

153 FERC ¶ 61,130
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

North American Electric Reliability Corporation

Docket Nos. RR15-2-001
RR15-2-002

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILINGS

(Issued November 4, 2015)

1. On May 20, 2015 and July 6, 2015, North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted compliance filings in accordance with the Commission's February 19, 2015 order conditionally accepting NERC's risk-based compliance monitoring and enforcement program (CMEP), also known as the Reliability Assurance Initiative (RAI).¹ As discussed below, we accept NERC's compliance filings subject to NERC making an additional compliance filing to modify its Rules of Procedure within 120 days of the date of this order, and providing additional information in its annual report on RAI.

I. Background

2. In the February 19 Order, the Commission approved NERC's implementation of RAI, which represents a transition to a risk-based approach to compliance monitoring and enforcement. The February 19 Order was based on a finding that focusing compliance resources on higher-risk issues that matter more to reliability is reasonable. In approving the implementation of RAI, however, the Commission directed NERC to submit a compliance filing proposing revisions to the NERC Rules of Procedure that articulate the RAI concepts and programs, as well as providing details on NERC's planned oversight of and evaluation of the RAI program.

3. With regard to the directed revisions to the Rules of Procedure, the Commission stated that NERC's proposal should, at a minimum, "recognize the existence of the RAI

¹ *North American Electric Reliability Corp.*, 150 FERC ¶ 61,108 (2015) (February 19 Order).

process, articulate basic RAI concepts and define fundamental RAI elements,” as well as provide for Commission approval of “significant” changes in RAI as NERC develops and implements its risk-based approach to compliance monitoring and enforcement.² The Commission stated, however, that it does “not expect NERC to include in the Rules of Procedure detailed procedures that would unduly hamstring the intended flexibility and streamlined processes that are the hallmark of RAI.”³ While providing NERC flexibility in the implementation of RAI, the Commission concluded that revisions to the Rules of Procedure are necessary to maintain meaningful Commission oversight and ensure that the ERO rules provide fair and impartial procedures for enforcement.

4. The Commission also directed NERC to include in this compliance filing “details on: a) its oversight processes for the RAI program and b) how it intends to measure the success of the risk-based approach to compliance monitoring and enforcement,” including the types of data-driven metrics that will be used to track the RAI program as it develops.⁴ In addition, the Commission imposed certain conditions on the implementation of RAI. Specifically, the Commission directed NERC to (1) make information regarding both Critical Infrastructure Protection (CIP) Reliability Standard and non-CIP compliance exceptions available to the public as currently provided for under the Find, Fix, Track and Report (FFT) program;⁵ (2) require “some level of formal review” of an entity’s internal controls before granting the entity the flexibility to self-log instances of noncompliance, including “an appropriate level of standardization for the content and review of an entity’s compliance logs;”⁶ and (3) while generally not including compliance exceptions in a registered entity’s compliance history for penalty purposes, assess subsequent noncompliance of the same or closely-related Reliability Standards and requirements to determine a registered entity’s qualification for compliance exception treatment.⁷ The Commission also clarified that a compliance exception will be considered closed 60 days after being reported to the Commission,

² *Id.* P 30.

³ *Id.*

⁴ *Id.* P 32.

⁵ *Id.* P 39.

⁶ *Id.* PP 42-43.

⁷ *Id.* PP 44-45.

unless it is determined that a compliance exception was obtained based on a material misrepresentation.⁸

5. In addition, the Commission accepted NERC's proposal to submit an annual informational filing on RAI, finding that "the annual report content suggested by NERC [is] reasonable."⁹ Specifically, the Commission directed NERC to submit an annual report as proposed by NERC, to include observed trends by standard, region or other categories, as well as examples of matters that were treated as compliance exceptions.¹⁰ In addition, the Commission directed NERC to include certain additional information in the annual report, including the interplay between the RAI program and other NERC program areas, such as a feedback loop from RAI to the standards development process and the analysis of Bulk-Power System events. The Commission also directed NERC to address whether a baseline audit is necessary to properly evaluate a registered entity's internal controls. Finally, the Commission directed NERC to provide "an update on NERC's oversight of the RAI program (e.g., whether RAI has been implemented in a consistent manner across the Regional Entities)," an update on "the metrics that NERC has or will employ to measure the effectiveness of the RAI program," and examples of "how a Regional Entity assesses and factors into a registered entity's risk assessment and audit scope that entity's use of NERC Alerts, Lessons Learned, Reliability Guidelines, and other NERC learning tools."¹¹

