Flow Reversals, Product Changes, and Conversion to Service

On September 18, 2014, the PHMSA issued an advisory bulletin and accompanying guidance document addressing the regulatory and safety impacts of flow reversals, product changes, and conversion to service for gas and hazardous liquid pipelines.[194] Together, the advisory bulletin and guidance document emphasize the notification, operation, and maintenance, and integrity management implications arising from these activities.[195] Notably, the guidance suggests that pipelines with certain design and operational characteristics, such as grandfathered pipe without pressure tests, low-frequency welded pipe, or pipelines with a history of failure or leaks due to corrosion, should not be considered for these changes.[196]

3. Program Evaluation and Meaningful Metrics

On October 15, 2014, the PHMSA issued an advisory bulletin and accompanying guidance document on employing meaningful performance metrics to evaluate integrity management (IM) programs.[197] The guidance document describes elements and characteristics of a mature IM program evaluation, identifies metrics specifically required by IM regulations, and encourages

191. Pipeline Safety: Construction Notification, 79 Fed. Reg. 54,777 (Dep't of Transp. Sept. 12, 2014) (advisory bulletin).

192. *Id.*

193. *Id.*

194. Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes, and Conversion to Service, 79 Fed. Reg. 56,121 (Dep't of Transp. Sept. 18, 2014) (advisory bulletin); U.S. DEP'T OF TRANSP. PHMSA, GUIDANCE FOR PIPELINE FLOW REVERSALS, PRODUCT CHANGES, AND CONVERSION TO SERVICE (2014) [hereinafter GUIDANCE DOCUMENT], *available at* http://phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Pipeline/Regulations/GORRPCCS.pdf.

195. *Id.*

196. GUIDANCE DOCUMENT, *supra* note 194, at 4.

197. Pipeline Safety: Guidance for Strengthening Pipeline Safety through Rigorous Program Evaluation and Meaningful Metrics, 79 Fed. Reg. 61,937 (Dep't of Transp. Oct. 15, 2014); U.S. DEP'T OF TRANSP., GUIDANCE FOR STRENGTHENING PIPELINE SAFETY THROUGH RIGOROUS PROGRAM EVALUATION AND MEANINGFUL METRICS (2014).

operators to incorporate additional metrics.[198] The additional metrics identified include: IM program element implementation; operational implementation; system specific metrics; and threat specific metrics.[199] Importantly, the advisory bulletin states that PHMSA inspectors will rely on the guidance document as criteria when evaluating the effectiveness of operators' IM program evaluations "to assure operators are developing sound program evaluation processes [and are developing] and applying a robust and meaningful set of performance metrics in their program [evaluations]."[200]

4. Litigation

PHMSA is named as a party to three lawsuits that are currently pending in the federal courts.[201]

a. PEER v. PHMSA

On April 10, 2013, Public Employees for Environmental Responsibility (PEER) filed a complaint against PHMSA in the United States District Court for the District of Columbia alleging that PHMSA failed to comply with the statutory deadline for responding to a pair of Freedom of Information Act (FOIA) requests that PEER sent to PHMSA in October 2012.[202] PEER's FOIA requests seek the release of agency records relating to PHMSA's administration of the Oil Pollution Act of 1990.[203]

Under court order, PHMSA has submitted seven status reports identifying, reviewing, and producing responsive documents to PEER's FOIA requests.[204] PHMSA's most recent November 2014 status report indicated that PHMSA has fully responded to PEER's first FOIA request, and that the agency has produced more than 98,000 pages of documents in response to PEER's second FOIA request, including 189 onshore oil spill response plans.[205] The report explained that PHMSA will continue to provide PEER with the remaining seventy-two oil spill response plans on a rolling basis, after completing approval and redaction.[206] PHMSA will submit its next status report by February 15, 2014,[207] and must submit its answer to the complaint by February 13, 2015.[208]

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198. *Id.* at 1.

199. *Id.* at 6-8.

200. *Id.*

201. As there were no significant developments in two of the three pending cases in 2014, see the Compliance and Enforcement Committee Report 2013, 34 ENERGY L.J. 1, 345 (2013), for a detailed synopsis of San Francisco v. U.S. Dep't of Transp., No. C 12-0711 EDL, 2012 WL 467707 (N.D. Cal. Feb. 14, 2012) and ONEOK Hydrocarbon, L.P. v. U.S. Dep't of Transp., No. 13-1040 (D.C. Cir. Feb. 25, 2013).

