

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

North American Electric Reliability                    )  
Corporation    )                   Docket No. RC11-6-\_\_\_\_  
  )

**COMPLIANCE FILING OF THE NORTH AMERICAN ELECTRIC RELIABILITY  
CORPORATION**

North American Electric Reliability Corporation (“NERC”) submits this filing in compliance with the order of the Federal Energy Regulatory Commission (“FERC” or “Commission”) in *North American Electric Reliability Corporation*, 138 FERC ¶ 61,193 (2012) (“March 15 Order”).<sup>1</sup> In the March 15 Order, among other things, the Commission accepted, with limited conditions, NERC’s petition requesting approval of its proposal to make informational filings in a Find, Fix, Track and Report (“FFT”) spreadsheet format of minimal risk, remediated possible violations of Reliability Standards.

**I. Introduction**

NERC launched the Compliance Enforcement Initiative (“CEI”) in September 2011 as part of the organization’s broader efforts on reliability excellence.<sup>2</sup> This objective is manifested in other efforts throughout the organization, particularly those related to the identification of reliability priorities. NERC has the requisite expertise and responsibility to systematically identify reliability priorities and address them effectively and efficiently. NERC’s prioritization

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<sup>1</sup> NERC is also submitting today, in this docket, the first of two information reports required by the Commission in the March 15 Order. On March 15, 2013, NERC will submit the twelve-month implementation report and compliance filing as directed in the March 15 Order.

<sup>2</sup> The two improvements introduced were an abbreviated reporting format for Notices of Penalty (“NOP”) in the form of a spreadsheet, Spreadsheet NOP (“SNOP”), and the FFT.

efforts are based on NERC's expert knowledge of the bulk power system and related risks. As indicated in the Petition, all instances of noncompliance, whether large or small should be identified, corrected and reported. In the March 15 Order, the Commission has endorsed the use of different enforcement tracks for issues posing different levels of risk to the reliability of the bulk power system ("BPS"). The CEI has been instrumental in allowing NERC and the Regional Entities to differentiate the processing of issues based on the level of risk posed to the reliability of the BPS.

As directed by the Commission, this Compliance Filing focuses on two issues: (a) the impact of a registered entity's compliance history in the determination of whether FFT treatment is appropriate in a given situation and (b) NERC's plans for future implementation of the CEI, including continuing training and outreach efforts to ensure the sustainability and expansion of the program as well as the efforts to ensure consistency and due process.

## **II. The Sustainability and Expandability of the CEI and Guiding Principles**

The CEI filing introduced a new paradigm in enforcement. NERC and the Regional Entities are increasing the utilization of their inherent enforcement discretion in the implementation of compliance and enforcement activities. The CEI filing set forth a more comprehensive and integrated risk control strategy that differentiates and addresses compliance issues according to their significance to the reliability of the BPS. The basic tenets are simple: (1) minimal risk issues do not require the same amount of time and resources as more serious risk issues, and (2) prompt attention and more time and resources should be devoted to more serious risk issues, including proactive steps to identify and mitigate potential risks rather than reacting to noncompliance. While NERC originally proposed that there would be a discrete Phase I and

Phase II implementation, through experience gained to date, NERC believes the proper focus is on ensuring the sustainability and expandability of the CEI program. This means that there is no going back to the prior model, and work must continue to expand the effectiveness of the current FERC-approved program. The first step in the expansion of the program is to have recommendations from compliance monitoring staff regarding the disposition of certain possible violations as FFTs. Future steps are currently being considered and will be addressed in NERC's upcoming twelve-month report. These future steps will be developed with the input and participation of Regional Entities and industry stakeholders.

Ongoing and consistent training is paramount to both the sustainability and expandability of the program, as discussed in more detail below. As also discussed, training is one of the tools which are used to support and drive consistency and due process.

With the March 15 Order, significant strides have been gained in ensuring that there is no one size fits all approach to resolving possible violations. The March 15 Order further invited NERC, Regional Entities and the industry to consider additional opportunities to focus on risk, including identification of Reliability Standard requirements that may not be needed or that require modification. NERC commends the Commission for this forward-looking objective. NERC is pleased to report that efforts are underway and will be the subject of a different filing at the appropriate time.

Sustainability of the program requires that there be consistency in application. NERC intends to promote consistency through a series of training and outreach sessions for Regional Entity enforcement and compliance staff on the identification and disposition of possible violations as FFTs. For the last five years, NERC and the Regional Entities have gained significant experience in conducting risk assessments. Over 3,100 violations have been processed as notices of penalty. Nearly 450 FFTs have been processed as of March 30, 2012.

This provides a useful library of examples not only of a risk assessment but of mitigating activities to correct and prevent recurrence of violations. For ease of reference, consolidated spreadsheets of FFTs and NOPs are publicly available on NERC's website.<sup>3</sup> This experience forms the basis for the training that is underway and to be implemented.

The existing guidance in the initial CEI filing, the March 15th Order guidance on risk assessments and actual FFT examples are training tools for enforcement staff and compliance monitoring staff that will ensure the exercise of discretion remains focused on meeting the purpose of the FFT program. In addition to training, oversight of the CEA staff will play a key role in assuring discretion is consistently applied.

NERC will also seek to expand the application of the FFT process. Expandability not only applies to who may identify potential FFT issues but also an expansion of the effectiveness of the program. The initial domain of usage involved CEA enforcement staff. NERC believes there is value in identification of minimal risk issues as early as possible. At this stage, CEA compliance monitoring staff will not make FFT determinations; rather, they will make recommendations to enforcement staff. NERC and the Regional Entities will continue to explore opportunities to enhance the roles of both CEA compliance monitoring and enforcement staff in the identification of potential FFT candidates.