II. NERC's Compliance Filings

A. May 20, 2015 Compliance Filing

6. On May 20, 2015, NERC submitted a compliance filing providing additional detail on its oversight processes, measures of success, a methodology for assessing an entity's internal controls and the circumstances under which an alternate methodology will be used, and standardization of the content and review of an entity's compliance logs as required in the February 19 Order. With respect to oversight processes, NERC discusses four aspects: (1) risk-based CMEP oversight; (2) compliance assurance

⁸ *Id.* PP 47-48.

⁹ *Id.* P 49.

¹⁰ *Id.* (citing NERC's November 3, 2014 Informational Filing on the Reliability Assurance Initiative in Docket No. RR15-14-000 at 51).

¹¹ *Id.* PP 49-52.

oversight; (3) compliance enforcement oversight; and (4) continued training of ERO Enterprise (i.e., NERC and the Regional Entities) staff.

7. NERC's filing also proposes success factors and some related metrics to assess the success of the implementation of the risk-based CMEP. Specifically, NERC states that it will measure the following success factors: (1) ERO Enterprise staff competency; (2) information and outreach; (3) consistency; (4) regulator trust; (5) balanced transparency; (6) metrics identified; and (7) recognized value.

8. NERC also provides a methodology for the review of a registered entity's internal controls to determine the entity's eligibility for the self-logging program. Specifically, Attachment A to NERC's May 20, 2015 compliance filing describes the self-logging program and the methodology that Regional Entities use to review internal controls associated with a registered entity's ability to self-assess and mitigate possible violations that, as currently required by the risk-based CMEP, pose only a minimal risk to Bulk-Power System reliability. Attachment A establishes the formal review of an entity's internal controls that must be undertaken by the Regional Entities prior to granting the ability to self-log, as required by the February 19 Order. NERC also clarifies that the formal review of a registered entity's eligibility for self-logging is separate and apart from an internal controls evaluation (ICE).¹² NERC states that this formal review should be available any time a registered entity seeks admission to the self-logging program and would likely take place outside of a formal compliance monitoring engagement. Nevertheless, NERC states that a self-logging evaluation may be performed at the same time in the context of an ICE, provided that the Regional Entity performs the review in accordance with the requirements in Attachment A.¹³

9. In addition, NERC provides an explanation of the anticipated content and review process associated with a registered entity's log of instances of noncompliance. Specifically, NERC explains that a log should "not provide any less information than what is contained in a typical Self-Report and corresponding Mitigation Plan," including a description of the facts surrounding the noncompliance and its discovery, a risk assessment, and a description of mitigating activities. NERC explains further that a Regional Entity must review each noncompliance included in a registered entity's log, to determine whether (1) the logged noncompliance is sufficiently described; (2) the minimal risk assessment is justified and reasonable; and (3) the mitigation activities for the noncompliance are appropriate and adequate. In addition, NERC explains that where a Regional Entity determines that any logged instances of noncompliance "are

¹² May 20, 2015 Compliance Filing at 14-15.

¹³ *Id.*

insufficient due to unclear or missing information, unsupported minimal risk determinations, or inadequate mitigations (e.g., recurring instances of noncompliance stemming from the same or substantially similar root cause),” the Regional Entity may (1) work with the entity to correct unsatisfactory log entries; (2) process the instance of noncompliance through an alternate disposition method; or (3) modify or revoke self-logging privileges.¹⁴

B. July 6 2015 Compliance Filing

10. On July 6, 2015, NERC submitted a compliance filing proposing revisions to section 400 and Appendices 2 and 4C of the NERC Rules of Procedure. NERC explains that the proposed revisions recognize the risk-based CMEP processes and concepts, as directed by the Commission. Specifically, NERC proposes definitions for key RAI-related terms: compliance exceptions; internal controls evaluation; and self-logging. In addition, NERC proposes revisions to the Rules of Procedure to (1) highlight the types of data NERC uses to identify annual risk elements; (2) explain that the type and frequency of the compliance monitoring tools appropriate for a particular entity is based on that entity’s specific reliability risk; and (3) include the principles related to the exercise of enforcement discretion.

