Compliance Enforcement Initiative Update: The Next Steps for Registered Entities

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July 11, 2012
• FERC’s March 15, 2012 Order
• NERC’s May 14, 2012 Status Report and Compliance Filing
• Self-Monitoring and Self-Reporting
• Guidance on Risk Assessments
• One-Year Report on CEI Due March 15, 2013
• Roles of Registered Entities
• All six FFT filings submitted to FERC from September, 2011 to February, 2012 were approved in the March 15, 2012 Order.

• Six-month report and compliance filing related to compliance history and further implementation made May 14, 2012.

• One-year report due in March 2013 – Commission will consider changes to the March 15th Order conditions.
**Limited Conditions**

- **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.
Limited Conditions

- Condition related to Accountability and Deterrence
  - FFT informational filings must publicly identify the registered entity with a Possible Violation.
    - Exception for CIP violations remains.
• An FFT matter will be closed 60 days after the FFT informational filing is submitted to FERC.
  - March and April filings now closed.
• FERC will not reopen an FFT for review unless it provides notice that it will review a specific matter.
• Within the 60-day window, FERC expects to exercise review infrequently and in limited and rare circumstances.
  - Insufficient mitigation.
  - Greater than minimal risk.
  - Pattern of non-compliance.
• FERC and the ERO will randomly sample FFTs.
• Certification of completion of mitigating activities.
• Unmitigated issues become ineligible for FFT.
Review of Existing Requirements

- FFT may highlight requirements that do little to protect reliability.
  - Removing requirements = Greater compliance efficiency.
- Identification of requirements for revision or removal.
  - Concurrent submittals to FERC.
• Sustainability and Expandability of the CEI.
• Compliance History as a Factor in Considering FFT Treatment.
• Future CEI Implementation.
First step for expansion – to have recommendations from compliance monitoring staff regarding the disposition of certain possible violations as FFTs.

Ongoing and consistent training:
- Training and outreach sessions for Regions’ enforcement and compliance staff on recommendations for the processing track.
- Expandability not only in who may recommend potential FFT issues, but also in the effectiveness of the program.

Goal is to identify minimal risk issues as early as possible.
Compliance History as a Factor in Considering FFT Treatment

• Repeat issues are eligible for FFT provided that the issues pose only a minimal risk to reliability of the BPS.
• Factors include (a) timing of violations/issues, (b) nature of violations/issues, and (c) method of discovery.
• Issues that would **NOT** be afforded FFT treatment:
  ▪ Where entity’s compliance history is indicative of broader concerns.
  ▪ Where prior remediated issue was subsequently found not to have been mitigated.
  ▪ Cases involving material misrepresentations about the nature and scope of the prior issue.
Future CEI Implementation

• Training and Outreach Activities – NERC hosts various workshops and training opportunities for Regions and registered entities. Specific CEI training will be provided to CEA staff on the consistent implementation of the FFT program.

• Coordination and Collaboration – Compliance monitoring staff will make recommendations on the processing track.

• Consistency and Due Process.
• The Regional Entities and NERC continue to work on plans for improvement of compliance monitoring and enforcement.
• NERC will conduct focus groups with registered entities to solicit feedback and input.
• Submit comments on CEI to ceicommants@nerc.net.
  ▪ Process improvements.
  ▪ Differences between FFT processing and violation processing.
• Self-Identified Violations Remain Strong.
• Improvement in Processing Efficiencies.
• Standards Receiving the Highest FFT Treatment.
• Next Steps in CEI Implementation.
Self-Identified Violations Remain Strong

• Incentives:
  - Avoiding a monetary penalty.
  - Abbreviated enforcement process.