Compliance monitoring staff may continue to provide guidance to the registered entity on appropriate mitigation activities while on site. Faster identification and application of mitigation activities will result in improved reliability and additional minimal risk possible violations that, having been mitigated early on, may qualify for FFT treatment. Enforcement staff will continue

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<sup>3</sup> See <http://www.nerc.com/filez/enforcement/index.html>.

to have a key role in approval of final mitigation activities to ensure consistency within and among the Regional Entities.

CEI process enhancements will be made through gradual but continuous improvements, based upon the knowledge and experience gained by Regional Entities and NERC as they realize increased efficiencies through improved and expanded processes. A significant degree of flexibility will allow Regional Entities to continuously improve the program subject to NERC oversight.

## **II. Compliance History as a Factor in Considering FFT Treatment**

In the March 15 Order, FERC accepted NERC's proposal to "count a possible violation processed as an FFT matter as part of the registered entity's compliance history." FERC explained that:

Registered entities are not obligated to have a matter resolved through an FFT informational filing. If a registered entity does not wish a possible violation to be included in its compliance history, it may opt to use the CMEP processes otherwise available to seek a dismissal of the possible violation or an on-the-record determination that it did not violate a Reliability Standard.<sup>4</sup>

However, FERC requested additional clarification on:

how a remediated issue will be factored into a registered entity's compliance history going forward. For example, possible violations of individual Reliability Standard requirements may pose a lesser risk when considered in isolation, but pose a higher risk in the context of other violations, whether reported in the same FFT filing, another FFT filing, or a Notice of Penalty. Alternatively, analysis of a poor compliance history may reveal, for example, shortcomings in the registered entity's training programs rather than the lack of a culture of compliance.<sup>5</sup>

As a result, FERC directed NERC:

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<sup>4</sup> March 15 Order at P 63.

<sup>5</sup> March 15 Order at P 64.

to submit within sixty days from the date of this order a compliance filing explaining the principles it will employ in evaluating an entity's compliance history. In its sixty-day compliance filing, NERC should include an explanation of how it will determine that an entity's compliance history is a contributing factor to the entity receiving FFT treatment for a possible violation. The sixty-day compliance filing should also include examples of where an entity's compliance history precludes or is a strong factor against an entity receiving FFT treatment for a possible violation. NERC should also explain in the sixty-day compliance filing the principles it will use to evaluate an entity's compliance history with respect to the following specific issues: self reports, repeat remediated issues, and multiple remediated issues arising from a single incident. We do not require NERC to explain in each monthly FFT spreadsheet filing how a registered entity's compliance history was factored into the remediated issues reported.”<sup>6</sup>

These are addressed in turn, below.

#### **A. Principles Regarding Compliance History**

An entity's compliance history, including prior or repeat issues by the entity or its affiliates, the entity's internal compliance program, internal controls and culture of compliance, are factors that have been and will continue to be taken into account in determining whether FFT treatment is warranted in any given case, and will be referenced in the FFT spreadsheet as appropriate. This is consistent with the Commission's requirement that “[i]n considering the seriousness of a violation, one factor evaluated by the Commission is whether a violation is a repeat offense or if the company has a history of violations.”<sup>7</sup> This is also consistent with the NERC Sanction Guidelines, which provide that “[i]f a violator has had repetitive infractions of the same or a closely-related reliability standard requirement, particularly within a time frame defined within the standard(s) or deemed appropriate by NERC or the regional entity in the absence of the standard(s) defining the time frame, NERC or the regional entity shall consider some increase to the penalty.” The NERC Sanction Guidelines also provides that “a violation

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<sup>6</sup> March 15 Order at P 66 (footnote omitted).

<sup>7</sup> *North American Electric Reliability Corporation*, 132 FERC ¶ 61,182 (2010) at P 5, *citing* Revised Policy Statement on Enforcement, 123 FERC ¶ 61,156, at P 55 (2008).

history of no violations will produce no mitigation of the Penalty otherwise determined; a violation history of infrequent minor violations of lesser risk Requirements assessed lower Violation Severity Levels may result in small or no increase; a history of more frequent violations or previous violations of higher risk Requirements assessed more severe Violation Severity Levels will generally incur commensurately larger increases.” Although there are no penalties applied to FFT remediated issues, the corresponding effect of the “aggravation” would be to result in a factor weighing against FFT treatment to a particular matter.

The Commission has explained that the factors of a prior violation need not be identical to a current violation to constitute an aggravating factor.<sup>8</sup> The Commission has stated that the reference, in the NERC Sanction Guidelines to “repetitive infractions” include: 1) repeated or continuing examples of conduct similar to that underlying the prior violation of the same or a closely-related Reliability Standard Requirement; 2) conduct addressed in a registered entity’s previously submitted mitigation plan for a prior violation of the same or a closely-related Reliability Standard Requirement; or 3) multiple violations of the same Standard and Requirement.<sup>9</sup> The evaluation of an entity’s compliance history includes the consideration of whether “instant violations may reflect recurring conduct by the same registered entity or by an affiliate or department that is operated by the same corporate entity or whose compliance activities may be conducted by that entity” as well as consideration of prior violations by the same or affiliated entity made by different Regional Entities.<sup>10</sup>

In applying these principles, NERC and the Regional Entities will continue to determine, based on the particular facts of each violation/remediated issue, whether a prior

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at P 7.

violation/remediated issue of the same or a closely-related Reliability Standard should preclude FFT treatment.<sup>11</sup>

### **1. Repeat Violations Do Not Necessarily Preclude FFT Consideration**

As indicated in the Petition, repeat issues are eligible for FFT treatment, provided that the issues pose only a minimal risk to reliability of the BPS. However, the identification of repeat issues of same, similar or different Reliability Standards may lead the CEA to use its discretion to discontinue the use of the FFT process and escalate the processing of these issues as possible violations as described in the CMEP.

