

REPORT OF THE COMPLIANCE AND ENFORCEMENT COMMITTEE

This report summarizes key federal enforcement and compliance developments in 2024, 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. Reports, Policy Statements, and Rules

1. Annual Enforcement Report

On November 21, 2024, the FERC Office of Enforcement (Enforcement) issued its Annual Report on Enforcement staff activities during the fiscal year 2024 that, as in past years, identified its priorities as focusing on (1) “[f]raud and market manipulation”; (2) “[s]erious violations of the Reliability Standards”; (3) “[a]nti-competitive conduct”; (4) “[t]hreats to the nation’s energy infrastructure and associated impacts on the environment and surrounding communities”; and (5) “[c]onduct that threatened the transparency of regulated markets.”¹

In pursuit of these priorities, Enforcement’s Division of Investigations (DOI) opened thirty new investigations in fiscal year 2024, up from nineteen the prior year,² while bringing ten to closure without further action,³ up from nine the prior year.⁴ DOI negotiated twelve settlements that were approved by the Commission, eleven of which resulted in approximately \$16.68 million in civil penalties and disgorgements of approximately \$62.9 million.⁵ The remaining Commission-approved settlement resolved one district court litigation matter for \$2.3 million in civil penalties.⁶ Seven of these settlements also required the settling parties to adopt compliance monitoring procedures.⁷ These total amounts were higher than the approximately \$26.84 million in civil penalties and \$21.92 million in disgorgement that resulted from twelve settlements entered into in 2023.⁸

1. FERC, 2024 REPORT ON ENFORCEMENT 3, 4 (Nov. 21, 2024) (Docket No. AD07-13-018) [hereinafter 2024 REPORT ON ENFORCEMENT]; see *Enforcement*, FERC, <https://www.ferc.gov/enforcement> (last updated Feb. 6, 2025) (reciting Enforcement’s five top priorities).

2. FERC, 2023 REPORT ON ENFORCEMENT 6 (Nov. 16, 2023) (Docket No. AD07-13-017) [hereinafter 2023 REPORT ON ENFORCEMENT].

3. 2024 REPORT ON ENFORCEMENT, *supra* note 1, at 4.

4. 2023 REPORT ON ENFORCEMENT, *supra* note 2, at 6.

5. 2024 REPORT ON ENFORCEMENT, *supra* note 1, at 4-5.

6. *Id.* at 5.

7. *Id.* at 20-23.

8. 2023 REPORT ON ENFORCEMENT, *supra* note 2, at 19.

FERC’s Division of Audits and Accounting completed ten audits of public utility, natural gas, oil, and regional transmission organization companies covering a wide array of topics, resulting in fifty-five findings of noncompliance and 240 recommendations for corrective action, the majority of which were implemented within six months, and directing approximately \$46 million in refunds and other recoveries.⁹ This compares to nine such audits in 2023 that resulted in sixty-eight findings of noncompliance and 332 recommendations for corrective action, the majority of which were implemented within six months, and approximately \$33 million in refunds and other recoveries.¹⁰

FERC’s Division of Analytics and Surveillance (DAS) surveillance staff’s activities resulted in sixteen natural gas surveillance inquiries, but no referrals to DOI for investigation; and forty-seven electric surveillance inquiries and seven referrals to DOI for investigation.¹¹ DAS closed thirty electric surveillance inquiries with no referral and, as of the end of the fiscal year, continued its work on ten other inquiries.¹² This compares to twenty-seven natural gas surveillance inquiries with three referrals to DOI for investigation and forty-three electric surveillance inquiries with six referrals to DOI for investigation in 2023.¹³ DAS also conducted enhanced surveillance related to two disruptive weather events in 2023, Winter Storm Elliott and the Winter 2022/2023 Western Energy Price Spike, which resulted in referrals to DOI for investigation.¹⁴

B. Enforcement Litigation and Adjudication

1. Rover Pipeline Company, LLC

In *Rover Pipeline, LLC v. FERC*, Rover filed a lawsuit in the United States District Court for the Northern District of Texas seeking, in part, a declaration that FERC’s enforcement proceedings violated the Seventh Amendment to the United States Constitution.¹⁵ In 2022, the district court initially stayed both the case and the underlying FERC proceeding.¹⁶ Then, on September 13, 2023, the district court administratively closed the case without prejudice “pending resolution of *Securities and Exchange Commission v. Jarkesy*, Case No. 22-859, in the Supreme Court of the United States.”¹⁷

The *Rover* complaint raises essentially the same issues addressed in *Jarkesy*, including whether an agency’s in-house adjudication of the case violated a party’s Seventh Amendment right to a jury trial. On July 12, 2024, in response to the

9. 2024 REPORT ON ENFORCEMENT, *supra* note 1, at 5.

10. 2023 REPORT ON ENFORCEMENT, *supra* note 2, at 7.

11. 2024 REPORT ON ENFORCEMENT, *supra* note 1, at 5.

12. *Id.* at 5.

13. 2023 REPORT ON ENFORCEMENT *supra* note 2, at 7.

14. *Id.* at 7, 82.

15. Complaint for Declaratory Relief at 11, *Rover Pipeline, LLC v. FERC*, No. 3:22-CV-00232 (N.D. Tex. Apr. 5, 2022), ECF No. 1.

16. Order, *Rover Pipeline, LLC v. FERC*, No. 3:22-CV-00232 (N.D. Tex. Apr. 5, 2022), ECF No. 34.

17. Order at 1, *Rover Pipeline, LLC v. FERC*, No. 3:22-CV-00232-S (N.D. Tex. Apr. 5, 2022), ECF No. 52.

decision of the Supreme Court of the United States in *Jarkesy v. SEC*,¹⁸ which held that the Seventh Amendment entitles a respondent in an administrative enforcement proceeding to a jury trial in a federal court organized under Article III of the Constitution when the SEC seeks civil penalties for securities fraud, Rover filed a notice of the *Jarkesy* decision.¹⁹ However, no party to the litigation has moved to reopen the case or lift the administrative stay, and thus, the district court has taken no further action since Rover filed the notice of decision in *Jarkesy*.

2. Total Gas & Power North America, Inc.

On September 19, 2024, FERC announced a Termination and Abeyance Order that terminated the administrative hearing procedures in the long-running market manipulation case against Total Gas & Power North America, Inc. (Total) and two of its traders (collectively, Respondents) in response to the June 27, 2024, decision issued by the Supreme Court of the United States in *Jarkesy v. SEC* holding that the Seventh Amendment provides a respondent in a fraud suit the right to a jury trial before a neutral adjudicator rather than through an in-house agency proceeding.²⁰ Because both the SEC's antifraud provisions and FERC's antimanipulation provisions replicate common law fraud, and the civil penalties sought in those actions are legal in nature, FERC will no longer prosecute market manipulation cases seeking civil penalties under the Natural Gas Act using its own Administrative Law Judges, signaling broad changes to its enforcement process.²¹

This enforcement action began in 2016 with allegations that Respondents manipulated natural gas prices between 2009 and 2012. On December 13, 2022, TotalEnergies Gas & Power North America, Inc. (TGPNA, formerly known as Total Gas & Power North America, Inc.) filed a complaint in the United States District Court for the Southern District of Texas, Houston Division, alleging the unconstitutionality of FERC's enforcement proceeding for the same reasons raised in *Jarkesy* and seeking injunctive and declaratory relief.²² On December 16, 2022, TGPNA moved the District Court to preliminarily enjoin the FERC enforcement matter.

Similar to *Rover*, on March 10, 2023, the district court stayed the case pending the Supreme Court's resolution of *Axon Enterprise, Inc. v. FTC*, No. 21-86, and *SEC v. Cochran*, No. 21-1239.²³ On October 19, 2023, the district court continued the stay pending resolution of *Jarkesy*, which the Supreme Court decided on June 27, 2024.²⁴

18. *SEC v. Jarkesy*, 144 S. Ct. 2117, 2139 (2024).

19. Notice, *Rover Pipeline, LLC v. FERC*, No. 3:22-CV-00232 (N.D. Tex. Apr. 5, 2022), ECF No. 58.

20. See *Total Gas & Power North America, Inc. et al.*, 188 FERC ¶ 61,197 (2024).

21. *Id.* at PP 4, 5.

22. Complaint, *TotalEnergies Gas & Power N.A., Inc. v. FERC*, No. 4:22-CV-04318 (S.D. Tex. Dec. 13, 2022), ECF No. 1.

23. Order, *TotalEnergies Gas & Power N.A., Inc. v. FERC*, No. 4:22-CV-04318 (S.D. Tex. Mar. 10, 2023), ECF No. 52.

24. Order, *TotalEnergies Gas & Power N.A., Inc. v. FERC*, No. 4:22-cv-04318 (S.D. Tex. Oct. 19, 2023), ECF No. 77.

Following the Supreme Court’s decision in *Jarkesy*, the parties in the *Total* case “filed a joint status report indicating that” FERC “would consider the potential implications of *Jarkesy* on the scope of the administrative proceedings.”²⁵ On September 19, 2024, FERC issued an Order Terminating Hearing and Holding Proceeding in Abeyance that stayed the administrative hearing procedures before the administrative law judge (ALJ).²⁶ FERC declined to impose penalties for the conduct alleged in the Order to Show Cause on the basis of an administrative enforcement proceeding before an ALJ but clarified it had not terminated the enforcement matter in its entirety and anticipated issuing a further order.

