

138 FERC ¶ 61,193
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

North American Electric Reliability Corporation	Docket Nos.	RC11-6-000
		RC12-1-000
		RC12-2-000
		RC12-6-000
		RC12-7-000
		RC12-8-000

ORDER ACCEPTING WITH CONDITIONS THE ELECTRIC RELIABILITY
ORGANIZATION'S PETITION REQUESTING APPROVAL OF NEW
ENFORCEMENT MECHANISMS AND REQUIRING COMPLIANCE FILING

(Issued March 15, 2012)

1. On September 30, 2011, the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), filed a petition requesting approval of its proposal to make informational filings in a "Find, Fix, Track and Report" (FFT) spreadsheet format of lesser-risk, remediated possible violations of Reliability Standards. As discussed below, we accept NERC's petition with limited conditions, require NERC to make a compliance filing within sixty days of the date of this order, and direct NERC to submit two informational filings.

2. While the FFT initiative represents a significant change in the paradigm for monitoring and enforcing compliance with Reliability Standards,¹ we agree with NERC that this change is warranted at this time. After several years of experience with the current program, we agree that NERC and the Regional Entities should have the flexibility to more efficiently process and track lesser risk violations in order to focus their resources on issues that pose the greatest risk to reliability. Consequently, we approve NERC's request for flexibility as set forth in the petition, subject to limited conditions.

¹ NERC Petition at 1.

3. We anticipate that our acceptance of NERC's proposal, as conditioned below, will be the first step to a more efficient and effective compliance and enforcement process. As we gain further experience with the FFT program and review the data provided by NERC in its compliance and informational filings, we will consider and evaluate ways to improve the program.²

I. Background

4. Section 215 of the Federal Power Act (FPA) requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO and, pursuant to delegation from the ERO, by Regional Entities, subject to Commission oversight, or by the Commission independently.³

5. Pursuant to FPA section 215(e)(2), NERC, as the ERO,⁴ must file a Notice of Penalty with the Commission for a penalty that a Regional Entity or NERC assesses to a user, owner or operator of the Bulk-Power System (registered entity) for violating a Reliability Standard. Each penalty determination, including a zero dollar penalty, is subject to Commission review, on its own motion or by the filing of an application for review by the registered entity subject to the penalty within thirty days after the date NERC files the applicable Notice of Penalty.⁵ In the absence of the filing of an application for review of a penalty or motion or other action by the Commission, each penalty NERC files takes effect by operation of law upon the expiration of the applicable thirty-day period.⁶

6. NERC filed its first Notices of Penalty on June 4, 2008.⁷ To date, NERC has filed 561 Notices of Penalty that cover more than 3,100 alleged and confirmed violations of

² The Commission will solicit input from NERC, the Regional Entities, and industry when addressing such issues.

³ See 16 U.S.C. 824o(e) (2006).

⁴ *North American Electric Reliability Corporation*, 116 FERC ¶ 61,062 (2006) (ERO Certification Order), *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

⁵ 18 C.F.R. § 39.7(e)(1) (2011).

⁶ *Id.*

⁷ See Docket Nos. NP08-1-000 through NP08-37-000.

Reliability Standards and assess total penalties of approximately \$18 million. Notices also have included numerous zero dollar penalties for violations. Among the issues the Commission has addressed in orders on the Notice of Penalty filings are statements encouraging NERC to file Notices of Penalty in formats and with records that are proportional to the seriousness of the violations so as to increase processing efficiency.⁸ To date, the Commission has sought to review on its own motion one Notice of Penalty.⁹

II. Description of the Petition

7. In its petition, NERC describes its proposal to change the manner in which it and the Regional Entities address “possible violations” of Reliability Standards. The petition proposes three tracks to address possible violations that come to the attention of a Regional Entity or NERC: (1) a Notice of Penalty (in “Full” or “Spreadsheet” Format); (2) an FFT informational filing; or (3) a Dismissal. First, NERC explains that Notices of Penalty will generally include issues posing a moderate to serious or substantial risk to the reliability of the Bulk-Power System, “although there may be occasions where issues posing a minimal risk may also warrant [Notice of Penalty] treatment.”¹⁰ Depending on the severity of the risk, Notices of Penalty may be filed in Full or Spreadsheet format.

8. Second, if a possible violation is determined to pose a “lesser risk” to the Bulk-Power System and meets other qualifications described below, the possible violation may be addressed through an FFT informational filing.¹¹ NERC explains that, since matters designated for FFT processing do not include a finding of violation, they are referred to as “possible violations.”¹² A possible violation addressed through an FFT informational filing will not be subject to a penalty, but will count as part of the registered entity’s

⁸ See *North American Electric Reliability Corporation*, 129 FERC ¶ 61,069, at P 9 (2009) (citing *North American Electric Reliability Corp.*, 127 FERC ¶ 61,198, at P 3 (2009)).

⁹ *North American Electric Reliability Corporation*, 134 FERC ¶ 61,209 (2011), *reh’g pending*. The Commission has issued orders setting for review other Notices of Penalty upon application by registered entities. Commission staff, under delegated authority, has extended the time period for consideration of other Notices of Penalty before the Commission determined that it would not review them on its own motion.

¹⁰ NERC Petition at 22.

¹¹ *Id.* at 25. NERC indicates that “lesser risk” violations include possible violations that pose a minimal to moderate risk to the Bulk-Power System. *Id.* at 27.

¹² *Id.* at 43.

compliance history. Because there will be no penalties to review for possible violations receiving FFT treatment, NERC proposes to submit these possible violations to the Commission on an informational basis only. The petition includes the first FFT informational filing, listing 117 possible violations by 59 registered entities.¹³ Third, NERC or the Regional Entity will dismiss a possible violation if it is determined that (1) a matter does not constitute a violation of a Reliability Standard or (2) the entity is not subject to compliance with the Reliability Standard at issue.

9. NERC explains in its petition that the FFT initiative will “promote[] reliability excellence by ensuring all issues are fixed and by enabling substantially greater resources and attention to be devoted to matters that pose a more serious threat to reliability of the [Bulk-Power System].”¹⁴ NERC believes that the proposal is consistent with all rules, orders and regulations governing NERC and the Commission, but requests waiver of such rules, orders, and regulations “to the extent that the Commission believes otherwise.”¹⁵

10. According to NERC, registered entities self-identify seventy percent of all compliance issues.¹⁶ After receiving information about a possible violation, NERC or a Regional Entity applies the “preliminary screen” provisions of NERC’s Compliance Monitoring and Enforcement Program (CMEP) to determine whether there is a possible violation. Specifically, NERC or a Regional Entity determines whether the entity at issue is registered for a reliability function and whether the Reliability Standard requirement at issue is applicable to the entity and enforceable.¹⁷ If so, a possible violation exists and a Notice of Possible Violation is issued to the registered entity.