202. *Id.* at 6.

203. *Id.* at 4; Oil Pollution Act of 1990, Pub. L. No. 101–380, 104 Stat. 484 (Aug. 18, 1990).

204. *See generally* Order No. 13-472 (D.D.C. June 24, 2013), ECF No. 10 (the first order requesting a status report was issued in a Minute Order in the docket on May 9, 2013).

205. Defendant's Status Report at 2-3, No. 13-472 (D.D.C. Nov. 3, 2014), ECF No. 28.

206. *Id.*

207. *Id.*

208. Order, No. 13-472 (D.D.C. Nov. 5, 2014), ECF No. 29.

IV. THE DEPARTMENT OF ENERGY

A. Enforcement Actions

Pursuant to the Energy Policy and Conservation Act of 1975 (EPCA) and its implementing regulations,[209] the Department of Energy (DOE) monitors and enforces compliance with energy and water conservation standards for certain covered consumer products. Further, the DOE is authorized to assess civil penalties for violations of the EPCA and to seek judicial action to prohibit further distribution of noncompliant products.[210]

The DOE engaged in a series of enforcement actions in 2014, including the following matters resulting in compromise agreements:

1. LG Electronics USA, Inc.

In October of 2014, the DOE accepted a compromise agreement with LG electronics USA, Inc., resolving a civil penalty case for distribution of air conditioners that failed to comply with regulations. The compromise agreement reflected a civil penalty of approximately $1.5 million.[211]

2. Whirlpool Corp.

In April of 2014, the DOE also ordered Whirlpool Corporation to pay a civil penalty of approximately $5.3 million, after finding it had manufactured and distributed at least 26,649 units of non-compliant refrigerator-freezers.[212] The order accepted a Compromise Agreement, which incorporated the civil penalty.

3. GD Midea Air-Conditioning Equipment Co., Ltd.

In August 2014, the DOE accepted a Compromise Agreement with GD Midea Air-Conditioning Equipment Co., Ltd., that included a civil penalty of $416,800 for distribution of air conditioners, which failed to comply with applicable energy conservation standards.[213]

B. Settlement on Standards for Furnaces, Air Conditioners, and Heat Pumps

In 2014, the DOE also settled its outstanding litigation, associated with amended energy conservation standards for residential furnaces, central air conditioners, and heat pumps.[214] The litigation stemmed from the DOE's June 2011 issuance of a direct final rule (76 Fed. Reg. 37,408), setting forth amended

209. Energy Policy and Conservation Act of 1975, 42 U.S.C. §§ 6291-309; 10 C.F.R. pts. 430.1-431.1 (2015).

210. 42 U.S.C. §§ 6302-6304 (2014).

211. *In re* LG Electronics USA, Inc., No. 2014-SE-15011 (U.S. Dep't of Energy Oct. 9, 2014), *available at* http://energy.gov/sites/prod/files/2014/10/f18/2014-SE-15011_LG_Order.pdf.

212. *In re* Whirpool Corp., No. 2013-SE-1420 (U.S. Dep't of Energy Apr. 25, 2014), *available at* http://energy.gov/sites/prod/files/2014/05/f15/2013-SE-1420_Whirlpool_Order.pdf.

213. *In re* GD Midea Air-Conditioning, No. 2013-SE-1505 (U.S. Dep't of Energy Aug. 12, 2014), *available at* http://energy.gov/sites/prod/files/2014/08/f18/2013-SE-1505_Midea_Order.pdf.

