

November 21, 2016

VIA ELECTRONIC FILING

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President and Chief Executive Officer
Alberta Electric System Operator
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T2P 0L4

RE: *North American Electric Reliability Corporation*

Dear Mr. Erickson:

The North American Electric Reliability Corporation hereby submits North American Electric Reliability Corporation's Annual Report on the Find, Fix, Track and Report and Compliance Exception Programs.

Please contact the undersigned if you have any questions concerning this filing.

Respectfully submitted,

/s/ Shama Elstein

Shama Elstein
*Senior Counsel for the North American Electric
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Enclosure

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. THE FFT AND CE PROGRAMS HAVE BEEN SUCCESSFULLY IMPLEMENTED AND HAVE CONTINUED TO EVOLVE SINCE INCEPTION. 3

III. JOINT NERC AND FERC ANNUAL REVIEW OF THE FFT AND CE PROGRAMS 7

IV. ONGOING NERC REVIEWS OF NONCOMPLIANCE AND RELATED PROCESSES 9

 A. CE Analysis 9

 B. Self-Logging Program Process Review 11

 C. Other Analysis of Noncompliance..... 13

V. PROPOSED PROGRAM IMPROVEMENT 14

APPENDIX A. Methodology and Criteria Applied in FFT and CE Sampling..... 16

APPENDIX B. Specific Analysis of the Sampled Issues..... 19

ATTACHMENT 1. Process Review Checklist

I. INTRODUCTION

The North American Electric Reliability Corporation (NERC) as the Electric Reliability Organization (ERO) respectfully submits this report on the Find, Fix, Track and Report (FFT) and Compliance Exception (CE) programs. This filing complies with the Federal Energy Regulatory Commission's (FERC) June 20, 2013 order¹ and FERC's September 18, 2014 order² requiring an annual report on NERC's FFT program and combines the evaluation of CEs with the annual sampling of FFTs in compliance with FERC's November 13, 2015 order.³

Since 2011, the ERO Enterprise⁴ has used the FFT program to resolve over 2,300 instances of noncompliance with the NERC Reliability Standards, 95% of which posed a minimal risk to the reliability of the bulk power system (BPS).⁵ Since June 2013, the ERO Enterprise has used the FFT program to resolve noncompliance posing a moderate risk to the BPS. FERC agreed that the FFT program has "produced efficiencies in NERC's processing of compliance and enforcement matters" and that continuing to use the FFT program to address moderate risk issues will result in a "more efficient enforcement process and allow NERC and the Regional Entities to focus on occurrences of severe risk violations."⁶

¹ *North American Electric Reliability Corp.*, 143 FERC ¶ 61,253 (2013).

² *North American Electric Reliability Corp.*, 148 FERC ¶ 61,214 (2014).

³ *North American Electric Reliability Corp.*, Letter Order Accepting NERC's Annual Report on the Find, Fix, Track and Report Program, Docket No. RC11-6-004 (FERC Nov. 13, 2015).

⁴ The term "ERO Enterprise" refers to NERC and the eight Regional Entities. The eight Regional Entities are Florida Reliability Coordinating Council (FRCC), Midwest Reliability Organization (MRO), Northeast Power Coordinating Council (NPCC), ReliabilityFirst (RF), SERC Reliability Corporation (SERC), Southwest Power Pool Regional Entity (SPP RE), Texas Reliability Entity (Texas RE), and Western Electricity Coordinating Council (WECC).

⁵ NERC's searchable public FFT spreadsheets are available on its Enforcement and Mitigation website. *See Enforcement and Mitigation*, NORTH AMERICAN ELECTRIC RELIABILITY CORP., <http://www.nerc.com/pa/comp/CE/Pages/Enforcement-and-Mitigation.aspx> (last visited Nov. 7, 2016).

⁶ *North American Electric Reliability Corp.*, 148 FERC ¶ 61,214 at P 1.

Building on the success of the FFT program, the ERO Enterprise developed the CE program in February 2014 to streamline further the resolution of lesser-risk noncompliance with NERC Reliability Standards. The ERO Enterprise has resolved over one thousand instances of noncompliance posing a minimal risk to the BPS through CEs since the inception of that program.

In 2016, NERC and FERC staff completed their annual coordinated review of FFTs and the first annual review of CEs and found the ERO Enterprise appropriately handles noncompliance posing a minimal and moderate risk through these programs.⁷ NERC and FERC staff agreed with the final risk determinations for all FFTs and CEs sampled, and noted significant improvement in the clear identification of root cause in all samples posted after the feedback calls from the previous year's survey.⁸ FERC staff also agreed with NERC that the FFT and CE programs are meeting expectations.