¹³ On September 30, 2011, in Docket Nos. NP11-267-000 through NP11-270-000, NERC also filed three Full Notices of Penalty addressing 27 violations by three registered entities and the first Spreadsheet Notice of Penalty addressing 75 violations by 21 registered entities. On October 28, 2011, the Commission issued a notice in these dockets stating that it would take no further review of these Notices of Penalty.

¹⁴ NERC Petition at 2.

¹⁵ *Id.* at 55.

¹⁶ *Id.* at 17. Self-identification may include self-reports, self-certifications, and self-reports made in anticipation of an upcoming scheduled audit.

¹⁷ *Id.* at 18 (*citing* CMEP Section 1.122).

11. NERC states that “experience has shown that the vast majority of the violations represent a minimal risk to the reliability of the [Bulk-Power System].”¹⁸ NERC asserts that continuing to process a large number of relatively minor violations as Notices of Penalty “has the effect of diverting valuable resources of the industry, NERC and the Regional Entities from compliance efforts to address the more serious violations.”¹⁹ Therefore, NERC further asserts that “[t]he current approach to compliance and enforcement processing is inconsistent with the prioritization efforts underway in other reliability areas such as standard development, audit practices and the final steps of the enforcement process.”²⁰

12. NERC states that, as of the petition’s filing date, it and the Regional Entities have approximately 3,300 active compliance matters that require processing.²¹ In addition, NERC states that new possible violations are being reported at a rate of approximately 200 per month. According to NERC, it and the Regional Entities process possible violations at a rate of approximately 176 per month through either dismissals or Notices of Penalty.²² NERC contends that if the current process is not changed, approximately two to three years will be required to process new possible violations from intake to final disposition.

III. Find, Fix, and Track Proposal

13. To address this concern, NERC proposed the FFT mechanism; a key feature of the FFT process is the use of an informational filing to address and report “lesser risk” possible violations. Lesser risk issues are defined as minimal to moderate risk, and include administrative, documentation, and certain maintenance or testing program implementation failures.²³

14. Once a registered entity has remediated a lesser risk possible violation and submitted a statement of completion of mitigation activities to the Regional Entity,

¹⁸ *Id.* at 8.

¹⁹ *Id.* at 7.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 8.

²³ *Id.* at 21.

NERC refers to the possible violation as a “remediated issue.”²⁴ NERC will not require formal mitigation plans for remediated issues, although a Mitigation Identification Tracking Number will be assigned to each possible violation. When an FFT informational filing is made, a registered entity’s mitigation activities as to a possible violation will be deemed accepted by NERC.²⁵ A registered entity must demonstrate that it has addressed the underlying possible violation, describe any corrective actions and maintain evidence of such corrective actions for possible later verification through an audit, spot check, random sampling or other inquiry. NERC explains that, because it will not assign a penalty or sanction to a remediated issue, the “thirty-day clock” for initiation of a possible Commission review applicable to a Notice of Penalty will not apply to FFT informational filings.²⁶

15. NERC states that it will include a remediated issue identified in an FFT informational filing in the applicable registered entity’s compliance history. According to NERC, the FFT initiative provides for systematic tracking of remediated issues and mitigation activities within each registered entity’s compliance history, as well as systematic NERC tracking of region- and industry-wide trends in possible violations to ensure continued reliable operations and compliance with standards, as well as consistency in implementation.

16. NERC proposes to file public and non-public versions of the FFT informational filings. NERC proposes to withhold the identity of each registered entity from the public version of the FFT informational filings for all possible violations. NERC asserts that, with regard to the FFT informational filings, the Commission’s regulations do not appear to permit public disclosure of confidential information related to a possible violation that is not included in a Notice of Penalty.²⁷

A. Assessment of the Risk Posed by a Possible Violation

17. The NERC petition explains that, following the issuance of a Notice of Possible Violation, NERC and the Regional Entities will assess the risk posed by the possible

²⁴ *Id.* at 27.

²⁵ NERC also proposes to apply this treatment of mitigation activities to Spreadsheet Notices of Penalty. *Id.* at 30.

²⁶ *Id.* at 27-28.

²⁷ *Id.* at 58-59.

violation to determine which of the three enforcement tracks is appropriate. NERC states that:²⁸

[f]actors taken into account during that initial review include, but are not limited to, the following: (1) the underlying facts and circumstances, including what happened, why, where and when; (2) the Reliability Standard at issue; (3) the applicable Violation Risk Factor (VRF) and Violation Severity Level (VSL); (4) the potential and actual level of risk to reliability, including mitigating factors during pendency of the Possible Violation; (5) the Registered Entity's compliance program, including preventive and corrective processes and procedures, internal controls and culture of compliance; and (6) the Registered Entity's compliance history.

According to NERC, the Violation Risk Factor (VRF) and Violation Severity Level (VSL) applicable to a possible violation serve as the starting point for a risk assessment, but are not deciding factors. For example, as part of the risk assessment for Notices of Penalty going forward, NERC states that Regional Entities will consider whether a Medium to High VRF and a Moderate to Severe VSL are involved and whether those combinations resulted in a moderate to serious risk to Bulk-Power System reliability.²⁹

18. NERC suggests that specific facts and circumstances may drive different results even if two situations initially appear the same or similar. For example, NERC and the regions will consider the registered entity's size, nature of facilities and location on the grid; the possible violation's impact on third parties, including load, neighboring utilities, and other registered entities; the time horizon that is relevant to the violated Reliability Standard (i.e., real time, on or off peak, or planning period); and the specific act or omission and its likelihood of recurrence.³⁰ NERC further explains that a risk determination is multi-faceted, including consideration of potential and actual risk, and factors that mitigate the risk during the violation.

19. In the petition, NERC identifies minimal, moderate, serious, and substantial as categories of risk posed by a possible violation. The record reviewed to evaluate risk will depend on how the possible violation is discovered, according to NERC. For example, if discovery occurred in a compliance audit, the record could include audit materials and responses to data requests; if a registered entity self-reports a possible violation, the

²⁸ *Id.* at 20.

²⁹ *Id.*

³⁰ *Id.*

record may include the self-report and additional information a Regional Entity develops as necessary.³¹

20. While not establishing any rigid criteria, parameters or guidelines for FFT candidates, NERC states that, based upon its experience to date, a high volume of lesser risk issues would benefit from the FFT approach. NERC states that “violations of priority Reliability Standards and top violated Reliability Standards may qualify for [FFT treatment], provided the risk assessment reveals the violation is a lesser risk issue.”³² NERC will consider whether there was “prompt, robust self-reporting” of the possible violation.³³

21. NERC states that repeat possible violations of the same, similar, or different Reliability Standard will not foreclose treatment of the possible violation as an FFT, but could be taken into account when addressing future possible violations.³⁴ If a repeat possible violation occurs because a registered entity fails to complete mitigation activities for a possible violation given FFT treatment, NERC proposes that it and the Regional Entities may treat the repeat violation as eligible for FFT treatment and will assign a new tracking number to it rather than reopening a former tracking number. The information from the former matter will be captured as background for the new matter, regardless of the new matter’s ultimate disposition.

