

143 FERC ¶ 61,253  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

North American Electric Reliability Corporation

Docket No. RC11-6-004

ORDER ON COMPLIANCE FILING

(Issued June 20, 2013)

1. On March 15, 2013, the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted a compliance filing reporting on NERC's implementation of the Find, Fix, Track and Report (FFT) program, as required in the Commission's March 15, 2012 Order.<sup>1</sup> In its filing, NERC also proposes certain enhancements to the FFT program.

2. As discussed below, the Commission accepts the compliance filing regarding the implementation and progress with the FFT program. In addition, we approve four of the five enhancements to the FFT program proposed by NERC, subject to certain conditions.

**I. Background**

3. On September 30, 2011, NERC filed a petition requesting approval of its proposal to make informational filings in a "Find, Fix, Track and Report" spreadsheet format of lesser-risk, remediated possible violations of Reliability Standards. On March 15, 2012 the Commission issued an order accepting NERC's petition, with limited conditions.<sup>2</sup> In the March 15 Order, the Commission agreed that NERC and the Regional Entities should have the flexibility to more efficiently process and track lesser risk violations in order to focus their resources on issues that pose the greatest risk to reliability. The Commission

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<sup>1</sup> *North American Electric Reliability Corporation*, 138 FERC ¶ 61,193 (2012) (March 15 Order).

<sup>2</sup> March 15 Order, 138 FERC ¶ 61,193.

anticipated that acceptance of NERC's proposal would be "the first step to a more efficient and effective compliance and enforcement process" and as more experience is gained with the program the Commission would consider and evaluate ways to improve the program.<sup>3</sup>

4. The Commission imposed the following conditions in accepting NERC's FFT program: (1) only possible violations that pose a minimal risk to Bulk-Power System reliability will be eligible for FFT treatment; (2) a failure to remediate a possible violation included in an FFT informational filing will be treated as a continuing possible violation of a Reliability Standard requirement that is not eligible for FFT treatment; (3) a registered entity must submit to the Regional Entity an affidavit, signed by an officer with knowledge of the remediation, certifying that the statement is true and correct; (4) NERC was to submit within sixty days a compliance filing explaining the principles it will employ in evaluating an entity's compliance history; (5) FFT informational filings must publicly identify the registered entity with a possible violation; and (6) the Commission will consider an FFT matter closed sixty days after the FFT informational filing is submitted to the Commission, and will not reopen an FFT matter unless the Commission provides notice during that period that it will review a specific matter or there is a material misrepresentation of the facts.

5. The Commission also directed NERC to make a twelve-month compliance filing and report on the implementation and progress of the FFT mechanism. The Commission identified this report as a "meaningful opportunity to review the initiative and to consider any necessary changes going forward, including expanding the scope and parameters of possible violations to be processed by FFT informational filings."<sup>4</sup> The March 15 Order directed NERC to report on the following matters: (1) the effect of the program on improving Bulk-Power System reliability; (2) the effect of the program on addressing NERC's compliance program, including its backlog; (3) the effect of the program on NERC and the Regional Entities better focusing resources on addressing more serious violations; (4) how NERC's evaluation of risk in identifying candidate "Possible Violations" for FFT treatment has evolved during the implementation of the FFT initiative, including but not limited to how the Violation Risk Factors (VRFs) have been considered in the evaluation; (5) manners in which the FFT mechanism can be improved based on experience to date; (6) the results of any audits, spot checks, or random samplings that NERC or the Regional Entities may have performed during the year with

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<sup>3</sup> *Id.* P 3.

<sup>4</sup> *Id.* P 76.

regard to implementation of the FFT proposal and (7) the impact, if any, the implementation of the FFT mechanism has had on the number of self-reports submitted.

6. In the March 15 Order, the Commission stated that it would survey a random sample of FFTs filed each year to gather information on how the FFT program is working. The purpose of the survey was to provide the Commission with information about how successful the program is in efficiently processing and remediating possible violations eligible for FFT treatment and to assist the Commission in gauging whether it generally agrees with NERC's and the Regional Entities' approach to qualify possible violations for FFT treatment.<sup>5</sup>