On January 8, 2025, FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and TGPNA that resolved both the FERC enforcement matter and the district court litigation.²⁷ TGPNA agreed to pay \$5,000,000 in monetary remedies to certain agreed-upon non-governmental organizations, which is described as a restitution payment rather than the typical civil penalty or disgorgement remedies.²⁸

C. Show Cause Orders and Orders Assessing Civil Penalties

1. Ketchup Caddy, LLC and Phillip Mango

On December 5, 2024, FERC issued an Order Assessing Civil Penalties²⁹ which held that Ketchup Caddy, LLC (Ketchup Caddy) and Phillip Mango, a 50% co-owner of Ketchup Caddy,³⁰ (together, Respondents) had engaged in a scheme to register demand response resources with the Midcontinent Independent System Operator, Inc. (MISO) without those resources’ knowledge or consent, thereby violating section 222(a) of the Federal Power Act (FPA)³¹ and section 1c.2(a)³² of the Commission’s regulations.³³ FERC also found that Ketchup Caddy violated sections 69A.3.5 and 69A.7.1 of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) by offering uncontracted resources into the annual Planning Resource Auctions (PRA) that MISO uses to procure capacity necessary to maintain reliability of the MISO grid.³⁴

Respondents’ alleged scheme involved using an automated tool to “scrape” and collect customer data from Ameren Illinois Company’s (Ameren) website.³⁵

25. Joint Status Report at 1, *TotalEnergies Gas & Power N.A., Inc. v. FERC*, No. 4:22-cv-04318 (S.D. Tex. July 22, 2024), ECF No. 79; *see* 188 FERC ¶ 61,197, at P 4.

26. 188 FERC ¶ 61,197, at PP 5, 7.

27. *Total Gas & Power North America, Inc. et al.*, 190 FERC ¶ 61,011 at PP 12-14 (2025).

28. *Id.* at P 2.

29. *Ketchup Caddy, LLC & Phillip Mango*, 189 FERC ¶ 61,176 (2024).

30. Ketchup Caddy’s other co-owner previously reached a settlement with Enforcement under which he agreed to disgorge \$525,451,93, his complete share of Ketchup Caddy’s profits from the conduct at issue. *See Todd Meinershagen*, 181 FERC ¶ 61,251 at P 23 (2022).

31. 16 U.S.C. § 824v(a) (2024).

32. 18 C.F.R. § 1c.2(a) (2024).

33. 189 FERC ¶ 61,176, at P 1.

34. *Id.*

35. *Id.* at P 25.

This information was collected without the authorization or knowledge of the customers or of Ameren. Respondents created “curtailment plans” for these customers based on estimates of their ability to reduce demand. The customers were then registered in the PRA even though Respondents had no connection to the customers and knew that they would not actually perform demand reductions if called upon.³⁶ Enforcement found that Ketchup Caddy had cleared 211.1 MW of capacity in the April 2019 PRA, 303.2 MW of capacity in the April 2020 PRA, and 372.3 MW of capacity in the April 2021 PRA.³⁷ Ketchup Caddy received weekly capacity payments from June 1, 2019, until October 2021 when MISO removed the company from the capacity market after becoming aware of the nature of Ketchup Caddy’s customer registrations.³⁸

FERC characterized the alleged violations as serious and found that they were exacerbated by the lack of any effort by the Respondents to remedy them.³⁹ FERC assessed a \$25,000,000 civil penalty against Ketchup Caddy and a \$1,500,000 penalty against Mango. FERC also directed Mango to disgorge unjust profits, plus interest, in the amount of \$506,502.⁴⁰

The proceedings began when Enforcement opened a preliminary investigation into Ketchup Caddy after MISO forwarded an anonymous tip that had been submitted to a MISO hotline.⁴¹ On October 6, 2022, Enforcement provided Respondents with a preliminary findings presentation.⁴² On July 17, 2023, Enforcement gave notice under section 1b.19 of FERC’s regulations that it intended to issue a show cause order.⁴³ FERC issued the Show Cause Order on February 21, 2024.⁴⁴

The Respondents did not answer any of these issuances.⁴⁵ Enforcement filed a motion for summary disposition on April 10, 2024.⁴⁶ However, on July 26, 2024, FERC issued an order stating that it would not act on Enforcement’s motion because the Show Cause Order had not been served on respondents.⁴⁷ FERC extended the answer deadline to give Respondents no later than thirty days after the date that the Show Cause Order was served to submit a response.⁴⁸ On September 4, 2024, FERC’s Secretary published a notice confirming that the Show Cause Order had been served on July 26, 2024.⁴⁹

36. *Id.* at P 29.

37. 189 FERC ¶ 61,176, at P 46.

38. *Id.*

39. *Id.* at PP 1, 42, 64.

40. *Id.* at P 1.

41. 189 FERC ¶ 61,176, at P 6 n.23.

42. *Id.* at P 6.

43. *Id.*

44. *Ketchup Caddy, LLC & Philip Mango*, 186 FERC ¶ 61,132 (2024).

45. 189 FERC ¶ 61,176, at PP 6, 13.

46. *Id.* at P 10.

47. *Ketchup Caddy, LLC & Philip Mango*, 188 FERC ¶ 61,081 (2024).

48. 189 FERC ¶ 61,176, at P 11.

49. *Id.* at P 12.

Respondents did not respond to the Show Cause Order.⁵⁰ Consequently, the Commission accepted as true the undisputed material facts in the record.⁵¹

2. American Efficient, LLC

On December 16, 2024, FERC issued an Order to Show Cause and Notice of Proposed Penalty (Show Cause Order) against American Efficient, LLC and its various subsidiary companies and corporate parents (American Efficient).⁵²

According to Enforcement, “[o]ver the past ten years, [American Efficient] has cleared half a billion dollars in capacity without offering any real energy efficiency, providing any demand reductions, or making the grid any more reliable. [American Efficient] receives more capacity payments than any single generator in PJM, and it offers nothing in return.”⁵³ American Efficient allegedly did so by purchasing sales data of energy efficiency products from major retailers, determining how much demand would be reduced if end-use customers used the products, and then bidding “those energy savings into the capacity markets as if it caused the savings.”⁵⁴ The Show Cause Order seeks a total of over \$970 million in civil penalties and disgorgement, the largest proposed amount in FERC’s history.⁵⁵

Specifically, Enforcement alleges that “American Efficient has received hundreds of millions of dollars in capacity payments from PJM and MISO from 2014 through the present for a purported energy efficiency capacity program . . . that did not reduce the demand for energy and violated the PJM and MISO Tariffs.”⁵⁶ Enforcement also asserts that American Efficient violated “provisions in the PJM and MISO Tariffs requiring [Energy Efficiency Resources] to (1) cause reductions in electricity use, (2) have a nexus with end-use customer projects, and (3) own or have contractual rights to those projects.”⁵⁷

According to Enforcement, “any one of those tariff violations made American Efficient ineligible to participate in the PJM and MISO capacity markets and, therefore, . . . American Efficient further violated the PJM and MISO Tariffs by participating in those auctions while it was ineligible to do so.”⁵⁸ Enforcement claims that “American Efficient knowingly or recklessly misled the ISO/RTOs to capture payments for capacity that American Efficient could not deliver.”⁵⁹ Enforcement’s allegations are detailed in its 163-page Enforcement Staff Report.⁶⁰

50. *Id.* at P 13.

51. *Id.* at P 17.

52. *American Efficient, LLC et al*, 189 FERC ¶ 61,196 (2024).

53. *Id.* app. A, at 1.

54. *Id.* app. A, at 2.

55. 189 FERC ¶ 61,196, at P 1.

56. *Id.* at P 3.

57. *Id.*

58. *Id.*

59. 189 FERC ¶ 61,196, at P 3.

60. *See generally id.* app. A.

FERC ordered American Efficient to show cause why it should not be found to have violated: (i) Section 222 of the FPA and section 1c.2 of the Commission's regulations "through a manipulative scheme and course of business" in the PJM Interconnection, L.L.C (PJM) and MISO regions "that extracted millions of dollars in capacity payments for a purported energy efficiency project that did not actually cause reductions in energy use"; and (ii) provisions of the MISO Tariff and PJM's Open Access Transmission Tariff "for failure to satisfy the tariff requirements for participation as an Energy Efficiency Resource (EER)."⁶¹

FERC also directed American Efficient to show cause why it should not:

- (i) disgorge \$2,116,057, plus interest, in unjust profits back to MISO and \$250,937,821, plus interest, in unjust profits back to PJM; (ii) disgorge additional unjust profits received between April 2024 and the date of any future order of the Commission directing disgorgement, plus interest, back to PJM; and (iii) pay a civil penalty in the amount of \$722,000,000.⁶²

Enforcement argues that the size of the penalties is warranted given the magnitude of the alleged violations and various aggravating factors, including American Efficient's alleged: (i) lack of cooperation with the investigation;⁶³ (ii) inaccurate and misleading statements; (iii) continuation of its conduct even when Enforcement's investigation was ongoing; and (iv) lack of a strong culture of compliance and the direct involvement of senior officers in the alleged misconduct.⁶⁴

The Show Cause Order is the culmination of a three-year investigation that began with referrals from the MISO and PJM market monitors to Enforcement in April 2021.⁶⁵ Enforcement opened a preliminary, non-public investigation in May 2021.⁶⁶ After extensive meetings, data requests, and written communications, Enforcement issued its preliminary findings to American Efficient in July 2023. American Efficient submitted a detailed non-public response in September 2023.⁶⁷ FERC converted the investigation into a formal one in October 2023. In May 2023, Enforcement notified American Efficient that it intended to recommend that FERC issue an order to show cause. American Efficient submitted what Enforcement characterized as an untimely response on July 22, 2024.⁶⁸

The Show Cause Order gives American Efficient the option to choose whether to proceed through: "(a) an administrative hearing before an ALJ at the Commission prior to the assessment of a penalty under [FPA] Section 31(d)(2)(A), or (b) a prompt penalty assessment by the Commission under Section 31(d)(3)(A)."⁶⁹ If American Efficient chooses "(b)," and FERC finds a violation,

61. 189 FERC ¶ 61,196, at P 1.