11. NERC explains that the proposed revisions to section 400 of the Rules of Procedure are intended to articulate the process by which NERC will identify continent-wide reliability risks, which will represent the focus for monitoring for the next year as inputs to the Regional Entities’ individual registered entity oversight plans. In addition, NERC proposes revised requirements for Regional Entities, to include in their Regional Entity CMEP implementation plan, details on the regional risk assessment process and results, the Reliability Standards and requirements identified by regional risk assessments, and the Regional Entity annual audit plan. NERC explains that the proposed revisions are intended to “help promote consistency and compliance with NERC’s uniform [CMEP].”¹⁵ NERC states that its proposed revisions to Appendices 2 and 4C are intended to define the fundamental RAI concepts and processes.

III. Notice and Responsive Pleadings

12. Notice of NERC’s May 20, 2015 compliance filing was published in the *Federal Register*, with comments or protests due on or before June 10, 2015.¹⁶ Notice of NERC’s

¹⁴ *Id.* at 16-18.

¹⁵ July 6, 2015 Compliance Filing at 7.

¹⁶ 80 Fed. Reg. 31,902 (June 4, 2015).

July 6, 2015 compliance filing was published in the *Federal Register*, with comments or protests due on or before July 27, 2015.¹⁷ None was filed.

IV. Discussion

13. As described further below, we conditionally accept NERC's compliance filings, subject to NERC making an additional compliance filing to modify its Rules of Procedure within 120 days of the date of this order and providing additional information in its annual report on RAI.

A. Additional Information Regarding RAI Oversight

14. In the February 19 Order, the Commission found that NERC's plan for oversight of the RAI programs was lacking in specifics beyond the first quarter of 2015. While the Commission found that NERC's commitment to review Regional Entity implementation of RAI during the first quarter of 2015 was appropriate to ensure that the program is implemented appropriately at its outset, the Commission directed NERC to provide details on its plan for ongoing oversight. Specifically, the Commission directed NERC to provide details on, among other things, its oversight processes for the RAI program.¹⁸

NERC's Compliance Filing

15. In its May 20, 2015 compliance filing, NERC explains that the oversight approach for the risk-based CMEP implementation includes (1) reviewing processes and procedure documentation to assess consistency with risk-based CMEP design; (2) sampling the activities related to performance of specific components of the risk-based CMEP design for quality assurance; and (3) providing feedback, training, and recommendations to Regional Entities for improvement.¹⁹

16. NERC states that it is conducting compliance assurance oversight activities through a two-phased approach. In the first phase, which has been completed, NERC visited all eight Regional Entities to review their risk-based process documentation, including procedures associated with the Inherent Risk Assessment (IRA) and ICE.²⁰

¹⁷ 80 Fed. Reg. 40,055 (July 13, 2015).

¹⁸ February 19 Order, 150 FERC ¶ 61,108 at P 32.

¹⁹ May 20, 2015 Compliance Filing at 4.

²⁰ NERC states that this documentation includes supporting regional process documents such as policies, procedures, narratives, and flowcharts describing the

NERC states that it compared the Regional Entities' basic concepts to the ERO Enterprise's guidance documents and procedures associated with these programs. NERC also states that it provided feedback identifying differences or opportunities for improvement and increased consistency in regional processes. In addition, NERC explains that it held regular and periodic discussions with the Regional Entities to follow up on the results of the site visits. NERC states that it plans to continue feedback discussions as procedures are revised.²¹

17. NERC explains that under phase two it will evaluate "how risk-based compliance monitoring concepts are used, the determinations made when using these concepts, and the results of their practical application by the Regional Entities."²² NERC states that phase two will continue throughout the remainder of 2015 and into 2016 and will "focus on samples of compliance monitoring work by each Regional Entity."²³

18. With regard to compliance enforcement, NERC states that its oversight includes three main categories of activities: (1) tracking data flow and calculating metrics; (2) performing an annual review and evaluation; and (3) developing feedback, guidance, and training.²⁴ NERC explains that it develops "performance indices on a regular basis to track and report the performance of the Regional Entities and NERC in processing violations and mitigation." NERC explains that for 2015, the "evaluations are focusing on the new processes under the risk-based CMEP including triage, self-logging, and Compliance Exceptions." NERC states that its enforcement staff provides feedback, guidance, and training to the Regional Entities and will provide additional training in 2015 to Regional Entity staff and industry stakeholders on areas such as compliance exceptions and the self-logging program. NERC explains that it will develop this training based on early experience with implementing the programs, as well as observations from the various reviews and evaluations. NERC states that it also computes performance

Regional Entity's execution and application of the design for the risk-based CMEP applicable to the ERO Enterprise.