## **II. Description of NERC's Compliance Filing and Report**

### **A. Report on Matters Related to FFT Effectiveness**

7. NERC responded to each of the seven matters described above as follows.

#### **(1) The effect of the program on improving Bulk-Power System reliability.**

8. NERC states that the implementation of the FFT program has freed NERC and the Regional Entities to devote more resources to serious and substantial risk events.<sup>6</sup> Attachment A to NERC's Report contains general information from each Regional Entity describing the impact of the FFT program on its region. For example, Midwest Reliability Organization (MRO) states that its average completion rate of enforcement actions in 2011 was 61 per cent and the average rate increased to 70 per cent in 2012. Northeast Power Coordinating Council Inc. (NPCC) reported that prior to September 2011 FFT issues took nine months on average to process and in 2012 FFT issues took 5.7 months on average to process. NPCC stated that the reduction in time has allowed NPCC enforcement to concentrate on other violations.<sup>7</sup>

#### **(2) The effect of the program on addressing NERC's compliance program, including its backlog.**

9. NERC states that implementation of the FFT program has reduced its backlog of violations. NERC indicates that the average monthly filing rate for violations (FFT,

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<sup>5</sup> March 15 Order, 138 FERC ¶ 61,193 at P 73.

<sup>6</sup> NERC Report at 17.

<sup>7</sup> NERC Report, Attachment A at 2.

Notices of Penalty and Spreadsheet Notices of Penalty) during the 16-month period from September 2011 through January 2013 was 151.25 violations per month. The average filing rate for the 16-month period preceding September 2011 was 102.5 per month.<sup>8</sup> NERC also states that prior to September 2011, the most violations processed in a single month was 192 and that NERC reached an all-time processing high of 258 violations in December 2012.<sup>9</sup> Finally, NERC explains that the efficiencies resulting from the FFT program have allowed NERC to reduce the number of issues in its caseload dating prior to 2011 by approximately 80 per cent.<sup>10</sup>

**(3) The effect of the program on NERC and the Regional Entities better focusing resources on addressing more serious violations.**

10. NERC states that the FFT program has allowed more resources to be focused on events that pose a greater risk to reliability.<sup>11</sup>

**(4) How NERC's evaluation of risk in identifying candidate "Possible Violations" for FFT treatment has evolved during the implementation of the FFT initiative, including but not limited to how the VRFs have been considered in the evaluation.**

11. NERC states that the quality of risk assessments has improved over time.<sup>12</sup> NERC states that it has conducted training and outreach sessions with the Regional Entities and registered entities regarding assessing risk.<sup>13</sup> In the March 15 Order, the Commission stated that "it is not clear how the [risk] factors will be applied, and how NERC will assure that they will be applied consistently."<sup>14</sup> The Commission required NERC "to specifically evaluate the consistency and application of the FFT initiative and include the

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<sup>8</sup> NERC Report at 11.

<sup>9</sup> *Id.* at 12.

<sup>10</sup> *Id.* at 14.

<sup>11</sup> *Id.* at 17. *See also*, Attachment A to the NERC Report.

<sup>12</sup> *Id.* at 33-35.

<sup>13</sup> *Id.* at 35.

<sup>14</sup> March 15 Order, 138 FERC ¶ 61,193 at P 78.

results of that evaluation in its twelve month report.”<sup>15</sup> In its Report, NERC states that “[a]s a result of this increased attention to the risk assessment and description of mitigating factors, there has been an improvement in the propagation of factors for minimizing risk.”<sup>16</sup> NERC generally states that its approach to risk “will continue to be refined” and it will “continue to work with REs” to “ensure consistency in risk assessments.”<sup>17</sup>

12. NERC found that the Regional Entities have implemented various tools to determine whether a possible violation is appropriate for FFT treatment. Nonetheless, NERC indicates that it appears these efforts have not been sufficiently coordinated to produce consistent results. NERC found that “there was some inconsistency, both within some of the Regional Entities FFTs and across the various Regional Entities, in addressing the potential risk presented by each FFT.”<sup>18</sup> Further, NERC noted that the Regions “at times have not included a well-documented basis for their final minimal risk determinations.”<sup>19</sup> NERC states that it “will continue to communicate to the Regional Entities the importance of providing complete risk statements.”<sup>20</sup>

**(5) Manners in which the FFT mechanism can be improved based on experience to date.**

13. Section II.B below includes a summary of NERC’s proposed enhancements.

**(6) The results of any audits, spot checks, or random samplings that NERC or the Regional Entities may have performed during the year with regard to implementation of the FFT proposal; and**

**(7) The impact, if any, the implementation of the FFT mechanism has had on the number of self-reports submitted.**

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<sup>15</sup> *Id.*

<sup>16</sup> NERC Report at 36.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 24.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