62. *Id.*

63. *See id.* app. A, at 14-15, 145-46.

64. *See id.* app. A, at 141-50.

65. 189 FERC ¶ 61,196, app. A, at 14.

66. *Id.*

67. *Id.*

68. *See id.* app. A, at 13-16.

69. 189 FERC ¶ 61,196, at P 4.

then FERC will issue an order assessing a penalty.⁷⁰ If that penalty is not paid within sixty days, then FERC would commence an action in a United States district court for an order affirming the penalty.⁷¹ The Show Cause Order does not mention the United States Supreme Court's 2024 decision in *SEC v. Jarkesy* or its potential implications for the use of FERC ALJs in civil penalty proceedings.⁷²

On December 17, 2024, American Efficient filed an unopposed motion requesting an additional sixty days to respond to the Show Cause Order.⁷³ FERC granted the requested extension on December 26, 2024.⁷⁴

American Efficient has stated that it “vigorously disputes the factual allegations and legal claims made by the Office of Enforcement.”⁷⁵ Many of the defenses previously advanced by American Efficient are summarized in the Enforcement Staff Report.⁷⁶ These include arguments that American Efficient's actions did not violate the PJM or MISO tariffs because those tariffs do not expressly require EERs to cause demand reductions, that American Efficient operated in a similar way to other energy efficiency providers, and that American Efficient was candid and transparent in its dealings with MISO, PJM, and other RTOs.⁷⁷

Enforcement has also publicly disclosed American Efficient's responses to Enforcement's notice under 18 C.F.R. §1b.19.⁷⁸ Enforcement stated that it did so because American Efficient had claimed that issues raised in Enforcement's investigation were identical or substantially similar to claims raised in various ongoing public complaint proceedings regarding American Efficient's compliance with PJM's market rules.⁷⁹ Enforcement therefore concluded that American Efficient's otherwise confidential submission could be disclosed as *ex parte* communications.⁸⁰

D. Settlements

1. EWP Renewable Corp.

On December 23, 2024, FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and EWP Renewable Corporation

70. *Id.*

71. *Id.*

72. *See, e.g., Jarkesy*, 144 S. Ct. 2117.

73. *Am. Efficient, LLC*, Unopposed Motion of Respondents to Extend Answer Deadline, FERC Docket No. IN24-2-000 (Dec. 17, 2024) [hereinafter *Am. Efficient Motion*].

74. *Am. Efficient, LLC*, Notice of Extension of Time, FERC Docket No. IN24-2-000 (Dec. 26, 2024).

75. *Am. Efficient Motion*, *supra* note 73, at 2.

76. *See generally* 189 FERC ¶ 61,196, app. A, at 102-41.

77. *See id.*

78. *Id.* at P 6.

79. *Id.*

80. 189 FERC ¶ 61,196, at P 6 (referencing FERC Docket Nos. EL24-113, EL24-118, EL24-124, and EL24-126).

(EWP).⁸¹ The order resolved allegations arising out of EWP's participation in the ISO-New England, Inc. (ISO-NE) capacity market in 2019 and 2020.⁸²

Enforcement found that EWP owned and operated through a subsidiary the "Hemp Hill biomass generator" (Hemp Hill) located in Springfield, New Hampshire.⁸³ The Hemp Hill generator consists of a single steam turbine with a maximum net output of 17.5 MW.⁸⁴ "It generates electricity by burning woody biomass such as wood chips, pellets, and sawdust."⁸⁵ Hemp Hill was a cleared capacity resource in the ISO-NE capacity market and was thus paid for that capacity.⁸⁶ It had a corresponding obligation to submit offers into the ISO-NE energy market for the same MW level at which it had sold capacity and based on the then-known unit operating characteristics.⁸⁷

Enforcement alleged that EWP did not respond to efforts by ISO-NE to learn of the availability of Hemp Hill on specific days and on other occasions provided incorrect information about availability in its offers into the ISO-NE energy market or otherwise, including an instance when its boiler was not licensed by the state of New Hampshire, and thus, the plant could not operate.⁸⁸

Enforcement alleged that these actions violated several provisions of the ISO-NE tariff, specifically provisions of "Market Rule 1 of the ISO-NE Tariff" found at section III.1.10.2(d) of the tariff.⁸⁹ Enforcement also found the conduct violated 18 C.F.R. § 35.41(a), the Commission's "Market Behavior Rule" on unit operation.⁹⁰

EWP neither admitted nor denied the allegations and agreed pay a civil penalty of \$722,000 to the United States Treasury and to pay \$259,669 in disgorgement to ISO-NE.⁹¹ EWP also agreed to submit an annual compliance monitoring report to Enforcement for at least one year.⁹²

2. Sonoran West Solar Holdings, LLC

On December 5, 2024, FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and Sonoran West Solar Holdings, LLC and Sonoran West Solar Holdings 2, LLC (collectively, the Sonoran Entities) related to allegations that the Sonoran Entities violated the California Independent System Operator (CAISO) Tariff or FERC's regulations in connection with oper-

81. *EWP Renewable Corporation*, 189 FERC ¶ 61,233 at P 1 (2024).

82. *Id.*

83. *Id.* at P 3.

84. *Id.*

85. 189 FERC ¶ 61,233, at P 3.

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

87. *Id.* at PP 5-6.

88. *Id.* at PP 9-11.

89. 189 FERC ¶ 61,233, at PP 19-26.

90. *Id.* at P 27.

91. *Id.* at PP 29-31.

92. *Id.* at P 32.

ating the Crimson 1 and Crimson 2 battery energy storage systems during the period from October 1, 2022 through February 17, 2023 (Relevant Period).⁹³ This investigation “arose out of a referral from the CAISO Department of Market Monitoring.”⁹⁴

Under CAISO’s Tariff, when a battery submits a Day-Ahead bid, it has the option of forecasting its State of Charge (SOC) at the beginning of the next operating day, which is called the battery’s “Initial State of Charge” or “Day-Ahead Initial State of Charge.”⁹⁵ CAISO’s market engines model the Day-Ahead Initial SOC as a physical constraint, which it would consider when determining what awards a battery would be eligible to receive.⁹⁶ The Maximum Stored Energy parameter is also a physical constraint and is the maximum energy that can be held by a battery resource when charging or discharging.⁹⁷

Enforcement found that during the Relevant Period, the Sonoran Entities frequently submitted biddable Initial SOC parameters that reflected a value other than the actual SOC the batteries were forecasted to hold at the start of the real time market.⁹⁸ Enforcement also found that the values submitted indicated that the batteries would be available to receive discharge awards when the batteries were at lower charge levels.⁹⁹

Additionally, Enforcement determined that during the Relevant Period, the Sonoran Entities submitted outage cards including Maximum Stored Energy of zero MWh on at least four different dates.¹⁰⁰ As a result, the Sonoran Entities received Day-Ahead awards to discharge their energy prior to such outages.¹⁰¹

Enforcement determined that the Sonoran Entities received Day-Ahead Awards they would not have otherwise received had they submitted accurate Initial SOC and Maximum Stored Energy values.¹⁰² Enforcement found that the Sonoran Entities received Bid Cost Recovery payments totaling \$2,473,265 from CAISO associated with these submissions.¹⁰³

Enforcement determined that the Sonoran Entities’ Initial SOC values and Maximum Stored Energy values submitted to CAISO during the Relevant Period were false and misleading, violating 18 C.F.R. § 35.41(b).¹⁰⁴ Additionally, Enforcement found that the Sonoran Entities violated CAISO Tariff section 30.5.6.1 because the Initial SOC information did not reflect a “forecasted starting physical

93. *Sonoran West Solar Holdings, LLC*, 189 FERC ¶ 61,174 (2024).

94. *Id.* at P 19.

95. *Id.* at P 6.

96. *Id.* at P 10.

97. 189 FERC ¶ 61,174, at P 11.

98. *Id.* at P 12.

99. *Id.* at P 13.

100. *Id.* at P 15.

101. 189 FERC ¶ 61,174, at P 17.

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

103. *Id.* at P 18.

104. *Id.* at PP 23-24, 25.

position.”¹⁰⁵ Enforcement also determined that the Initial SOC information did not reflect the Sonoran Entities’ reasonably expected availability of the batteries, in violation of CAISO Tariff section 37.3.1.1.¹⁰⁶

The Sonoran Entities neither admitted nor denied the alleged violations.¹⁰⁷ The Sonoran Entities agreed to disgorge \$2,473,265, plus interest, to CAISO to be allocated by CAISO, subject to Enforcement’s approval, and to pay a civil penalty of \$1,000,000 to the United States Treasury.¹⁰⁸ Additionally, the Sonoran Entities agreed to provide compliance training to its personnel and provide one annual compliance monitoring report to Enforcement, with a possible second annual report subject to Enforcement’s discretion.¹⁰⁹

3. Public Service Electric and Gas Company

On December 5, 2024, FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and Public Service Electric and Gas Company (PSE&G).¹¹⁰ The order resolved allegations that PSE&G violated 18 C.F.R. § 35.41(b) of the Commission’s regulations by failing to fully and accurately provide information to PJM Interconnection, LLC (PJM) in connection with a request for approval of a \$546 million transmission line replacement project under PJM’s Regional Transmission Expansion Plan process.¹¹¹

Enforcement found that in 2017 and 2018 PSE&G provided PowerPoint presentations to PJM staff relating to the proposed transmission project that contained incomplete or inaccurate information about the condition of the existing line most of which was more than ninety-years old.¹¹²

Enforcement concluded this violated 18 C.F.R. § 35.41(b).¹¹³ Enforcement did not challenge the decision by PSE&G that the existing line was at the end of its life and sought no disgorgement.¹¹⁴

PSE&G neither admitted nor denied the violations and agreed to pay a civil penalty of \$6,600,000 to the United States Treasury and be subject to compliance monitoring for at least one year and possibly two.¹¹⁵

4. Montpelier Generating Station, LLC and Rockland Capital, LP

On December 6, 2024, FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and Montpelier Generating Station,

105. 189 FERC ¶ 61,174, at P 24.