An entity's compliance history must be considered in context. A large number of violations or remediated issues in an entity's compliance history could reflect an aggressive compliance program or could be evidence of a systemic problem, either related to the company's culture of compliance, the effectiveness of its compliance program or the effectiveness of its internal training, depending on the underlying facts and circumstances. Accordingly, there is no one-size-fits-all formulaic approach. NERC and the Regional Entities will continue to evaluate an entity's entire compliance history in order to determine the appropriate enforcement track for a particular matter. Issues to be considered include, but are not limited to:

- The timing of the prior and instant violations/remediated issues.

As a general matter, the fact that an entity has prior violations/remediated issues which occurred in the early years of mandatory and enforceable Reliability Standards may be a factor in favor of affording FFT treatment to a subsequent matter.

- The nature, scope and risk of the prior and instant violations/remediated issues.

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<sup>11</sup> *Id.* at P 8.



Depending particularly on the level of risk posed by the violations/remediated issues that comprise the entity's compliance history, FFT treatment may still be warranted for new minimal risk issues.

- Whether the prior and instant violations/remediated issues have been self-identified and/or indicate a robust compliance program.

As a general matter, self-reports and other forms of self-identified issues will be one of the factors that may weigh in favor of affording FFT treatment for repeat issues.

Thus, if the registered entity's compliance history evidences a dedication to complying with NERC standards, FFT treatment reinforces and rewards that behavior by addressing minimal risk, mitigated compliance issues in an efficient manner. FFT treatment will reinforce a culture of compliance where the registered entity has, for example, a history of timely responses to Regional Entity requests, including a registered entity's internal compliance assessments especially following significant system events; prompt self-reports; and full and timely correction, in accordance with approved mitigation plans, of prior violations.

FFTs related to repeat issues have been submitted and will continue to be submitted where the conduct does not signal a broader concern or a failure of the mitigation of the prior issue. This could be the case, for example, if the new issue has different facts, or occurs in a portion of the company not covered by the prior mitigation efforts. It has also occurred in the context of multiple violations within the same corporate family when several affiliated registered entities utilize a common document in compliance with specific Reliability Standards. In those cases, the identification of a problem in a corporate-wide document may result in violations for each of the affiliated registered entities, even though there is only a single instance or event that

constitutes the basis of the noncompliance. Provided that the risk assessment indicates a minimal risk, the existence of the multiple violations would not alone preclude FFT treatment.

In addition, there may be situations in which possible violations are identified at one time either because they were discovered at the same time or because they arise or result from a single incident. As a general matter, all past and pending possible violations are evaluated in the course of determining the ultimate filing format and disposition. While they will generally be filed together, the timing of completion of mitigation may affect when individual possible violations are filed. In cases where a possible violation is filed separately from others that were discovered at the same time or resulted from a single incident, NERC and the Regional Entities will continue to evaluate the totality of the registered entity's compliance history in order to identify any broader corporate or compliance issues.

**B. Examples of Repeat Issues that Would Not be Afforded FFT Treatment**

FFT candidates are considered both in isolation and in the aggregate to determine whether there is a systemic or performance failure on the part of the registered entity. This is the case with respect to multiple violations/remediated issues filed concomitantly as well as an entity's prior compliance history. NERC and the Regional Entities have rejected and continue to reject FFT candidates where the registered entity's compliance history is indicative of broader concerns either due to the number of repeat issues or the seriousness of such issues. In certain cases, evidence of a lack of commitment of senior management to the entity's compliance program, associated with a large number of prior violations resulted in a rejection of FFT treatment for additional violations.

Where the registered entity's compliance history reveals a pattern of disregard of NERC requirements, the failure to impose a penalty might not sufficiently deter such behavior and

promote compliance efforts. This could be evidenced by (a) a registered entity's pattern of failure to respond to Regional Entity requests, or to complete prior mitigation plans on time without seeking extensions in accordance with the CMEP; (b) a Regional Entity's inability to confirm mitigation plan completions certified by the registered entity; or (c) continued repetitions of the same violations in a manner that indicates or evidences a lack of internal controls to prevent recurrence/inadequate mitigation of earlier violations. In addition, compliance history would argue against FFT treatment if it shows a pattern of lack of concern about reliability compliance, indicating that imposing a penalty on the registered entity even for minimal risk violations serves an important purpose in promoting that entity's compliance.

As required by the Commission in the March 15 Order, FFT treatment would not be afforded to a prior remediated issue that was subsequently found not to have been mitigated. Similarly, cases involving material misrepresentations about the nature and scope of the prior issue would preclude FFT treatment.<sup>12</sup>

#### **IV. Future CEI Implementation**

NERC recognizes that we are in the early stages of implementation of CEI. The March 15 Order provided the cornerstone upon which the program will continue to be implemented and to evolve. In the March 15 Order, FERC authorized NERC to proceed with the implementation of the CEI but requested clarification regarding "how Regional Entity audit teams will decide

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<sup>12</sup> As stated in the March 15 Order, "the Commission retains the discretion to review a possible violation reported in an FFT informational filing even after the sixty day period if it finds that FFT treatment was obtained based on a material misrepresentation of the facts underlying the FFT matter." March 15 Order at P 72.

whether a possible violation will be resolved through the CMEP or FFT processes and how NERC will achieve consistency of outcomes.”<sup>13</sup>

Specifically, FERC made the following requests for information:

- Describe how NERC and Regional Entity compliance and enforcement personnel will be trained to implement Phase II and, for informational purposes, provide copies of any training materials prepared for this purpose;
- Explain the procedures for coordination and collaboration between compliance personnel and enforcement personnel in evaluating FFT eligibility during Phase II;
- Explain how NERC intends to obtain consistent treatment of possible violations for FFT treatment among the Regional Entities and as between NERC and the Regional Entities; and
- Describe the process for certification or qualification of specific personnel to participate in eligibility determinations during Phase II.

