Compliance Enforcement Initiative: Initial Filing and Next Steps

November 8, 2011
Rebecca Michael, Associate General Counsel, Acting Director of Enforcement
1) Background and Purpose of the Compliance Enforcement Initiative (CEI)
2) Spreadsheet Notices of Penalty (NOPs)
3) Find, Fix, Track and Report (FFT)
4) FFT Examples
5) CEI Filing and Status Update
6) CEI Timeline Going Forward
Refocus efforts on **reliability excellence**, eliminate undue regulatory burdens, streamline paperwork requirements, and encourage continued timely and thorough self-reporting and mitigation.

Differentiates issues of noncompliance based on the **level of potential risk to the reliability of the bulk power system**. All instances of noncompliance will continue to be identified and mitigated. Issues that pose a more serious risk to the reliability of the bulk power system will be filed at the Federal Energy Regulatory Commission (FERC) on a monthly basis in a further streamlined spreadsheet Notice of Penalty format or full Notice of Penalty as appropriate. Matters that pose a lesser risk to reliability will be processed on a “find, fix, track and report” spreadsheet that will be submitted on a monthly basis to FERC as an informational filing.
Background: Industry Feedback

NERC and the Regional Entities solicited feedback over the summer from representatives of Registered Entities. That feedback identified both goals and issues to address with a refocused enforcement program.

Goals include:
- Learning firsthand about the impacts of compliance enforcement processing on Registered Entities
- Ensuring compliance promotes reliability and is not an end to itself

Issues include:
- Little differentiation between time and resources spent on minor violations and more serious violations
- Self-reports take too long to process and the perceived benefit is minimal
- Too much focus on finding and processing any “related violations” stemming from a single set of facts
Staff from NERC and the Regional Entities have been working on key enforcement initiatives to:

- Refocus industry efforts on achieving reliability excellence through attention to matters posing greatest risks to reliability
- Reduce undue regulatory burdens on users, owners, and operators of the bulk power system
- Improve caseload processing
- **Dismissal**
  - Occurs when there are no violations, when the entity is not registered for and/or subject to a particular requirement, or when there are duplicate entries of issues

- **Find, Fix, Track and Report (FFT) - New!**
  - This process will apply when a Possible Violation poses a lesser (minimal to moderate) risk to bulk power system reliability

- **Notice of Penalty (NOP)**
  - For those matters that pose more risk to reliability of the bulk power system, NOPs will be filed
  - May be filed in either a spreadsheet format or a full NOP format
Phase I – September 2011
Possible Violations identified in all compliance monitoring methods qualify for FFT Report consideration

Phase II – September 2012 or later
CEA auditors make determinations in the field on disposition tracks; CEA Enforcement staff make determinations on other monitoring methods

Phase III – 2013 or later
Future options could include aggregated reporting of Remediated Issues to CEA, NERC and FERC
Spreadsheet Notices of Penalty
What to include
Spreadsheet Notices of Penalty generally should be used except for most serious risk issues

Requirements:
- To the extent needed, preference for the short-form Settlement Agreement similar to the ACP 2-page Settlement Agreement
- Documents referenced in the Settlement Agreement or included as attachments thereto must be sent to NERC
- Notice of Confirmed Violations are eligible
- Service Lists
• Descriptions in the following sections of the Spreadsheet Notices of Penalty should reflect the level of detail included in Full Notices of Penalty:
  ▪ Description of the violation
  ▪ Risk statement
  ▪ Mitigation activity and status thereof
  ▪ Explanation of start and end duration dates
  ▪ Internal compliance program
  ▪ Compliance history of entity and affiliates
  ▪ Any other factors taken into consideration when determining the penalty amount or sanctions
FFTs

How are the Regions identifying candidates?
• Possible Violations that pose a lesser risk (minimal to moderate) to the reliability of the bulk power system (BPS) qualify for FFT processing, taking into account:
  ▪ the underlying facts and circumstances, including what happened, why, where and when;
  ▪ the Reliability Standard at issue;
  ▪ the applicable Violation Risk Factor (VRF) and Violation Severity Level (VSL);
  ▪ the potential and actual level of risk to reliability, including mitigating factors during pendency of the Possible Violation;
  ▪ the Registered Entity’s compliance program, including preventive and corrective processes and procedures, internal controls and culture of compliance; and
  ▪ the Registered Entity’s compliance history.
• Upon correction and submittal of Registered Entity’s statement of completion of mitigating activities, Possible Violations in FFT will become Remediated Issues.