106. *Id.*

107. *Id.* at P 2.

108. *Id.* at PP 2, 27-28.

109. 189 FERC ¶ 61,174, at PP 30, 35.

110. *Public Service Electric and Gas Company*, 189 FERC ¶ 61,175 (2024).

111. *Id.*

112. *Id.* at PP 10, 11.

113. *Id.* at P 36.

114. 189 FERC ¶ 61,175, at P 30.

115. *Id.* at PP 39, 40.

LLC (Montpelier) and Rockland Capital, LP (Rockland) (collectively, the Companies) related to allegations that the Companies violated the PJM Interconnection Tariff and the Commission's Market Behavior Rule by classifying a Forced Outage as a Maintenance Outage in submissions to PJM during the period October 25, 2022, through January 11, 2023 (Relevant Period), causing Montpelier to avoid Performance Assessment Interval (PAI) penalties during Winter Storm Elliot in December 2022.¹¹⁶

PJM assesses resources' performance during defined emergency periods, and resources with a performance shortfall pay PAI penalties.¹¹⁷ However, resources with a PJM-approved Planned or Maintenance Outage are excused from paying PAI penalties.¹¹⁸

Enforcement found that on the morning of October 25, 2022, Montpelier Unit 2, which is owned by Rockland, tripped offline due to high vibrations.¹¹⁹ Montpelier then submitted a ticket to PJM with the Outage Type "Unplanned Outage/Derate" and a reduction of its entire capacity.¹²⁰ Enforcement also found that later that day, Montpelier entered a new outage ticket to PJM with the Outage Type "Maintenance Outage/Derate."¹²¹ Montpelier then inspected its unit and determined that the turbine with the vibration issue was damaged but encountered numerous delays in repairing the damaged turbine.¹²² Enforcement determined that Montpelier submitted a series of extensions to PJM of the second outage ticket with the Outage Type "Maintenance Outage/Derate" spanning the period November 1, 2022, through January 11, 2023.¹²³

Enforcement further found that because Montpelier Unit 2 had classified its Outage Type as "Maintenance Outage/Derate" and not "Unplanned Outage/Derate," PJM did not assess it penalties for failing to perform during PAI periods on December 23 and 24, 2022.¹²⁴

Enforcement determined that by failing to notify the Office of the Interconnection that Montpelier Unit 2 had suffered a Forced Outage, rather than a Maintenance Outage, and by failing to make a record of the events and circumstances giving rise to the Generator Forced Outage, the Companies violated PJM Tariff Attachment K, section 1.9.4(a).¹²⁵ "Enforcement determined that the outage should have continued to have been classified as an 'Unplanned Outage/Derate,'" as defined in PJM Manual 10, section 2.4.¹²⁶

116. *Montpelier Generating Station, LLC and Rockland Capital, LP*, 189 FERC ¶ 61,185 (2024).

117. *Id.* at P 9.

118. *Id.*

119. *Id.* at PP 3, 5.

120. 189 FERC ¶ 61,185, at P 5.

121. *Id.* at P 7.

122. *Id.* at P 8.

123. *Id.* at P 8.

124. 189 FERC ¶ 61,185, at P 11.

125. *Id.* at P 17.

126. *Id.*

Enforcement determined that the Companies violated section 35.41(b) of the Commission's regulations when it submitted a ticket to PJM that inaccurately classified Montpelier's outage during the Relevant Period.¹²⁷

The Companies neither admitted nor denied the alleged violations.¹²⁸ Montpelier agreed to pay a civil penalty of \$105,000 to the United States Treasury and to pay \$674,074 in disgorgement plus \$84,690 in interest to PJM.¹²⁹ The Companies agreed to "submit annual compliance monitoring reports to Enforcement . . . for two years with a third year at Enforcement's discretion."¹³⁰

5. Big Rivers Elec. Corp.

On September 5, 2024, FERC approved a Stipulation and Consent Agreement between Enforcement and Big Rivers Electric Corporation (BREC) regarding BREC's alleged violations of the Commission's Anti-Manipulation Rule through its communications with the Midcontinent Independent System Operator, Inc. (MISO) and MISO's Independent Market Monitor (IMM) and through its offers to MISO between June and July of 2023.¹³¹

Enforcement found that BREC had offered its generating station, known as Green 2, into the MISO capacity auction for the 2023 season, and its offer cleared.¹³² In June of 2023, MISO had implemented a new rule under which units on planned outage for more than thirty-one days, during the summer capacity season, starting June 1, would incur Capacity Replacement Non-Compliance Charges (CRNCCs) unless the unit acquired replacement capacity.¹³³ BREC went into a planned outage on April 15, 2023.¹³⁴ Thus, the planned outage allowance period under the revised rules would have expired on July 1, 2023.¹³⁵ Enforcement found that rather than incurring CRNCCs for taking a longer planned outage that would last into July, BREC went into a forced outage from June 29 to July 6, 2023.¹³⁶

Additionally, from July 6 through July 25, 2023, BREC offered Green 2 into MISO as fully available despite having removed a key fan motor for repairs.¹³⁷ On July 25, MISO gave the plant a Day Ahead award for its full availability, but the plant was only able to achieve a total output of 105 MW, rather than its full 223 MW.¹³⁸ Enforcement found that BREC subsequently entered a derate from July 26 through July 31.¹³⁹ Enforcement determined that when questioned by

127. *Id.* at PP 18-19.

128. 189 FERC ¶ 61,185, at P 2.

129. *Id.* at PP 22-23.

130. *Id.* at P 24.

131. *Big Rivers Electric Corporation*, 188 FERC ¶ 61,155 (2024); see 18 C.F.R. § 1c.2 (a) (2006) (Anti-Manipulation Rule).

132. *Id.* at P 6.

133. *Id.* at P 7.

134. *Id.* at P 8.

135. 188 FERC ¶ 61,155, at P 8.

136. *Id.* at P 13.

137. *Id.* at P 15.

138. *Id.* at PP 15-16.

139. 188 FERC ¶ 61,155, at P 16.

MISO's IMM about the outages and derate, BREC provided conflicting information regarding the fan motor failure, inaccurately suggesting the failure occurred later than it did.¹⁴⁰

Enforcement determined that BREC violated the Anti-Manipulation Rule by (1) falsely telling MISO its planned outage ended on a certain date and that other outages were forced; (2) submitting offers to MISO for Green 2 at full capacity when BREC knew or was reckless in not knowing the plant could not run at full availability; and (3) submitting false and misleading information to the MISO IMM.¹⁴¹

BREC neither admitted nor denied the allegations.¹⁴² BREC agreed to pay a civil penalty of \$336,870 to the United States Treasury and to disgorge \$308,341 to MISO.¹⁴³ BREC agreed to provide training to its compliance personnel, to review its compliance procedures for potential improvements, and to submit one annual compliance monitoring report, with a possible second annual report at Enforcement's request.¹⁴⁴

6. Arlington Energy Ctr. III, LLC

On August 8, 2024, The Commission approved a Stipulation and Consent Agreement between Enforcement and Arlington Energy Center III, LLC; Blythe Solar 110, LLC; Blythe Solar III, LLC; Blythe Solar IV, LLC; Desert Sunlight 250, LLC; Sunlight Storage, LLC; and McCoy Solar, LLC (the Companies).¹⁴⁵ The order resolved Enforcement's investigation into whether the Companies violated the CAISO Tariff by deviating from CAISO dispatch instructions during the period between January 1, 2022 and September 1, 2023 (the Relevant Period).¹⁴⁶ Enforcement initiated its investigation based on a referral from the CAISO Market Monitor.¹⁴⁷

Enforcement determined that the Companies each operate co-located solar and battery facilities that function as separate resources but share a common Point of Interconnection (POI).¹⁴⁸ The facilities are prohibited from producing above the "POI limit" set forth in their respective interconnection agreements.¹⁴⁹ The POI limit was set significantly below the combined maximum potential output for each facility.¹⁵⁰

Enforcement determined that in December 2021 CAISO modified its tariff to prevent co-located battery facilities from deviating from dispatch instructions

140. *Id.*

141. *Id.* at P 24

142. *Id.* at P 2.

143. 188 FERC ¶ 61,155, at P 2.

144. *Id.*

145. Arlington Energy Center III, LLC et al., 188 FERC ¶ 61,117 (2024).

146. *Id.* at P 1.

147. *Id.* at P 8.

148. *Id.* at P 3.

149. 188 FERC ¶ 61,117, at P 3.