22. NERC states that it will continue to compile trend data and keep historical records on registered entities to target areas for increased education and attention as needed. NERC commits to report back to the Commission in six months and again in one year following its filing of the petition to describe the experience gained from the FFT initiative as well as the results of its implementation.³⁵

B. Implementation in Two Phases

23. NERC proposes two implementation phases for the FFT initiative. In Phase I, either NERC or Regional Entity compliance staff will make recommendations to their counterpart enforcement staff as to whether an issue warrants Full Notice of Penalty,

³¹ *Id.* at 26.

³² *Id.* at 28.

³³ *Id.* at 29.

³⁴ *Id.* at 28.

³⁵ *Id.* at 56.

Spreadsheet Notice of Penalty, or FFT informational filing processing, but the enforcement staff will decide how a possible violation is ultimately resolved. Phase I will include enhanced training of both enforcement and compliance staff to address consistency in due process and implementation of the program across the Regional Entities. In addition, NERC will use Phase I to collect and analyze data and information to support Phase II.³⁶

24. NERC states that Phase II is targeted to occur after twelve to eighteen months of the implementation of the initiative. NERC explains that, in Phase II, both compliance staff and enforcement staff would determine the ultimate disposition of possible violations.³⁷ NERC proposes that compliance field staff, auditors and investigators make such determinations in the course of compliance audits, spot checks and compliance investigations, and that there will be constant collaboration with NERC and Regional Entity enforcement staff. Determinations by compliance field staff will not preclude determinations by NERC and Regional Entity enforcement staff as to particular facts and circumstances for matters that enforcement staff processes as Notices of Penalty. NERC suggests that increased discretion by field compliance personnel in Phase II will allow enforcement staff to focus on critical issues affecting reliability.

25. NERC explains that Phase II will be predicated on an increased training and certification program for field auditors and investigators that will include standardized audit and compliance monitoring practices and in depth assessment of the FFT candidates.

C. Enhancements in Audit and Compliance Monitoring Practices

26. NERC states that in conjunction with its petition, to ensure consistency of application within and across regions, transparency to stakeholders and FERC, and more effective administration of the CMEP, it is also implementing enhancements to its audit and compliance monitoring practices. NERC notes that section 402.1 of the NERC Rules of Procedure directs the ERO to have a program to monitor each Regional Entity's compliance enforcement program that NERC accomplishes through an annual compliance enforcement program review, program audits and regular evaluations of performance.

27. NERC argues that the FFT initiative would provide for systematic tracking of remediated issues and mitigation activities within each registered entity's compliance history, as well as systematic NERC tracking of region- and industry-wide trends in

³⁶ *Id.* at 32-34.

³⁷ *Id.*

possible violations to ensure continued reliable operations and compliance with standards, as well as consistency in implementation.

D. Subsequent FFT Filings – Docket Nos. RC12-1-000, RC12-2-000, RC12-6-000, RC12-7-000, and RC12-8-000

28. Since filing its petition in Docket No. RC11-6-000 in September 2011, NERC has submitted an FFT informational filing each month. In addition, NERC has submitted, on a monthly basis, both “full” Notices of Penalties and abbreviated, Spreadsheet Notices.

29. On October 31, 2011, in Docket No. RC12-1-000, NERC submitted an FFT informational filing that describes 82 possible violations by 33 registered entities. On November 30, 2011, in Docket No. RC12-2-000, NERC submitted an FFT informational filing that describes 50 possible violations by 30 registered entities. On December 30, 2011, in Docket No. RC12-6-000, NERC submitted an FFT informational filing that describes 76 possible violations by 40 registered entities. On January 31, 2012, in Docket No. RC12-7-000, NERC submitted an FFT informational filing that describes 57 possible violations by 30 registered entities. On February 29, 2012, in Docket No. RC12-8-000, NERC submitted an FFT informational filing that describes 46 possible violations by 24 registered entities.

IV. Notice of Filing, Interventions, and Comments

30. Notice of NERC’s September 30, 2011 filing was published in the *Federal Register*, 76 Fed. Reg. 62,802 (2011), with comments due on or before October 21, 2011. Timely motions to intervene and comments were submitted by the entities listed in the Appendix to this Order. Avista Corporation (Avista) moved to intervene one day out of time.

31. On November 14, 2011, NERC filed a motion for leave to answer and an answer to ISO/RTO Council’s comments. On that date, ISO/RTO Council filed supplemental comments. Following the Commission’s November 29-30, 2011 Reliability Technical Conference in Docket Nos. AD-12-1-000, RC11-6-000 and EL11-62-000, the Transmission Dependent Utility Systems filed comments on the technical conference that support the NERC petition. The National Association of Regulatory Utility Commissioners filed a resolution supporting NERC’s petition.

32. All comments support the petition as a means of more efficiently allocating the compliance resources of NERC, the Regional Entities and registered entities. Trade Associations comment that they believe that the FFT proposal provides an effective means to address “the preponderance” of Reliability Standard violations that have little or no impact on Bulk-Power System reliability. Trade Associations view the FFT proposal as a means to re-focus resources on issues more important to reliability. Likewise, the Regional Entities support the FFT initiative, explaining that, through the exercise of

discretion, NERC, the regions and registered entities will better focus on performance and reducing risk to the Bulk-Power System. The Regional Entities state that, while all instances of non-compliance will continue to be identified and mitigated, NERC and the regions have the opportunity to better differentiate the level of enforcement action for possible violations based on the associated level of risk.

33. G&T Cooperatives emphasize that the FFT proposal will address NERC's backlog, and state that "while the Spreadsheet Notice of Penalty format will speed the processing to the extent possible at the back end of the compliance enforcement process, the new FFT process presents the opportunity to achieve real efficiency gains at the front end."³⁸ G&T Cooperatives acknowledge that acceptance of the FFT proposal "will entail putting some faith in the enforcement staffs at NERC and the Regional Entities that they are adequately assessing the risks of each possible violation based on the limited records presented," but argue that NERC has amply demonstrated its ability to exercise such enforcement discretion based on the fact that the Commission has rarely reviewed Notices of Penalty filed by NERC.³⁹ NextEra and PNGC support NERC's FFT proposal as a first step toward a more comprehensive reform of its compliance monitoring and enforcement program."

34. PNW Utilities and the PPL Companies support the FFT component of the petition, but are concerned that Regional Entities may be inconsistent in addressing similar alleged violations by similarly-situated registered entities through the FFT process or through filing Notices of Penalty.⁴⁰ PNW Utilities ask the Commission, when reviewing NERC's proposed six-month and one-year reports, to "ensure that NERC is properly performing consistency reviews and that there is consistency in enforcement within and among the regions."⁴¹

35. PPL Companies urge the Commission to clarify that when a remediated issue is resolved through an FFT informational filing, the remediated issue not be considered part of the registered entity's compliance history.⁴² PPL Companies also point out that NERC proposes to consider the time between discovery and reporting as a factor for FFT eligibility, and ask the Commission to clarify that the "time of discovery need not be the

³⁸ G&T Cooperative Comments at 6.