The following sections respond to these requests for information and address NERC’s plans for future implementation of the CEI, including through the continuing training and outreach efforts described below.

## **A. Training and Outreach Activities**

### **1. Training and Outreach Opportunities since September 2011**

To support the implementation of the CEI, NERC held a series of webinar, workshop and training opportunities for both Regional Entities and registered entities. These activities provided information to the Regional Entities and industry regarding the FFT process and progress. During the first several months of the CEI, nearly 1,500 attendees, including Regional Entity and registered entity representatives, participated in the NERC workshops, webinars and training sessions related to the CEI. Attachment A to this filing includes a report on all training

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<sup>13</sup> March 15 Order at P 80.

and outreach activities conducted for both Regional Entities and registered entities including venue, agenda and key points and target audience.<sup>14</sup>

NERC and the Regional Entities continue to conduct informational webinars for both Regional Entity staff and industry stakeholders. Webinars have focused on lessons learned from discovery and processing of FFTs, including the importance of internal compliance programs to identify potential violations of reliability standards, appropriate risk assessments, and completion of mitigation activities. Webinars for industry also have focused and will continue to focus on case study examples of FFTs filed. In addition, industry and ERO general workshops continue to include sessions on CEI progress and lessons learned and the importance of the CEI in promoting reliability and accountability.

In addition to these ERO-conducted training opportunities, NERC staff participated in other events to discuss the CEI in general and FFT in particular. These opportunities are also listed in Attachment A.

## **2. CEA Staff Training**

In addition to more general training and outreach activities referenced above, additional specific CEI training will be provided to CEA staff, including compliance monitoring and enforcement staff, to ensure successful implementation of the program in the field, promote consistency and ensure processes, roles, and responsibilities are well understood.

All CEA staff, including compliance monitoring staff and enforcement staff, will be trained with respect to the ongoing implementation of FFT. This will ensure consistency within and among the CEA staffs. The focus of the training will be on evaluation of the underlying facts

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<sup>14</sup> Selected presentations and other materials are available at <http://www.nerc.com/page.php?cid=3|22>.

and circumstances, assessment of the risk, evaluation of the corrective and preventive actions and consideration of compliance history and other relevant factors. Training also will focus on application of the factors to be considered in connection with FFT treatment and risk assessments illustrated by case studies of FFTs filed since September 2011 and informed by the March 15 Order. The respective roles of compliance monitoring and enforcement staff with respect to identification and recommendation of FFT candidates and coordination and collaboration between these functions will also be part of the training sessions. The outline of training to be provided to CEA staff is attached as Attachment B.

CEA staff training will continue through the third and fourth quarters of 2012. NERC, in conjunction with the Regional Entities, will develop training materials for CEA staff in order to ensure the appropriate qualification of personnel who will be responsible for making FFT determinations. Lead Auditor training taking place in May, August and October, 2012 will address the accumulation of information necessary for assessing risk and deciding whether FFT treatment is appropriate. This training will also cover interpersonal communication and conflict management.

Webinars and web modules providing education for CEA compliance and enforcement staff will be available in August, 2012. These training tools will include case studies with examples of violations that are appropriate for FFT treatment and violations that are not appropriate. The examples will cover Operations/Planning Standards and CIP Standards, with the purpose of expanding CEA staff skills to evaluate and assess risk. This qualification process will be ongoing, with the goal of qualifying great enough percentages of CEA personnel to implement FFT determinations in the field in early 2013.

## **B. Coordination and Collaboration between Compliance Monitoring and Enforcement Personnel**

To ensure coordination and collaboration between compliance monitoring and enforcement staff, it is critical that these individuals understand their respective roles in the continued implementation of CEI. These roles, summarized below, reflect the early stages of implementation of the CEI. At this time, with the appropriate training, compliance monitoring staff will make recommendations to enforcement staff. This provides a check and balance system and will facilitate consistency and due process. Some Regional Entities are already implementing this successfully.

As experience is gained, and capabilities are developed, we expect to continue to evolve the roles to ensure the continued success of the program. The ultimate objective of expanding this aspect of the program is to allow for the identification and final resolution of minimal risk issues, including mitigating activities, at the earliest possible opportunity. The process of developing next steps will include the input and participation by Regional Entities and industry stakeholders.

### **1. Identifying and Processing FFTs in Connection with Compliance Audits, Spot Checks and Compliance Investigations**

Compliance Audit, Spot Check and Compliance Investigation findings will continue to be made as they were prior to the implementation of the CEI. At this time, NERC is not proposing that the FFT decision will be made and communicated to the registered entity on site. Rather, following conclusion of the compliance monitoring activity, compliance monitoring staff will promptly communicate an FFT recommendation to enforcement. Enforcement will then conduct a preliminary review of the FFT candidate to confirm consistency and completion of all FFT requirements, and will then promptly issue the Notice of Possible Violation and send the FFT opt

out letter to the registered entity. If the entity does not elect to opt out of FFT processing, enforcement will then promptly submit the FFT spreadsheet to NERC. However, even if compliance monitoring staff does not make a recommendation that a possible violation is an FFT candidate, enforcement will still continue to review all possible violations and afford FFT treatment where appropriate to ensure consistency and fairness. As experience is gained, this aspect of implementation will continue to evolve.

