

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability
Corporation

Docket No. RC11-6-004

**COMMENTS OF THE EDISON ELECTRIC
INSTITUTE, THE AMERICAN PUBLIC POWER
ASSOCIATION, ELECTRICITY CONSUMERS
RESOURCE COUNCIL, THE NATIONAL RURAL
ELECTRIC COOPERATIVE ASSOCIATION, THE
TRANSMISSION ACCESS POLICY STUDY GROUP,
THE ELECTRIC POWER SUPPLY ASSOCIATION,
AND THE LARGE PUBLIC POWER COUNCIL**

On March 15, 2013, the North American Electric Reliability Corporation (“NERC”) filed its Compliance Filing and Report on the Compliance Enforcement Initiative and Proposed Enhancements to the Find, Fix, Track and Report (“FFT”) Program (“Twelve-Month Report”) in response to *N. Am. Elec. Reliability Corp.*, 138 FERC ¶ 61,193 (2012) (“March 15, 2012 Order”).¹ Pursuant to the Commission’s March 20, 2013 Notice of Filing and Section 212 of the Commission’s Regulations (18 CFR § 385.212), the American Public Power Association (“APPA”), the Edison Electric Institute (“EEI”), the Electricity Consumers Resource Council (“ELCON”), the Electric Power Supply Association (“EPSA”), the Large Public Power Council (“LPPC”), the National Rural Electric Cooperative Association (“NRECA”), and the Transmission Access Policy Study Group (“TAPS”) (collectively the “Trade Associations”), all of

¹ *Clarified*, 139 FERC ¶ 61,168 (2012).

which have previously been granted intervention in the underlying proceeding,² hereby submit comments in response to NERC's Twelve-Month Report.

In particular, the Trade Associations strongly support NERC's proposals to enhance FFT so that the program can better deliver the intended benefits: refocusing time and resources of NERC, its Regional Entities, and registered entities away from issues that pose lesser risks to bulk-power system reliability so that they can be reallocated towards activities that enhance reliability, and better align commitment of resources to risk. The Trade Associations urge the Commission to promptly approve NERC's proposals to expand and increase the efficiency of FFT, with the expectation that NERC will continue to examine the FFT program and propose additional steps to further improve FFT.

COMMENTS

In our October 21, 2011 Comments in support of NERC's FFT Proposal, the Trade Associations stated:³

The Trade Associations believe that the FFTR approach provides an effective means to handle the preponderance of NERC violations that have little or no impact on the reliability of the BPS. Registered entities are now overwhelmed by the demands of the compliance and enforcement "administrivia" associated with demonstrating compliance with many of the NERC standards. Such minor violations should be resolved quickly and simply so that personnel may devote the substantial resources now dedicated to handling these issues to matters that have a greater impact on BPS reliability. The Trade Associations

² The Trade Associations were granted intervention in Paragraph 38 of the March 15, 2012 Order.

³ Motion to Intervene and Comments of the Edison Electric Institute, the American Public Power Association, Electricity Consumers Resource Council, the National Rural Electric Cooperative Association, the Transmission Access Policy Study Group, the Electric Power Supply Association and the Large Public Power Council 6, Oct. 21, 2011, Docket No. RC11-6-000, eLibrary No. 20111021-5043 ("October 21, 2011 Comments").

believe that the FFTR proposal can serve as one remedy for this serious and growing problem and provide a means to re-focus resources on issues more important to BPS reliability.

The Trade Associations' October 21, 2011 Comments described the registered entity resources required to satisfy the broad range of compliance documentation and enforcement-related paperwork and other administrative demands as amounting to "multiples of the consolidated NERC spending." *Id.* The Comments explained:

These expenditures include preparation for and participation in compliance audits and spot checks, self-reporting and mitigation plan development and management, violations settlement discussions and negotiations, and a broad range of other compliance monitoring, reporting and data submittals, and the attendant paperwork flow management and coordination within registered entities. The work requires the involvement of field operations and maintenance personnel, technical subject matter experts, compliance program management, attorneys, outside consultants, and in some cases, senior management. This rough estimate does not include capital expenditures, or operating and maintenance expenses, required to plan and operate the bulk power system, but only the registered entity managerial and administrative overhead expense that supports NERC compliance and enforcement processes.

Id. 6-7.

The Trade Associations therefore supported FFT as an "important first step to ensure that the substantial resources devoted to compliance demonstration and enforcement are targeted on those matters that pose the greatest risk to the reliability of the BPS." *Id.* 7.

The Commission's March 15, 2012 Order accepted NERC's FFT initiative, with certain conditions, and (at PP 43, 75-76) directed NERC to submit a twelve-month report. The Commission made clear that it "plan[ned] to use the twelve-month report as an

opportunity to consider any changes to the FFT initiative and to any of the limited conditions adopted in this order.” *Id.* P 43.