214. *Furnace Litigation Settled*, ENERGY.GOV (May 2, 2014) [hereinafter *Furnace Litigation Settled*], *available at* http://energy.gov/gc/articles/furnace-litigation-settled. *See also* Am. Pub. Gas Ass'n v. Dep't of Energy, No 11-1485 (D.C. Cir. 2014) for full pleadings in the case.

energy conservation standards for such products.[215] The American Public Gas Association had challenged the stricter standard applicable to non-weatherized gas furnaces in the northern region of the United States, and in April 2014 the D.C. Circuit accepted a settlement agreement to resolve the issues involved in the litigation.[216] The settlement included vacatur and remand of the portion of the direct final rule entailing standards for non-weatherized gas furnaces. The remaining portions of the rule remained in place.[217] The DOE also agreed to conduct administrative proceedings to clarify its procedures on direct final rules, civil penalties for violation of air conditioner standards, and consider a negotiated rulemaking on enforcement of standards on central air conditioners.[218] Since then, the DOE held a public meeting regarding the tools it has developed for consideration of proposed rules on residential non-weatherized gas furnaces and mobile home gas furnaces.[219]

V. THE DEPARTMENT OF JUSTICE

A. Energy-Related Investigations

1. Weatherford International Ltd.

In 2014, the United States District Court for the Southern District of Texas approved Weatherford International Ltd.'s (Weatherford) December 2013 settlement with the U.S. Departments of Justice (DOJ), Commerce and Treasury, as well as certain of Weatherford's subsidiaries. Weatherford, an international oil and gas service company, pleaded guilty to violating the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA) and paid the DOJ a criminal fine of $87.2 million.[220] Weatherford had also been charged with one count of violating the FCPA's internal controls provisions.[221] The DOJ alleged that Weatherford had established a joint venture in Africa with local entities controlled by foreign officials and their relatives from 2004 through 2008.[222] The local entities had not made contributions to the joint venture but received significant payments for awarding the lucrative contracts to the joint venture, giving Weatherford information about competitor pricing and taking contracts away from Weatherford competitors.[223] Weatherford also agreed to pay $65.6 million in civil penalties, disgorgement, and prejudgment interest in a Securities and Exchange Commission

215. *Id.*

216. *Id.*

217. *Id.*

218. *Furnace Litigation Settled*, *supra* note 214. *See also* Am. Pub. Gas Ass'n v. Dep't of Energy, No. 11-1485 (D.C. Cir. 2014).

219. *See generally Residential Furnaces and Boilers*, ENERGY.GOV, *available at* http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/72 (last visited Dec. 29, 2014) (posting additional information regarding the rules and procedures and describing the litigation).

220. Richard L. Cassin, *Weatherford Pays $152.6 million for FCPA Violations, $100 Million for Trade Sanctions*, THE FCPA BLOG (Nov. 26, 2013, 12:08 PM), http://www.fcpablog.com/blog/2013/11/26/weatherford-pays-1526-million-for-fcpa-violations-100-millio.html.

221. *Id.*

222. *Id.*

223. *Id.*

case brought under the FCPA, and paid $100 million for export controls violations under the International Emergency Economic Powers Act and the Trading with the Enemy Act.[224]

2. General Electric Hitachi Nuclear Energy Americas LLC

On January 23, 2014, General Electric Hitachi Nuclear Energy Americas LLC (GE Hitachi) agreed to pay $2.7 million to resolve DOJ allegations under the False Claims Act (FCA) that it made false statements and claims to the Department of Energy (DOE) and Nuclear Regulatory Commission concerning an advanced nuclear reactor design.[225] The DOJ claimed GE Hitachi concealed known flaws in its analysis of a component in the advanced nuclear Economic Simplified Boiling-Water Reactor (ESBWR). In addition, the DOJ alleged that GE Hitachi falsely represented that it had properly analyzed the component according to applicable standards and verified the accuracy of its modeling using reliable data.[226] The alleged false claims were made in connection with funding GE Hitachi received from the DOE for developing and engineering the advanced nuclear ESBWR.[227] The allegations arose from a whistleblower lawsuit filed by a former GE Hitachi employee under the FCA, which empowers private citizens to sue on behalf of the government and share in any recovery.[228]

3. Pacific Gas & Electric Co.

The DOJ filed a twelve-count criminal indictment against Pacific Gas and Electric Company (PG&E) in the United States District Court for the District of Northern California on April 1, 2014, alleging numerous violations of the Natural Gas Pipeline Safety Act, which resulted in a pipeline rupture in San Bruno. PG&E pleaded not guilty to the charges,[229] and in July 2014 the DOJ filed a superseding indictment charging PG&E with obstructing the investigation of the National Transportation Safety Board and twenty-seven additional counts of violating the PSA.[230] The potential fine for the alleged violations exceeds $1.2 billion.[231]