The FFT and CE programs have been instrumental in streamlining processes and ensuring the efficient processing of noncompliance. Based on what the ERO Enterprise has learned over the last five years, both from the annual reviews as well as from process reviews and analyses of posted and filed noncompliance, NERC and the Regional Entities continue to identify enhancements to the FFT and CE programs. NERC has completed an analysis of CEs beyond those reviewed with FERC, and is currently reviewing repeat noncompliance, moderate risk noncompliance, and the Regional Entity implementation of the Self-Logging Program. Although

⁷ See *North American Electric Reliability Corp.*, 143 FERC ¶ 61,253 (2013); see also *North American Electric Reliability Corp.*, 148 FERC ¶ 61,214 (2014); *North American Electric Reliability Corp.*, Letter Order Accepting NERC's Annual Report on the Find, Fix, Track and Report Program, Docket No. RC11-6-004 (FERC Nov. 13, 2015); *North American Electric Reliability Corp.*, Notice of Staff Review of Compliance Programs, Docket No. RC11-6-004 (FERC June 15, 2016).

⁸ See *infra* Appendix B.

complete analysis of each of these subjects is not finalized, initial conclusions are referred to below as appropriate.

As several of these reviews are ongoing, NERC is not at this time proposing substantive improvements to the FFT or CE programs, although it is providing notice of a minor adjustment to the time for completion of mitigation activities to align the FFT and CE programs, as further described below. Nevertheless, NERC has identified potential areas of improvement to be proposed in the near future. Among other things, the ERO Enterprise is considering the means of reporting on minimal risk noncompliance and avenues of expansion for the CE program. NERC anticipates proposing certain program improvements in its 2016 Annual Compliance Monitoring and Enforcement Program Report filing in February 2017.

II. THE FFT AND CE PROGRAMS HAVE BEEN SUCCESSFULLY IMPLEMENTED AND HAVE CONTINUED TO EVOLVE SINCE INCEPTION

The FFT and CE programs, with the Self-Logging Program, are major elements of the ERO Enterprise's risk-based approach to enforcement.⁹ The FFT program resolves noncompliance posing a minimal or moderate risk to the reliability of the BPS, while the CE program resolves minimal risk noncompliance outside of Section 5.0 of the Compliance Monitoring and Enforcement Program (CMEP). Both programs require: (a) mitigation of the noncompliance; (b) availability of the facts and circumstances of the noncompliance for review by NERC and Applicable Governmental Authorities; (c) tracking and analysis of the noncompliance as necessary to identify risks; and (d) the opportunity for the registered entity to opt-out.¹⁰ These programs

⁹ For a description of the alternative enforcement processes, enforcement discretion, CEs, and FFTs, *see* NERC Rules of Procedure, app. 4C §§ 3.8, 3A.0, 3A.1, & 5.2A, respectively.

¹⁰ *See* NERC Rules of Procedure, app. 4C §§ 5.2A, 3A.

have streamlined processing, reduced caseload in process, and helped to ensure the efficient resolution of minimal and moderate risk noncompliance.

The FFT program was the first major step in implementing a risk-based approach to enforcement of Reliability Standards that recognizes not all instances of noncompliance require the same type of process and documentation. Over the last five years, the FFT program evolved from a processing track limited to minimal risk noncompliance to a vehicle for efficient and effective disposition of moderate risk noncompliance. The success of the FFT program in resolving lesser risk noncompliance led to the development of the CE program and the expansion of the FFT program to include resolution of moderate risk issues. The ERO Enterprise now uses these programs to resolve more than half of discovered noncompliance.¹¹

Use of the FFT program has contributed to the significant reduction of the ERO Enterprise caseload to be processed. For example, in 2014, the ERO Enterprise reduced the older caseload from 483 pre-2013 instances of noncompliance to just 35.¹² In other words, the ERO Enterprise was able to process those older instances of noncompliance while continuing to process newer violations. The reduction in the active caseload discovered prior to 2013 reduced the average age of noncompliance in the ERO Enterprise inventory to 9.9 months by the end of 2014.¹³ Since 2012, 45% of dispositions have been FFTs and CEs (30% and 15% respectively), significantly

¹¹ See North American Electric Reliability Corp., *Compliance Monitoring and Enforcement Program Report: Third Quarter 2016* (Nov. 1, 2016), <http://www.nerc.com/gov/bot/BOTCC/Compliance%20Committee%202016/Compliance%20Committee%20Open%20Meeting%20-%20November%201%202016.pdf>.

¹² See North American Electric Reliability Corp., *Key Compliance Metrics and Trends: Fourth Quarter 2014*, at 3 & fig.2 (Feb. 11, 2015). All NERC Enforcement analysis and violation statistics are available on NERC's website. See *Enforcement Analysis and Violation Statistics*, NORTH AMERICAN ELECTRIC RELIABILITY CORP., <http://www.nerc.com/pa/comp/CE/Pages/Compliance-Violation-Statistics.aspx> (last visited Nov. 14, 2016).