NERC’s March 15, 2013 Twelve-Month Report addresses the issues identified in the Commission’s March 15, 2012 Order, and shows that NERC is on the right track. FFT is improving the ability of NERC and its Regional Entities to more efficiently process lesser-risk possible violations, and therefore enable them to begin to address the backlog and focus efforts on issues of greater importance to BPS reliability. While the September 2011 through December 31, 2013 summary of FFT, SNOPs and Full NOPs shows some continued inconsistencies in the application of FFT across the regions,⁴ we are encouraged by signs of increasing consistency,⁵ and strongly support NERC efforts to improve the consistency of FFT implementation through standardized instructions and templates, training and outreach, and use of other consistency-driving tools. Twelve-Month Report at 29, 30-31, 33-35. Consistency of application of FFT, both within and across regions, is essential to achieving the benefits of FFT.⁶

The Trade Associations also agree with NERC that FFT reinforces and provides some incentives for self-identification of possible violations, contributing to a stable 70% self-identification ratio. *See id.* 14-16. However, this incentive is muted to the extent

⁴ *See* Twelve-Month Report at 11, Figure 2. *See also id.* 25-27 & n.19, highlighting inconsistencies in the evaluation and documentation of mitigating activities associated with FFT, with one region continuing to require formal Mitigation Plan submissions, but “working to identify a possible streamlined format that will work with its system requirements.” *Id.* n.19.

⁵ *See id.* n.10.

⁶ Contrary to NERC’s suggestion (*id.* 29), the goal should be not only “consistency in evaluating violations and assessing risk,” but also consistency of outcomes within and across regions. If all the relevant circumstances are the same (recognizing that is often not the case), a registered entity should not be subject to a NOP for non-compliance that would be afforded FFT treatment by another region.

FFT fails to reduce the compliance documentation and enforcement-related paperwork and other administrative demands on registered entities.

Thus, the Trade Associations agree with NERC's assessment that there is ample room for improvements in the FFT program. NERC seeks Commission approval of a number of improvements, all of which are strongly supported by the Trade Associations.⁷

Each is discussed briefly below:

1. Inclusion of FFT Presenting Moderate Risk

Although NERC initially proposed to apply FFT to issues posing a minimal or moderate risk to the bulk-power system, the March 15, 2012 Order (P 47) conditioned its approval of FFT on limiting its application to minimal risk issues, given the lack of experience with NERC's assessment of risk:

We have limited experience as to how NERC and the Regional Entities will make the necessary risk assessments in determining whether to categorize a possible violation as minimal, moderate, or serious or substantial risk. Until we can obtain more experience on how the risk determinations are made for the purpose of qualifying possible violations for FFT treatment, the Commission will condition its acceptance of the FFT proposal on allowing only possible violations that pose a minimal risk to Bulk-Power System reliability to be eligible for FFT treatment. The Commission expects that the experience it gains over the next year with regard to how NERC and the Regional Entities determine risk levels for possible violations will provide the Commission with useful insight.

⁷ The Trade Associations also support NERC's consideration of steps toward implementing what the March 15, 2012 Order (at P 80; *see also* P 24) had approved as Phase II of FFT. Twelve-Month Report at 46-47. As discussed in the June 15, 2012 Comments of the Edison Electric Institute, the American Public Power Association, Electricity Consumers Resource Council, the National Rural Electric Cooperative Association, the Transmission Access Policy Study Group, the Electric Power Supply Association and the Large Public Power Council (*available at* eLibrary No. 20120615-5079), the Trade Associations expect to see increased resource prioritization benefits of FFT for NERC, its REs, and registered entities when compliance personnel are authorized to make FFT decisions in the field, and urge NERC and its Regional Entities to take more aggressive steps in this direction.

The Commission committed to “review this condition as part of our one-year review of the program, described below, when we have more experience with how NERC and the Regional Entities assess risk.” *Id.*

In its Twelve-Month Report, NERC proposes to afford FFT treatment to a subset of moderate risk issues, i.e., isolated instances of non-compliance posing moderate risk where the registered entity can demonstrate that it has already established a strong internal compliance program with internal controls designed to prevent, detect, and correct violations of the particular Reliability Standard. Twelve-Month Report at 37-40. NERC’s proposed expansion is more tailored than NERC’s initial proposal for including moderate risk issues that was considered in the March 15, 2012 Order.

The Trade Associations support NERC’s proposal to expand FFT to a limited set of moderate risk issues. NERC has now established an extensive track record on the manner in which it assesses risk, so there is a stronger basis for the Commission to extend application of FFT. NERC’s proposal is consistent with the Commission’s recognition that the presence of a strong compliance program, with internal controls designed to prevent, detect, and correct violations, is appropriately considered in assessing the treatment of a non-compliance.⁸ In implementing this screen, NERC should apply Commission guidance, which recognizes size as an “important factor” in “determining

⁸ *See, e.g.*, Enforcement of Statutes, Orders, Rules, and Regulations, Policy Statement on Enforcement, 113 FERC ¶ 61,068, P 22 (2005); Enforcement of Statutes, Regulations and Orders, Revised Policy Statement on Enforcement, 123 FERC ¶ 61,156, PP 57-59 (2008); Compliance with Statutes, Regulations, and Orders, Policy Statement on Compliance, 125 FERC ¶ 61,058, PP 13-17 (2008); Enforcement of Statutes, Orders, Rules, and Regulations, Revised Policy Statement on Penalty Guidelines, 132 FERC ¶ 61,216, PP 109, 115-119 (2010).

whether an organization has met the requirements for an effective compliance program.”⁹ Expanded application of FFT should yield further efficiencies, while reinforcing robust compliance programs that can proactively enhance reliability.

