NERC’s Compliance Enforcement Initiative
*Find, Fix, Track and Report Update*

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• All six FFT filings submitted to FERC from September, 2011 to February, 2012 were approved in the March 15, 2012 Order.

• Six month and one year status reports due to FERC.
  ▪ One year report due in March 2013 – Commission will consider changes to the March 15th Order conditions.

• A compliance filing also is due May 14, 2012 related to compliance history and Phase II.
• Conditions related to eligibility for FFT treatment
  - Prospectively, only Possible Violations that pose a minimal risk are eligible.
  - If an FFT matter is not mitigated as certified, it will be treated as a continuing Possible Violation not eligible for FFT treatment.
• **Conditions related to Documentation**
  
  - A registered entity that receives FFT treatment must certify that mitigation is completed. FERC will require a registered entity to submit to the Regional Entity an affidavit, signed by an officer with knowledge of the remediation, certifying that the statement is true and correct.
  
  - NERC must explain how a registered entity’s compliance history was considered in designating a Possible Violation as an FFT.
• **Condition related to Accountability and Deterrence**
  
  - FFT informational filings must publicly identify the registered entity with a Possible Violation.
    - However, there is an exception for public release to the extent the Possible Violation relates to a Cybersecurity Incident or release would jeopardize the security of the bulk power system.
• An FFT matter will be closed sixty days after the FFT informational filing is submitted to FERC.
• FERC will not reopen it for review unless it provides notice that it will review a specific matter.
• Within the sixty day window, FERC expects to exercise review infrequently and in limited and rare circumstances.
  ▪ For example, where the described remedial action does not appear to mitigate the issue; where an event appears to pose more than minimal risk; where there was a pattern of non-compliance and there is not adequate explanation for FFT treatment.
The compliance filing is due May 14, 2012 and must address issues related to compliance history and Phase II.

NERC must explain:
- how NERC and Regional Entities will evaluate a registered entity’s compliance history; and
- how it will be considered in deciding if FFT treatment is warranted.

Principles and examples must be provided.
NERC may proceed with Phase II.

In the May 14 compliance filing, NERC must provide additional information on how it will implement Phase II of the FFT proposal. NERC must

- Describe how personnel will be trained and provide training materials;
- Explain the procedures for coordination and collaboration;
- Explain how consistent treatment will be obtained; and
- Describe the process for certification or qualification of specific personnel to participate in eligibility determinations.
• A Registered Entity may opt out of FFT processing.
• Upon correction and submittal of FFT filing, the Possible Violation becomes a Remediated Issue.
  ▪ No penalty or sanction is assigned.
  ▪ Formal Mitigation Plans will not be required.
  ▪ Mitigating activity completion may be verified anytime.
• Violations are final 60 days after submittal to FERC unless there is cause to open for review.
• Violations found not to have been mitigated will be treated as continuing violations not eligible for further FFT treatment.

• Remediated Issues become part of a Registered Entity’s compliance history.
  • Remediated Issues may not be contested in subsequent enforcement actions.
Guidance on Risk Assessment

• 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.
  ▪ However, the order clarifies that a Possible Violation may qualify for FFT if other factors that mitigated the risk are explained.

• Second, risk assessments included in FFT informational filings must be based on facts, rather than assumptions.
Guidance on Risk Assessments

• Third, FERC will not view a Possible Violation as posing minimal risk if it reveals a serious shortcoming in a registered entity’s reliability-related processes.

• Finally, risk assessments must be based on facts at the time of the Possible Violation, not on facts that develop later.
  ▪ Focus assessments on risk during the Possible Violation.

• In addition, FERC “will be inclined to accept risk assessments that examine whether a registered entity used processes or took actions to that made the actual risk of a Possible Violation less than its potential risk.”
Importance of Self-Reports

• The data listed in NERC’s “Guidance for Self Reports” are sufficient information to meet documentation needs for FFT treatment.

• FERC does not want the FFT mechanism to be a reason for registered entities to be less vigilant in internal reviews and self-reporting.
  ▪ Such a reaction would be inconsistent with FERC’s desire to create a culture of compliance.

• FERC will use the twelve month report to determine the impact of FFT on self-reports, if any.
• Each year FERC will survey a random sample of FFTs to determine if the program is accomplishing its goals.
• The survey will evaluate the effectiveness of the program on a continuing basis.
• FERC will not reopen Possible Violations reviewed in the random sampling, absent discovery of a material misrepresentation.
• No additional documentation requirements are imposed.
The Order invites NERC, Regional Entities and interested entities to propose mechanisms to identify and revise or remove unnecessary or redundant requirements from Commission-approved reliability standards.

No deadline is imposed on when the comments should be submitted.

FERC requests that NERC, Regional Entities and interested entities coordinate to submit comments concurrently.
FFTs by Month
(September 2011 - February 2012)