²¹ May 20, 2015 Compliance Filing at 4-5.

²² *Id.* at 5.

²³ *Id.*

²⁴ *Id.* at 6.

indices on a regular basis to track and report the performance of the Regional Entities and NERC in processing violations and mitigation.²⁵

19. NERC states that it prioritized training for ERO Enterprise staff to provide oversight and transparency for the risk-based CMEP. During 2015, according to NERC, its staff, supported by Regional Entities, will continue to develop and provide comprehensive and ongoing education and training on the transformation of compliance monitoring and enforcement for ERO Enterprise staff. As part of phase one, NERC explains, the training focused heavily on consistent implementation of the IRA and ICE components; phase two will incorporate lessons learned and other examples obtained through actual application of IRA and ICE.²⁶

Commission Determination

20. While NERC provided additional information on its oversight of the RAI program, as directed in the February 19 Order, we believe that the Commission's monitoring would benefit from additional information regarding NERC's oversight plan going forward. We recognize, however, that the Commission directed NERC to "address and provide an update on NERC's oversight of the RAI program" in its upcoming annual report.²⁷ Therefore, we accept this aspect of NERC's May 20, 2015 compliance filing on the condition that NERC provide in its annual reports on RAI the following additional types of information.

21. As an initial matter, NERC provided a description of the phase 1 assessment and the activities completed as of the time it submitted its compliance filings. We direct NERC to provide the results of that assessment, as well as future assessments, in its annual reports. NERC should provide its assessment of the Regional Entities' consistency in the implementation of risk-based CMEP, including a description of any inconsistencies found in Regional Entities' risk-based process documentation and application, and how such inconsistencies were or will be resolved. Such information is important with respect to how each Regional Entity has implemented and will implement the RAI program; therefore, we direct NERC to include this information in its annual reports on RAI.

²⁵ *Id.* at 6-7.

²⁶ *Id.* at 7.

²⁷ February 19 Order, 150 FERC ¶ 61,108 at P 52.

22. It would also be informative for NERC to provide in its annual reports an analysis of self-logging data provided by each Regional Entity to measure the quality and consistency of self-logging across regions. This analysis should include information quantifying the number of applicants and successful applicants to receive self-logging authority, and information on the quality and disposition of self-logs, including whether they included all elements required by NERC's self-logging program.²⁸ Such information will assist the Commission with its ongoing oversight of the RAI program.

B. Measures of Success and Associated Metrics

23. As noted above, the Commission found in the February 19 Order that NERC's plan for oversight of the RAI programs was lacking in specifics beyond the first quarter of 2015. Specifically, the Commission directed NERC to provide details on "how it intends to measure the success of the risk-based approach to compliance monitoring and enforcement, to include the types of data-driven metrics it will track as the RAI program develops."²⁹

NERC's Compliance Filing

24. NERC states that it has developed success factors and related metrics to assess the success of the implementation of the risk-based CMEP. NERC further states that over the course of 2015, it "will collect information related to each measurement in order to determine appropriate benchmarks and possible targets for future years." NERC also states that "each metric may support more than one success factor." NERC proposes seven success factors: (1) ERO Enterprise staff competency; (2) information and outreach; (3) consistency; (4) regulator trust; (5) balanced transparency; (6) metrics identified; and (7) recognized value.³⁰

25. NERC defines the ERO Enterprise staff competency success factor as having ERO staff that performs key activities being trained and competent in their areas of responsibility and regarded as being well qualified in their roles by registered entities. NERC further states that it measured achievement of this objective through several methods including the percentage of staff receiving training and the review of exit results from audit engagement surveys.

²⁸ May 20 Filing, Attachment A at 5.

²⁹ February 19 Order, 150 FERC ¶ 61,108 at P 32.

³⁰ May 20, 2015 Compliance Filing at 10-13.

26. NERC defines its information and outreach success factor as registered entities having the information they need to prepare for engaging with Regional Entities and NERC in risk-based compliance and enforcement activities. NERC states that it now partly meets this objective through webinars, workshops, and newsletters and that it will continue to provide support for various industry and trade events.