¹³ See North American Electric Reliability Corp., *Key Compliance Metrics and Trends: Fourth Quarter 2014*, at 3.

contributing to the ERO Enterprise's ability to manage and prioritize processing of the caseload based on risk. Because of successive improvements to the FFT program, in particular the extension to moderate risk noncompliance in 2013, NERC and the Regional Entities are able to handle minimal and moderate risk noncompliance efficiently and effectively and focus their resources on noncompliance posing a greater risk to the reliability of the BPS.¹⁴ Registered entities and Regional Entities have experienced efficiency gains due to the reduced documentation and negotiation required for FFTs.¹⁵ Similarly, the CE program remains a key element in implementing the risk-based approach to enforcement of NERC Reliability Standards. For example, in 2015, the ERO Enterprise used CEs to resolve nearly half of the minimal risk noncompliance. In 2016, CEs now exceed all other enforcement methods for processing minimal risk noncompliance.¹⁶

The FFT and CE programs have helped the Regional Entities reduce the average age of the noncompliance in their inventories. As of Q3 2016, 68% of the noncompliance inventory is now less than one year old and only 9% is over two years old. FRCC, NPCC, RF, and Texas RE have completed processing of all noncompliance with discovery dates prior to 2014.¹⁷ At the same time, there are only 191 pre-2014 instances of noncompliance remaining to be processed across

¹⁴ See *North American Electric Reliability Corp.*, 148 FERC ¶ 61,214 at P 1, 25 & n.37; see also *North American Electric Reliability Corp.*, NERC's Annual Report on the Find, Fix, Track, and Report Program, Docket No. RC11-6-004 at 2 (Sept. 18, 2015).

¹⁵ See *North American Electric Reliability Corp.*, NERC's Compliance Filing and Report on the Compliance Enforcement Initiative and Proposed Enhancements to the FFT Program, Docket No. RC11-6-004 at 9 (Mar. 15, 2013).

¹⁶ See *North American Electric Reliability Corp.*, *Compliance Monitoring and Enforcement Program Report: Third Quarter 2016*, app. A, at 13 fig.7.

¹⁷ *Id.*

MRO, SERC, SPP RE, and WECC, and most of these instances of noncompliance are from federal entities.¹⁸

The ERO Enterprise's use of the FFT and CE programs has continued to increase since FERC initially approved them. FFTs were used to resolve approximately 3% of moderate risk noncompliance in 2014 and almost 22% of moderate risk noncompliance in 2016. Using FFT to resolve moderate risk noncompliance has meant violations posing a more significant risk have received increased attention and resources through processing in spreadsheet Notices of Penalty (NOPs) or full NOPs.

In 2013, approximately 43% of all processed noncompliance were treated as FFTs.¹⁹ FFTs accounted for approximately 34% and CEs almost 10% of noncompliance in 2014.²⁰ In 2015, the percentages essentially reversed, with CEs making up over half of all processed noncompliance and FFTs representing approximately 8%.²¹ As of November 1, 2016, CEs continue to make up around half of all processed noncompliance.²² This is consistent with the fact, regularly observed, that a large portion of the noncompliance with Reliability Standards poses a minimal risk to the reliability of the BPS.²³ The Regional Entities' effective use of CEs and FFTs, demonstrated

¹⁸ The ERO Enterprise kept noncompliance related to federal entities on "hold" pending a decision in *Southwestern Power Admin. v. Federal Energy Regulatory Comm'n*, 763 F.3d 27 (2014) (*Southwestern Power*). On August 22, 2014, the District of Columbia Circuit resolved *Southwestern Power*, ruling that FERC, and by extension NERC and the Regional Entities it oversees, could not impose monetary penalties against federal government entities. *See id.* at 29-30, 36.

¹⁹ *See* North American Electric Reliability Corp., *Key Compliance Metrics and Trends: Fourth Quarter 2013*, at 10.

²⁰ *See* North American Electric Reliability Corp., *Key Compliance Metrics and Trends: Fourth Quarter 2014*, at 22.

²¹ *See* North American Electric Reliability Corp., *2015 ERO Enterprise Compliance Monitoring and Enforcement Program Annual Report*, at 14.

²² As of November 1, 2016, NERC has posted 380 CEs out of 744 total posted or filed instances of noncompliance. *See supra* n.6.

²³ As of November 1, 2016, 80% of total noncompliance the ERO Enterprise has processed has posed a minimal risk to the reliability of the BPS. *Id.*

through oversight mechanisms such as the annual review described below shows increased consistency in processing and understanding of the risk associated with individual noncompliance across the ERO Enterprise.

III. JOINT NERC AND FERC ANNUAL REVIEW OF THE FFT AND CE PROGRAMS

As part of oversight of the FFT and CE programs, NERC and FERC staff conducted the 2015 annual review of FFTs and CEs. During the review, NERC and FERC staff: (a) evaluated the Regional Entities' current FFT and CE procedures and processes; (b) reviewed a sample of minimal and moderate risk issues processed as CEs and FFTs; (c) assessed successful mitigation completion for FFTs and CEs with ongoing mitigating activities; (d) identified region-specific best practices and areas for improvement; and (e) provided observations to the Regional Entities related to the timeliness and completeness of the programs. Through this review, FERC staff and NERC staff determined whether the Regional Entities were following the NERC CMEP and successfully implementing the FFT and CE programs.²⁴

On June 15, 2016, FERC issued its Notice of Staff Review of Compliance Programs.²⁵ Notably, FERC staff agreed with the final risk determinations for all samples and noted significant improvement in the clear identification of root cause in all samples posted after the feedback calls from the previous year's survey.²⁶ On June 20, 2016, NERC staff filed a statement that included similar findings. FERC staff also agreed with NERC that the FFT and CE programs are meeting

²⁴ For a more detailed description of the review, *see infra* Appendices A-B.