In considering whether to recommend FFT treatment, compliance monitoring staff may obtain, as necessary, any background information necessary to effectively apply the factors to be considered in identifying FFT candidates (e.g., compliance history). Additional information from the registered entity may be required and obtained as part of the consideration of whether to recommend FFT treatment (e.g., compliance plans, internal controls etc.). The Guidance for Self Reports available on the NERC web page should be used as guidance for the nature and scope of the information to be obtained from the registered entity.

## **2. Other Compliance Monitoring Activities**

Enforcement staff will continue to evaluate FFT candidates identified through all monitoring methods, but will have principal responsibility for identifying FFT candidates that have not been recommended by an auditor or investigator. With respect to FFT candidates recommended by auditors or investigators, enforcement staff will review the record for completeness and will request additional information as necessary.

### **C. Consistency and Due Process**

Given the number of factors taken into account when determining the appropriate enforcement track for a specific issue, even if two situations appear the same or similar on the



surface these factors may drive different results. Consistency is driven by (1) having appropriate policies, procedures and oversight controls in place, (2) ongoing vetting of candidates prior to ultimate disposition by NERC and the Regional Entities, (3) after the fact peer review of a sample of FFT candidates that have been filed or rejected, and (4) training.

NERC and the Regional Entities follow common processes and consider the same factors in the determination of the appropriate enforcement track of any possible violation. For example, NERC and the Regional Entities utilize common forms, letters and spreadsheets to promote consistency in processing issues. The factors considered in identifying FFT candidates were discussed in the Petition and the Commission's March 15 Order. They include (1) minimal risk to reliability<sup>15</sup> and related facts and circumstances, including what happened, why, where and when, including the timeframe for and completion of mitigation, (2) Reliability Standard at issue and applicable Violation Risk Factor (VRF) and Violation Severity Level (VSL), and (3) Registered Entity's compliance program and compliance history.

With respect to oversight controls, CEA enforcement will have oversight over FFT recommendations made by compliance monitoring staff. In addition, NERC exercises review and oversight to ensure consistent treatment of matters.

NERC reviews all possible violations for comparison against possible violations that have already been processed, regardless of the enforcement processing track they will follow. Possible violations involving similar facts and circumstances or similar Reliability Standard or Requirements are closely reviewed to ensure the respective outcomes are consistent (even if not identical). While the existing precedent informs NERC's review of new possible violations,

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<sup>15</sup> Although certain moderate risk FFTs were filed between September 2011 and February 2012, in accordance with the FERC order issued on March 15, 2012, only minimal risk issues will be included prospectively.

NERC also reviews any applicable settlement agreements, mitigation plans and proposed penalties in order to promote consistency among the Regional Entities. There is also constant communication among NERC and the Regional Entity's compliance and enforcement staffs to ensure alignment of expectations and consistency with respect to how matters are evaluated and processed. The Commission itself recognized the benefits of conducting sampling to make sure the program is working. NERC and the Regional Entities also will develop a process for sampling of FFT candidates to ensure the program is working as intended.

NERC and the Regional Entities also ensure that requisite information is made available, at the time of the filing of an issue with FERC, to allow third parties to understand, after the fact, what factors were relevant in the review of each case. Whether an issue is processed as an FFT or Spreadsheet NOP, the description, risk assessment and mitigating activities are appropriately scaled.<sup>16</sup> This information allows third parties to compare issues and understand outcomes which may appear to be disparate at a first glance.

NERC and the Regional Entities are always seeking to improve the transparency and availability of information. Searchable spreadsheets for both FFTs and Spreadsheet NOPs are available on the NERC website<sup>17</sup> and provide faster dissemination of information and more transparency in results. That format also helps NERC, Regional Entities and industry stakeholders identify potential consistency issues that need to be addressed.

Ongoing CEA staff training and guidance both with respect to the criteria for identifying FFTs and the process steps to be taken in connection with the identification and processing of

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<sup>16</sup> As part of the review process referenced above, NERC examines each and every NOP and FFT candidate prior to filing to ensure that the filing contains a robust discussion of these issues, as well as the actual and potential risk and any interim protections that may have mitigated the risk.

<sup>17</sup> See <http://www.nerc.com/filez/enforcement/index.html>.

FFTs also will further promote consistency in implementation of the CEI. NERC and Regional Entities pay particular attention to consistency in outcomes and due process and will realign as necessary. However, as noted, consistent approaches do not necessarily equate to identical outcomes.

#### **D. Qualification of Personnel**

CEA compliance monitoring and enforcement staff engaged in the disposition of possible violations will be required to successfully complete the CEA staff training in development and as described herein. Training will be conducted in accordance with generally accepted training practices following the outline in Attachment B. NERC and the Regional Entities will keep training records of its own staff and will require training by all relevant staff. Continuing training will be available to all CEA staff on a pre-determined timeframe.

## V. Conclusion

NERC is committed to the sustainability and future expansion of the CEI and will take all necessary actions to ensure the continued success of the program, as evidenced in the discussion of the applicable processes and the ongoing training and outreach efforts, including future training and certification of CEA staff. In conclusion, NERC requests that the Commission accept this submittal in compliance with the March 15 Order.