14. In a response to matters 6 and 7, NERC reported that several regions have seen a slight decrease in the number of self-reported events (Florida Regional Reliability Council, Inc., NPCC and Texas Reliability Entity) while others have seen an increase (MRO, ReliabilityFirst, and SERC Reliability Corporation). Western Electricity Coordinating Council and Southwest Power Pool Regional Entity report no increase.<sup>21</sup> NERC explains that with additional compliance experience, many registered entities may have progressed past the initial mistakes common to the implementation of new programs. NERC states that Regional Entities continue to engage in outreach to registered entities to impress upon them the importance of sustained self-identification of issues.<sup>22</sup>

## **B. FFT Enhancements**

15. NERC proposes to change the scope of the FFT program as follows: (1) increasing the risk parameter to include a “limited pool” of moderate risk possible violations; (2) no longer requiring senior officers to certify completion of remediation; (3) affording FFT treatment to possible violations not yet mitigated; (4) limiting NERC’s review to only sampling a subset of FFTs; and (5) replacing monthly FFT informational filings to the Commission with monthly postings to NERC or Regional Entity websites. NERC states that it proposes the enhancements “to build upon the experience accumulated since the inception of the program in September 2011 and expand the program to include a broader scope of issues addressed through the FFT processing track and to improve the efficiency of the FFT processing track.”<sup>23</sup> According to NERC, the enhancements, described below, will allow more possible violations to be processed as FFTs, while improving the processing time for FFTs.

### **1. Inclusion of FFTs Presenting Moderate Risk**

16. NERC proposes to expand the scope of the FFT program to include a “limited pool” of moderate risk possible violations.<sup>24</sup> NERC does not specify which moderate risk possible violations would be eligible for FFT treatment, but states that violations posing moderate risk to the Bulk-Power System would be eligible for FFT treatment if,

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<sup>21</sup> See Attachment B to the NERC Report.

<sup>22</sup> NERC Report at 15-16.

<sup>23</sup> *Id.* at 8.

<sup>24</sup> *Id.* at 37-40.

“for example, moderate risk issues...are [Spreadsheet Notice of Penalties] with a zero-dollar penalty or a low penalty” and the registered entity has a strong internal compliance program “with internal controls designed to prevent, detect, and correct violations... [and] prevent reoccurrences.”<sup>25</sup> NERC states that the additional experience gained since the inception of the FFT program related to the identification of minimal, as opposed to moderate or serious and substantial, risk issues “provides confidence that Regional Entities are able to make accurate risk determinations for moderate risk issues.”<sup>26</sup> Further, NERC expressed the general expectation that “NERC and FERC oversight will ensure that these determinations are in fact accurately and consistently made throughout the ERO enterprise.”<sup>27</sup>

## 2. Elimination of Senior Officer Certification

17. NERC proposes to eliminate the requirement for a senior officer with knowledge of a remediation to sign an affidavit certifying that the mitigating activities have been completed.<sup>28</sup> NERC asserts that the involvement of senior management is most beneficial to reliability when it occurs in a “structured manner” such as through implementation of a robust compliance program, which is supported by the highest levels of management within an organization. NERC contends that mitigation certification by a senior officer does not necessarily reflect the same level of company-wide commitment that is essential to reliability, but rather “imposes a burden on the registered entities that is no longer justified in light of the experience and level of maturity of the FFT program.”<sup>29</sup> NERC proposes that the requirement be eliminated only in connection with those mitigating activities which have been verified as completed by the Regional Entity

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<sup>25</sup> *Id.* at 37.

<sup>26</sup> NERC and the Regional Entities consider the following as examples of serious and substantial risk matters: (1) extended outages; (2) loss of load; (3) cascading blackouts; (4) vegetation contacts; (5) systemic or significant performance failures; and those involving intentional or willful acts/omissions and gross negligence or other misconduct. NERC Report at 34.

<sup>27</sup> *Id.* at 40.

<sup>28</sup> The Commission previously rejected NERC’s request to broaden the potential signatories who can certify that mitigation is complete to officers, employees or other authorized representatives of any registered entity. *North American Electric Reliability Corporation*, 139 FERC ¶ 61,168, at P 8 (2012) (May 31 Order).

<sup>29</sup> NERC Report at 42.

at the time of filing or posting of the FFT. Possible violations not fully mitigated by the time of the filing or posting of the FFT would still require a senior officer affidavit indicating the mitigation had been completed.

