

140 FERC ¶ 61,215
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

North American Electric Reliability Corporation

Docket No. RC11-6-002

ORDER ON COMPLIANCE FILING

(Issued September 20, 2012)

1. On March 15, 2012, the Commission accepted, with limited conditions, the petition of the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), 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.¹ In addition, the FFT Order directed NERC to submit a compliance filing with additional details on the implementation of the FFT initiative. In this order, we accept NERC’s compliance filing and provide NERC additional time to submit certain materials required by the FFT Order.

I. Background

2. On September 30, 2011, NERC filed a petition requesting approval of its proposal to make informational filings in a FFT spreadsheet format of lesser-risk, remediated possible violations of Reliability Standards. NERC explained that the processing of possible violations in the FFT format would provide NERC with greater flexibility and efficiency in its compliance program, so that NERC can focus its resources on the matters that pose a more serious threat to Bulk-Power System reliability. In addition, NERC outlined its plan to implement the FFT initiative in two phases as part of its Compliance Enforcement Initiative (CEI).²

¹ *North American Electric Reliability Corporation*, 138 FERC ¶ 61,193 (FFT Order), *order on clarification*, 139 FERC ¶ 61,168 (2012).

² September 30, 2011 NERC Petition at 32-34.

3. In the FFT Order, the Commission accepted, with limited conditions, NERC's petition. The Commission also directed NERC to submit a compliance filing within sixty days, concurrent with an initial six-month report on the CEI, and to submit a second report by twelve months from the date of issuance of the FFT Order. With regard to the sixty-day compliance filing, the Commission directed NERC to explain the principles that it will employ in evaluating an entity's compliance history.³ The Commission also directed NERC to respond to certain questions relating to the implementation of Phase II of the FFT initiative, during which NERC and Regional Entity compliance field staff, auditors, and investigators would make determinations regarding FFT treatment during audits, spot checks, and investigations.⁴ In particular, the Commission directed NERC to describe how NERC and Regional Entity staff will be trained to implement Phase II and provide, for informational purposes, copies of any training materials prepared to implement Phase II.⁵

II. NERC Compliance Filing

4. In the May 14, 2012 compliance filing, NERC provides an explanation of its evolving approach to the CEI, as well as responses to the questions proffered in the FFT Order. NERC explains that, although it originally proposed to implement the FFT initiative through a discrete Phase I and Phase II, NERC now believes that the proper focus of its efforts "is on ensuring the sustainability and expandability of the CEI program" rather than implementing the program in two discrete phases.⁶ NERC further explains that "[t]he first step in the expansion of the program is to have recommendations from compliance monitoring staff regarding the disposition of certain possible violations as FFTs."⁷ NERC states that future steps to modify the CEI program will be addressed in NERC's twelve-month report on the FFT initiative. NERC also indicates that it and the Regional Entities will develop a process for sampling FFT candidates to ensure the program is working as intended.⁸

³ FFT Order, 138 FERC ¶ 61,193 at P 66.

⁴ *Id.* PP 79-80.

⁵ *Id.* P 80.

⁶ May 14, 2012 Compliance Filing at 2-3.

⁷ *Id.* at 3.

⁸ *Id.* at 18.

5. In response to the Commission's questions regarding the evaluation of an entity's compliance history in the context of the FFT initiative, NERC states generally that:

An entity's compliance history, including prior or repeat issues by the entity or its affiliates, the entity's internal compliance program, internal controls and culture of compliance, are factors that have been and will continue to be taken into account in determining whether FFT treatment is warranted in any given case, and will be referenced in the FFT spreadsheet as appropriate.⁹

According to NERC, a review of an entity's compliance history by NERC or the Regional Entities will include a determination, "based on the particular facts of each violation/remediated issue, whether a prior violation/remediated issue of the same or a closely-related Reliability Standard should preclude FFT treatment."¹⁰ NERC also provides a discussion of repeat violations that would not necessarily preclude FFT treatment and examples of repeat issues that would bar FFT treatment.

6. NERC provides an overview of the FFT-related outreach and training activities it has conducted to date, as well as a description of its plans for continued training relating to the ongoing implementation of the FFT initiative, including facilitating field staff determination of FFT treatment.¹¹ As part of this description, NERC states that "[w]ebinars and web modules providing education for CEA compliance and enforcement staff will be available in August 2012."¹² In addition, NERC describes the current efforts relating to the coordination and collaboration between compliance monitoring and enforcement staff, including general standards to ensure the adequate qualification of compliance monitoring and enforcement staff of NERC and the Regional Entities involved with the FFT initiative.¹³ Finally, NERC discusses its efforts to maintain the consistent treatment of potential violations under the FFT initiative.¹⁴

⁹ *Id.* at 6.