27. NERC defines the consistency success factor as having tools, processes, and templates used by the Regional Entities for risk-based compliance and enforcement that are consistent where consistency is important, with NERC having adequate oversight of the relationship between Regional Entities and registered entities.³¹ NERC states that it ensures consistency through oversight and registered entities may also report consistency-related concerns through NERC's Regional Consistency Reporting Tool.

28. NERC defines the regulator trust success factor as the ERO Enterprise having strengthened the trust of the Commission and applicable Canadian authorities in risk-based compliance and enforcement. NERC states that it continues to coordinate and collaborate with the Commission and other Applicable Governmental Authorities to ensure proper implementation of risk-based processes and that those authorities have access to the information necessary to discharge their oversight responsibilities.

29. NERC defines the balanced transparency success factor as the ERO Enterprise having determined an appropriate level of transparency for various facets of risk-based compliance and enforcement, balancing the efficiency and the confidentiality needs of a registered entity with the needs of the industry to learn from others.³² NERC notes that it has implemented an elevated level of transparency by posting compliance exceptions and regular public reports on a variety of implementation matters.

30. NERC defines the metrics identified success factor as metrics having been identified for key expected results from risk-based compliance and enforcement and benchmarked for 2015. NERC states that it has reported on the results of a number of metrics that reflect the growth and expansion of the risk-based compliance monitoring and enforcement processes. NERC further states that during 2015 the ERO Enterprise will continue to develop any additional necessary metrics that correlate the implementation of the risk-based processes with the reliability of the Bulk-Power System.

31. NERC defines the recognized value success factor as the value of risk-based compliance and enforcement being of demonstrable value to the consuming public and

³¹ May 20, 2015 Compliance Filing at 11-12.

³² *Id.* at 12.

clearly and publicly articulated.³³ NERC states that it will “measure this value through benchmarking of the effectiveness survey results for future comparison.”

Commission Determination

32. While NERC’s compliance filing contains a description of how it intends to measure success (i.e., its proposed success factors), NERC’s filing does not specifically include the “types of data driven metrics it will track as the RAI program develops.” Specifically, none of the proposed success factors have clearly defined metrics to allow the evaluation of the program over time. Accordingly, we conditionally accept this part of NERC’s May 20, 2015 compliance filing, subject to NERC providing additional information in its annual report.

33. We direct NERC to develop success factors and metrics, in lieu of or in addition to those proposed in the May 20, 2015 compliance filing, that will enable NERC and the Commission to evaluate the success of the RAI program, perform a thorough analysis of lessons learned through experience with the RAI program, and identify any needed improvements. For example, as part of this proceeding, NERC noted that the streamlined processes that are the hallmark of RAI would allow fewer resources to be focused on minor violations.³⁴ Similarly, NERC maintained that RAI reforms will result in improvements to reliability, such as faster detection and remediation times for minor violations.³⁵ Accordingly, we direct NERC to provide revised success factors and metrics that could illustrate these benefits, as well as any needed improvements, as part of its annual report.³⁶ To assist NERC in developing revised metrics, we also direct

³³ *Id.* at 13.

³⁴ *See* November 3, 2014 Informational Filing on the Reliability Assurance Initiative in Docket No. RR15-2-000 at 11.

³⁵ *See id.* at 12.

³⁶ Examples of these may include assessing whether the program results in more efficient use of compliance and enforcement resources; improved identification, assessment, and correction of possible violations through greater use of internal controls; or decreases in the time to detect and remediate possible violations through self-logging. They may also include measuring the timeliness of training of ERO and Regional Entity staff on risk-based CMEP components; the number of eligible entities that apply for self-logging; timeliness of action on registered entity requests to self-log; or annual increases in the number of reliability coordinators, balancing authorities, and transmission operators requesting internal control evaluations.

Commission staff to work with NERC staff in developing its revised success factors and metrics.

34. In addition, while we agree that trust and collaboration between the Commission and NERC is critical to the long-term success of the RAI program, we find that NERC's proposed regulator trust factor is not an effective metric for measuring the success of the RAI program, given that the notion of "regulator trust" is a subjective concept that is not conducive to quantitative measurement. Therefore, we direct NERC to discontinue the use of this specific success factor.