**3. Inclusion of Possible Violations as FFT Even if the Mitigation is Not Yet Completed.**

18. NERC proposes to remove the requirement that possible violations must be completely mitigated prior to submitting or posting the possible violations as FFTs. NERC does not intend to allow every issue processed as an FFT to be unmitigated at the time of submitting or posting. Rather, NERC explains that, in certain circumstances, mitigation may take longer for specific reasons and additional time for mitigation may be required, such as when mitigation could only be performed during an outage. NERC states that it “expects that this additional time frame would not, in most cases, exceed three months,” but then clarifies that mitigation must be completed “in no more than three months.”<sup>30</sup> Further, NERC would expect Regional Entities to thoroughly review the issues underlying the FFT determination and the extent of the mitigating activities prior to filing or posting. While this proposal would not require mitigating activities to be completed at the time of filing or posting, it would still require an affidavit of mitigation completion signed by an officer for those possible violations unmitigated at the time of filing or posting once the mitigation is completed.

**4. Public Posting of FFTs**

19. Currently, the Regional Entities submit their FFTs to NERC, which then prepares a single monthly filing for submission to the Commission. NERC proposes that Regional Entities will publicly post FFTs on a common website, such as the NERC website, on the last day of each month instead of NERC submitting a monthly informational filing to the Commission. The information contained in the FFTs posted would remain the same as filed with the Commission now and would be available for review by the public, NERC, and the Commission. For FFTs involving the CIP Reliability Standards, the Regional Entities would continue to redact the identity of the registered entities involved in the issue and provide access to the non-public versions of these FFTs to NERC and FERC.

20. NERC states that the goal of this proposal is to eliminate the time and resources NERC and the Regional Entities currently invest in the preparation of the informational filing. Specifically, NERC states it devotes approximately one-and-a-half months to review and approve each monthly informational filing made with the Commission.

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<sup>30</sup> NERC Report at 41.

NERC explains that, while posting FFTs will save it time, the Commission will be able to obtain more information, citing Commission regulations (18 C.F.R § 39.2(d)), which allow the Commission to require additional information “necessary to implement section 215,” which includes additional information regarding any posted FFT. Thus, NERC acknowledges that the Commission may request additional information informally or require that specific items be formally filed or posted.

### **5. FFT Sampling and Oversight and Annual Informational Filing**

21. Currently, NERC reviews each FFT included in monthly informational filings submitted to the Commission. In the Report, NERC proposes to implement a 60 day review period similar to the Commission’s review period established in the March 15 Order where the Commission established a 60 day time limit on its review of remediated issues contained in FFT informational filings. In other words, NERC proposes that it will not review each FFT before public posting by a Regional Entity but, rather, will review a representative sample of FFTs during the 60 day window following the Regional Entities’ monthly posting of FFTs on NERC’s website. According to NERC, this process would enable NERC to ensure consistency and exercise oversight over the FFT process by selecting a monthly sample of the FFTs proposed by each Regional Entity for review.

22. In addition, NERC will conduct a separate sampling of FFTs outside the 60 day review period to prepare for an annual informational filing with the Commission. The purpose of this sampling would be to gather information related to NERC’s annual filing with the Commission and would not include reopening FFTs. To report on the results of its FFT sampling throughout the year and on any other matters associated with the FFTs, NERC proposes to continue making an annual informational filing with the Commission. The annual informational filing would keep the Commission and the public informed about the status and progress of the FFT program by providing statistical data and analysis.

### **III. Notice of Filing, Interventions, and Comments**

23. Notice of NERC’s March 15, 2013, filing was published in the *Federal Register*, 78 Fed. Reg. 18,333 (2013), with comments due on or before April 15, 2013. Timely motions to intervene and comments were submitted by ISO/RTO Council, and Occidental Energy Ventures Corporation (Occidental). The American Public Power Association, the Edison Electric Institute, the Electricity Consumers Resource Council, the Electric Power Supply Association, the Large Public Power Council, the National Rural Electric

Cooperative Association, and the Transmission Access Policy Study Group (collectively the “Trade Associations”) filed comments.<sup>31</sup>

24. All comments generally support NERC’s proposed enhancements. In particular, intervenors support inclusion of some moderate risk possible violations as FFTs and the elimination of senior officer certification. The Trade Associations believe NERC has established “an extensive track record on the manner in which it assesses risk...NERC’s proposal is consistent with the Commission’s recognition that the presence of a strong compliance program...is appropriately considered in assessing the treatment of non-compliance.”<sup>32</sup> ISO/RTO Council states that the individual Regional Entities’ risk assessments, with NERC oversight, provide assurance that some moderate risk possible violations are appropriate for FFT processing. With respect to senior officer certification, the Trade Associations and ISO/RTO Council believe it is not necessary to achieve Commission reliability objectives, is a burden that does not advance reliability and may distract from activities more central to addressing reliability risks. Trade Associations contend that the requirement should be eliminated if mitigation is verified at the time the FFT is posted by the Regional Entity or submitted to the Commission.