³⁹ *Id.* at 7-8.

⁴⁰ PNW Utilities Comments at 7; PPL Comments at 5-7.

⁴¹ PNW Utilities Comments at 7.

⁴² PPL Companies Comments at 7-9.

moment the Registered Entity suspects that there may have been a deviation from its compliance program,” but instead should be after “reasonable internal processes” to assess the nature of the potential violation.⁴³

36. BGE suggests that the Commission officially deem a remediated issue to be closed when it is filed by NERC, without further review. BGE argues that this would be appropriate because NERC proposes to assign a new tracking number to “any repeat issue by an entity” subsequent to an FFT and to consider the record of the FFT in the new compliance matter.⁴⁴ BGE suggests that the Commission address any need to refine the FFT process when NERC submits its six-month and annual reports on the process.

37. ISO/RTO Council comments that it supports the FFT initiative as a means to streamline the processing of possible violations. In its comments, ISO/RTO Council also expressed concern about the “registered entity risk assessment” initiative discussed in NERC’s petition. NERC submitted an answer to ISO/RTO Council’s comment, explaining that the discussion in the petition regarding the registered entity risk assessment was intended for informational purposes only and that NERC intends to engage in stakeholder input before implementing this activity. In a concurrent filing, ISO/RTO Council withdrew its comment on this matter.

V. Discussion

A. Procedural Matters

38. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given the early stage of this proceeding and the absence of undue prejudice or delay, we grant the unopposed out-of time motion to intervene of Avista.

39. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept NERC’s answer, however, because it has provided information that assisted us in our decision-making process.

⁴³ *Id.* at 9-10.

⁴⁴ BGE Comments at 4.

B. Commission Determination

40. We accept the FFT proposal with limited conditions, as discussed below. We applaud NERC for proposing a format that will help it and the Regional Entities focus their resources on issues that pose the greatest risk to reliability. Based on the explanations provided in the petition, we believe that the FFT proposal may significantly reduce the time and resources needed to resolve minor possible violations of Reliability Standards and thereby permit NERC and the Regional Entities to reprioritize their compliance efforts toward more important violations and matters. We also believe that the experience NERC has gained in the almost six years since the Commission certified it as the ERO justifies its reappraisal of strategies for improving how it addresses compliance with mandatory Reliability Standards and thereby strengthening Bulk-Power System reliability.

41. While the FFT initiative represents a significant change in the paradigm for monitoring and enforcing compliance with Reliability Standards,⁴⁵ we agree with NERC that this change is warranted at this time. In light of the experience gained by the Commission, NERC, the Regional Entities and registered entities to date, we approve NERC's request for flexibility as described in the petition, subject to limited conditions. We anticipate that our acceptance of NERC's proposal, as conditioned below, will be the first step to a more efficient and effective compliance and enforcement process. As we gain further experience with the FFT program and review the data provided by NERC in its compliance and informational filings, we will consider and evaluate ways to improve the program.

42. As we discuss in greater detail below, the conditions in this order are grouped into three categories: (1) conditions related to whether a possible violation may qualify for FFT treatment at this time; (2) conditions related to documentation of possible violations processed as FFTs; and (3) a condition related to accountability and deterrence. NERC and the Regional Entities must apply these conditions to possible violations submitted to the Commission in FFT informational filings prospectively from the date of this order. In the interests of finality, we will exercise our discretion and will not require NERC to re-

⁴⁵ NERC Petition at 1.

file any of the six FFT informational filings submitted prior to the date of this order.⁴⁶ Thus, we consider these six FFT informational filings closed.⁴⁷

43. We also seek additional information regarding certain elements of NERC's proposal, and direct NERC to submit a compliance filing addressing these matters within sixty days from the date of this order. In addition, we direct NERC to submit a six-month and twelve-month report as described below. We plan 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.

1. Conditions Related to Identifying Whether a Possible Violation Qualifies for FFT Treatment

44. We appreciate NERC's efforts to streamline the enforcement process for "lesser risk" compliance matters. NERC indicates that possible violations that pose a lesser risk to Bulk-Power System reliability will be candidates for FFT treatment, but without the benefit of further experience, it is difficult to fully understand how NERC and the Regional Entities will assess or gauge such risk under the FFT initiative. For example, risk assessments based on an after-the-fact review of the "actual risk," which may equate to harm, as opposed to potential risk, could lead to misleading or inappropriate results. Simply because there was no adverse impact to the Bulk-Power System during the period a possible violation occurred does not mean that there was minimal risk to the Bulk-Power System.

45. Further, while the NERC petition identifies six factors that it and the Regional Entities will consider in assessing the risk of a possible violation, it is not clear how the factors will be applied, and how NERC will assure that they will be applied consistently across NERC's eight regions. NERC identifies VRFs as one of the six considerations and indicates that, while a starting point, VRFs should not be determinative.⁴⁸ While we generally agree with this statement, we note that as described in NERC's petition, this application of the six considerations could result in violations with other than minimal risk to the Bulk-Power System being eligible for FFT treatment. Based on these

⁴⁶ Docket Nos. RC11-6-000, RC12-1-000, RC12-2-000, RC12-6-000, RC12-7-000, and RC12-8-000.

⁴⁷ But see P 72, *infra*, explaining that the Commission may reopen a "closed" FFT for review if the Commission later discovers that FFT treatment was obtained based on a material misrepresentation.

⁴⁸ NERC Petition at 20.

concerns, the Commission conditions its approval of the FFT proposal as described below.

a. **Only Possible Violations that Pose a Minimal Risk are Eligible for FFT Treatment**

46. In its petition, NERC indicates that “lesser risk” issues - those posing a minimal or moderate risk to the Bulk-Power System - are the most likely candidates for inclusion in FFT filings.⁴⁹ However, NERC makes clear that it does not seek to establish “rigid” criteria for inclusion in an FFT spreadsheet.

47. 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. We will 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.

48. We support NERC’s efforts to streamline the processing of enforcement matters as much as possible and recognize that conditioning the FFT proposal in this manner will preclude moderate risk matters from the benefit of FFT treatment. However, we note that NERC and the Regional Entities have in large part conformed to this condition in the FFT filings to date. In the first six FFT informational filings submitted to the Commission, nearly all of the possible violations were identified as posing minimal risk. Specifically, of the 428 possible violations submitted as FFTs to date, NERC designated only 19 as having posed a moderate risk, while NERC characterized all other possible violations as posing “minimal risk” or “neither serious nor substantial” risk. Thus, we expect that this condition will not be detrimental to the streamlining of the enforcement process.

