

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Reliability Technical Conference

Docket No. AD13-6-000

Written Statement of Joseph T. Kelliher

Good morning. My name is Joe Kelliher. I am Executive Vice President, Federal Regulatory Affairs, NextEra Energy, Inc. NextEra Energy is a holding company with two principal subsidiaries, Florida Power & Light Company and NextEra Energy Resources, both of which are or own registered entities that operate in every reliability region of the country. I am here today representing the Edison Electric Institute, the trade association for the investor-owned segment of the electric industry in this country. EEI member companies own or operate 70% of the electric system.

EEI welcomes the opportunity to review and discuss current important policy and management matters regarding implementation of Section 215 of the Federal Power Act. The reliability regulatory regime was established six years ago and there is now enough experience with reliability enforcement and compliance to draw certain conclusions.

It also has been over two years since the Commission last held such a conference. During that period, the Electric Reliability Organization (ERO) has made progress on several issues that present healthy challenges for succeeding in its vital mission, and today's discussion is therefore timely. As Kevin Burke points out, the ERO is making progress across a broad set of initiatives.

There has been progress in the compliance and enforcement program area. Certainly, the addition of "find fix track report" (FFT) provides a good first step in streamlining and reducing inefficiency. We understand that the regions are working on common templates for compliance audits and other shared tasks taking place in this area. EEI also welcomes discussion on the ERO's "Reliability Assurance Initiative" (RAI), a discussion that EEI has been seeking for quite some time.

The ERO compliance and enforcement program needs to adopt several changes. Some changes may have policy implications, some are management or process matters. In my statement and in panel discussion, I will offer several recommendations that aim at improving this critical ERO program area and make it more effective.

As designed and practiced, the compliance and enforcement program does not provide incentives for companies to strongly manage and mitigate their reliability risks. Instead, the current reliability enforcement regime focuses registered entities on managing compliance risks. That impedes the ability of registered entities to focus resources on assuring compliance with the reliability standards that have the greatest reliability consequence, as well as distracting from the important tasks of planning and operating the bulk power system and delivering reliability on a daily basis.

Compliance audits consume far too much time and attention, issues of little or no consequence to reliability move slowly through the full enforcement process, minor matters require far too much time and too many people to resolve, companies like NextEra that do business in multiple regions face widely varying compliance processes and outcomes, FFT still requires too much company time and expense, and companies have no efficient appeals method or recourse for actions or decisions viewed as unreasonable or unfair.

In my view, the core problem in this area is continued adherence to the “OSHA model” as the foundation for the reliability enforcement and compliance. I was unfamiliar with this model when NERC initially proposed it during development of the reliability program after enactment of the Energy Policy Act of 2005. Under this approach, every reliability violation gets a “ticket”, and is subject to process and mitigation, although not necessarily civil penalties. I had some skepticism about this approach, in large part because it was completely inconsistent with the manner in which the Commission enforces all other regulatory requirements. But the decision was made to show deference to NERC on its preferred model for reliability enforcement. We have had experience with the OSHA model for reliability enforcement and compliance for more than five years now and I think are at the point where we can conclude this model is not working well, and reliability enforcement should be reformed to be consistent with the rest of the

Commission's enforcement program. The administrative burden on companies consumes far too many resources, and the benefits of this approach are small. The complexity of systems planning and operations is challenging enough already without having to distract technical experts to carry out unnecessary and costly administrative burdens.

The Commission's general approach towards enforcement is to set enforcement priorities, allocate its resources accordingly, and make those priorities public so that the regulated community similarly can allocate their compliance resources in a manner that reflects Commission priorities. The Commission efficiently disposes of violations in low priority areas through dismissals. In that manner, low priority violations do not dissipate the Commission's enforcement resources and distract from its focus on high priority areas.

By contrast, if the Commission adopted the "OSHA model" for its enforcement program in non-reliability areas, and required a "ticket" and process for every violation, forgoing early dismissals of low priority violations, self reports on incorrect Electronic Quarterly Report filings and late posting of changes in corporate organization under the Standards of Conduct rule would command Commission enforcement resources that otherwise would be dedicated to market manipulation.

Unfortunately, that is exactly what we do in the area of reliability enforcement and compliance. Since every violation gets a ticket and gets processed, low priority violations absorb more enforcement and compliance resources than they merit. There is a need to conform reliability enforcement and regulation with how the Commission enforces all other regulatory requirements. We urge the ERO and the Commission to amend rules governing reliability enforcement to that end.

There is more than one way to move away from the OSHA model. One path is the approach used by the Commission, where the agency sets enforcement priorities and exercises prosecutorial discretion to focus its enforcement resources on those priorities. The Midwest Reliability Organization has explored adoption of this approach, and I commend its leadership. This approach has been successful in the non-reliability area, but the Commission is the only

enforcer of these requirements. There are ten enforcers of reliability requirements, the Commission, the ERO, and eight Regional Entities. Exercise of prosecutorial discretion in reliability enforcement entails the Commission trusting in the judgment of others, rather than trusting its own judgment. Implementation of this approach is pretty straightforward, but this approach can only work if the Commission trusts the ERO and Regional Entities to properly exercise prosecutorial discretion.