#### **IV. Discussion**

##### **A. Procedural Matters**

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

##### **B. Commission Determination**

26. We accept NERC’s twelve-month report regarding the matters pertaining to the implementation experience. Further, the Commission approves four of the five proposed enhancements, subject to the conditions described below. In particular, the Commission accepts NERC’s proposal to expand the FFT program by allowing FFT treatment for some moderate risk possible violations, subject to NERC reporting on its implementation within one year of the date of this order, and rejects NERC’s proposal to eliminate the requirement that senior officers certify that possible violations have been fully mitigated. Further, the Commission approves, subject to conditions, NERC’s proposal: (1) to

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<sup>31</sup> The Trade Associations were granted intervention in the March 15 Order at P 38.

<sup>32</sup> Trade Association Comments at 6.

remove the requirement that possible violations must be completely mitigated prior to submitting or posting possible violations as FFTs by the Regional Entities; (2) to allow Regional Entities to publicly post FFTs on a common website on the last day of each month instead of NERC submitting a monthly informational filing to the Commission; and (3) to review a representative sample of FFTs during the 60 day window following Regional Entities' monthly posting of FFTs on NERC's website.

**1. FFT Effectiveness**

**a. NERC's 12-month Report**

27. Based on the information provided in NERC's filing, the Commission finds that the FFT program is improving the ability of NERC and its Regional Entities to more efficiently process lesser-risk possible violations, enabling them to reduce the backlog of pending enforcement cases and focus on issues of greater importance to Bulk-Power System reliability. While the summary of FFT eligibility determinations shows some regional inconsistencies, we find that there are improvements in this regard and NERC should continue to monitor this aspect of FFT implementation.

28. Further, while the Commission accepts NERC's twelve month report, more specificity regarding the FFT program's impact on Bulk-Power System reliability would have reinforced NERC's conclusions. The Commission recognizes that detailed Bulk-Power System impact assessments may be difficult to ascertain in light of the FFT initiative being in its nascent stages, but we believe that more detailed information on the implementation would benefit program evaluation.<sup>33</sup>

29. Similarly, NERC states that the quality of risk assessments has improved and that it has conducted training and outreach sessions with the Regional Entities and registered entities regarding assessing risk, but otherwise does not support the statement.<sup>34</sup> NERC states that "[a]s a result of this increased attention to the risk assessment and description of mitigating factors, there has been an improvement in the propagation of factors for minimizing risk."<sup>35</sup> Rather than provide specifics, NERC generally states that its

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<sup>33</sup> Additionally, as NERC considers further changes to its compliance enforcement process as part of the Reliability Assurance Initiative, it would benefit by having metrics that demonstrate improvements in reliability attributable to new enforcement mechanisms.

<sup>34</sup> NERC Report at 33-35.

<sup>35</sup> *Id.* at 36.

approach to risk “will continue to be refined,” and it will “continue to work with [Regional Entities to] ensure consistency in risk assessments.”<sup>36</sup> While NERC found that the Regional Entities have implemented various tools to determine whether a possible violation is appropriate for FFT treatment, NERC indicates that it appears these efforts have not been sufficiently coordinated to produce consistent results.<sup>37</sup> Further, NERC noted that the Regional Entities “at times have not included a well-documented basis for their final minimal risk determinations.”<sup>38</sup> NERC states that it “will continue to communicate to the Regional Entities the importance of providing complete risk statements.”<sup>39</sup> While more information would be beneficial, on balance, the Commission finds that the data NERC provides indicate that the implementation of the FFT program has produced reasonable outcomes.<sup>40</sup> NERC should continue to work with the Regional Entities to further assure consistent implementation of the FFT program among the regions.

30. NERC also reported that several regions have seen a slight decrease in the number of self-reported events while others have seen an increase.<sup>41</sup> We recognize that the number of self-reports in particular regions is a result of many factors. NERC explains that with additional compliance experience, many registered entities may have progressed past the initial mistakes common to the implementation of new programs. NERC states that the Regional Entities continue to engage in outreach to registered entities to emphasize the importance of sustained self-identification of issues. NERC should continue its outreach to the Regional Entities in this regard.