49. In addition, NERC identifies a number of “most serious risk” issues that have been included in Full Notices of Penalty to date.⁵⁰ Those “most serious risk issues” are: “(i) those involving or resulting in (a) extended outages, (b) loss of load, (c) cascading

⁴⁹ *Id.* at 21.

⁵⁰ *Id.*

blackouts, (d) vegetation contacts and (e) systemic or significant performance failures; and (ii) those involving (a) intentional or willful acts or omissions, (b) gross negligence and (c) other misconduct.”⁵¹ We agree that the issues identified by NERC pose a serious risk to the reliability of the Bulk-Power System and, consistent with NERC’s petition, expect NERC to process violations involving these “most serious risk” matters identified above as full Notices of Penalty.

50. Although we have limited experience on how NERC will assess risk in determining whether a possible violation may be treated as an FFT, the Commission has reviewed the 428 possible violations submitted as FFTs as of February 29, 2012. The overwhelming majority of the risk assessments for the FFTs submitted thus far were satisfactory. However, as a result of the review, the Commission has identified several FFTs that raise concerns and the Commission provides the following guidance for use in filing future FFTs.⁵²

51. First, a possible violation does not pose a minimal risk simply because there was no adverse impact to the Bulk-Power System during the period of the possible violation. For example, NERC asserts that FFT tracking number TRE201000164 (included in the September 2011 FFT informational filing) posed a moderate potential risk and a minimal actual risk for two reasons: (1) the possible violation lasted only four minutes; and (2) only a portion of the transmission line protection system was disabled. We are concerned with the risk assessment for this FFT because we believe that the possible violation described in this FFT could have subjected the Bulk-Power System to serious risk during the time of the possible violation.⁵³ The fact that the possible violation lasted for a relatively short period of time and impacted only a small part of the Bulk-Power System does not fully explain the risk the possible violation posed to the system (or to the part of the system impacted) during that period of time. If the underlying theory of this risk assessment was that actual risk was minimal because nothing happened during those

⁵¹ *Id.*

⁵² The FFTs identified below need not be refiled but are included for illustrative purposes.

⁵³ The FFT informational filing describes the possible violation as follows: “[W]hen a technician was at a substation installing a disturbance monitoring panel that required drilling holes in the floor, the technician disabled both primary and backup relaying on a 345- kV line in the adjacent panel to mitigate risk of an operation due to the vibration of the drilling without notifying its Transmission Operator (TOP) in advance of changes to the operating conditions . . . Relaying was disabled four minutes prior to notifying the registered TOP.”).

four minutes, we clarify that risk assessments should not be based on a “no harm, no foul” theory.

52. While NERC and the Regional Entities should not treat a possible violation as having posed a minimal risk merely because it did not result in harm to the Bulk-Power System, we clarify that a possible violation may qualify for FFT treatment if NERC or the Regional Entity can explain in the FFT informational filing that other factors mitigated risk. For example, in assessing the risk of a possible violation, NERC and the Regional Entities may evaluate the effect on risk of contemporaneous compliance with other Reliability Standards, or of other actions or processes that mitigated or acted as a meaningful correction to the possible violation. In other words, NERC and the Regional Entities may show that because of the totality of the circumstances, a possible violation posed only a minimal risk to the Bulk-Power System.

53. Second, risk assessments included in the FFT informational filings must be based on facts, rather than assumptions. For example, in tracking number FRCC200900333 (included in the September 2011 FFT informational filing), a registered entity’s failure to document, maintain and publish facility connections requirements, in possible violation of Reliability Standard FAC-001-0 Requirement R1, was deemed to have posed minimal risk. The risk assessment was based partly on the assumption that all applicable sub-requirements of this requirement would have been discussed and negotiated during the engineering studies related to any proposed interconnection with the registered entity. In our view, this assumption did not support the risk assessment. It is not clear to the Commission how a discussion and negotiation during the engineering studies means that the failure to document, maintain, and publish facility connection requirements posed a minimal risk.

54. Third, we will not view a possible violation as posing a minimal risk if it reveals a serious shortcoming in a registered entity’s reliability-related processes. For example, we agree that tracking number SPP201000406 (included in the September 2011 FFT informational filing), which identified a possible violation of Reliability Standard PRC-004-1 Requirement R1, posed a moderate risk instead of a minimal risk to the Bulk-Power System because the registered entity’s procedures for analyzing and mitigating misoperations of transmission protection systems were deficient. As the FFT informational filing states, “[t]he procedures did not clearly define what constitutes a misoperation, leading to discrepancies in understanding among employees. As a result, not all potential misoperations were being logged, monitored and evaluated.” In finding that the possible violation posed a moderate risk, the FFT filing indicated that the deficiency in the procedures made the registered entity vulnerable to the extent that it could have recurring misoperations or the applicable devices would not operate appropriately when required to do so.

55. Finally, risk assessments must be based on facts at the time of the possible violation, not on facts that develop later. Risk assessments based on facts that develop after a possible violation is mitigated do not address directly the risk a possible violation poses when it occurs or while it continues. For example, in tracking number MRO201000238 (included in the September 2011 informational filing), a registered entity's failure to add two contractors to its list of personnel authorized for cyber access or unescorted physical access to Critical Cyber Assets led to a possible violation of CIP-004-1 Requirement R2. The FFT informational filing states that this possible violation posed a minimal risk to the Bulk-Power System because the registered entity at some later time reclassified the Critical Cyber Assets as non-critical Cyber Assets after a determination that they are not essential to operation of a Critical Asset. We do not disagree that the possible violation could have posed a minimal risk, but we believe that the risk assessment should have focused on the risk during the possible violation.

56. As we have explained, however, we will be inclined to accept risk assessments that examine whether a registered entity used processes or took actions that made the actual risk of a possible violation less than its potential risk. For example, in tracking number RFC2011001120 (included in the January 2012 FFT informational filing), a Generator Operator self-reported a possible violation of VAR-002-1.1b Requirement R1, which required that it operate particular generators in the automatic voltage control mode unless it has notified the Transmission Operator. On multiple occasions over a three-year period, the Generator Operator operated three of its generators in the manual voltage control mode without so notifying its Transmission Operator. The filing stated that the possible violation posed minimal risk because the Generator Operator started these units in manual mode as required by their design and the startup procedures, by minimizing undesirable mechanical stress and variability of current on the generators prior to their availability for dispatch, maintained system stability and contributed to reducing risk to the Bulk-Power System.

b. **A Registered Entity that Received FFT Treatment for a Possible Violation but Fails to Mitigate as Certified Will Not Receive FFT Treatment for the Possible Violation**

57. According to NERC's petition, a registered entity must provide a statement that a possible violation is mitigated before the matter is submitted to the Commission in an FFT informational filing.⁵⁴ NERC indicates that mitigation of possible violations receiving FFT treatment is subject to possible verification through audits, spot checks, random sampling and other techniques, as warranted.⁵⁵ The NERC petition, however,

⁵⁴ NERC Petition at 3.