Another path is the approach that could emerge from RAI. RAI acknowledges the nature of the problems associated with continued adherence to the OSHA model, without yet offering a concrete solution. I want to commend the ERO to undertaking this initiative and encourage it to fully develop solutions. At some level, RAI is rooted in assessment of reliability risk than subjective exercise of prosecutorial discretion. Under RAI, enforcement and compliance would focus on violations deemed to “significantly” impact reliability. Yet, in the Commission’s order approving FFT expressed concern that only violations posing “minimal” risks to the bulk electric system should be covered. RAI may not succeed in its goal of focusing enforcement and compliance on the reliability requirements with the greatest reliability significance if it must extend to all reliability requirements except those that pose minimal risk to the bulk electric system. Of course, this exercise would be vastly simpler if there were easy means to subjectively assess reliability risk.

Another core design issue in RAI is which entity determines whether particular violations pose minimal, moderate or significant issues to the bulk electric system. Should the Commission or the ERO make those decisions on a consistent national basis? Should Regional Entities make those decisions on a consistent regional basis? Or should registered entities make individualized decisions, subject to oversight by Regional Entities, the ERO, and the Commission? We believe the ERO and Regional Entities can make some basic changes that will properly refocus the incentives on reliability risk management within the program. EEI strongly believes that the Commission can do this by endorsing as a policy principle that companies build and maintain strong internal risk management processes and controls, and allowing companies with strong controls and processes to earn appropriate credit for them. From the ERO perspective, such credit should be applied by a) adjustments in the scope, frequency, and intensity of compliance

audits and spot checks, b) relief in the disposition of matters with no reliability consequences by having matters dismissed without having to enter an enforcement process, and c) reduced self-reporting burdens. EEI believes this principle is the heart of RAI.

There is ample evidence for this simple and important principle. The Securities and Exchange Commission, the Nuclear Regulatory Commission, and this Commission, all realize the inefficiency and impracticality of a “zero defects” practice. All agencies understand that full enforcement is reserved for serious breaches and violations, that pursuit of each and every violation does not reward good management and performance.

EEI understands that all companies maintain processes and controls for the broad range of business matters that they manage. Some are centralized, some de-centralized. Various models are used to guide design and management for various risk management control systems. Many companies use sophisticated software and communications tools to continuously manage and communicate process issues. Business process control and risk management systems vary by company size and complexity, and corporate organizational structures. All such systems have capabilities to immediately identify, assess, and ensure that problems or errors are corrected. These control systems inform company management on potential systemic patterns that support identification of root cause problems. Conferences, workshops, and seminars allow companies regular opportunity to share with each other the design and management practice of their control systems. For reliability management, these control systems contain the totality of requirements needed for compliance, assign responsibilities for job performance, and maintain performance records.

The ERO and Regional Entities need to develop a process for assessing company processes and controls to gauge determinations of credit to be applied in various compliance and enforcement matters affecting the company. Training compliance and enforcement personnel is the key management issue in this regard. However, the ERO and Regional Entities must avoid seeking to impose a top-down structure or design for risk management that would force companies to reconfigure existing control systems. It is critically important that the ERO not seek to impose a “one size fits all” model or template. In addition, it is critically important that the ERO not

displace or disrupt the compliance process work taking place under the North American Transmission Forum. EEI understands that this group has the support of many companies, a proactive forum for the sharing of compliance process best practices.

In addition, the ERO can begin to exercise pilot programs now. This activity should not require more conferences, white papers, or webinars.

The benefits of this approach are clear and compelling. Rewarding strong internal processes and controls will help refocus the incentives on finding and fixing problems at the earliest possible time, reduce the amount of time and money misspent on administrative work, and allow company personnel to focus themselves on planning and operating the system, exactly where their attention should focus. The 2013 ERO State of Reliability Report says that 1.6% of processed violations are serious in nature, 85% are minor.

EEI notes that the current FFT process, while offering some modest relief for the ERO and Regional Entities, remains an enforcement-based process that involves process burden that is unnecessary in most if not all cases. Rather than more process, EEI would prefer the ERO and Regional Entities shift the focus of their resources to those violations or patterns of violations that have serious potential reliability consequences, as noted above.

In response to questions posed by the Commission on these issues, EEI understands NERC statistics to show that overall trend for compliance violations is downward. Non-CIP violations are trending downward, CIP violations are high and steady. CIP now dominates the “top ten” violated standards. In general, this current status and trend follows expectations. Like system protection standards, the sheer numbers of “moving parts” covered by the CIP standards suggests a higher level of violations.

The NERC report also suggests a clear disconnect between the current compliance and enforcement process and the enforcement volume and process. To the extent that potential violations are not dismissed and moved into enforcement, FFT must carry more volume and full notices of penalty far less, and FFT must be further streamlined with much faster decisions. It is

very difficult to draw conclusions on a specific relationship between FFT and reliability at this point.

On a final point, I would like to make a comment about consistency among Regional Entities. This is an area of particular interest to NextEra Energy, since we are a registered entity in all eight NERC regions. At this point, I would have to say there is little effort to assure a reasonable degree of consistency among regions. At some level, this is understandable. Most violations are resolved through settlement, so perfect consistency is not expected. But there should be some effort by the Commission or the ERO to police gross inconsistencies that rise to the point where they suggest enforcement is arbitrary, undermining confidence of registered entities in the fairness of reliability enforcement.

I look forward to discussion and questions on the issues. Thank you.