• Subject to the outcome of NERC’s filing on September 30, 2011, Remediated Issues will be reported to FERC in an informational filing, which concludes NERC’s and a Regional Entity’s processing of a given Possible Violation.

• No penalty or sanction will be assigned to a Remediated Issue.
Mitigating activity completion may be verified at any time by a Regional Entity, including but not limited to at an audit, spot check, random sampling or otherwise, as warranted.

If Registered Entity fails to mitigate the Possible Violation(s), then Registered Entity will be assessed [a] new Possible Violation(s) that may be eligible for FFT or Notice of Penalty processing, depending on the circumstances.

Remediated Issues afforded FFT treatment become part of a Registered Entity’s compliance history and may be positive or negative considerations in future actions depending on the facts and circumstances.
• Once Remediated Issues are included in an FFT informational filing, those Remediated Issues may not be contested in subsequent enforcement actions.

• A Registered Entity may opt out of FFT processing by providing written notification to a Regional Entity within five business days of receipt of this Notice.

• If a Registered Entity opts out of FFT processing, the Possible Violation will then be addressed through the Compliance Monitoring and Enforcement Program.
• FERC has authority under 18 C.F.R. Section 1b to review Remediated Issues included in an FFT Report.

• Because the FFT Report is not an NOP, FERC is not expected to act on the filing within the 30-day period established for NOPs and may act pursuant to its own authority at any time.
• When the FFT Spreadsheets are submitted to NERC, they must include:
  ▪ NERC Tracking Numbers
  ▪ Service Lists
  ▪ Detailed descriptions of the Remediated Issue, the risk statement, and the mitigating activities
  ▪ The Region should have evidence of the completion of mitigating activities, *e.g.*, a Statement of Completion, in its files prior to filing with FERC.
The FFT spreadsheet template encompasses all required documentation information. As such:

NERC expects the record to be commensurate with the risk.

NERC does not expect there to be settlement agreements associated with FFT.

NERC is not requiring that an entity admit to the underlying Possible Violation, but the entity cannot challenge FFT Remediated Issues later.
FFT Examples
Detail in Descriptions and Risk Statements: Three Examples
• Description of the Issue for CIP-004-2 R2.2.4

• During a Spot Check, Texas RE reviewed a training presentation and determined that URE's training program for personnel did not include actions plans and procedures to recover or re-establish CCAs and access thereto following a Cyber Security Incident.
• Description of the Risk for CIP-004-2 R2.2.4

• The potential risk was minimal because:
  ▪ The entity had procedures in place that included action plans and procedures to recover or re-establish CCAs and access to CCAs.

• The actual risk was minimal because an event triggering the use of procedures to recover or re-establish CCAs never occurred during the non-compliance period.
Description of Remediated Issues and Risk Statements

- Description of the Issue for CIP-003-3 R2
- URE self-certified to WECC that it had failed to document a successor to the senior manager with CIP responsibilities within 30 days of the senior manager's retirement.
• Description of the Risk for CIP-003-3 R2

• The risk was minimal because:
  - The URE did install a new senior manager; the failure was only in the lack of documentation.
  - The URE CIP Senior Manager role was continually filled with no gaps, however URE did not document when the previous CIP Senior Manager retired and the new CIP Senior Manager assumed the role.
  - There was no lag or gap in CIP oversight. Further, URE does not have CCAs.
• Description of the issue for CIP-006-1 R1.1

• During a Spot Check, MRO determined that the entity failed to locate all CAs in a defined ESP within an identified PSP and failed to incorporate a completely enclosed six-wall border for a PSP in its Physical Security Plan.

• MRO discovered an opening above the ceiling tiles in the breezeway connecting the control center and administration buildings which allowed access into the control center's designated PSP, bypassing access controls.
• Description of the risk for CIP-006-1 R1.1
• The risk was minimal because:
  ▪ The entity's facility is protected against unauthorized access by three levels of physical security, and also includes video surveillance, and two levels of credential check-points.
  ▪ Additionally, although the unprotected opening in the PSP boundary provided the ability to bypass access control mechanisms, access to any CCAs within the PSP requires clearance of additional access controls.
Compliance Enforcement Initiative
Filing and Status Update
NERC filed several components of the Compliance Enforcement Initiative on September 30, 2011