⁵⁵ *Id.*

does not identify the appropriate compliance track for an FFT compliance matter that a registered entity certifies as mitigated, but the ERO or Regional Entity later determines had not been mitigated.

58. Having afforded a registered entity the opportunity to process a possible violation as an FFT matter, the Commission believes it is inappropriate for Regional Entities or NERC to provide FFT treatment to a registered entity for the separate event of its failure to mitigate that possible violation. In this circumstance, the registered entity has abused the discretion granted to NERC and the Regional Entities by certifying a matter as mitigated when, in fact, that is not the case. Such actions are also inconsistent with ongoing efforts to improve the culture of compliance in registered entities. Accordingly, we accept NERC's petition with the condition that a failure to remediate a possible violation included in an FFT informational filing will be treated as a continuing possible violation of a Reliability Standard requirement that is not eligible for FFT treatment. Rather, any further action on the possible violation must be processed as a Notice of Penalty and, consistent with NERC's CMEP relating to mitigation plans, the duration of the possible violation would start from the date that the violation first occurred, not from the date that the failure to mitigate was discovered.⁵⁶

2. Conditions Related to Documentation

59. NERC states that, for lesser risk matters, it and the Regional Entities "generally have sufficient information to make a determination after an initial review of the record without the need to develop an exhaustive record. The extent of the record will vary according to the specific violation."⁵⁷ NERC indicates that, for a self-reported matter, the record may include the self-report submitted by the registered entity and additional information developed by the Regional Entity as necessary.

60. The Commission understands the need to reduce the burden associated with compliance matters that pose a minimal risk, especially with regard to burden of documentation. Posted on the NERC web site is a document titled "Guidance for Self Reports" that identifies the data that a registered entity should submit to self report an event.⁵⁸ In an effort to minimize the amount of documentation that a registered entity

⁵⁶ See NERC Rules of Procedure, Appendix 4C (CMEP), Sections 6.3 and 6.6.

⁵⁷ NERC Petition at 26.

⁵⁸ The data include a factual description of the possible violation, identification of the risk it posed, a description of actions taken or to be taken to correct the possible violation and prevent future recurrence, identification of evidence demonstrating such actions were taken (if completed) and requirements for a statement of completion of
(continued...)

may be required to submit in connection with an FFT matter, the Commission believes that the data listed in the NERC “Guidance for Self Report” are sufficient information to meet documentation needs for FFT treatment.⁵⁹ In addition, to assure that the Commission is able to fulfill its oversight role and responsibilities, we require NERC to satisfy the following conditions relating to documentation of compliance matters processed as FFTs.

a. **A Registered Entity that Receives FFT Treatment for a Possible Violation Must Certify that Mitigation is Completed**

61. To ensure effective remediation of possible violations accorded FFT treatment, we accept NERC’s proposal to require a registered entity to submit to its Regional Entity a statement certifying that remediation has occurred and is completed.⁶⁰ We will require that a registered entity submit to the Regional Entity an affidavit, signed by an officer with knowledge of the remediation, certifying that the statement is true and correct.

b. **NERC Must Explain How a Registered Entity’s Compliance History was Considered in Designating a Possible Violation as an FFT**

62. NERC states that possible violations listed in an FFT informational filing will not become violations subject to penalties, but will count as part of the registered entity’s compliance history with respect to Reliability Standards.⁶¹ PPL Companies urge the Commission to clarify that when remediated issues are resolved through FFT

mitigation of the possible violation. NERC Petition at 17. NERC has posted this guidance at <http://www.nerc.com/files/Guidance%20on%20Self-Reports.pdf>.

⁵⁹ Regional Entities must maintain a record of compliance activities for a minimum of five years. Section 9.2 of NERC’s CMEP provides that Regional Entity management policy must require that “information and data generated or received pursuant to Compliance Program activities, including Compliance Audits, Self-Certifications, Spot Checking, Compliance Investigations, Self-Reporting, ... will be retained for the longer of (i) five (5) years or (ii) any retention period specified in a Reliability Standard or by FERC or another Applicable Governmental Authority.” NERC Rules of Procedure, Appendix 4C (CMEP), Section 9.2 (Retention Requirements).

⁶⁰ NERC Petition at 27.

⁶¹ *Id.*

informational filings, those remediated issues will not be considered part of a registered entity's compliance history.

63. We reject the request of PPL Companies. Rather, we accept NERC's proposal to count a possible violation processed as an FFT matter as part of the registered entity's compliance history. Registered entities are not obligated to have a matter resolved through an FFT informational filing. If a registered entity does not wish a possible violation to be included in its compliance history, it may opt to use the CMEP processes otherwise available to seek a dismissal of the possible violation or an on-the-record determination that it did not violate a Reliability Standard.⁶²

64. While NERC states that it will count possible violations processed as FFT matters in a registered entity's compliance history, it does not clearly state how a remediated issue will be factored into a registered entity's compliance history going forward. For example, possible violations of individual Reliability Standard requirements may pose a lesser risk when considered in isolation, but pose a higher risk in the context of other violations, whether reported in the same FFT filing, another FFT filing, or a Notice of Penalty. Alternatively, analysis of a poor compliance history may reveal, for example, shortcomings in the registered entity's training programs rather than the lack of a culture of compliance.

65. Additionally, the Commission recognizes the importance of self-reporting of violations by registered entities and encourages registered entities to self-report. Therefore, we believe that self-reporting of violations should be a factor that NERC considers in designating a possible violation as an FFT, including when it considers an entity's compliance history. NERC may conclude, for example, that a compliance history with self-reports is indicative of a culture of compliance that justifies FFT treatment for a possible violation. Similarly, in reviewing a possible violation in light of an entity's compliance history, NERC may conclude that self-reporting of a possible violation marks a positive change in an entity's compliance culture. In addition, the Commission does not want the FFT mechanism to become a reason for registered entities to become less vigilant in their internal reviews and self-reporting. Such a reaction, if it occurs, is inconsistent with the Commission's desire to create a culture of compliance. We plan to use the twelve-month report as an opportunity to determine the impact of the FFT mechanism on self-reporting, if any.

⁶² We also deny PPL Companies' request for clarification of the "time of discovery" of a possible violation for the purpose of evaluating the eligibility of a self-reported matter for FFT treatment. PPL Companies at 9-10. Instead, we recognize that Regional Entities and NERC may consider for this purpose the specific circumstances of a particular self-report, including the registered entity's use of internal processes such as fact-checking that led to its self-report, as well as its quality and promptness.