²⁵ Notice of Staff Review of Compliance Programs, Docket No. RC11-6-004 (FERC June 15, 2016).

²⁶ *See infra* Appendix B.

expectations. In June 2016, NERC staff provided individual feedback to the Regional Entities with specific findings and recommendations for each region.

Sampling for the 2015 program year²⁷ indicated that the Regional Entities appropriately included the sampled noncompliance in the FFT and CE programs and that the registered entities adequately mitigated all 132 instances of noncompliance, including 11 self-logged CEs (approximately 10% of the CEs reviewed). The sample analysis did indicate a small number of documentation issues, particularly with regard to the quality of the information contained in the FFT and/or CE postings.²⁸ For example, a few of the FFTs or CEs lacked some of the information necessary for posting, such as start or end dates and factors affecting the risk during the pendency of the noncompliance. Subsequent review of the supporting information for these FFTs or CEs, however, identified a majority of the missing information.²⁹

The results of the 2015 annual review show a consistent improvement in program implementation. They indicate, among other things, that most registered entities, in coordination with their respective Regional Entity, are able to identify, mitigate, and remediate minimal, as well as certain moderate, risk noncompliance. They also show significant alignment across the ERO Enterprise. Including the processing and understanding of the risk associated with individual noncompliance. For a more detailed discussion of the findings from the annual FFT and CE review, see Appendices A and B.

²⁷ For FFTs, the program year was October 1, 2014 through September 30, 2015. For CEs, the review period was May 1, 2014 through September 30, 2015.

²⁸ See *infra* Appendix B.

²⁹ See *id.*

IV. ONGOING NERC REVIEWS OF NONCOMPLIANCE AND RELATED PROCESSES

The ERO Enterprise is continuously refining its processes and identifying additional areas for improvement. FFTs and CEs are subject to a 60-day review by NERC and FERC after posting of the issues each month.³⁰ NERC uses any issues identified in the reviewed samples to provide guidance to the Regional Entities, ensure consistency, and identify future improvements to the programs. NERC has also completed an analysis of 630 CEs, and is performing analysis of: (a) the Regional Entities implementation of the Self-Logging Program; (b) repeat noncompliance; and (c) moderate risk noncompliance.

A. CE Analysis

In 2016, NERC staff completed an analysis of 630 CEs posted in 2014 and 2015. Fifteen percent of the CEs analyzed were self-logged noncompliance.³¹ NERC regularly evaluates noncompliance to look for trends or other relevant information to disseminate to Regional Entities or registered entities as appropriate. Generally, NERC found that, in most of the cases reviewed, registered entities had internal controls and defenses in place at the time of issue that prevented the noncompliance from escalating to moderate or serious risk noncompliance. Through the review, NERC was able to identify four recurring themes with the CEs, even though the instances involved a diverse array of underlying conduct, facts, and circumstances.

³⁰ *North American Electric Reliability Corp.*, 150 FERC ¶ 61,108 at P 47-48 (2015) (Risk-Based CMEP Order).

³¹ The Self-Logging Program provides the Regional Entities the opportunity to perform formal reviews of entity's internal controls, which provides reasonable assurance of the entity's ability regarding identifying, addressing, and preventing noncompliance and future risk to the BPS. This allows registered entities and Regional Entities to focus their effort on matters that have a greater impact on reliability while continuing to find more minimal risk issues and correct them in an expeditious manner. This reasonable assurance supports the presumption of CE treatment for self-logged items.

First, the review of the CEs identified noncompliance consisting of minor mistakes and missteps when implementing programs, such as conflicting program requirements or inadequate communication between departments, as opposed to a more widespread failure or lack of mature programs. The instances of noncompliance were not due to major organizational or programmatic deficiencies.

Second, many of the registered entities discovered the noncompliance because of strong internal review processes that employed layers of review and internal audits. These instances of noncompliance were not due to fundamental failures in internal controls.

Third, the majority of noncompliance related to previous mitigation was merely of a “record keeping” nature, not due to a failure in previously implemented mitigation. Over 15,000 instances of noncompliance have been reported in the United States since the NERC Reliability Standards became mandatory and enforceable in 2007. Therefore, some level of repetition in noncompliance is not surprising. For this reason, the risk assessment of CEs also includes information about past noncompliance and how the Regional Entity factors that history in its determination of CE treatment. For repeat noncompliance, in most instances, the CE did not include the same relevant conduct as past noncompliance, supporting its treatment as a CE.

Finally, while many of the reviewed CEs included updates to internal processes combined with internal training in their mitigating activities, the majority of these CEs did not have deficient past training or lack of internal processes or procedures listed as the root cause of the noncompliance. Instead, the nature of the procedural changes and training was aimed at providing clarity and raising overall awareness within relevant departments at the registered entity.