4. Panther Energy Trading LLC

The DOJ began its prosecution of Michael Coscia, sole owner of Panther Energy Trading LLC, following his October 1, 2014 indictment on six counts of commodities fraud and six counts of spoofing—making a bid or offer with intent

224. *Id.*

225. Press Release, U.S. Dep't of Justice, General Electric Hitachi Nuclear Energy Americas Agrees to Pay $2.7 Million for Alleged False Claims Related to Design of Advanced Nuclear Reactor (Jan. 23, 2014), http://www.justice.gov/opa/pr/general-electric-hitachi-nuclear-energy-americas-agrees-pay-27-million-alleged-false-claims.

226. *Id.*

227. *Id.*

228. *Id.*

229. Press Release, U.S. Dep't of Justice, PG&E Charged with Obstruction of the Investigation of the National Transportation Safety Board and Additional Violations of the Natural Gas Pipeline Safety Act (July 29, 2014), http://www.justice.gov/usao-ndca/pr/pge-charged-obstruction-investigation-national-transportation-safety-board-and.

230. *Id.*

231. *Id.*

to cancel before execution—under the Community Exchange Act (CEA), which was enacted as part of the Dodd-Frank Act.[232] Coscia paid $3.7 million in fines and penalties in 2013 to settle administrative actions brought against him by the U.S. Commodity Futures Trading Commission, the UK Financial Conduct Authority, and the CME Group Inc.[233] This is the DOJ's first prosecution for spoofing under the CEA.[234]

5. Washington Gas Energy Systems (WGESystems)

In November 2014, Washington Gas Energy Systems (WGESystems) consented to being indicted on one count of conspiracy to commit fraud on the United States for illegally obtaining contracts set aside for small and disadvantaged businesses.[235] In a deferred prosecution agreement with the U.S. Attorney's Office for the District of Columbia, WGESystems agreed to pay more than $2.5 million in fines and penalties for its conduct.[236] As part of the conspiracy, an eligible business obtained the contracts and illegally subcontracted them to WGESystems in exchange for a 5.8% share of the contract value.[237] The funds for the contracts were appropriated through the American Reinvestment and Recovery Act in order to make federal buildings in the D.C. area more energy efficient and were to be awarded to small, disadvantaged businesses through the SBA-administered 8(a) program.[238]

6. Alstom S.A.

Alstom S.A., a French power and transportation company, pleaded guilty on December 22, 2014, to two counts of violating the FCPA by falsifying its books and records and failing to implement adequate internal controls.[239] Alstom agreed to pay over $772 million to resolve charges relating to falsified records and tens of millions of dollars in bribes paid to government officials in connection with power grid and transportation projects for state-owned entities in Indonesia, Saudi Arabia, Egypt, the Bahamas, Taiwan, and elsewhere.[240] The DOJ is also prosecuting several Alstom corporate executives for alleged violations of the FCPA.[241]

232. *U.S. Department of Justice Brings Its First Criminal Prosecution for Spoofing of Commodities Markets*, MAYER BROWN LEGAL UPDATE (Oct. 14, 2014), http://www.mayerbrown.com/US-Department-of-Justice-Brings-Its-First-Criminal-Prosecution-for-Spoofing-of-Commodities-Markets-10-14-2014/.

233. *Id.*

234. *Id.*

235. Press Release, U.S. Dep't of Justice, Washing Gas Energy Systems Agrees to Pay $2.5 Million in Fines and Penalties for Conspiring to Obtain Federal Contracts (Nov. 19, 2014), http://www.justice.gov/atr/public/press_releases/2014/309963.htm.

236. *Id.*

237. *Id.*

238. *Id.*

239. Press Release, U.S. Dep't of Justice, Alstom Pleads Guilty and Agrees to Pay $772 Million Criminal Penalty to Resolve Foreign Bribery Charges (Dec. 22, 2014), http://www.justice.gov/opa/pr/alstom-pleads-guilty-and-agrees-pay-772-million-criminal-penalty-resolve-foreign-bribery.

240. *Id.*

241. *Id.*

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