66. Our consideration of the FFT initiative as it is implemented would benefit from further information on these issues. Accordingly, we direct NERC to submit within sixty days from the date of this order a compliance filing explaining the principles it will employ in evaluating an entity's compliance history. In its sixty-day compliance filing, NERC should include an explanation of how it will determine that an entity's compliance history is a contributing factor to the entity receiving FFT treatment for a possible violation. The sixty-day compliance filing should also include examples of where an entity's compliance history precludes or is a strong factor against an entity receiving FFT treatment for a possible violation. NERC should also explain in the sixty-day compliance filing the principles it will use to evaluate an entity's compliance history with respect to the following specific issues: self reports, repeat remediated issues, and multiple remediated issues arising from a single incident.⁶³ We do not require NERC to explain in each monthly FFT spreadsheet filing how a registered entity's compliance history was factored into the remediated issues reported.

3. Condition Related to Accountability and Deterrence: FFT Informational Filings Must Publicly Identify the Registered Entity with a Possible Violation

67. NERC asserts that, with regard to the FFT informational filings, the Commission's regulations do not appear to permit public disclosure of confidential information that is not included in a Notice of Penalty.⁶⁴ Therefore, NERC proposes that the FFT informational filings will not publicly disclose identification of registered entities.

68. We disagree with NERC on this issue. Section 39.7(b)(4) of our regulations provides that "[e]ach violation or alleged violation shall be treated as non-public until the matter is filed with the Commission as a notice of penalty or resolved by [an admission of violation] or a settlement or other negotiated disposition . . ."⁶⁵ We do not see this provision of our regulations as preventing the disclosure of the identity of an entity that is the subject of an FFT matter. First, the regulation is intended to prevent the public

⁶³ For example, NERC should address whether possible violations of a registered entity discovered at the same time and processed together should be filed together in the same FFT informational filing. The Commission is concerned that breaking up a registered entity's possible violations discovered together into separate FFT filings may create an inaccurate overall risk assessment.

⁶⁴ NERC Petition at 59.

⁶⁵ 18 C.F.R. § 39.7(b)(4) (2011).

disclosure of an entity subject to an ongoing compliance matter.⁶⁶ The FFT informational filing results in closure of a compliance matter before NERC. Thus, similar to the filing of a Notice of Penalty with the Commission, the submission of an FFT filing is the appropriate time for disclosure. Moreover, it is reasonable to view the closure of a possible violation pursuant to the FFT informational filing as the product of a “negotiated disposition” that NERC may file on a public basis pursuant to the first sentence of section 39.7(b)(4). Because there may be similarly situated registered entities, public disclosure of the identity of the entity in an FFT informational filing will provide industry with valuable information on compliance issues. Further, public disclosure will make the full information regarding an FFT matter available to state regulators and the public, thus, providing additional accountability and deterrence.

69. However, section 39.7(b)(4) of our regulations also provides an exception that “[t]he disposition of each violation or alleged violation that relates to a Cybersecurity Incident or that would jeopardize the security of the Bulk-Power System if publicly disclosed shall be non-public unless the Commission directs otherwise.” This exception will continue to apply in the FFT context.

4. Finality of FFT Informational Filings

70. NERC proposes that an FFT informational filing will conclude NERC and Regional Entity processing of remediated issues, subject to activities to verify remediation as warranted. In its comments, BGE suggests that the Commission officially deem a remediated issue to be closed when it is filed by NERC, without further review.

71. We recognize that finality of matters treated as FFT is important to the success of the FFT mechanism. However, to fulfill the objectives of Congress, the Commission must retain its independent authority pursuant to FPA section 215(e)(3) to reopen a remediated issue included in an FFT informational filing. Thus, we reject BGE’s suggestion that the Commission officially deem a remediated issue to be closed as to the Commission when it is filed by NERC.

72. Recognizing the critical importance of bringing finality to matters addressed through the FFT process, however, the Commission will adopt a time limit on its review of remediated issues included in FFT informational filings. Specifically, the Commission will consider an FFT matter closed sixty days after the FFT informational filing is submitted to the Commission, and will not reopen an FFT matter for review unless the

⁶⁶ See *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 533-34, *order on reh’g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

Commission provides notice during that period that it will review a specific matter. While the sixty-day window we adopt here is longer than the thirty-day window in our regulations applicable to Notices of Penalty, we believe this limited additional time for review is necessary given the possibility that a large number of FFT matters could be filed each month. Within the sixty-day window, the Commission expects to exercise its authority to review matters in FFT informational filings infrequently and only in limited and rare circumstances, such as in situations where the described remedial action does not appear to mitigate the possible violation, where an event that appears to have posed more than a minimal risk to the reliability of the Bulk-Power System was processed as an FFT, or where the Commission determines that there was a pattern of non-compliance and NERC has not adequately explained why the possible violation justifies FFT treatment. To the extent the Commission initiates a review of a possible violation included in an FFT informational filing, the Commission will review it in a timely manner, but is not committing to complete each review within the sixty-day period.⁶⁷ In addition, the Commission retains the discretion to review a possible violation reported in an FFT informational filing even after the sixty day period if it finds that FFT treatment was obtained based on a material misrepresentation of the facts underlying the FFT matter.

73. Additionally, at this time, the Commission plans to survey a random sample of FFTs filed each year to gather information on how the FFT program is working. The purpose of this survey will *not* be to reach back and reopen the FFTs selected for survey or to evaluate documentation requirements.⁶⁸ Therefore, NERC, the Regional Entities, and registered entities should not increase the documentation they require for FFT treatment as a result of, or in anticipation for, this survey.⁶⁹ Instead, the purposes of this survey are to: (1) provide the Commission with information about how successful the program is in efficiently processing and remediating possible violations eligible for FFT treatment (including determining if the required remediation occurred); and (2) assist the Commission in gauging whether it is in general agreement with the approach NERC and the Regional Entities are taking to qualify possible violations for FFT treatment. While the information gained through this survey may inform future policy guidance, NERC,

⁶⁷ Depending on the outcome of this review, the Commission may, among other steps, close the FFT or send the matter back to NERC for processing as an NOP.

⁶⁸ Absent discovery of a material misrepresentation, as discussed above, the FFTs surveyed would not be reopened.

⁶⁹ As we stated above, the Commission understands the need to reduce the documentation burden with regard to matters included in an FFT informational filing. The Commission is not imposing any new documentation burdens with this survey process.

the Regional Entities, and interested industry participants will have the opportunity to provide their input before the Commission requires any changes. Any such Commission guidance will be prospective only.