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 24.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> NERC evaluated 98 of the 100 FFTs sampled by Commission staff as part of its own sampling review process and did not identify any that were “inappropriate for FFT treatment.” (NERC Report at 25). NERC did not evaluate the two FFTs sampled by Commission for which it was the compliance enforcement authority.

<sup>41</sup> *See* Attachment B to the NERC Report.

**b. Report on Commission Sampling**

31. As required by the March 15 Order, during the first quarter of 2013, Commission staff reviewed a sample of 100 FFT issues out of the approximately 820 FFT issues filed with the Commission between September 2011 and September 2012.<sup>42</sup> Commission staff applied NERC's Guidance on Self-Reports and documentation provided by the Regional Entities, and determined that the 100 FFT possible violations were properly treated under the FFT program.<sup>43</sup> The Commission will continue to survey a random sample of FFTs filed each year to gather information on how the FFT program is working.<sup>44</sup>

**2. FFT Enhancements**

**a. Moderate Risk Violations**

32. The Commission approves NERC's proposed expansion of the program by allowing FFT treatment for a "limited pool" of possible violations involving moderate risk, subject to the conditions described below. The Commission initially denied consideration of such matters for FFT processing, stating that until it could obtain "more experience on how the risk determinations are made for the purpose of qualifying possible violations for FFT treatment, the Commission will condition its approval of the FFT proposal on allowing only possible violations that pose a minimal risk to Bulk-Power System reliability to be eligible for FFT treatment."<sup>45</sup> NERC describes how the initial phase of the FFT program has provided NERC and its Regional Entities with experience in risk assessment, as evidenced by the development of risk determination procedures by each Regional Entity, and NERC's oversight of the implementation of this aspect of the FFT program during the initial FFT phase. NERC states that their experience in performing risk assessments during the initial FFT implementation provides reasonable assurance that consideration of moderate risk possible violations for FFT processing will reflect the risk of the issue, and, therefore, will result in appropriate

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<sup>42</sup> March 15 Order, 138 FERC ¶ 61,193 at P 73.

<sup>43</sup> Commission staff found a small number of FFT possible violations related to the CIP Reliability Standards did not clearly document the root cause, but these issues were addressed as part of informal discussions with Commission staff, NERC and the Regional Entities.

<sup>44</sup> March 15 Order, 138 FERC ¶ 61,193 at P 73.

<sup>45</sup> March 15 Order, 138 FERC ¶ 61,193 at P 47.

enforcement processing decisions. Finally, as NERC notes, expanding the scope of the FFT program in this manner does not mean all moderate risk possible violations will be afforded FFT treatment. Accordingly, we agree that allowing NERC to consider a “limited pool” of moderate risk possible violations for FFT treatment will not create an undue risk to the Bulk-Power System.

33. While the initial experience with the FFT program has shown positive signs, given the limited information in NERC’s report regarding how NERC will expand the program to include moderate risk possible violations, the expansion must be monitored to so that it is clear what factors NERC and the Regional Entities use to determine whether a moderate risk possible violation warrants FFT treatment. NERC’s report, while generally responsive to the March 15 Order, lacks detail in certain respects. For example, NERC does not provide detail on the criteria NERC and the Regional Entities will use to determine what constitutes a “moderate risk” possible violation. In addition, other than by one example, NERC does not identify which moderate risk possible violations will be in the “limited pool” eligible for FFT treatment. Accordingly, the Commission is conditionally approving the expansion of the FFT program to moderate risk possible as described in NERC’s report, subject to NERC submitting a report to the Commission within one year of the issuance of this order justifying continuation of the expanded FFT program. Based on the information in the report, and further experience with the FFT program, the Commission will determine whether to continue the FFT program for moderate risk possible violations or, if other changes to the scope of the FFT program, if any, are warranted.

34. To ensure that NERC’s one-year report contains adequate information for the Commission to evaluate whether to continue treatment of some moderate risk possible violations as eligible for FFT treatment, the Commission directs NERC, at minimum, to provide the following information in the report: (1) the number and types of FFTs that were moderate risk possible violations since the date of this order; (2) for each moderate risk possible violation treated as an FFT, a statement of the factors that the Regional Entities relied on to make the determination and why those factors supported treatment of the moderate risk possible violation as an FFT;<sup>46</sup> and (3) a detailed explanation of the steps that NERC has taken to ensure the Regional Entities are determining risk in a

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<sup>46</sup> For example, if the Regional Entity determined the event would merit not more than a low penalty and the entity had good internal controls, NERC would explain why the low penalty supports FFT treatment and how the strength of the entity’s internal controls justify FFT treatment of the event. If the Regional Entity relies on other reasons, the report would have to explain what those reasons were and why those reasons justified FFT treatment of the moderate risk possible violation.

consistent manner, and identify any inconsistent outcomes and the reason for them. NERC's report should contain specific information responsive to the Commission's order.

