

139 FERC ¶ 61,168
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. RC11-6-001

ORDER GRANTING IN PART, AND DENYING IN PART, CLARIFICATION AND
DENYING REHEARING

(Issued May 31, 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 NERC requests clarification or, in the alternative, rehearing, of the March 2012 Order. In this order, we grant in part, and deny in part, NERC’s request for clarification, and deny the alternative request for rehearing.

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. A possible violation addressed through an FFT informational filing is not subject to a penalty, but counts as part of the registered entity’s compliance history. NERC also stated that a registered

¹ *North American Electric Reliability Corporation*, 138 FERC ¶ 61,193 (2012) (March 2012 Order).

entity must provide a statement that a possible violation is mitigated before the matter is submitted to the Commission in an FFT informational filing.²

3. In the March 2012 Order, the Commission accepted, with limited conditions, NERC's FFT petition. The Commission also directed NERC to submit a compliance filing within sixty days and submit two informational filings. With regard to NERC's proposal that a registered entity provide a statement that a potential violation has been mitigated, the Commission set the following condition:

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. 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.³

II. NERC Request for Clarification or, in the Alternative, Rehearing

4. NERC requests that the Commission clarify "that it did not intend to limit the ability of registered entities to designate appropriate signatories for the certification of mitigation activities associated with remediated issues to officers of the registered entity."⁴ NERC states that certain registered entities, such as public power utilities that are political subdivisions of a state, might become ineligible for the FFT program because they have no officers. NERC also contends that placing a higher burden for certification is inconsistent with the goals of the FFT program.

5. NERC seeks clarification that a certification of remediation can be submitted by an officer, employee, or other authorized representative of the registered entity with knowledge of the remediation. According to NERC, absent such clarification, the March 2012 Order would be inconsistent with - and create a greater burden than - NERC's Compliance Monitoring and Enforcement Program (CMEP), which provides that "[a]ny report or other submission of information by a Registered Entity required by the Compliance Program shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity. ... NERC or the Compliance Enforcement Authority may require the signer to provide a statement of the basis of his or her authority to sign on behalf of the Registered Entity." NERC states that this

² September 30, 2011, NERC Petition at 3.

³ March 2012 Order, 138 FERC ¶ 61,193 at P 61 (footnote omitted).

⁴ NERC clarification request at 2.

provision of the CMEP was developed as the result of a Commission order, in lieu of more restrictive language initially proposed by NERC.⁵

6. In the alternative, NERC seeks rehearing of the March 2012 Order. Specifically, NERC contends that the Commission erred in limiting the scope of potential signatories for certifications of mitigation activities associated with remediated issues filed through FFTs in contravention of the CMEP and the Commission's prior orders on this issue. NERC argues that, with respect to this issue, FERC has failed to properly support its finding and, therefore, failed to engage in reasoned decision-making.

III. Discussion

7. We grant, in part, NERC's request for clarification of the March 2012 Order. We conditioned our acceptance of NERC's proposal on the requirement that a registered entity submit to its Regional Entity a statement certifying that remediation has occurred and is completed, and 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.⁶ Our intent was to ensure that compliance matters that are processed through the FFT mechanism are brought to the attention of senior officials of the registered entity, not to preclude the participation of registered entities that are not organized as corporations. Accordingly, we clarify that a registered entity that is not organized as a corporation or has no officers may submit an affidavit certifying mitigation to the Regional Entity signed by a person in an executive or leadership position with knowledge of the remediation equivalent to that of an officer.

8. However, we deny NERC's request to the extent that NERC seeks to broaden the potential signatories who can certify that mitigation is complete to officers, employees or other authorized representatives of any registered entity. NERC contends that the condition in the March 2012 Order is a departure from the language of NERC's CMEP and related Commission precedent. However, neither NERC's CMEP nor the Commission precedent cited by NERC address - or even contemplate - the new FFT format for processing possible violations. We believe that a more stringent certification requirement is justified in the context of verifying mitigation of a possible violation of a matter resolved through the FFT process. Requiring verification of mitigation by a corporate officer or equivalent for eligibility for FFT treatment, as clarified herein, assures that appropriate senior personnel within a registered entity are made aware of possible violations and have personal knowledge that they are mitigated.

⁵ NERC clarification request at 3-4 (*citing North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, at PP 197-198 (2007)).

⁶ March 2012 Order, 138 FERC ¶ 61,193 at P 61.

9. Accordingly, we grant NERC's request for clarification in part, and deny clarification in part, as discussed above. We also deny NERC's request for rehearing for the reasons discussed above.

The Commission orders:

The Commission hereby grants clarification in part, and denies clarification in part, and denies rehearing, as set forth in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.