B. Self-Logging Program Process Review

On November 3, 2014, NERC, in conjunction with the Regional Entities, submitted a filing describing enhancements to the risk-based CMEP in which NERC discussed two primary components of risk-based enforcement—CEs and the Self-Logging Program. NERC proposed that registered entities with demonstrated effective management practices to self-identify, assess, and mitigate minimal risk instances of noncompliance would: (a) record issues on a non-public log in lieu of individual Self-Reports; (b) have their Regional Entities periodically review and approve the log; and (c) receive CE treatment once its Regional Entity approved the logged issue.

FERC’s order, issued February 19, 2015, approved NERC’s implementation of the additional components, including CEs and self-logs, but instructed NERC to post the CEs publicly similar to its FFT posting.³² FERC’s intent in directing that CEs, including those originating from self-logs, be made public was “to educate industry to avoid and mitigate noncompliance with reliability standards, and to maintain the credibility of NERC’s compliance and enforcement regime.”³³ The proposed Self-Logging Program was new to the ERO Enterprise, so additional oversight at the time was appropriate. The Self-Logging Program has continued to mature since the February 2015 Order, with 62 registered entities in the Self-Logging Program and self-logged instances of noncompliance making up approximately 14% of CEs as of Q3 2016.³⁴

³² *North American Electric Reliability Corp.*, 150 FERC ¶ 61,108 at P 26, 36.

³³ *See id.* at P 36.

³⁴ *See* North American Electric Reliability Corp., *Compliance Monitoring and Enforcement Program Report: Third Quarter 2016*, app. A, at 11-12 fig.4 (Nov. 1, 2016); *see also* North American Electric Reliability Corp., *Compliance Monitoring and Enforcement Program Report: Second Quarter 2016*, app. A, at 14 fig.5 (Aug. 10, 2016).

As mentioned previously, approximately 10% of the CEs reviewed in the 2015 joint FFT/CE review and 15% of the CEs reviewed in the 2016 CE analysis were self-logged. NERC staff is also currently performing a process review of the Regional Entities' self-logging procedures. This review is to assess compliance with the CMEP, relevant FERC Orders, and the ERO Self-Logging Program,³⁵ to evaluate the consistency of each Regional Entity's practices, and to identify potential areas for improvement.

To perform the review of this program, NERC requested each Regional Entity provide documents on its outreach, formal evaluations of the registered entities' internal controls, and decision-making processes when deciding whether to approve a registered entity for self-logging. NERC staff is assessing the accessibility of the program to registered entities and making recommendations for improvement. NERC's review focuses on six high level aspects of the Self-Logging Program: (a) procedural consistency; (b) eligibility determinations; (c) level and means of outreach; (d) how the Regional Entities use the program beyond the minimum requirements of reporting noncompliance; (e) potential areas of expansion for the program; and (f) accuracy of self-logged issues.

NERC has provided this list of high-level topics to FERC staff. FERC staff will also receive a copy of the final analysis of the process review. NERC's initial review of the Regional Entities' Self-Logging programs is essentially complete and suggests that Regional Entities have appropriately admitted program participants based on the identification of effective management

³⁵ ERO Enterprise Self-Logging Program (February 1, 2016), [http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/Updated_ERO%20Enterprise%20Self-Logging%20Program%20\(2-1-16\).pdf](http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/Updated_ERO%20Enterprise%20Self-Logging%20Program%20(2-1-16).pdf).

practices to self-identify, assess, and mitigate minimal risk instances of noncompliance. NERC staff anticipates its analysis to be complete in mid-December 2016.

C. Other Analysis of Noncompliance

On November 20, 2014, FERC issued its Five-Year Order³⁶ in which it directed NERC to include in its next five-year assessment an analysis of repetitive noncompliance.³⁷ Specifically, FERC requested more clarity regarding the effect the ERO Enterprise’s compliance monitoring and enforcement program is having on reducing repeat noncompliance. FERC identified repeat noncompliance as a “key indicator” of the effectiveness of the CMEP on recognizing, mitigating, and preventing violations.³⁸ NERC has reviewed over 7,400 instances of noncompliance from July 2011 through the end of September 2016. NERC is focusing its analysis on correlations amongst the repeat noncompliance, the increase or decrease in risk of repeat noncompliance, and the principal reasons behind recurrence—in particular, whether the issues stem from conduct similar to that underlying a prior violation of the same or a closely related Reliability Standard requirement.

NERC also has plans to conduct a comprehensive analysis of moderate risk noncompliance. Notably, NERC has only filed 14 moderate risk zero-dollar penalty violations outside of the FFT program since the start of 2015.³⁹ As of Q3 2016, NERC has processed 29

³⁶ *North American Electric Reliability Corporation*, 149 FERC ¶ 61,141 (2014) (Five-Year Order).

³⁷ *Id.* at P 39 (“[W]e direct NERC to include an analysis of repeat violations in its next Performance Assessment that will allow NERC, the Regional Entities, and the Commission to evaluate whether NERC’s compliance and enforcement efforts have been effective in improving registered entities’ compliance and overall reliability.”).