150. *Id.* at P 4.

from CAISO.¹⁵¹ Enforcement further determined that the Companies did not update their software to comply with this tariff change.¹⁵² As a result, during the Relevant Period, when the combined output of the facilities approached the POI limit, the programmable logic controllers (PLCs) at the facilities curtailed the battery facility (even during times when the batteries had received ancillary services awards), allowing the solar facility to continue to deliver its output to the CAISO grid.¹⁵³

Enforcement determined that there were 3,835 five-minute intervals during the Relevant Period where the battery facilities deviated from dispatch instructions while holding ancillary services awards.¹⁵⁴ Enforcement determined that the companies' software curtailment policy enabled them to accrue additional revenue in the amount of \$381,724 from solar output when the solar resources should have been curtailed.¹⁵⁵

The Companies stipulated to the facts and admitted the violations.¹⁵⁶ The Companies agreed to pay a civil penalty of \$105,000 to the U.S. Treasury and to disgorge \$381,724 to CAISO.¹⁵⁷ In addition, the Companies agreed to submit one annual compliance monitoring report, with a possible second annual report at Enforcement's discretion.¹⁵⁸

7. Vista Energy Storage, LLC

On August 6, 2024, FERC approved a Stipulation and Consent Agreement between Enforcement and Vista Energy Storage, LLC (Vista), following an investigation into whether Vista violated the CAISO Tariff by submitting bids for ancillary services into CAISO when its battery facility was not reasonably expected to be available and capable of performing at the levels specified in the bids.¹⁵⁹ The investigation focused on thirty-three days during the summer of 2022 (the Relevant Period).¹⁶⁰

Enforcement determined that Vista, a subsidiary of REV Renewables, LLC, operates a 40 MW battery that can fully charge or discharge within an hour.¹⁶¹ Vista offers both Energy and Ancillary Services into CAISO.¹⁶² Enforcement determined that during the Relevant Period Vista repeatedly submitted Initial SOC

151. *Id.* at P 5.

152. *Id.* at P 6.

153. 188 FERC ¶ 61,117, at P 7.

154. *Id.* at P 9.

155. *Id.* at P 10.

156. *Id.* at P 16.

157. 188 FERC ¶ 61,117, at PP 17-18.

158. *Id.* at PP 16-21.

159. *Vista Energy Storage, LLC*, 188 FERC ¶ 61,112 (2024).

160. *Id.* at P 1.

161. *Id.* at PP 1, 4.

162. *Id.* at P 10.

forecasts as part of its bid for Regulation Down awards,¹⁶³ projecting that its battery's SOC would be lower than it knew or should have known would be possible.¹⁶⁴ Specifically, Vista projected an Initial SOC of 4 MWh or lower as part of its Regulation Down bids, while the Regulation Down requirements necessitated a higher SOC to perform as bid.¹⁶⁵ This practice led to frequent conflicts between the operation of the Regulatory Down product (which seeks to charge the battery) and CAISO's Ancillary Service SOC constraint (which seeks to discharge batteries to keep their SOC at a certain level so the battery can perform its Awards).¹⁶⁶ As a result of this conflict, Vista's battery was frequently discharged to make Vista's Regulation Down Awards achievable.¹⁶⁷ CAISO was at the time required to pay Vista for these discharges (Bid Cost Recovery payments) at Vista's bid prices, which often exceeded the CAISO Locational Marginal Price.¹⁶⁸

Enforcement determined that Vista's bidding practice violated CAISO Tariff section 37.3.1.1, which requires that bids must reflect a resource's reliable availability.¹⁶⁹ Enforcement found that Vista's practice likely allowed it to secure greater compensation than would have been achievable with accurate Initial SOC values — Enforcement found that Vista received around \$1.485 million in Bid Cost Recovery payments and approximately \$185,000 in Regulation Down awards during the relevant period.¹⁷⁰

Vista neither admitted nor denied the alleged violations.¹⁷¹ Vista agreed to a civil penalty of \$1,000,000 to the U.S. Treasury and to disgorge \$1,670,000 to CAISO.¹⁷² Vista also agreed to submit one annual compliance monitoring report, with a possible second report at Enforcement's discretion.¹⁷³

8. SunSea Energy, LLC

On June 28, 2024, FERC approved a Stipulation and Consent Agreement between Enforcement and SunSea Energy, LLC (SunSea) regarding allegations that SunSea failed to timely disclose the existence of regulatory investigations that could materially impact its financial condition, in violation of section 26.2.1.3 of the New York Independent Systems Operator's (NYISO) Market Administration and Control Area Services Tariff and FERC's Market Behavior Rule, 18 C.F.R. § 35.41(b).¹⁷⁴

163. 188 FERC ¶ 61,112, at P 11 ("Regulation is a type of Ancillary Service"); *see also id.* ("With Regulation Down [Awards], the grid operator changes its directives to the battery to reduce the total amount of energy on the grid" while Regulation Up increases the amount of energy on the grid.).

164. *Id.* at PP 19-23.

165. *Id.* at P 19.

166. *Id.* at P 21.

167. 188 FERC ¶ 61,112, at P 22.

168. *Id.* at P 22.

169. *Id.* at P 25.

170. *Id.*

171. 188 FERC ¶ 61,112, at P 29.

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

173. *Id.* at PP 27-29.

174. *SunSea Energy, LLC*, 187 FERC ¶ 61,225 (2024).

Enforcement determined that from December 2020 to May 2021, SunSea was subject to a series of investigations by the NYPSC related to its customer enrollment and marketing practices as an energy service company (ESCO).¹⁷⁵ These investigations led to multiple NYPSC orders, including a December 2020 show cause order requiring SunSea to justify its eligibility to operate as an ESCO in New York and a May 2021 order revoking SunSea's ESCO eligibility, effectively barring it from operations in the state.¹⁷⁶ Despite these regulatory actions and their potential financial implications, SunSea did not disclose the NYPSC investigations in its 2021 Credit Questionnaire Form (CQF) response to NYISO. Instead, SunSea marked the relevant disclosure field as "N/A."¹⁷⁷

Enforcement found that SunSea's failure to disclose these regulatory investigations violated section 26.2.1.3 of NYISO's Tariff, which requires transparency regarding ongoing investigations with potential material impact on financial condition.¹⁷⁸ Additionally, Enforcement determined that SunSea violated section 35.41(b) of FERC's regulations by failing to exercise candor in its communications with a FERC-approved entity.¹⁷⁹

SunSea neither admitted nor denied the alleged violations.¹⁸⁰ SunSea agreed to pay a civil penalty of \$5,000 to the United States Treasury.¹⁸¹

9. Josco Energy Corp.

On June 28, 2024, FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and Josco Energy Corp. (Josco) related to allegations that Josco failed to timely inform NYISO of the existence of ongoing investigations by the New York Public Service Commission (NYPSC) that could have a material impact on its financial condition.¹⁸²

Enforcement determined that from October 2020 to May 2021, Josco was subject to a series of investigations by NYPSC related to Josco's marketing and enrollment practices as a retail competitive energy services provider in New York.¹⁸³ NYISO requires customers to complete an annual CQF that includes a request for information regarding any ongoing investigations.¹⁸⁴ Enforcement determined that in its April 7, 2021 response to the CQF, Josco did not disclose that it was under investigation before the NYPSC.¹⁸⁵ Following this submission, in May of 2021, the NYPSC revoked Josco's eligibility to serve retail customers in

175. *Id.* at PP 3-4.

176. *Id.* at PP 5, 8-9.

177. *Id.* at P 7.

178. 187 FERC ¶ 61,225, at P 12.

179. *Id.* at P 14.

180. *Id.* at P 2.

181. *Id.* at P 2.

182. *Josco Energy Corp.*, 187 FERC ¶ 61,221 (2024).

183. *Id.* at P 4.

184. *Id.* at P 7.

185. *Id.*

New York.¹⁸⁶ On May 24, 2021, NYISO issued a formal notice of default to Josco for failure to disclose the NYPSC investigations in its CQF.¹⁸⁷

Enforcement determined that Josco violated section 26.2.1.3 of the credit reporting provisions of NYISO's Tariff by failing to timely disclose the NYPSC investigations in its April 7, 2021 CQF submission.¹⁸⁸ Additionally, Enforcement found that Josco's failure to disclose the NYPSC investigations, which it stated could have a material impact on Josco's financial condition, violated section 35.41(b) of FERC regulations.¹⁸⁹

Josco neither admitted nor denied the alleged violations.¹⁹⁰ Josco agreed to pay a civil penalty of \$5,000 to the United States Treasury.¹⁹¹

10. Galt Power Inc.

On June 28, 2024, FERC approved a Stipulation and Consent Agreement between Enforcement, Galt Power Inc. (Galt) and, for certain obligations, Customized Energy Solutions Ltd. (Customized)¹⁹² related to allegations that Galt violated FERC's Anti-Manipulation Rule¹⁹³ and section 222 of the FPA¹⁹⁴ by repeatedly engaging in prohibited wash trades between July 8, 2016, and April 23, 2019 (the Relevant Period).¹⁹⁵

Enforcement determined that both before and during the Relevant Period, Galt, on behalf of its clients, exported energy generated by two wind farms from the NYISO into ISO-NE to generate "Class I" Renewable Energy Credits (RECs) under the Massachusetts Renewable and Alternative Energy Portfolio Standard Program (the Program).¹⁹⁶

Enforcement determined that in July of 2016, the New England Power Pool Generation Information System (NEPOOL GIS), which creates and tracks Class I RECs, introduced a new "hourly netting" policy that would greatly reduce Galt's profitability under its previous Class I REC bidding strategy.¹⁹⁷ Enforcement alleged that following the implementation of this new policy, Galt devised a plan to offset its energy exports from ISO-NE to NYISO in the same quantities and for the same time intervals of the NYISO to ISO-NE exports.¹⁹⁸ When questioned by an APX, Inc. (APX, the operator of NEPOOL GIS) employee regarding some of

186. 187 FERC ¶ 61,221, at P 8.

187. *Id.* at P 10.

188. *Id.* at PP 12-13.

189. *Id.* at P 14.

190. 187 FERC ¶ 61,221, at P 2.

191. *Id.*

192. *Galt Power Inc.*, 187 FERC ¶ 61,224 at P 6 (2024) ("Galt was formed to assist Customized's clients with participating in the wholesale electric markets."); *see also id.* at P 5 ("Galt's minority owner is an employee of Customized.").