2. Inclusion of FFTs with Mitigation Activities to be Completed in a Short Time Frame

NERC proposes to broaden FFT by eliminating the requirement that non-compliance must be completely remediated prior to filing an FFT. Instead, NERC would include as an FFT otherwise eligible issues that require, for a specific reason, additional time (i.e., three months) to complete the mitigation. Twelve-Month Report at 40.

The Trade Associations support expansion of FFTs to include those on track to be completed within three months. Because the scope of mitigation will be clearly defined at the time of filing (or posting, if permitted) and a completion of mitigation affidavit would still be required, there is no reliability reason not to gain the efficiency improvements this expansion could yield.

3. Elimination of Requirement for Senior Officer Certification

NERC proposes to eliminate the requirement, imposed in the March 15, 2012 Order at P 61 that the registered entity submit an affidavit, “signed by an officer with knowledge of the remediation” certifying that remediation is complete.¹⁰ The Trade Associations support NERC’s request. Experience has shown this requirement to be

⁹ See, e.g., Enforcement of Statutes, Orders, Rules, and Regulations, Revised Policy Statement on Penalty Guidelines, 132 FERC ¶ 61,216, P 134 (2010); see also *id.* P 135; Compliance with Statutes, Regulations, and Orders, Policy Statement on Compliance, 125 FERC ¶ 61,058, P 17 (2008).

¹⁰ In denying clarification or rehearing of requests to eliminate this requirement, the Commission clarified that a registered entity that is not organized as a corporation or has no officers may submit an affidavit certifying mitigation to the Regional Entity signed by a person in an executive or leadership position with knowledge of the remediation equivalent to that of an officer. *NERC*, 139 FERC ¶ 61,168, P 7 (2012).

neither necessary to achieve the Commission's reliability objectives, nor consistent with risk-informed resource allocation.

The senior officer certification requirement was intended to “assure[] that appropriate senior personnel within a registered entity are made aware of possible violations and have personal knowledge that they are mitigated.”¹¹ However, this requirement, while well-intended, is a burden that does not advance reliability, may delay or disqualify FFT treatment, and may distract from activities more central to addressing significant risks to reliability. As described in NERC's Twelve-Month Report (at 42), a registered entity's commitment to reliability is enhanced and reinforced by engaging senior management in a structured manner through implementation of a compliance program supported at the highest levels, rather than personal involvement of a senior officer in remediation of a particular low-risk FFT. There is no reason to believe that the time and cost involved in securing senior officer certification of remediation completion advances reliability. Thus, the senior officer certification requirement should be eliminated, at minimum in connection with mitigating activities verified as completed at the time of filing (or posting, if permitted).

4. Public Posting of FFTs Followed by Annual Informational Filing

NERC has proposed, in lieu of monthly FFT informational filings, to publicly post FFTs on a common website on the last day of each month, and to maintain the same masked treatment of CIP issues as it does today, with the Commission having access to

¹¹ *Id.* P 8.

non-public versions of those FFTs, as well as other tools to obtain additional information. Twelve-Month Report at 43.

The Trade Associations support this common sense step to reduce the burden on NERC and its REs, and thus speed FFT processing, with no loss in visibility to the Commission or to the public. NERC states (*id.*) that this approach would reduce processing time by one and a half months. As NERC noted (Twelve-Month Report at 44), resources freed by implementing this proposal could be more productively focused on analyses that would be provided to the Commission in an annual report.

5. NERC FFT Sampling and Oversight

NERC proposes to adopt a sampling approach similar to that adopted by the Commission in the March 15, 2012 Order, rather than continue to review each FFT before it is filed (or posted, if permitted). Twelve-Month Report at 44-45. Importantly, NERC proposes to preserve the finality of the FFT process, i.e., NERC (like the Commission) will consider an FFT final sixty days after filing (or posting).

The Trade Associations support this proposal so long as NERC will be actively engaged in sampling FFTs, and using all the tools at its disposal (e.g., training, outreach, standardization of templates) to drive fairness and consistency in the application of FFT.

6. Annual Informational Filing

The Trade Associations support NERC's proposal to make annual informational filings to report the results of its sampling and other progress on FFT implementation. Specifically, NERC should continue to examine ways to improve the implementation of FFT, and should be required in the next annual report to identify other modifications, including further expansion of FFT applicability, that could make processing of lesser

risk issues more efficient, and less burdensome on registered entities as well as NERC and its REs, and thereby better align compliance and enforcement resources with risk.

CONCLUSION

For the reasons set forth above, the Trade Associations urge the Commission to promptly approve the FFT enhancements proposed by NERC, and encourage NERC to undertake further efforts to reduce the violation backlog and refocus resources of NERC, its Regional Entities, and registered entities on activities that will enhance reliability and better align with risk.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated on this 15th day of April, 2013.

/s/ Cynthia S. Bogorad

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