Respectfully submitted,

*/s/ Rebecca J. Michael*

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## Attachment A

### **Training Opportunities since September 2011**

#### **I. NERC-sponsored Activities**

In September 2011, NERC conducted the Fall ERO Auditor Workshop in Atlanta, GA. This multi-day workshop was conducted for compliance staff from each Regional Entity and NERC. The purpose of the ERO Auditor Workshop is to provide auditors with CMEP information and updates and to promote consistency in the application of the program and audit practices across the industry. The workshop included presentations, panel discussions, and breakout work sessions to provide auditors the opportunity for interactive involvement and continuing training. Included in the agenda was a session presented by NERC enforcement staff on the CEI. The session included discussions on the background and development of the FFT process, purpose of the CEI, the implementation plan, considerations for assessing potential violations for FFT treatment including assessment of risk, reporting mechanisms and key roles. The session included opportunities for questions and discussion. Approximately 65 compliance enforcement authority (“CEA”) staff attended.

On October 6, 2011 a Regional Entity webinar was conducted by NERC staff. Participants included Regional Entity staff in the compliance and enforcement programs. The webinar covered the following key points: The CEI represents a risk-informed approach that draws upon experience and technical expertise to promote the reliability of the BPS. The new enforcement initiative is designed to concentrate attention and efforts of registered entities, Regional Entities, and NERC on possible violations in proportion to the significance of their actual or potential risks to reliability of the BPS, eliminate undue administrative and regulatory burdens on registered entities that do not result in reliability benefits, streamline paperwork

requirements, and encourage continued timely and thorough self-reporting and mitigation. By identifying, mitigating and resolving on a streamlined basis the possible violations that pose a minimal risk to reliability of the BPS, more time, resources and efforts can be devoted to more significant possible violations. Implementation of the CEI will facilitate more efficient and effective risk management. The webinar included questions and discussions among the presenters and participants. Approximately 29 staff participated in the webinar.

On October 13, 2011, a webinar was conducted for NERC members and industry stakeholders on the CEI. Introductory comments were provided by the NERC CEO. The key points covered were similar to those presented in the October 6 webinar. The agenda included background information, the phased implementation plan, spreadsheet notices of penalty, how FFTs would be identified including risk significance and mitigation activities taken by the entity, and FFT examples. The webinar included questions and discussions among the presenters and participants. Approximately 245 industry representatives participated in the webinar.

In addition, NERC conducts quarterly training sessions for Audit Team Leaders. Beginning with the November 2011 class, a session was added to the course agenda to discuss the CEI. The items covered in the session included the background and purpose of the CEI, Spreadsheet NOPs, FFT process and examples, CEI filing and status CEI implementation timeline, and audit team actions. A similar session was conducted in February 2012. This training will be updated with current information, examples, and CEI status for future sessions. Approximately 10 to 20 audit team leaders participate in each training session.

In November 2011, a CEI workshop was conducted at NERC in Atlanta for Regional Entity CEA staff. The purpose of the workshop was to provide Regional Managers and Staff

with CEI information and updates; promote consistency in the application of the CEI in order to enhance the consistency of audit practices across the industry; and capture feedback to enable the ERO and Regional Staff to develop more granular guidance to both enhance consistency and support the development of the CEI and training programs. The workshop included presentations, discussions, and working sessions to provide Regional Managers and Staff the opportunity for interactive involvement, discussion and training. Topics included review of CEI status, detailed discussions of FFT processes and examples and lessons learned from the early FFT submittals. Approximately 20 staff attended the workshop.

In December 2011, several training activities were conducted. On December 6, a Compliance Workshop for industry representatives included a session presented by NERC staff on the CEI. Participants were registered entity compliance staff. The session included discussion of the CEI background and purposes, filing status, spreadsheet notices of penalty, FFT examples, statistics summary and guidance for self-reporting. Also presented were factors for consideration including risk and mitigation actions. Approximately 204 industry representatives participated in the workshop.

On December 12, 2011, a Regional Entity webinar was conducted by NERC staff. Participants included Regional Entity staff in the Compliance and Enforcement Programs. This webinar provided an update on the 2011 filings with FERC of the associated FFTs. The webinar included questions and discussions among the presenters and participants. Approximately 30 Regional Entity representatives participated.

On December 13, 2011, a webinar was conducted for NERC members and industry stakeholders on the CEI. This webinar provided an update to the industry regarding the

September, October, and November 2011 filings with FERC of the associated FFTs and the NOPs. Additionally, guidance was provided for registered entities on best practices regarding the completion of the self-report template and risk assessments needed for FFTs processing. Discovery methods were presented, noting that a majority of FFTs resulted from self-reporting. Approximately 219 industry representatives registered for the webinar.

In early February 2012, a CEI information update webinar was conducted for NERC members and industry stakeholders. The focus of this webinar was to provide industry with the latest information relating to FFT issues processed to date. This included FFT background, statistics, analysis, and case studies to help registered entities better understand the FFT process and its use in promoting the reliability of the bulk power system. Topics included a summary of the first five CEI filings, and FFT trends by reliability standard family. A summary of FFT remediated issues was provided that included the potential violation, associated risk impact and mitigation actions completed for specific standards. The webinar included questions and discussions among the presenters and participants. Approximately 550 participants were registered for the webinar, including representatives from the Commission.

Also in February 2012, NERC conducted an ERO Auditor Workshop in Salt Lake City. This multi-day workshop was conducted for compliance staff from each Regional Entity and NERC. A session on the CEI was provided that included the goals of the CEI, FFT trends and examples. Approximately 110 staff attended the workshop.

In April 2012, NERC conducted a Standards and Compliance Workshop in San Diego for registered entities. The theme of the workshop was “A Risk-Based Approach to Reliability and Accountability” and included an information session on the compliance enforcement initiative.



Approximately 150 people attended the workshop with an additional 50 remote participants through webinar.