193. *See, e.g.*, 18 C.F.R. § 1c.2 (2024).

194. *See, e.g.*, 16 U.S.C. § 824v (2024).

195. 187 FERC ¶ 61,224, at P 1.

196. *Id.* at P 16.

197. *Id.* at PP 20-22.

198. *Id.* at P 24.

the offsetting trades in 2017, Enforcement alleged that Galt employees attempted to conceal the relationship between the trades by stating that they believed the schedules were erroneously tagged.¹⁹⁹

Enforcement found that Galt repeatedly executed “prearranged offsetting trades of the same product among the same parties, which involved no economic risk and no net change in beneficial ownership.”²⁰⁰ Accordingly, Enforcement determined that Galt violated the Commission’s Anti-Manipulation Rule — 18 C.F.R. § 1c.2 (2024) — and section 222 of the FPA by engaging in wash trades.²⁰¹ Enforcement also found that Galt violated the Anti-Manipulation Rule by making untrue statements of material fact to APX in connection with the jurisdictional wash trades.²⁰²

Galt neither admitted nor denied the alleged violations.²⁰³ Galt agreed to pay a civil penalty of \$1,500,000 to the United States Treasury and \$372,297.85 in disgorgement and interest to the Commonwealth of Massachusetts.²⁰⁴ Customized agreed to guarantee fully the penalty and disgorgement payments in the event Galt does not pay a portion or the entirety of the payments.²⁰⁵ Additionally, Galt and Customized agreed to submit to two annual compliance-monitoring reports, with a possible third annual compliance monitoring report, subject to Enforcement’s discretion.²⁰⁶

11. ENGIE Energy Mktg. NA, Inc.

On May 20, 2024, FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and ENGIE Energy Marketing NA, Inc. (EEMNA) related to EEMNA’s request for exemptions from energy market mitigation between July 2021 and September 2022 (Relevant Period).²⁰⁷

Enforcement determined that during the Relevant Period, EEMNA routinely requested that one or more of its assets be exempted from market mitigation by the ISO-NE Internal Market Monitor (IMM).²⁰⁸ Under the ISO-NE Tariff, Market Participants submitting offers for Forward Reserve Resources are required to bid their resources at or above the “Forward Reserve Threshold Price” — a deliberately elevated price — or face a penalty.²⁰⁹ At the same time, the IMM is required to mitigate certain elevated supply offers, even where such mitigation could result in a penalty for falling below the Forward Reserve Threshold Price.²¹⁰ In 2015,

199. 187 FERC ¶ 61,224, at P 41.

200. *Id.* at P 36 (quoting Market Behavior Rules Order, 105 FERC ¶ 61,218 at PP 46, 52).

201. *Id.*

202. *Id.* at PP 39, 41.

203. 187 FERC ¶ 61,224, at P 2.

204. *Id.* at PP 44-45.

205. *Id.*

206. *Id.* at P 46.

207. *ENGIE Energy Marketing NA, Inc.*, 187 FERC ¶ 61,084 (2024).

208. *Id.* at P 5.

209. *Id.* at P 6.

210. *Id.*

the IMM issued a pair of memoranda that listed six conditions a Market Participant must meet for the IMM to consider not applying mitigation in instances where mitigation would otherwise be warranted.²¹¹ Market Participants satisfying all the listed conditions may submit a request to the IMM asking it not apply energy market mitigation, but are required to attest as part of their application that (among other things) all the conditions described in the IMM guidance are satisfied.²¹² Enforcement determined that, on numerous occasions, EEMNA submitted exemption requests containing false attestations that all six conditions were satisfied.²¹³

Enforcement determined that EEMNA violated 18 C.F.R. § 35.41(b), which prohibits a Seller from submitting false or misleading information, or omitting material information, in any communication with a Commission-approved market monitor “unless Seller exercises due diligence to prevent such occurrences.”²¹⁴ Enforcement found that because EEMNA failed to take sufficient steps, employ a process to ensure accuracy of attestations, or exercise reasonable care to ensure accurate attestations, it did not exercise due diligence to prevent the misstatements to the IMM.²¹⁵

EEMNA neither admitted nor denied the violations.²¹⁶ EEMNA agreed to pay a civil penalty of \$48,000 and to submit one annual compliance monitoring report to Enforcement, with the potential for a second report subject to Enforcement’s discretion.²¹⁷

12. Smart One Energy LLC

On March 12, 2024, FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and Smart One Energy, LLC (Smart One) related to allegations that Smart One violated section 26.2.1.4 of the NYISO’s Market Administration and Control Area Services Tariff (Tariff) by failing to timely inform NYISO of sanctions imposed by two state public service utility commissions that had a material impact on its financial condition.²¹⁸

In 2019, NYISO began requiring its Customers/Applicants to submit an annual CQF, where it asked Customers/Applicants to list “any sanctions involving the Applicant/Customer, guarantor (if applicable), Principals, or traders of Applicant/Customer” that were imposed by “any state or provincial entity responsible for regulating activity in energy markets” where such sanctions “could foreseeably have a material financial impact on Applicant/Customer.”²¹⁹ Smart One marked the relevant disclosure field as “N/A” its 2020 and 2021 CQF.²²⁰

211. 187 FERC ¶ 61,084, at PP 7-8.

212. *Id.* a P 8.

213. *Id.* at P 14.

214. *Id.* at PP 12, 15; *see* 18 C.F.R. § 35.41(b) (2024).

215. 187 FERC ¶ 61,084, at P 16.

216. *Id.* at P 18.

217. *Id.* at PP 22-23.

218. *Smart One Energy, LLC*, 186 FERC ¶ 61,181 (2024).

219. *Id.* at P 5.

220. *Id.* at P.

Enforcement found that “[o]n May 21, 2021, NYISO’s Corporate Credit division was made aware that Smart One had been the subject of two separate investigations in Maryland and Virginia that culminated in sanctions imposed against Smart One.”²²¹ Specifically, the Maryland Public Service Commission (MPSC) suspended Smart One’s retail license to supply natural gas and ordered Smart One to pay a civil penalty of \$561,000 in 2019.²²² Additionally, in 2020, Smart One surrendered its Virginia competitive retail service provider license and terminated service to its customers as a result of a settlement with the Virginia State Corporation Commission (VSCC).²²³

Enforcement determined that after losing its customers in Maryland and Virginia, Smart One’s net sales decreased about 60%, assets decreased approximately 27%, cash decreased by around 80%, and net income declined by 80% from 2019 to 2020.²²⁴ Enforcement concluded that by failing to timely report these material changes in its financial condition, Smart One violated the requirement to “inform the ISO of any material change in its financial status within five (5) business days” under NYISO Tariff section 26.2.1.4.²²⁵

Smart One neither admitted nor denied any of the alleged violations.²²⁶ Smart One agreed to pay a civil penalty of \$5,000 to the United States Treasury.²²⁷

13. Vitol Inc.

On January 4, 2024, FERC issued an order approving a Stipulation and Consent Agreement between Enforcement and Vitol Inc. (Vitol) and Federico Corteggiano (Mr. Corteggiano) (together Defendants).²²⁸ It resolved:

- (i) the Commission’s claims against Defendants . . . for violations of the Commission’s Regulations and the [FPA] as set forth in the Commission’s October 25, 2019 Order Assessing Civil Penalties against Defendants and (ii) the Commission’s subsequent lawsuit captioned *FERC v. Vitol Inc. and Federico Corteggiano*, Case No.: 2:20-CV-00040-KJM-AC (E.D. Cal.) (Federal Court Lawsuit).²²⁹

The substance of the allegations in these proceedings was previously reported in prior editions of this publication and involved trading conduct in the CAISO markets pertaining to physical power imports and Congestion Revenue Rights.²³⁰

221. *Id.* at P 6.

222. 186 FERC ¶ 61,181, at P 7.

223. *Id.* at P 8.

224. *Id.* at P 14.

225. *Id.* at PP 12-14.

226. 186 FERC ¶ 61,181, at P 2.

227. *Id.* at P 17.

228. *Vitol Inc. and Federico Corteggiano*, 186 FERC ¶ 61,008 (2024).

229. *Id.* at P 1.

230. See, e.g., *Report of the Compliance and Enforcement Committee*, 42 Energy Law Journal 8-9 Online (2021), <https://www.eba-net.org/wp-content/uploads/2023/02/13-Compliance-EnforcementFinal.pdf>; *Report of the Compliance and Enforcement Committee*, 43 Energy Law Journal 2-4 Online (2022), <https://www.eba-net.org/wp-content/uploads/2023/02/14-Enforcement-and-Compliance-Report-Final.pdf>; *Report of the Compliance and Enforcement Committee*, 45 Energy Law Journal 3-4 Online (2024), <https://www.eba-net.org/wp-content/uploads/2024/05/13-CR-1.pdf>.