- Docket No. RC11-6: Petition for Approval of New Enforcement Mechanisms; Initial Informational Filing of FFTs
  - First group of FFT Remediated Issues
    - 117 total: 62 Operations/Planning Standards/55 CIP Standards
  - No action requested on individual FFT Remediated Issues
  - Report back to the Commission and industry stakeholders at six months and one year following initial filing
  - Comments were filed on October 21, 2011
Status of the Filings

- Docket No. NP11-270: First Spreadsheet NOP
  - 75 total: 44 Operations/Planning Standards/31 CIP Standards
  - FERC issued Notice of No Further Review on October 28, 2011

- Docket No. NP11-267 – NP11-269: 3 Full NOPs
  - FERC issued Notice of No Further Review on October 28, 2011
Second Filing under CEI

- Second group of FFT Remediated Issues and second Spreadsheet NOP violations were filed October 31, 2011
  - Docket No. RC12-1: 82 FFT Remediated Issues
  - Docket No. NP12-1: 31 in Full CIP NOP
  - Docket No. NP12-2: 46 in Spreadsheet NOP
## CEI Processing Statistics

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<th>Approved NOP Violations</th>
<th>Approved FFTs</th>
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<td>October</td>
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<td>November</td>
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## CEI Processing Statistics by Region

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<th>September NOP/FFT</th>
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Compliance Enforcement Initiative

Next Steps
What Industry Can Do

- CEI filing public comments were filed October 21, 2011
- Continue to develop internal compliance programs
  - Ongoing self-monitoring to find, fix, and self-report Possible Violations in advance of audits and self-certifications
- Utilize ERO resources to aid compliance and improve self-reporting
  - Webinars, workshops, and documents on NERC website
  - Other CEI forms are available on NERC website under Compliance, then Resources at http://www.nerc.com/files/Notice%20of%20FFT%20Treatment.pdf
Compliance Enforcement Initiative:

GUIDANCE FOR SELF-REPORTS
Registered Entities are encouraged to provide Self-Reports of potential noncompliance with NERC Reliability Standards as promptly as possible.

A Self-Report should include sufficient information to assist the Compliance Enforcement Authority to make an informed decision regarding the proper disposition of the matter.
Self-Reports:
What to include?
Nature of the Potential Noncompliance

- What, Why, When, Where, How
- Duration: start and end dates
- Reliability Standard requirements at issue
- Time horizon of the potential noncompliance
- Was the potential noncompliance related to documentation, performance or both?
• How was the noncompliance discovered?
• Who discovered it and when?
• Self-evaluation, internal audit, or ICP? Result of an investigation or in preparation for or during an audit? Discovered during an event or operational occurrence?
• What time period elapsed between discovery and reporting? Explain gaps.
Self-Reports: Scope of Non-Compliance

Scope (Extent of Condition)

- Did similar conditions or similar events occur at any of the Registered Entity’s other facilities or those of its affiliates?
- Is this a repeat Violation or repeat Remediated Issue?
Self-Reports: Cause of Non-Compliance

• Were there extenuating circumstances?
• Was it the result of intentional, negligent or inadvertent behavior or action?
• Was the Registered Entity attempting to comply in good faith?
Self-Reports: Remediation

**Mitigation**

- What activities have been taken or will be taken to correct the noncompliance?
- What is the status of mitigation activities?
- What is the timeline for completion?
- What will prevent recurrence?
- Describe above and beyond actions
Self-Reports: Assessing Risk

- What is the potential and actual risk and harm to the reliability of the bulk power system?
- What factors mitigated the risk?
- What were the system conditions during the event?
- What are the size, nature, and location of the facilities at issue?
- Were there any misoperations, system operating limits, or interconnection reliability operating limits?
Self-Reports: Who did what

Personnel Involved

- Include the identity of employees involved
- What was the role of senior management with respect to the potential noncompliance?
- Did senior management actively participate and encourage employees to provide complete information?
Self-Reports: ICP

**Internal Compliance Program**

- Describe the internal compliance program
- When was it established?
- What improvements have been implemented as a result of the potential noncompliance?
- If the ICP was in place at the time of the potential noncompliance, explain whether the ICP could have prevented the potential noncompliance.
• Provide or list all relevant documents and evidence in support of the Self-Report and issues discussed above
• Ongoing Work

• Public Outreach

• Training

The ERO’s commitment to promoting reliability excellence is unchanged.
Question & Answer