C. Registered Entity Document Retention Period

35. In the February 19 Order, the Commission conditioned its approval of NERC's RAI implementation on NERC requiring some level of formal review of an entity's internal controls before granting the flexibility to self-log instances of noncompliance. Further, the Commission required NERC in its compliance filing to provide a methodology for assessing an entity's internal controls and the circumstances under which an alternate methodology will be used in place of an ICE.

36. In the ERO Enterprise Self-Logging Program, Attachment A to the May 20, 2015 compliance filing (Self-Logging Program), NERC addresses data retention requirements for registered entities. With respect to data retention for self-logged items, the proposed program's procedure states the following:

The registered entity will maintain evidence to support the details included in the description of the noncompliance, the minimal risk assessment of the noncompliance, and the completion of mitigation activities for each instance of noncompliance recorded on the log. The registered entity shall maintain this evidence until the Regional Entity verifies completion of the mitigation activities, subject to the following qualification: If the Regional Entity has not verified the completion of the mitigation activities for 12 months from the later of the date the Regional Entity sent the Notice of Compliance Exception treatment or the date the registered entity completes the mitigation activities, the registered entity is no longer required to maintain the evidence.³⁷

37. We find that NERC's proposed 12-month data retention period is insufficient to allow NERC and the Commission to maintain proper oversight of compliance exceptions as required in the February 19 Order. If registered entities are only required to maintain

³⁷ May 20, 2015 Compliance Filing, Attachment A at 6.

relevant materials for 12 months following a notice of compliance exception treatment, relevant data could be disposed of just prior to or during oversight activities.³⁸

Accordingly, we condition our acceptance of NERC's May 20, 2015 compliance filing on NERC requiring registered entities to maintain evidence related to compliance exceptions for no less than 18 months from the later of the date the Regional Entity sent the notice of compliance exception treatment or the date the registered entity completes the mitigation activities.

D. Proposed Revisions to NERC's Rules of Procedure

38. In the February 19 Order, the Commission stated that NERC must include the fundamental RAI concepts and elements in the NERC Rules of Procedure. Specifically, the Commission stated that NERC's Rules of Procedure should, at a minimum, "recognize the existence of the RAI process, articulate basic RAI concepts and define fundamental RAI elements," as well as provide for Commission approval of "significant changes in RAI as NERC develops and implements its risk-based approach" to compliance monitoring and enforcement.³⁹ In addition, the Commission stated that it does "not expect NERC to include in the Rules of Procedure detailed procedures that would unduly hamstring the intended flexibility and streamlined processes that are the hallmark of RAI."⁴⁰ While providing NERC flexibility in the implementation of RAI, the Commission concluded that revisions to the Rules of Procedure are necessary to maintain meaningful Commission oversight and ensure that the ERO rules provide fair and impartial procedures for enforcement.

³⁸ NERC acknowledged that it intends to include compliance exceptions in its annual FFT review with Commission staff. *See* NERC's September 18, 2015 *Annual Report on the Find, Fix, Track, and Report Program*, Docket No. RC11-6-004, at 15. Thus, for example, NERC staff's evaluation of a sample of compliance exceptions over a twelve-month period likely would take several weeks or months to obtain and review all the data. If registered entities are only required to retain data for 12 months, NERC may not be able to fully investigate compliance exceptions that occurred at the beginning of the sampling period.

³⁹ February 19 Order, 150 FERC ¶ 61,108 at P 30.

⁴⁰ *Id.*

Commission Determination

a. Codifying the Self-Log Review Period

39. In its November 3, 2014 filing proposing RAI, NERC stated that registered entities submit their self-logs for review by the Regional Entity every three months, and noted that the Regional Entity may adjust this period to six months based on its experience with the registered entity.⁴¹ As noted above, in the February 19 Order, the Commission stated that the NERC Rules of Procedure should “at a minimum, recognize the existence of the RAI processes, articulate basic RAI concepts and define fundamental RAI elements, and require Commission approval for significant changes in RAI as NERC further develops and implements its risk-based approach.”⁴² We find that the Regional Entity review period for self-logged items in the Self-Logging Procedure is a “fundamental RAI element” in streamlining the processes of NERC’s risk-based CMEP for minor risk instances of non-compliance. While we find the three-month review period with the possibility of adjustment to six months based on experience to be reasonable, we note that NERC did not codify this review period in its proposed revisions to the Rules of Procedure. Without such codification in the Rules of Procedure, the self-logging review period for Regional Entities could be subject to change without notice to, or approval from, the Commission. Such change to the Self-Logging Procedure would be a significant change in RAI that would warrant Commission review as contemplated in the February 19 Order. Accordingly, we direct NERC to make a compliance filing within 120 days of the date of this order modifying the Rules of Procedure to include the self-logging review period as described in its November 3, 2014 filing.

