



March 15, 2012

Chairman Jon Wellinghoff

STATEMENT

FEDERAL ENERGY REGULATORY COMMISSION

Docket Nos. RC11-6-000, RC12-1-000,
RC12-2-000, RC12-6-000, RC12-7-000,
RC12-8-000
Item No. E-3

Statement of Chairman Jon Wellinghoff on The New Enforcement Mechanism for Reliability Standards

"Thank you to the team for that presentation and for your hard work in reviewing NERC's Find, Fix, and Track proposal and the related filings over the last several months. I want to thank staff members in the Office of Electric Reliability, the Office of General Counsel, and the Office of Enforcement, as well as NERC and the industry for their continued diligent work to improve the reliable functioning of this nation's interconnected transmission network.

It is worth noting that every commenter supported NERC's FFT proposal as a means of more efficiently allocating the compliance resources of NERC, the Regional Entities and registered entities. I support efforts to prioritize the allocation of resources in order to focus resources on issues that pose the greatest risk to reliability. I 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. It is my hope that our approval of NERC's proposal, as conditioned in our order, will lead to a more efficient and effective compliance and enforcement process.

In approving this proposal today, we provide certain guidance, but do not significantly alter NERC's proposal. NERC has been submitting monthly FFT filings since the FFT proposal was initially filed in September. I agree that a vast number of these monthly FFT filings are satisfactory. In fact, our review of those monthly filings, in concert with our consideration of the FFT proposal, has enhanced our understanding and confidence in how NERC intends to implement its proposal.

Based on our review of the monthly FFT filings, the Commission provides guidance for the implementation of the FFT proposal going forward. I would like to highlight a few key concepts. While the NERC proposal identifies six factors that will be considered 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.

For example, I am concerned that a violation may be treated as posing a minimal risk because no harm to the Bulk Power System actually occurred. 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. The order identifies other examples of where NERC's risk assessment was problematic and we offer guidance on those matters. In sum, we need a better understanding of how the risk assessments will be made in qualifying a possible violation for FFT treatment. Consequently, until we and NERC have gained additional experience with the assessment of risk under specific factual scenarios, we are limiting eligibility for FFT treatment only to possible violations that pose a minimal risk to Bulk-Power System reliability. Our review of the informational filing that NERC submits in one year may give us a better understanding of how risk is being assessed so that we may consider whether it is appropriate to review this condition.



I point out that this initial eligibility requirement is substantially consistent with NERC's proposal. Of the possible violations submitted by NERC as FFT issues from September through February, approximately ten percent would be affected by this condition and would not have qualified for FFT treatment on a prospective basis. However, we will not reopen these FFTs or require that they be refiled.

Second, I agree with the need to reduce the burden associated with compliance matters that pose a minimal risk, especially with regard to documentation burdens. However, the Commission is obligated to fulfill its oversight role and responsibilities. I believe the data listed in the NERC "Guidance for Self Report" provides sufficient information to meet our documentation needs and to significantly minimize the amount of documentation submitted in connection with an FFT matter.

In addition, we will require the public disclosure of the identity of an entity that is the subject of an FFT matter unless the disclosure relates to a Cybersecurity incident or would jeopardize the security of the Bulk-Power System. 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.

I recognize that finality of matters treated as FFTs is important to the success of the FFT mechanism. Moreover, I do not want or intend to second-guess NERC or the Regional Entities in determining whether a possible violation qualifies for FFT treatment. In fact, I support the statement in the order that an FFT matter will be considered closed sixty days after the FFT informational filing is submitted to the Commission unless reviewed for good cause, which should be infrequently and only in limited and rare circumstances.

Finally, compliance, not penalties is my main goal. Therefore, I strongly support promoting a culture of compliance. I am concerned that the FFT mechanism may have an adverse impact on self-reporting. We have asked NERC to include, as part of its one-year report, an analysis of the impact, if any, the implementation of the FFT mechanism has had on the number of self-reports submitted.

In conclusion, today's order approving NERC's proposal generally provides NERC with the discretion it seeks to proceed with implementation of the FFT proposal. I agree with the goals of the proposal. But as the order indicates, the proposal is a major change in how we will enforce compliance with the Reliability Standards going forward. Thus, I believe the limited conditions and guidance in the order are appropriate for the Commission to ensure at this stage that the mechanism achieves its goals but without any adverse effect on our ability to ensure compliance with the Reliability Standards. By allowing FFT treatment of possible violations that pose only a minimal risk to the reliability of the Bulk Power System, the Commission supports NERC's efforts to prioritize its allocation of resources on the matters that pose the greatest risk to reliability."