In addition, the CEI was discussed with registered entities and Regional Entities at each NERC board meeting as part of the Member Representatives Committee and the open Board of Trustees Compliance Committee meetings commencing in 2011.

## **II. NERC Staff Participation in Third Party Activities**

NERC staff spoke at a brown bag luncheon of the Energy Bar Association on November 8, 2011, a webinar conducted by the Edison Electric Institute on January 19, 2012, and a panel presentation in the National Association of Regulatory Utility Commissioners' Winter Meetings on February 5, 2012, both in Washington DC. In addition, NERC staff spoke at a meeting of the Northwest Public Power Association in Seattle on March 1, 2012 and a webinar held by the North American Generator Forum on March 27, 2012. NERC staff also presented during the Energy Bar Association's Compliance & Enforcement Committee and Georgetown University Law Center's Energy Enforcers and Defenders Forum on April 2, 2012, the Annual Conference of the National Hydropower Association on April 17, 2012, the EEI Reliability Executive Advisory Committee on April 25, 2012, and the Energy Bar Association's Annual Meeting on April 26, 2012.

## **III. Regional Entity-sponsored Activities**

Regional Entities have provided separate training on CEI and FFT. As reported to NERC, these training opportunities included as follows:

**A. FRCC**

Below is a list of FFT training that has been provided by FRCC to date.

**FRCC  
FFT Training**

<b>Date</b>	<b>Forum</b>	<b>Training Target</b>
10/15/2011	Board of Directors	Registered Entities
12/15/2011	Board of Directors	Registered Entities
1/31/2012	Board of Directors	Registered Entities
8/22/2011	FRCC RE Compliance Committee	Registered Entities
9/21/2011	FRCC RE Compliance Committee	Registered Entities
10/26/2011	FRCC RE Compliance Committee	Registered Entities
3/27/2012	FRCC RE Compliance Committee	Registered Entities
4/25/2012	FRCC RE Compliance Committee	Registered Entities
10/10/2011	Fall 2011 Compliance Workshop	Registered Entities
10/11/2011	Fall 2011 Compliance Workshop	Registered Entities
10/12/2011	Fall 2011 Compliance Workshop	Registered Entities
10/13/2011	Fall 2011 Compliance Workshop	Registered Entities
10/14/2011	Fall 2011 Compliance Workshop	Registered Entities
3/12/2012	Spring 2012 Compliance Workshop	Registered Entities
3/13/2012	Spring 2012 Compliance Workshop	Registered Entities
3/14/2012	Spring 2012 Compliance Workshop	Registered Entities
3/15/2012	Spring 2012 Compliance Workshop	Registered Entities
3/16/2012	Spring 2012 Compliance Workshop	Registered Entities

## **B. MRO**

MRO provided an overview of the CEI with an emphasis on the FFT Report Process at its Compliance Workshop on December 14, 2011. The workshop was conducted in conjunction with the 2011 Annual Member meeting and was attended by 150 registered entity staff. The presentation was posted on the MRO website within days of the Workshop. MRO provided an overview of the March 15, 2012 Commission Order at an open meeting of its Board of Directors on March 29, 2012. A report appears in the Board agenda posted on the MRO website.

Beginning with the Sept./Oct. 2011 edition, MRO has included an article about the CEI and FFT Report Process in each edition of its newsletter, Reliability Matters. These articles provide insight into how MRO has implemented the FFT Report Process and how registered entities can assist and/or participate in the process. The newsletter is sent to a broad distribution list including all registered entities within the MRO region, as well as those outside the MRO region that have requested to be added to the distribution list, Regional Entities, and other interested parties. The newsletter is also posted on the MRO website.

## **C. NPCC**

As part of the Regional Entities sponsored activities, NPCC presented the FFT process to its registered entities at its 2011 Winter Compliance and Standards Workshop held on December 15, 2011.

## **D. RFC**

Reliability*First* internal staff training has been ongoing since the implementation of the FFT, and includes review of NERC webinars and participation in discussions with NERC and

FERC (risk assessment improvements). ReliabilityFirst has monthly meetings with enforcement staff to discuss, *inter alia*, PV processing and risk-harm assessment to assist in training and the ongoing implementation of the FFT (and processing all violations, generally). Below is a list of the FFT training performed by ReliabilityFirst to date:

<b>Date</b>	<b>Forum</b>	<b>Training Target</b>
9/1/2011	Board of Directors	Registered entities
10/19/2011	Compliance Workshop (Baltimore)	Registered entities
2/20/2012	Compliance Webinar	Registered entities
2/22/2012	Compliance Committee	Registered entities
3/19/2012	Compliance Webinar	Registered entities
3/29/2012	Compliance Workshop (Pittsburgh)	Registered entities

**E. SERC**

Below is a list of FFT training that has been provided by SERC to date.

9/8/2011	Small Entity Workshop	Registered Entities
10/31/2011	Open Forum WebEx	Registered Entities
11/15/2011	Compliance Seminar: Atlanta	Registered Entities
11/29/2011	Compliance Seminar: Charlotte	Registered Entities
1/12/2012	SERC Auditor Training	SERC Staff
2/28/2012	Compliance Seminar: Charlotte (with presentation by NERC staff)	Registered Entities
4/11/2012	Compliance Seminar: New Orleans	Registered Entities
10/25/2011	SERC Board Compliance Committee	Registered Entities
10/26/2011	SERC Board of Directors	Registered Entities
10/6/2011	SERC Standing Committees	Registered Entities
3/13/2012	SERC Operating Committee	Registered Entities
10/18/2011	North American Generator Forum	Registered Entities
1/19/2012	SERC Board Compliance Committee	Registered Entities
3/6/2012	Enforcement Training and Legal Coordination	SERC Staff