FFTs by Discovery Method as of 6/30/12

- Externally Identified (Audits, Spot Checks, Investigations) 37%
- Internally Identified (Self-Reports, Self-Certifications, Data Submittal, Exception Reporting) 63%
• Average duration from discovery to filing:
  - For FFTs discovered after July 1, 2011 = 6.3 months.
  - The ERO is committed to reducing this time.
• Of the 641 FFTs filed, 350 were for CIP-002 through CIP-009 standards violations.
  - 101 of the 350 were CIP-007.
• The highest number of non-CIP FFTs were the 48 CIP-001 issues, followed by 42 PRC-005 issues.
### FFTs/ SNOPs/NOPs
Filed from Sept 2011 to June 30, 2012

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**Note:**
- FFTs = Fast Fourier Transforms
- SNOPs = Safeguards Notification of Problems
- NOPs = Non-Probable
- Total Issues and Violations reflect the sum of FFTs, SNOPs, and NOPs.
Next Steps in the CEI Implementation

- Develop a training program for CEA compliance and enforcement staff that will address:
  - Factors to be evaluated when considering processing track.
  - Changes to existing processes that will result from the extension of FFT recommendations by CEA compliance monitoring staff to enforcement staff.
- Public education and outreach activities to evaluate and improve the program will also continue.
Importance of Self-Reports

- NERC’s “Guidance for Self Reports” available on its website.
  - Provide complete information early in process.
- FFT should promote better internal reviews and self-reporting.
  - Percentage of self-identified violations should continue to grow.
- Move compliance monitoring responsibilities and decisions on disposition to earlier points.
  - Demonstrable cultures of compliance and internal controls.
Culture of Reliability Excellence

- Expectations for increased compliance as experience with mandatory Reliability Standards grows.
- Serious treatment for violations that should have been self-identified.
  - Less likely to be FFTs.
- The ERO and registered entities must continue to perform in order to exercise additional discretion.
Guidance on Risk Assessment

- No adverse impact ≠ minimal risk.
  - However, other factors may lead to minimal risk.
- Do not base risk assessments on assumptions.
  - Stick to the facts.
- Programmatic shortcomings ≠ minimal risk.
Guidance on Risk Assessments

• Assess risk at the time of the possible violation.
• Existing processes and contemporaneous actions can make actual risk < potential risk.
How to Spot an FFT

- Mostly self-identified issues.
- Lesser risk to Bulk Electric System (BES) Elements.
- Informal/automatic procedures existed.
- Very few devices excluded.
- Operated within good utility practice.
- Short duration/promptly corrected.
- Backup protection/process in place.
- Trusted/experienced employee.
- No event occurred during violation period—though not as single factor.
• Near final draft anticipated in early February, 2013.
• NERC is working to collect the information required in the one-year report.
One-Year Filing in March, 2013

- FERC will use the filing to evaluate the effectiveness of the FFT program with regard to such matters as:
  - The effect of the program on improving BPS reliability – narrative discussion of risk-based approach and how FFT fits in.
  - The effect of the program on addressing NERC’s compliance and enforcement program, including its caseload – graphs similar to 6-month report.
  - The effect of the program on NERC and the Regions better focusing resources on addressing more serious violations – experience dealing with serious issues.
How NERC’s evaluation of risk in identifying candidate for possible violations for FFT treatment has evolved, including how VRFs are considered in the evaluation.

How the FFT mechanism can be improved based on experience – view of end state and desired improvements.

Results of audits, spot checks or random samplings that NERC or the Regions performed regarding the FFT process – NERC developing a random sampling approach.

The impact, if any, the implementation of the FFT mechanism has had on the number of Self-Reports submitted – will be tracking level of Self-Reports.
NERC’s evaluation of the consistency and application of the FFT initiative:

- Addressed above re: audits, spot checks, and other sampling methods. The results of those monitoring activities are expected to provide insight into consistency issues.
- NERC expects to expand on the review and coordination processes currently in place, which have been discussed in prior filings.
What Registered Entities Can Provide

- Effect the FFT process has had on the allocation of resources to compliance activities.
- Ways in which the FFT mechanism can be improved.
- Effects on internal controls and willingness to self-report.
- Experience so far with the Regions on processing FFTs.
- Develop and track efficiency metrics to provide further information on the impact of the program on processes.
• FERC has provided support and guidance for the CEI.
• NERC and the Regions will continue to work with registered entities on compliance and enforcement efficiencies.
• Registered entities should continue to be on the frontlines of maintaining and ensuring reliability.
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