¹⁰ *Id.* at 7-8.

¹¹ *Id.* at 12-14.

¹² *Id.* at 14.

¹³ *Id.* at 15-16, 19.

¹⁴ *Id.* at 16-19.

III. Notice of Filing and Comments

7. Notice of NERC's Filing was published in the *Federal Register*, with comments due on or before June 15, 2012.¹⁵ Timely comments were submitted by ISO/RTO Council and Trade Associations.¹⁶

8. ISO/RTO Council states that the FFT initiative has had a tangible impact and led to substantial improvements in NERC's compliance and enforcement efforts. In addition, ISO/RTO Council supports NERC's plan to expand the CEI program, including its FFT initiative. ISO/RTO Council, however, suggests adding certain features to the FFT initiative. Specifically, ISO/RTO Council suggests that NERC adopt additional training for NERC and Regional Entity compliance monitoring and enforcement staff to ensure consistency in the application of the FFT initiative and guarantee due process for registered entities.¹⁷ ISO/RTO Council states that FFT-related training should "emphasize the importance of objective metrics (such as comparable historical violations)."¹⁸

9. ISO/RTO Council also advocates that "standardization of the process of evaluating potential and confirmed violations, including the utilization of one or more NERC-Approved forms" would result in "additional predictability, transparency, and consistency" in the determination of FFT applicability.¹⁹ ISO/RTO Council notes that the use of standardized processes and forms would promote equitable treatment of registered entities in all regions, which is important for registered entities that may operate in more than one region.

10. Trade Associations state that the goal of the FFT initiative, specifically refocusing time and resources away from lower risk issues to focus on activities that enhance reliability "cannot be realized unless NERC can achieve consistency of application within

¹⁵ 77 Fed. Reg. 32,629 (2012).

¹⁶ Trade Associations filed comments on behalf of 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.

¹⁷ ISO/RTO Council Comments at 3.

¹⁸ *Id.* at 4.

¹⁹ *Id.*

and across regions, and within and across both enforcement and compliance personnel.”²⁰ Trade Associations note that NERC’s movement away from a discrete Phase I/Phase II implementation approach “appears intended to more quickly yield the efficiencies and value everyone hopes the FFT program can achieve.”²¹ Nevertheless, Trade Associations assert that apparent inconsistency in the application of the FFT initiative by various Regional Entities shows that NERC has more work to do to reach its goals.

IV. Commission Determination

11. We accept NERC’s compliance filing and find that NERC has adequately responded to our inquiries regarding the evaluation of compliance history in determining FFT treatment and NERC’s implementation of Phase II of the FFT initiative. With regard to our requirement for NERC to file training materials associated with the implementation of Phase II of the FFT initiative,²² we recognize that NERC had not completed the development of such training materials when the compliance filing was submitted, that NERC expects relevant training materials to be available in August 2012, and that NERC no longer intends to transition to a discrete Phase II of the initiative. In response to NERC’s update, we direct NERC to file the training materials developed to facilitate the implementation of FFT determinations within thirty days from the issuance of this order.²³

12. We share the concern of ISO/RTO Council and Trade Associations that the FFT initiative be implemented in a consistent manner across the various Regional Entities. We expect that the Regional Entities will consistently apply the conditions outlined in the FFT Order relating to qualification for FFT treatment, documentation of possible violations as FFTs, accountability and deterrence.²⁴ We will not, however, mandate the use of standardized processes and forms at this time. To the extent that standardized processes and/or forms could help ensure consistent application of the FFT initiative, we encourage NERC and the Regional Entities to consider implementation of such processes and/or forms.

²⁰ Trade Associations Comments at 2.

²¹ *Id.* at 3.

²² FFT Order, 138 FERC ¶ 61,193 at P 80.

²³ To the extent that NERC has concerns with the public release of the training materials, NERC may file them on a non-public basis.

²⁴ *See* FFT Order, 138 FERC ¶ 61,193 at P 42.

The Commission orders:

(A) The Commission hereby accepts NERC's sixty-day compliance filing, as set forth in the body of this order.

(B) NERC is hereby directed to make a compliance filing providing the training materials being developed to facilitate the implementation of FFT determinations within thirty days from the issuance of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.