The Stipulation and Consent Agreement did not contain substantive fact stipulations. Instead, Enforcement and the Defendants stipulated to certain procedural facts.²³¹ The Defendants neither admitted nor denied the violations.²³² Vitol agreed to pay \$2,225,000 in civil penalties to the United States Treasury and Mr. Corteggiano agreed to pay \$75,000 in civil penalties to the United States Treasury.²³³ The Commission agreed to “dismiss with prejudice its claims against Defendants in the Federal Court Lawsuit.”²³⁴

14. Linde, Inc.

On January 4, 2024, FERC issued an order approving a Stipulation and Consent Agreement between the Office of Enforcement (Enforcement) and Linde Inc. (Linde) and Northern Indiana Public Service Company LLC (NIPSCO).²³⁵ The order resolved allegations arising out of Linde and NIPSCO’s participation in a MISO demand response program between August 2017 and July 2022.²³⁶

Enforcement found that Linde operates a large air separation facility known as the Calumet Area Pipeline Operations Center (CAPOC) in northwest Indiana and that Linde’s equipment at CAPOC requires as much as 330 MW to operate.²³⁷ “NIPSCO is a Load Serving Entity (LSE), providing distribution service to approximately 468,000 retail electric customers in Indiana.”²³⁸ “NIPSCO was the Market Participant for Linde’s participation in the demand response program.”²³⁹

Enforcement alleged violations of MISO Tariff section 38.2.5.d.ii.e, which requires “[a] Market Participant selling Energy . . . shall . . . (e) respond to the Transmission Provider’s directives to start, shutdown, or change output levels of Resources, in accordance with the terms specified in the Offer. . . .”²⁴⁰ Enforcement determined that “NIPSCO was (as the Market Participant for Linde) selling Energy, in the form of reduced energy usage, in MISO’s Day Ahead market.”²⁴¹ Enforcement determined that “Linde did not reduce energy consumption levels when MISO accepted its demand response offers.”²⁴² Instead, enforcement concluded that Linde operated at load levels based on its preplanned schedule.²⁴³ Enforcement concluded that “this conduct violated § 38.2.5(d)(ii)(e) of the MISO Tariff because Linde did not ‘respond to [MISO] directives to . . . change output levels’ by reducing its load below what it would otherwise have been.”²⁴⁴

231. 186 FERC ¶ 61,008, at PP 2-9.

232. *Id.* at P 2.

233. *Id.*

234. *Id.*

235. *Linde Inc. and Northern Indiana Public Service Company LLC*, 186 FERC ¶ 61,009 (2024).

236. *Id.*

237. *Id.* at P 5.

238. *Id.* at P 6.

239. 186 FERC ¶ 61,009, at P 1.

240. *Id.* at PP 19-21.

241. *Id.* at P 22.

242. *Id.* at P 20.

243. 186 FERC ¶ 61,009, at P 20.

244. *Id.* at P 21.

Linde and NIPSCO neither admitted nor denied the allegations. Linde agreed to disgorge \$48,500,000 it received through its conduct, pay a civil penalty of \$10,500,000 to the United States Treasury, and provide compliance training to all personnel involved if it intends to participate again as a DRR-1 asset in MISO.²⁴⁵ NIPSCO agreed to disgorge \$7,700,000 it received in connection with Linde's conduct and make an appropriate filing with the Indiana Utility Regulatory Commission (IURC) to ensure that NIPSCO customers receive a refund equivalent to the amount they were charged because of Linde's conduct.²⁴⁶

II. THE COMMODITY FUTURES TRADING COMMISSION

During fiscal year 2024, the CFTC resolved seven energy-related investigations via settlement, including three involving federal position limits and four addressing allegations of fraud or misleading statements.

A. *Energy-Related Enforcement Cases*

1. Aspire Commodities LLC

On September 25, 2024, the CFTC issued an order simultaneously filing and settling charges against Aspire Commodities LLC (Aspire), a commodities and derivatives trading firm, for allegedly "exceed[ing] the Federal spot-month speculative position limit for cash-settled reference contracts to the New York Mercantile Exchange's (NYMEX) physically-delivered Henry Hub Natural Gas (NG) futures contract" on seven occasions from 2022 to 2024.²⁴⁷ Aspire allegedly exceeded the Federal spot month speculative position limits in cash-settled NG futures contracts while utilizing the conditional limit exemption based on its failure to refrain from holding positions in the physically-delivered NYMEX NG contract during the final three trading days in the contract's spot month.²⁴⁸ The order found that from 2022 to 2024, Respondent violated section 4a(b)(2) of the Commodity Exchange Act (Act), 7 U.S.C. § 6a(b)(2), and Regulation 150.2, 7 C.F.R. § 150.2 (2023).²⁴⁹ Accordingly, the Order requires Aspire to cease and desist from further violations of the CEA and CFTC regulations and pay a civil monetary penalty in the amount of \$800,000.²⁵⁰

2. Merrill Lynch Commodities Inc.

On September 25, 2024, the CFTC issued an order simultaneously filing and settling charges against Merrill Lynch Commodities, Inc. (MLCI) for (1) allegedly exceeding the federal and ICE Futures U.S. position limits in contracts that reference natural gas futures traded on the NYMEX; and (2) allegedly having swap

245. *Id.* at PP 24-27.

246. *Id.* at PP 28-30.

247. *In re Aspire Commodities, LLC*, CFTC No. 24-30 at 1-2 (Sept. 25, 2024).

248. *Id.* at 4.

249. *Id.*

250. *Id.* at 6.

dealer supervision and position limit monitoring failures.²⁵¹ MLCI allegedly held positions in April 2023 ICE H contracts and May 2023 ICE H contracts in excess of both the Federal and Exchange speculative position limits.²⁵² MLCI, a swap dealer registered with the CFTC, allegedly failed to establish and enforce written policies and procedures reasonably designed to monitor and prevent violations of applicable federal, exchange, or swap execution facility position limits.²⁵³ This led MLCI to improperly rely on exemptions or exclusions from position limits in cases where the positions did not meet the requirements of the exemption or exclusion.²⁵⁴ Thus, the early warning system did not adequately take into consideration the limitations or conditions of the exemption granted by an exchange. Therefore, MLCI allegedly violated sections 4a(b)(2) and (e), and 4s(h)(1)(B) and (C) of the Act, 7 U.S.C. §§ 6a(b)(2), (e) and 6s(h)(1)(B), (C) and CFTC Regulations 23.601(a), 23.602(a), and 150.2, 17 C.F.R. §§ 23.601(a), 23.602(a), 150.2 (2023).²⁵⁵ The order requires MLCI to pay a \$1.5 million civil monetary penalty and cease and desist from further violations of the CEA and CFTC regulations as stated above.²⁵⁶

3. John Cartwright

On September 20, 2024, the CFTC filed a civil enforcement action in the U.S. District Court of the Southern District of Texas against John Cartwright for allegedly engaging in a fraudulent scheme to misappropriate material, nonpublic information from one of his employer's brokerage customers in certain natural gas futures contracts on the NYMEX.²⁵⁷ Cartwright allegedly provided a third-party nonpublic information from a customer regarding natural gas block trade orders, the third-party then entered into fictitious, non-arm's length trades with that customer and generated a profit, which was subsequently shared with Cartwright.²⁵⁸ Therefore, the complaint alleges that Cartwright violated section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Commission Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2023).²⁵⁹ As such, the CFTC seeks to have Cartwright disgorge all benefits and make full restitution to those who suffered losses from the acts described above, and pay a civil monetary penalty assessed by the court.²⁶⁰

251. *In re Merrill Lynch Commodities, Inc.*, CFTC No. 24-31 at 5-6 (Sept. 25, 2024).

252. *Id.* at 3.

253. *Id.* at 2.

254. *Id.*

255. *In re Merrill Lynch Commodities*, CFTC No. 24-31, at 7.

256. *Id.* at 8.

257. Complaint for Injunctive Relief, Civil Monetary Penalties, Restitution, Disgorgement, and Other Equitable Relief at 1, CFTC v. John Cartwright, No. 4:24-cv-3539 (S.D. Tex. Sept. 20, 2024), ECF No. 1.

258. *Id.* at 2.

259. *Id.* at 27.

260. *Id.* at 29.

4. Nasdaq Futures, Inc.

On August 28, 2024, the CFTC issued an order simultaneously filing and settling charges against the former Nasdaq Futures, Inc. (NFX), without the respondent admitting or denying the findings or legal conclusions, for: (1) allegedly failing to properly establish, monitor, or enforce rules related to an incentive program it offered to certain traders on its DCM; (2) allegedly failing to disclose the details of its incentive program to the CFTC or the public; and (3) allegedly having made false and misleading statements to the CFTC regarding the incentive program.²⁶¹ Specifically, NFX implemented a program that allegedly provided volume-based payments to its participants based on the amount of trades each participant placed on the exchange.²⁶² NFX allegedly failed to disclose the volume-based payments part of its program to the CFTC and the public, and allegedly made false and misleading statements to the CFTC about the existence of these volume-based payments.²⁶³ The CFTC alleged that “NFX violated Sections 5(d)(2), 5(d)(7), 5(d)(12), and 6(c)(2) of the Commodity Exchange Act, 7 U.S.C. §§ 7(d)(2), 7(d)(7), 7(d)(12), 9(2), and Commission Regulations 38.150, 38.154(c), 38.400, 38.401(b), 38.650, 38.651, 38.4(b), and 40.6, 17 C.F.R. §§ 38.150, 38.154(c), 38.400, 38.401(b), 38.650, 38.651, 38.4(b), 40.6 (2023).”²⁶⁴ The order required NFX to pay a \$22 million civil monetary penalty.²⁶⁵

5. TOTSA TotalEnergies Trading SA et al.

On August 27, 2024, the CFTC issued an order simultaneously filing and settling charges against TOTSA TotalEnergies Trading SA et al. (TOTSA), without the respondents admitting or denying the findings or legal conclusions, for allegedly attempting to manipulate the European Argus Eurobob Oxy (EBOB) market by depressing the value of EBOB to benefit its derivatives positions in violation of the Act and CFTC regulations.²⁶⁶ Specifically, TOTSA allegedly established a large short position in EBOB-linked futures and subsequently sold more physical EBOB than it ever had in a single month period and allegedly attempted to transact at below market value, which the CFTC asserted TOTSA should reasonably have known would depress the price of physical EBOB and benefit its short position.²⁶⁷ The CFTC found that TOTSA intentionally or recklessly attempted, through its sales of physical EBOB, to manipulate EBOB-linked futures contracts.²⁶⁸ The CFTC declared conduct violated section 6(c)(1) of the Act and C.F.R. § 180.1(a)(1).²⁶⁹ The Order required TOTSA to pay a \$48 million

261. *In re Nasdaq Futures, Inc.*, CFTC No. 24-20 at 1-2 (Aug. 28, 2024).