³⁸ *Id.*

³⁹ This number does not include “no penalty” federal entity violations, which, because of their age and procedural history, have been primarily processed using the full or spreadsheet NOP track. Of the 14 moderate risk violations processed outside of the FFTs program, NERC processed ten as a part of larger disposition packages. The Regional Entities did not extend FFT treatment to 2 of the 14 because they were either identified through Compliance Audit

FFTs in 2016—only four included a minimal risk noncompliance.⁴⁰ The 25 moderate risk issues were primarily self-identified; the involved registered entities had robust compliance programs and mitigated the noncompliance quickly. Among other things, the analysis will provide more detail regarding the types of treatment appropriate for noncompliance posing a moderate risk to reliability.

Through the various processes and analyses described here, NERC and the Regional Entities continue to identify potential improvements for all enforcement-related processes. Based on the results of its review of CEs, repeat noncompliance, moderate risk noncompliance, and the results of reviews of the Self-Logging Program NERC is conducting now, NERC expects to identify and propose potential program improvements in its 2016 Annual Compliance Monitoring and Enforcement Program Report filing.

V. PROPOSED PROGRAM IMPROVEMENT

In its September 2014 Order, FERC noted the accepted time frame for completing mitigation activities for registered entities is one year after FFT posting. In its November 4, 2015 Order, FERC accepted that registered entities are required to mitigate noncompliance resolved through a CE within 12 months *of the time of the notification to the registered entity of CE treatment*.⁴¹ NERC proposes to modify this timeframe to be within 12 months *of the time of the posting of the CE*. This minor adjustment would align the mitigation completion activity

or self-reported prior to a Compliance Audit. One remaining violation was processed as a spreadsheet NOP because of negative compliance history and the other was a roll-in violation containing three separate instances.

⁴⁰ One of these minimal risk FFTs was negotiated prior to FERC's approval of the CE program. At the time the Regional Entity submitted the issue to NERC, NERC identified the need for additional scrutiny and then, due to an administrative error, did not post the FFT until 2016. The remaining three FFTs were instances of minimal risk noncompliance for a single entity processed together.

⁴¹ *North American Electric Reliability Corporation*, 153 FERC ¶ 61,130 at P 37 (2015).

timeframe between FFTs and CEs, thus facilitating tracking of completion deadlines. The ERO Enterprise does not anticipate any changes to processing timeframes because of this adjustment.

Respectfully submitted,

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Dated: November 21, 2016

APPENDIX A. Methodology and Criteria Applied in FFT and CE Sampling

NERC and FERC staff's 2016 review involved a sample of 32 FFTs for the period of October 2014 through September 2015 and 100 CEs, including 11 self-logged instances, for the period of May 2014 through September 2015. Coordination between NERC and FERC staff made the review more efficient. FERC staff performed the sampling of FFTs and CEs, with feedback from NERC on specific instances to be included in the sample. NERC staff issued data requests to the Regional Entities on behalf of both organizations.

FERC staff used RATS-STATS⁴² to select 18 CIP and 14 non-CIP FFTs from 161 FFTs posted in fiscal year 2015. FERC staff also selected 54 CIP and 46 non-CIP CEs from 499 CEs posted from May 1, 2014 through September 30, 2015.

Table 1: Sample Size of FFTs for all Regional Entities

	Total Processed	Selected	Percent representation of total processed	Percent representation of selected
Total	161	32	% of 161	% of 32
FRCC	10	2	20%	6%
MRO	8	2	25%	6%
NPCC	13	3	23%	9%
RF	14	3	21%	9%
SERC	26	5	19%	16%
SPP RE	20	4	20%	13%
TRE	23	5	22%	16%
WECC	47	8	17%	25%

⁴² RATS-STATS is a statistical audit tool used by the U.S. Department of Health and Human Services, Office of Inspector General, and Office of Audit Services and developed by the Regional Advanced Techniques Staff (RATS).

Table 2: Sample Size of CEs for all Regional Entities

	Total Processed	Selected	Percent representation of total processed	Percent representation of selected
Total	445	100	% of 445	% of 100
FRCC	14	3	21%	3%
MRO	43	15	35%	15%
NPCC	35	9	26%	9%
RF	142	30	21%	30%
SERC	45	10	22%	10%
SPP RE	50	9	18%	9%
TRE	41	7	17%	7%
WECC	75	17	23%	17%

NERC requested the Regional Entities provide all FFT- and CE-related documents for the items included in the sample set, including but not limited to: procedural documents; follow-up or sampling program procedures; source documents; notices of eligibility; documents describing mitigation activities; certifications; affidavits; verification documents, if applicable; and evidence demonstrating the noncompliance was successfully mitigated. NERC examined the selected noncompliance and the documents received using nine criteria described in NERC’s FFT/CE program Review Checklist.⁴³ The criteria were based on three major categories: (a) the description of the issue was clear and sufficient facts were included; (b) the risk was aligned with the facts and circumstances of each particular issue; and (c) the issues were mitigated timely and appropriately, with open issues being mitigated within one year.