## **F. SPP**

SPP RE staff made presentations to registered entities in its Fall and Spring Workshops:

- Compliance Enforcement Initiative Update, February 29, 2012
- NERC's Compliance Enforcement Initiative October 5, 2011

## **G. Texas RE**

Texas RE external CEI training since September 2011 includes:

- October 6, 2011 Standards and Compliance Workshop presentation (“New Compliance and Enforcement Initiatives”) to discuss and answer stakeholder questions
- October 31, 2011 NERC Standards Review Subcommittee call on to discuss the CEI and answer questions from regional entities (“Find, Fix, Track, Report)
- April 18, 2012 bi-monthly Talk with Texas RE conference call and webinar (“FFT Update – After FERC Order”) to discuss FFT and answer stakeholder questions

Texas RE internal training has been ongoing, and includes review of NERC webinars and participation in discussions with NERC and FERC (risk assessment improvements). Texas RE has monthly meetings with enforcement staff to discuss PV processing, and has flow charts of its internal procedures to assist in training. Enforcement staff has recently begun meeting with compliance staff to periodically discuss risk assessments of PVs.

## **H. WECC**

On April 19, 2012, its monthly open webinar to the Compliance User Group (CUG), WECC provided an update regarding the FERC order on CEI/FFT. WECC also will conduct training on CEI and FFT as part of its CUG meeting on June 6, 2012 in Salt Lake City. WECC expects 400 registered entities (mostly compliance contacts) to be present.

## Attachment B

### CEA Staff Training Outline

In preparation for the continuing expansion of the CEI, FFT qualification training is expected to be available in the third and fourth quarters of 2012 to CEA staff to ensure successful implementation in the field, promote consistency and ensure processes, roles, and responsibilities are well understood. Training will focus on application of the factors to be considered in identifying FFT candidates and risk assessments illustrated by case studies of FFTs filed since September 2011 as guided by the March 15 Order. Training will be provided through instructor-led training in auditor workshops, quarterly audit team leader training courses, and dedicated live webinar sessions. Training materials will also be developed for online delivery covering the same topics and following the same principles described below. The fall 2012 ERO Auditor workshop will provide a venue for most auditors to participate in the training. Particular emphasis will be placed on risk assessment methods in determining FFT candidates. Training will be based on experience gained and processes developed and used since September 2011. The outline of training to be provided includes the following:

- CEI purpose and background
- Roles and responsibilities
- Terms and Definitions
- Guidance for quality self-reports
- Applicable NERC filings and FERC orders, and acceptance conditions for the FFT process
- FFT factors
  - Minimal risk to reliability<sup>18</sup> and related facts and circumstances, including what happened, why, where and when, including the timeframe for mitigation;
  - Reliability Standard at issue and applicable Violation Risk Factor (VRF) and Violation Severity Level (VSL);
  - Registered Entity's compliance program and compliance history.
- Documentation of possible violations processed as FFTs
  - Completing FFT report spreadsheet and final disposition
  - Certification that mitigation is complete
  - How an entity's compliance history was considered
  - Identification of the registered entity
- Case study exercises from actual FFT filings
- Communicating FFT process and decisions

Training and webinar information will be updated as additional experience is gained.

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<sup>18</sup> Although certain moderate risk FFTs were filed between September 2011 and February 2012, as a result of the FERC order issued on March 15, 2012, only minimal risk issues will be included prospectively.

**Training population – NERC and Regional Entity compliance monitoring staff, applicable enforcement staff.**

- **Key points**
  - All issues are reported
  - NPV is issued for every item regardless of ultimate processing in FFT or NOP
  - Only possible violations that pose a minimal risk are eligible for FFT treatment
  - FFT evaluation includes several factors to consider
  - FFT spreadsheet is used to document the possible violation
  - Once FFT issues are included in a filing, they are final after 60 days, with exceptions
  - Formal mitigation plans not required, but entity must certify that all mitigation activities have been completed
  - Qualified compliance staff will be authorized to make FFT recommendations to enforcement staff

**Learning Objectives:**

- Describe the FFT process in detail for compliance audits and spot checks
- Describe the FFT process in detail for compliance investigations
- Discuss the conditions for the FFT acceptance contained in FERC Order issued March 15, 2012 including:
  - Minimal risk
  - Possible violations not mitigated are not eligible for filing until completed and certified
  - Certification that mitigation is complete
  - Review of entity compliance history
  - Identification of the entity
- Discuss possible violations that would typically not qualify for FFT treatment
- Describe the roles and responsibilities in the FFT processes for
  - Registered entity
  - Compliance monitoring staff
  - Regional Entity enforcement staff
  - NERC
- Use the FFT factors to determine if a possible violation is eligible for treatment in the FFT process
- Assess mitigation actions for adequacy and completeness
- Prepare a FFT spreadsheet report using “Guidance for Quality Self-Reports” to ensure appropriate and sufficient information is included

- Describe the handoff process for possible violations identified by an audit or investigation team
- Locate and use previous FFT filings as examples of acceptable reports

NERC and Regional Entity staff will lead the training sessions. Training will be conducted in accordance with generally accepted training principles. Training completion records will be maintained by NERC and Regional Entities.

Audit Team Leader training, conducted quarterly, will also include the FFT process.

Continuing training on the FFT process will be provided in the semi-annual ERO auditor workshops and periodic webinars as required based on experience and lessons learned from FFT processing.



**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 14th day of May, 2012.

*/s/ Rebecca J. Michael*  
Rebecca J. Michael  
Associate General Counsel for Corporate  
and Regulatory Matters