**b. Elimination of Senior Officer Certification**

35. The Commission rejects NERC's proposal to eliminate the requirement for senior officer certification. We are not persuaded that that this requirement imposes a burden on the registered entity in light of the limited experience with the FFT program. NERC has not supported its assertion that this requirement imposes an undue burden on the registered entity, especially considering the Commission's emphasis on the need for senior officers to be actively engaged in registered entities' compliance programs.<sup>47</sup> As we explained in the March 15 Order, a registered entity must submit to the Regional Entity an affidavit, signed by an officer with knowledge of the remediation, certifying that the statement is true and correct. In a May 31, 2012 order, in part denying NERC's request for clarification and denying NERC's request for rehearing, the Commission further clarified that "[r]equiring verification of mitigation by a corporate officer or equivalent for eligibility for FFT treatment, ... assures that appropriate senior personnel within a registered entity are made aware of possible violations and have personal knowledge that they are mitigated."<sup>48</sup> Further, while NERC states that having senior officers certify mitigation completion does not contribute to an entity's implementation of a robust compliance program, active involvement in compliance efforts by senior personnel is one of the factors identified in determining the existence of a robust internal compliance program in the Revised Policy Statement on Enforcement.<sup>49</sup>

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<sup>47</sup> *Policy Statement on Enforcement*, 113 FERC ¶61,068, at P 22 (2005); *Revised Policy Statement on Enforcement*, 123 FERC ¶61,156, at P 58 (2008) (A factor the Commission identified as relevant to determining the existence of a robust internal compliance program is whether "compliance [is] fully supported by senior management? For example, is senior management actively involved in compliance efforts...").

<sup>48</sup> May 31 Order, 138 FERC ¶ 61,193 at P 8.

<sup>49</sup> *Revised Policy Statement on Enforcement*, 123 FERC ¶ 61,156 at PP 57-58.

c. **Inclusion of Possible Violations as FFTs Even if the Mitigation is Not Yet Completed.**

36. The Commission approves, subject to the conditions described below, NERC's proposal to expand the scope of the FFT program to include some unmitigated possible violations. The Commission agrees that, as conditioned below, NERC's proposal would shorten the processing time for FFTs. Currently, full remediation of a possible violation as a condition of FFT eligibility provides an incentive for registered entities to promptly mitigate potential violations to allow them to be considered for FFT treatment by the Regional Entity. However, allowing registered entities to complete mitigation after submission of the FFT with no definite timeframe for mitigation could weaken the incentive for entities to expeditiously mitigate possible violations. Therefore, the Commission directs NERC to apply this proposal so that, if an unmitigated event is included in an FFT posting or filing, the possible violation must be fully mitigated within 90 days from the date the FFT is filed or posted.

37. Additionally, the Commission is concerned that NERC's proposal to consider an FFT "closed" sixty days after the Regional Entity submits or posts the FFT while a registered entity granted an FFT with ongoing remediation could have up to 90 days to complete mitigation. Thus, the Commission clarifies that, if a possible violation is treated as an FFT with ongoing mitigation that violation will not be "closed" until the mitigation is complete. Additionally, if the registered entity fails to complete the mitigation within the 90 day window or the mitigation is later found to be inadequate, the FFT eligibility would be rescinded. Also, in such an instance, an entity's failure to mitigate within the 90 day period should be treated as a continuing possible violation that is no longer eligible for FFT treatment.<sup>50</sup>

d. **Public Posting of FFTs**

38. The Commission approves NERC's proposal for Regional Entities to publicly post FFTs on a common website on the last day of each month instead of NERC submitting a monthly informational filing to the Commission. The Commission agrees that this

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<sup>50</sup> The Commission emphasizes that Regional Entities must continue to take precautions to protect non-public, confidential information and redact any details that could be used with publicly available information with respect to violations of the CIP Reliability Standards, such as the Regional Entities' audit schedule, to identify the registered entity. This is especially relevant in cases where the FFT is posted with ongoing mitigation activities because the registered entity may not have fully addressed any vulnerabilities resulting from the possible violation at the time of filing or posting.