In addition to the above criteria, NERC staff reviewed the documents provided by the Regional Entities to determine whether there were any cases where the Regional Entities omitted known information that would have helped NERC and FERC staff in review of the mitigating activities. NERC staff also assessed whether the root cause was appropriately identified, leading

⁴³ NERC’s FFT/CE Process Review Checklist is included as **Attachment 1**.

to effective mitigation. NERC staff's review also focused, as feasible, on whether a registered entity's internal processes and controls contributed to the mitigation of the risk during the pendency of the noncompliance.

NERC made informational filings of data requests and Regional Entities' responses for the public record. NERC also processed with FERC the information regarding the Regional Entities' processes and the specific FFTs and CEs on a privileged/non-public basis. NERC also took this opportunity to reinforce to the Regional Entities that communications issued after FERC's November 2015 Order should indicate that registered entities retain relevant records for 18 months after the date of posting.

APPENDIX B. Specific Analysis of the Sampled Issues

A. Process documents

NERC found that, in general, each of the Regional Entities' internal documents and procedures regarding the FFT and CE programs follows the NERC Rules of Procedure and CMEP. Each region has detailed internal procedures that provide systematic guidance in the processing of noncompliance. These documents gave NERC the assurance that the regions were determining properly the appropriate processing route for received noncompliance.

B. Description of the issue and risk assessment

NERC and FERC staff reviewed the description of the issue as it pertained to each of the FFTs and CEs sampled. While on occasion, the Regional Entities omitted from the issue description and risk assessments relevant facts and circumstances, those facts and circumstances were not always critical for risk assessment. Nevertheless, those facts may have facilitated better understanding by NERC and FERC staff of the issue or risk to the reliability of the BPS. In addition, there were examples where the Regional Entities either omitted or did not clearly identify the duration of the noncompliance. NERC has updated the FFT and CE spreadsheet template to include duration dates explicitly.

Notably, the Regional Entities made significant improvement in issues posted after last year's feedback calls, identifying the root cause in all FFTs and CEs posted after those discussions. Through review of the provided documents, NERC found that the Regional Entities consistently and accurately addressed the risk presented by the noncompliance through provision of mitigating factors and compensating measures in place for the duration of the issue. For the most part, the Regional Entities supported their risk determinations with facts that existed at the time of the

noncompliance. The Regional Entities provided after-the-fact determinations only in conjunction with facts known at the time of the issue to reinforce the risk determinations. NERC will continue collaborating with the Regional Entities to ensure the relevant information needed for a complete description and risk assessment is included for all noncompliance.

C. Evaluation and documentation of mitigation activities

As part of the sampling, NERC determined that the Regional Entities were requiring timely mitigation of the FFTs and CEs to address both the instant noncompliance and abatement of future occurrences. Most of the sampled mitigation activities explicitly included measures designed to prevent recurrence of noncompliance.

There were some instances where the posted information left out information that was available in the underlying documentation—the posting was still accurate, however additional information could have been included. For example, there were identified issues where a direct link between the root cause and the mitigation activities to address that root cause was not clear; however, NERC did not identify any issues where the mitigation activity was not adequate to address and remediate the noncompliance. For ongoing noncompliance, i.e. issues with mitigation activities still outstanding at the time of posting, there were examples of failure to include a description of the compensating measures in place during the pendency that would reduce risk until mitigation was complete. NERC has updated its templates to require more clearly that this information be included.

While this group of sampled issues notably improved from the prior year's review, there was one example where the Regional Entity expanded the scope of the FFT after the posting. This expansion occurred during the registered entity's mitigation of the issue. Although the risk

remained minimal after the expansion, in a different case it could have elevated. This was the only example in the sampled group of an expansion of scope after posting. FERC staff and NERC provided direct feedback that Regional Entities need to convey to NERC and FERC any future changes to issues posted accordingly.

NERC continues to identify Regional Entities still requiring formal Mitigation Plans instead of mitigation activities. NERC also identified Regional Entities that continue to verify mitigation completion for all noncompliance regardless of disposition method, instead of on a sampling basis for streamlined processing methods. NERC continues to work with the Regional Entities to update their verification processes. Accepting mitigation activities for lesser risk issues that qualify for streamlined processing and sampling verification for minimal risk issues—especially for those entities in the Self-Logging Program that have provided evidence of internal processes related to finding, fixing, and preventing noncompliance—should further increase processing efficiencies.