262. *Id.* at 2.

263. *Id.*

264. *Id.* at 6.

265. *In re Nasdaq Futures* CFTC No. 24-20, at 8.

266. *In re TOSTA TotalEnergies Trading SA*, CFTC No. 24-19 at 1-2 (Aug. 27, 2024).

267. *Id.* at 4, 5.

268. *Id.* at 6.

269. *Id.* at 8.

civil monetary penalty and cease and desist from violating the applicable statute and regulations.²⁷⁰

6. Vitol, Inc. et al.

On August 14, 2024, the CFTC issued an order simultaneously filing and settling charges against Vitol, Inc. and Vitol SA, without the respondents admitting or denying the findings or legal conclusions, for allegedly (1) on several days in May and June 2021, exceeding the CFTC's position limits on aggregate positions in the NYMEX WTI 1 Month Financial Calendar Spread Option and the IFED WTI 1 Month Calendar Spread (Financial Option), as equivalents to the NYMEX Physically Settled West Texas Intermediate (WTI) Crude Oil contracts; and (2) on one day in December 2022, exceeding the CFTC's position limits in live cattle futures contracts on the Chicago Mercantile Exchange.²⁷¹ The CFTC found that the respondents violated section 4a(b) of the Act, 7 U.S.C. §§ 6a(b), and 17 C.F.R. § 150.2 (2023), and required Vitol collectively to pay a \$500,000 civil monetary penalty.²⁷²

7. Trafigura Trading LLC

On June 17, 2024, the CFTC issued an order simultaneously filing and settling charges against Trafigura Trading, LLC (Trafigura), without the respondent admitting or denying the findings or legal conclusions, for allegedly (1) misappropriating nonpublic information; (2) manipulating a fuel oil benchmark to benefit its futures and swaps positions; and (3) impermissibly requiring former employees to sign non-disclosure agreements with no law enforcement or regulator exception.²⁷³ Trafigura allegedly obtained material nonpublic information related to physical gasoline sales from a Mexican trading entity and then traded gasoline while in knowing possession of that information.²⁷⁴ The order further alleges that Trafigura manipulated the benchmark price of U.S. Gulf Coast high-sulfur fuel oil by conducting heavy bidding and buying in a short period to benefit its long derivative position in U.S. Gulf Coast high-sulfur fuel oil.²⁷⁵ Finally, the order alleges that Trafigura impeded voluntary communications with the CFTC by requiring former employees to sign a non-disclosure agreement that did not contain an exception to voluntarily initiate disclosures of information to law enforcement or regulators such as the CFTC.²⁷⁶ The order found that Trafigura violated sections 6(c)(1) and 23(h)–(j) of the Act, 7 U.S.C. §§ 9(1) and 26(h)–(j), and Regulations 165.19 and 180.1(a)(1) and (3), 17 C.F.R. §§ 165.19 and 180.1(a)(1), (3) (2023).²⁷⁷

270. *In re TOSTA TotalEnergies Trading SA*, CFTC No. 24-19, at 9.

271. *In re Vitol, Inc. & Vitol SA*, CFTC No. 24-14 (Aug. 14, 2024).

272. *Id.* at 4-5.

273. *In re Trafigura Trading, LLC*, CFTC No. 24-08 at 2-3 (Jun. 17, 2024).

274. *Id.* at 4.

275. *Id.* at 5-6.

276. *Id.* at 6.

277. *In re Trafigura Trading, LLC*, CFTC No. 24-08, at 10.

The order required Trafigura to pay a \$55 million civil monetary penalty and implement certain remedial measures to provide future compliance with the CEA and CFTC regulations.²⁷⁸

III. THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

In 2024, NERC submitted notices of penalty to the FERC regarding eighteen violations of reliability standards, for which registered entities agreed to pay roughly \$4.78 million in penalties.²⁷⁹ This represents a decrease from the number of violations identified in notices of penalty during the previous year and a decrease in the dollar value of penalties collected.²⁸⁰

IV. PIPELINE & HAZARDOUS MATERIALS SAFETY ADMINISTRATION

The PHMSA initiated 181 enforcement cases in 2024, a decrease from 198 cases initiated in 2023.²⁸¹ PHMSA also closed 175 enforcement actions in 2024, down from 185 actions closed in 2023.²⁸² PHMSA actively employed its civil penalty authority, proposing approximately \$3.6 million in penalties across forty-one civil penalty cases, down from approximately \$12.6 million across forty-seven civil penalty cases in 2023.²⁸³

V. THE DEPARTMENT OF ENERGY

DOE enforcement activities fall within three categories. “Conservation standards cases deal with manufacturers that distributed products in the U.S. that DOE has found do not meet the required energy standards.”²⁸⁴ “Compliance certification cases deal with manufacturers that either have not certified that the products that they manufacture and distribute in the U.S. have been tested and meet the applicable energy conservation standards or have submitted invalid compliance certifications.”²⁸⁵ Finally, DOE continues to support the enforcement of the Environmental Protection Agency’s ENERGY STAR appliance rating program. However, the DOE Office of the General Counsel’s (GC) practice is now to refer

278. *Id.* at 11-13.

279. NERC, ENFORCEMENT AND MITIGATION — SEARCHABLE SPREADSHEET, <https://www.nerc.com/pa/comp/CE/Pages/Enforcement-and-Mitigation.aspx> (scroll to “Enforcement and Mitigation – Current Year”; then click “Searchable Spreadsheet”) (last visited May 4, 2025).

280. *Id.*

281. U.S. DEP’T OF TRANSP., SUMMARY OF ENFORCEMENT ACTIVITY-NATIONWIDE, <https://primis.phmsa.dot.gov/enforcement-data/summaries> (last visited Mar. 2, 2025).

282. *Id.*

283. U.S. DEP’T OF TRANSP., SUMMARY OF CASES INVOLVING CIVIL PENALTIES, <https://primis.phmsa.dot.gov/enforcement-data/civil-penalties/cases-initiated> (last visited Mar. 2, 2025).

284. U.S. DEP’T OF ENERGY, ENFORCEMENT CASES, <https://www.energy.gov/gc/enforcement-cases> (last visited Mar. 2, 2025).

285. *Id.*

“to the EPA any products DOE tests that do not meet the ENERGY STAR specification.”²⁸⁶ DOE GC has not initiated new ENERGY STAR enforcement actions of its own since 2015.²⁸⁷

DOE’s enforcement activity in 2024 increased slightly compared to 2023, with the agency’s GC resolving twelve conservation standards noncompliance cases²⁸⁸ and thirty-eight compliance certification enforcement cases.²⁸⁹

VI. THE DEPARTMENT OF JUSTICE

A. *Evaluation of Corporate Compliance Programs*

On September 23, 2024, the Criminal Division published revised guidance on the Evaluation of Corporate Compliance Programs (ECCP).²⁹⁰ The 2024 revisions to the ECCP emphasize DOJ’s expectation that companies should (1) manage risks related to the use of new technology such as artificial intelligence in their operations and compliance programs; (2) actively promote internal whistleblowing and safeguard individuals who report misconduct; (3) sufficiently resource and fund compliance programs and ensure that the programs have access to the data and technology necessary to detect and mitigate risks; (4) have compliance programs and employee training that evolve based on lessons learned from both the company’s own prior conduct and from issues at other companies in related industries and geographies; and (5) have compliance functions involved in M&A activity, in particular post-transaction integration.²⁹¹

B. *Corporate Whistleblower Awards Pilot Program*

On August 1, 2024, DOJ launched a new, three-year Corporate Whistleblower Awards Pilot Program (Pilot Program) to incentivize and reward individuals who report corporate wrongdoing.²⁹² The Pilot Program is DOJ’s first whistleblower rewards program and modeled on whistleblower programs run by the SEC, CFTC, and FinCEN. Eligible whistleblowers may receive a portion of the “net proceeds forfeited” as a result of “original” information provided. The award amount is at DOJ’s discretion and is only available if the report: (1) relates to specific focus areas identified by DOJ and not covered by other federal programs;

286. *Id.*

287. U.S. DEP’T OF ENERGY, SUPPORT FOR ENERGY STAR ENFORCEMENT, <https://www.energy.gov/gc/support-energy-star-enforcement> (last visited Mar. 2, 2025).

288. *See generally*, U.S. DEP’T OF ENERGY, CONSERVATION OF STANDARDS ENFORCEMENT, <https://www.energy.gov/gc/listings/conservation-standards-enforcement?page=0> (last visited Mar. 2, 2025).

289. *See generally*, U.S. DEP’T OF ENERGY, COMPLIANCE CERTIFICATION ENFORCEMENT, <https://www.energy.gov/gc/listings/compliance-certification-enforcement> (last visited Mar. 2, 2025).

290. U.S. DEP’T OF JUST. CRIM. DIV., EVALUATION OF CORPORATE COMPLIANCE PROGRAMS 1, <https://www.justice.gov/criminal/criminal-fraud/page/file/937501/dl> (last updated Sept. 2024).

291. *Id.* at 7-8.

292. U.S. DEP’T OF JUST., CORPORATE WHISTLEBLOWER AWARDS PILOT PROGRAM 1, <https://www.justice.gov/criminal/media/1362326/dl?inline> (last visited Mar. 2, 2025).

(2) leads to the successful forfeiture of greater than \$1 million; and (3) meets several other criteria (e.g., the whistleblower did not “meaningfully participate[]” in the criminal activity).²⁹³

293. *Id.* at 1-2.