5. Reports to the Commission and One-Year Review

74. NERC proposed to submit reports to the Commission six months and one year from the date of its petition to address the experience gained and implementation results from the new mechanisms and tools.⁷⁰

75. We agree that the reports would be useful and, therefore, we direct NERC to submit the six-month report concurrently with the sixty-day compliance filing. With regard to the twelve-month report, we direct that it be filed twelve months from the date of issuance of this order. Submitting the twelve-month report from the date of this order will allow NERC to gain experience and report on the efficacy of the FFT program as implemented in accordance with the conditions articulated in this order

76. The Commission sees the reports as means to provide the Commission with a meaningful opportunity to review the initiative and to consider any necessary changes going forward, including expanding the scope and parameters of possible violations to be processed by FFT informational filings. The Commission will use the submission of the twelve-month report as an opportunity to evaluate the effectiveness of the FFT program with regard to such matters as: (1) the effect of the program on improving Bulk-Power System reliability; (2) the effect of the program on addressing NERC's compliance program, including its backlog; (3) the effect of the program on NERC and the Regional Entities better focusing resources on addressing more serious violations; (4) how NERC's evaluation of risk in identifying candidate possible violations for FFT treatment has evolved during the implementation of the FFT initiative, including but not limited to how the VRFs have been considered in the evaluation; (5) manners in which the FFT mechanism can be improved based on experience to date; (6) the results of any audits, spot checks or random samplings that NERC or the Regional Entities may have performed during the year with regard to implementation of the FFT proposal; and (7) the impact, if any, the implementation of the FFT mechanism has had on the number of self-reports submitted. We direct NERC to include information in the twelve-month report that will assist the Commission in evaluating these matters.

6. Consistency of Outcomes

77. NERC explains in its petition that it has mechanisms to ensure consistency of outcomes in similar situations with regard to FFT treatment.⁷¹ For example, NERC states

⁷⁰ NERC Petition at 2.

that it intends to (1) post searchable spreadsheets for both FFTs and spreadsheet Notices of Penalty, (2) develop common forms and letters, and (3) provide training and guidance for consistent implementation. PNW Utilities and the PPL Companies express the concern whether Regional Entities will consistently address similar possible violations by similarly-situated registered entities through the FFT process.

78. The Commission finds that NERC and the Regional Entities should coordinate and work together to ensure consistency of outcomes, where such consistency is warranted. Although NERC has identified some tools to promote consistency, experience will assess whether these tools are adequate. Therefore, we require NERC to specifically evaluate the consistency and application of the FFT initiative and include the results of that evaluation in its twelve-month report.

VI. Phase II

79. NERC, in its petition, indicates that Phase II of the FFT initiative would include NERC and Regional Entity compliance field staff, auditors and investigators making determinations regarding FFT treatment during audits, spot checks and investigations. NERC indicates that Phase II is “targeted to occur after twelve to eighteen months of the implementation of the initiative.”⁷²

80. NERC may move forward with Phase II. However, because NERC’s petition does not clearly describe how Phase II will be implemented, we have questions regarding how Regional Entity audit teams will decide whether a possible violation will be resolved through the CMEP or FFT processes and how NERC will achieve consistency of outcomes. Consequently, we require NERC, as part of its compliance filing due sixty days after the date of this order, to:

- (1) Describe how NERC and Regional Entity compliance and enforcement personnel will be trained to implement Phase II and, for informational purposes, provide copies of any training materials prepared for this purpose;
- (2) Explain the procedures for coordination and collaboration between compliance personnel and enforcement personnel in evaluating FFT eligibility during Phase II;
- (3) Explain how NERC intends to obtain consistent treatment of possible violations for FFT treatment among the Regional Entities and as between NERC and the Regional Entities; and

⁷¹ NERC Petition at 31-35.

⁷² NERC Petition at 33.

- (4) Describe the process for certification or qualification of specific personnel to participate in eligibility determinations during Phase II.

The Commission will review the information submitted and, if necessary, provide further guidance to NERC and the Regional Entities as they move forward.

VII. Other Approaches to Gain Efficiencies and Reduce Compliance Backlogs

81. The Commission notes that NERC's FFT initiative is predicated on the view that many violations of requirements currently included in Reliability Standards pose lesser risk to the Bulk-Power System. If so, some current requirements likely provide little protection for Bulk-Power System reliability or may be redundant. The Commission is interested in obtaining views on whether such requirements could be removed from the Reliability Standards with little effect on reliability and an increase in efficiency of the ERO compliance program. If NERC believes that specific Reliability Standards or specific requirements within certain Standards should be revised or removed, we invite NERC to make specific proposals to the Commission identifying the Standards or requirements and setting forth in detail the technical basis for its belief. In addition, or in the alternative, we invite NERC, the Regional Entities and other interested entities to propose appropriate mechanisms to identify and remove from the Commission-approved Reliability Standards unnecessary or redundant requirements. We will not impose a deadline on when these comments should be submitted, but ask that to the extent such comments are submitted NERC, the Regional Entities, and interested entities coordinate to submit their respective comments concurrently.

The Commission orders:

(A) The Commission hereby accepts NERC's FFT initiative as set forth in the petition, subject to limited conditions, as set forth in the body of this order.

(B) NERC is hereby directed to make a compliance filing within sixty days of this order, as discussed in the body of this order.

(C) NERC is hereby directed to submit information reports regarding the implementation of the new enforcement mechanisms, as set forth in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Motions to Intervene in Docket No. RC11-6-000

Duke Energy Corporation

Electric Power Supply Association

Exelon Corporation

Florida Reliability Coordinating Council, Inc.

Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company

Modesto Irrigation District

National Grid USA

New Jersey Board of Public Utilities

Penobscot Energy Recovery Company, L.P.

Puget Sound Energy, Inc.

Snohomish County Public Utility District No. 1

Tacoma Power

Tennessee Valley Authority

Texas Reliability Entity, Inc.

Motions to Intervene and Comments in Docket No. RC11-6-000

Baltimore Gas and Electric Company (BG&E)

FirstEnergy Service Company

G&T Cooperatives (Associated Electric Cooperative, Basin Electric Power Cooperative and Tri-State Generation and Transmission Association)

ISO/RTO Council

NextEra Energy, Inc. (NextEra)

NRG Energy, Inc. (NRG Energy)

Pacific Northwest Generating Cooperative (PNGC)

Pacific Northwest Utilities (PNW Utilities)

Pepco Holdings, Inc.

PPL Companies (PPL Electric Utilities Corporation, PPL EnergyPlus, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Martins Creek, LLC, PPL Montana, LLC, PPL Mountour, LLC, PPL Renewable Energy, LLC, PPL Susquehanna, LLC, Lower Mount Bethel Energy, LLC, LG&E and KU Services Company as agent for Louisville Gas and Electric Company and Kentucky Utilities Company)

Regional Entities (Florida Reliability Coordinating Council, Midwest Reliability Organization, Northeast Power Coordinating Council, ReliabilityFirst Corporation, Southwest Power Pool Regional Entity, SERC Reliability Corporation, Texas Reliability Entity, and Western Electricity Coordinating Council)

San Diego Gas & Electric Company

Trade Associations (The Edison Electric Institute, American Public Power Association, Electricity Consumers Resource Council, National Rural Electric Cooperative Association, Transmission Access Policy Study Group, Electric Power Supply Association, and Large Public Power Council)