ATTACHMENT 1. Process Review Checklist

2015 – 2016 FFT and Compliance Exception Process Review Checklist

Any procedural documents or training documents that are used for the FFT and Compliance Exception process.	
<i>Title, revision</i>	<i>Summary of document - explain that the document is about</i>
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<i>Title, revision</i>	<i>Summary of document - explain that the document is about</i>

Follow-up or Sampling Program, e.g., audit or spot-check documents. Follow-up on closed issues and issues posted originally as open. Does the the RE have a sampling process for random checking of completion or a spot check or audit process, to the extent it does not verify completion of mitigating activities?	
<i>Title, revision</i>	<i>Summary of document - explain that the document is about</i>
<i>Title, revision</i>	<i>Summary of document - explain that the document is about</i>
<i>Title, revision</i>	<i>Summary of document - explain that the document is about</i>
<i>Title, revision</i>	<i>Summary of document - explain that the document is about</i>

Results

Summarize your findings under the following categories:

1. Were the underlying facts and circumstances included? Was the root cause considered? Were there any cases where the REs “omitted known information that would have facilitated NERC and FERC in review of the mitigating activities?” 2) NERC Enforcement will assess whether the root cause was appropriately identified leading to effective mitigation;

2. Did the risk assessments include the risk to reliability, including mitigating factors during pendency of the issue? The risk was not considered a minimal risk simply because of no adverse impact ("no harm no foul"). Was the risk determined in a consistent manner? For minimal risk issues, was CE/FFT treatment appropriate? 1) NERC Enforcement will assess, as feasible, whether internal controls contributed to the mitigation of the risk during the pendency of the noncompliance;

3. Were the issues mitigated successfully? For ongoing mitigation, was it successfully completed and certified? 3) If the CE/FFT is associated with a formal Mitigation Plans, NERC Enforcement will ask the Regional Entity to explain the circumstances that

4. NERC Enforcement will communicate to the REs that communications issued after the FERC order dated [November 2015] request that the registered entities retain relevant records for 18 months after date of posting of CEs.

	Questions	Issue Tracking ID
	Type - FFT/CE	
	Standard	
	Requirement	
	Documents Received: List specific documents received for this violation ID here	
1	<p>The description of the issue was adequate and includes the following:</p> <ul style="list-style-type: none"> a) Description of the issue, underlying facts and circumstances. For CEs, indicated if it was self-logged (applicable to CEs posted since May 2015). b) Discovery date and method of the issue. c) Start and end dates of the issue. d) Explanation and proper identification of root cause. e) Compared to the evidence, the description of the issue that was posted is accurate and reasonably complete. 	
2	<p>Risk Statement adequately addresses the issue.</p> <ul style="list-style-type: none"> a) The issue posed a minimal (for CEs and FFTs) or moderate risk (for FFTs) to the BPS and does not warrant a monetary penalty. For moderate risk issues, the statement explains why it is appropriate for FFT treatment. b) Risk statement based on facts at the time of the issue, not just after-the-fact determinations. c) Risk statement addresses mitigating factors that reduced the risk and compensating factors at the time of the issue which reduced the potential risk as relevant to the entity and circumstances. (Does not include a blanket heightened risk statement related solely to the Standard (R) at issue.) d) Indication of no actual harm (does not require "No harm is known to have occurred" if the risk assessment otherwise indicates that no harm occurred) e) Compared to the evidence, the posted description of the risk assessment is accurate and reasonably complete. f) Compensating measures or internal controls are in place during the period of noncompliance which reduce the risk to reliability while mitigation is ongoing. Are internal controls contributing to the mitigation of the risk of noncompliance? 	

3	<p>The mitigating activities address both the current issue and abatement of future occurrences.</p> <p>a) Includes specific mitigation activities or steps to be taken</p> <p>b) Addresses root cause of the issue and actions to prevent recurrence - is root cause identification contributing to more efficient mitigation of noncompliance?</p> <p>c) Compared to the evidence, the posted description of the mitigation is accurate and reasonably complete.</p> <p>d) Based on the evidence and activities, does the FFT appear to be appropriately remediated (mitigated)?</p> <p>Or</p> <p>For issues with open mitigation activities at the time of posting, include the information above and state the expected completion date. Date should be less than 12 months from date of posting. Explanation of why the length of time for completion is required.</p> <p>If the CE/FFT is associated with a formal Mitigation Plans, NERC Enforcement will ask the Regional Entity to explain the circumstances that prevented use of mitigation activities.</p>	
4	<p>For FFTs, an affidavit of completion signed by an officer with knowledge of the remediation and for FFTs and CEs other certification document/evidence was included.</p>	
5	<p>For ongoing mitigation, activities were successfully completed and certified.</p>	
6	<p>Consideration, if any, of the registered entity's internal compliance program.</p> <p>a) List any aspects of the ICP that were considered by the RE.</p>	
7	<p>The RE considered the compliance history when evaluating this issue. (applicable compliance history is 3 years from mitigation completion of prior issue to start of current issue).</p> <p>a) There have not been any re-occurrences since the mitigation activities were completed.</p> <p>For FFT review, Compliance Exceptions are not considered a part of the compliance history unless the most recent one is an event or they continue to violate the same Standard/Req.</p>	
8	<p>The registered entity was notified of FFT/CE treatment at least 10 days before date of posting. For issues with completed mitigation at the time of posting, a notice that shows that after 60 days of posting the issue is considered to be closed if FERC/NERC have no issues. For issues with ongoing mitigation at the time of posting, the issue is closed after mitigation completion or after 60 days of posting, whichever is greater.</p>	
9	<p>Overall Satisfactory? If not, state why or refer to checklist numbers that are unsatisfactory.</p>	