b. Conforming Changes to the Rules of Procedure

40. While NERC proposed a number of changes to the Rules of Procedure intended to reflect the fundamental RAI concepts and elements, we have identified certain areas where conforming changes or updates to the Rules of Procedure have not been made to reflect the risk-based CMEP. First, NERC did not propose revisions to the data retention requirements for the ERO and Regional Entities in Appendix 4C, section 9.0 to cover data and other information related to self-logging. The current language covers data generated by other discovery methods including, among others, compliance audits, self-certifications, spot checks, compliance investigations, and self-reports. NERC did not

⁴¹ November 3, 2014 Informational Filing on the Reliability Assurance Initiative in Docket No. RR15-2-000 at 58.

⁴² February 19 Order, 150 FERC ¶ 61,108 at P 30.

provide an explanation as to why self-logged items and information and data relating to them would not be subject to the existing data retention provisions.

41. Second, NERC did not propose revisions to Appendix 4C, section 5.1 or elsewhere to reflect that NERC currently provides Commission staff with a non-public preliminary notice of self-logged matters received by Regional Entities, similar to the preliminary notice provided to staff for other possible or alleged violations.⁴³ NERC did not provide an explanation for why this practice should not be reflected in the Rules of Procedure. Third, the Commission, in the February 19 Order, directed NERC to publicly post compliance exceptions.⁴⁴ However, NERC did not propose modifications to Rules of Procedure section 400.11, which addresses public posting. Each of these issues reflects a fundamental concept or element of RAI that should be reflected in the Rules of Procedure.

42. Therefore, we direct NERC to propose revisions to the Rules of Procedures to update the appropriate sections or, in the alternative, provide an explanation as to how the RAI components listed above are addressed in the current Rules of Procedure or NERC's proposed amendments to the Rules of Procedure in the compliance filing due within 120 days of the date of this order.

The Commission orders:

(A) The Commission hereby accepts NERC's compliance filings, subject to conditions as discussed in the body of this order.

(B) NERC is hereby directed to submit a compliance filing within 120 days of the date of this order, as discussed in the body of this order.

⁴³ Section 39.7(b) of the Commission's regulations requires that NERC and the Regional Entities shall "have procedures to report promptly to the Commission any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard." *See also* current CMEP section 8.2.

⁴⁴ February 19 Order, 150 FERC ¶ 61,108 at P 39.

(C) NERC is hereby directed to include additional information in its future annual reports on the risk-based CMEP, as discussed in the body of this order.

By the Commission. Commissioner LaFleur is concurring with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners:

North American Electric Reliability Corporation

Docket No. RR15-2-001
RR15-2-002

(Issued November 4, 2015)

LaFLEUR, Commissioner, *concurring*:

As the Commission reviews the Reliability Assurance Initiative (RAI), it is essential to strike a balance between ensuring appropriate Commission oversight and providing the North American Electric Reliability Corporation (NERC) and the Regional Entities sufficient flexibility to implement the RAI program to achieve its intended efficiencies and benefits. On the whole, I believe today's order strikes an acceptable balance of those two objectives.

The RAI program grew out of a well-documented concern – discussed for years on the record in reliability technical conferences and Commission dockets – that NERC and the Regional Entities' reliability work was unsustainably bogged down in paperwork on relatively minor issues, which detracted from our collective ability to focus on more significant reliability matters. Going forward, I believe we must be careful not to require, as part of our ongoing oversight, the type of overly prescriptive and time-consuming analysis that the RAI program was designed to avoid, which would “unduly hamstring the intended flexibility and streamlined processes that are the hallmark of RAI.”⁴⁵ FERC and NERC should focus our attention on significant issues before us like cybersecurity, geomagnetic disturbances, and adapting the electric grid to changes in the resource mix. We should also stay focused on the risk-based prioritization that led us to approve RAI, and not require NERC to repeatedly justify that program.

Accordingly, I respectfully concur.

Cheryl A. LaFleur
Commissioner

⁴⁵ *North American Electric Reliability Corp.*, 150 FERC ¶ 61,108, at P 30 (2015).