proposal will allow NERC and the Regional Entities to more efficiently report on FFTs. In the March 15 Order, the Commission conditioned its approval of the FFT mechanism by specifying that a failure to remediate a possible violation included in an FFT informational filing will result in the FFT issue being treated as a continuing possible violation that is not eligible for FFT treatment.<sup>51</sup> The Commission later stated that finality of matters treated as FFTs is “important to the success of the mechanism” and indicated that in order to fulfill the objectives of Congress the Commission would retain independent authority to reopen a remediated issue included in the informational filings for up to 60 days after the FFTs are filed with the Commission.<sup>52</sup> Accordingly, the Commission clarifies that we will consider the public posting as equivalent to an informational filing, thus triggering the Commission’s 60 day review period.

39. While the Commission is approving this proposal, NERC should streamline the paperwork process to allow Commission staff to efficiently review the public and non-public spreadsheets that regional entities submit on a monthly basis. To accomplish this, the Commission directs NERC to work with Commission staff to develop a plan on how the Regional Entities will post each month, the information that will be posted or otherwise available for review, and how Commission staff will have access to both public and non-public spreadsheets. This would allow Commission staff, NERC, and the Regional Entities to develop a system to assure Commission staff can review each monthly posting in an effective and efficient manner.

e. **FFT Sampling and Oversight and Annual Informational Filing**

40. The Commission approves, with a condition, NERC’s proposal to implement a 60 day review period similar to the Commission’s review period established in the March 15 Order where the Commission established a 60-day time limit on its review of remediated issues contained in FFT informational filings. We find that NERC’s proposal to review a representative sample of FFTs during the 60 day window following the Regional Entities’ monthly posting of FFTs on NERC’s website instead of reviewing each FFT before public posting is reasonable. We clarify, however, that NERC must include FFTs with ongoing mitigation as part of its sample. We find that this process would enable NERC to ensure consistency and exercise oversight over the FFT process by selecting a monthly sample of the FFTs proposed by each Regional Entity for review.

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<sup>51</sup> March 15 Order, 138 FERC ¶ 61,193 at P 58.

<sup>52</sup> March 15 Order, 138 FERC ¶ 61,193 at P 71.

41. NERC states that it will also conduct a separate sampling of FFTs outside the 60 day review period. According to NERC, this sampling would gather information related to NERC's annual filing with the Commission and would not include reopening FFTs. To report on the results of its FFT sampling and on any other matters associated with the FFTs, NERC proposes to continue making an annual informational filing with the Commission. The annual informational filing would keep the Commission and the public informed about the status and progress of the FFT program by providing statistical data and analysis. The Commission finds this proposal reasonable and we direct NERC to submit an informational filing to the Commission annually reporting on the outcome of its sampling and other matters relating to the FFT program. As with its monthly audits, we clarify that NERC must include FFTs with ongoing mitigation as part of its annual sample.

42. The proposed change in lieu of a monthly informational filing would promote the efficient use of resources by NERC, and NERC's monthly sampling reviews would promote consistency and the appropriate use of the FFT program for the Regional Entities. In addition, the Commission finds that the annual report would benefit the FFT program by keeping the Commission informed about the status and process of the FFT progress throughout the year by providing data and analysis.

43. The Commission is concerned, however, that NERC's proposal could result in confusion as to whether an FFT is closed or still open for review. Currently, NERC reviews all FFTs prior to filing them with the Commission. The Commission's 60 day review of an FFT is the last step in processing an FFT. Once the Commission completes its review of an FFT in the 60 day window, the FFT is final and closed. Under NERC's proposal, NERC and the Commission will concurrently review the FFTs during the same 60 day period after the FFTs are posted. If the Commission finds a problem with the FFT, then the FFT is not closed and the Commission may send it back to NERC or take other action. It is unclear, however, whether a possible violation that NERC finds to be deficient would be closed or remain open. Therefore, the Commission clarifies that any possible violation proposed for FFT treatment that NERC identifies as deficient during its 60 day review process, regardless of whether the Commission identifies it during its 60 day review, would remain an open FFT until NERC addresses the deficiency. To ensure that a deficient FFT will be treated as open until the problems are fixed and posted, we direct NERC to work with Commission staff to develop a plan on how NERC will track, address and process the deficient FFTs.

The Commission orders:

(A) The Commission hereby approves in part and rejects in part, NERC's expanded FFT program as set forth in NERC's report, subject to conditions, as set forth in the body of this order.

(B) NERC is hereby directed to make a compliance filing within one year of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.