

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Reliability Technical Conference	Docket Nos. AD13-6-000
North American Electric Reliability Corporation	RC11-6-004
North American Electric Reliability Corporation	RR13-2-000
	(not consolidated)

**WRITTEN STATEMENT OF  
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ON BEHALF OF THE TRANSMISSION ACCESS  
POLICY STUDY GROUP,  
FOR THE JULY 9 TECHNICAL CONFERENCE**

Thank you for inviting me to participate in today's technical conference. This conference, and particularly this panel on the Continuing Evolution of NERC Enforcement and Compliance Activities, comes at a crucial point in the development of a more risk-based, efficient, and reliability-enhancing approach to compliance and enforcement of NERC reliability standards. With Commission approval, NERC has made significant progress in this direction, but has a long way to go. Getting compliance and enforcement right is key to NERC's ability to achieve the objectives everyone shares of cost-effectively maintaining and enhancing reliability.

As retired CEO of Vermont Public Power Supply Authority and consultant to TAPS—the Transmission Access Policy Study Group, an association of transmission dependent utilities in more than thirty-five states—I am acutely aware of both the importance of a reliable and secure Bulk-Power System ("BPS"), as well as the heavy compliance burden borne by registered entities, even if they are small systems with

limited impact on BPS reliability. As a member and past chairman of NERC's Member Representatives Committee, I am actively engaged in NERC policy issues. From these vantage points, I will provide my views on questions posed to this panel regarding NERC's Find, Fix, Track, and Report ("FFT") and Reliability Assurance Initiative ("RAI") efforts.

## **I. FIND, FIX, TRACK AND REPORT**

NERC's FFT initiative, which was proposed by NERC on September 30, 2011 and initially approved by the Commission on March 15, 2012,<sup>1</sup> is an important effort to recalibrate enforcement efforts to better match the impact of a possible violation on reliability. It has given NERC and its Regional Entities the flexibility to more efficiently process and track possible violations that pose lesser risk to BPS reliability, while requiring their mitigation.

As approved by the Commission on June 20, 2013,<sup>2</sup> FFT will be enhanced by, among other things, expansion to certain moderate risk violations as well as possible violations whose mitigation will be completed within 90 days of the FFT posting; and allowing NERC to streamline its review of FFTs and to post FFTs monthly (rather than file them with the Commission). We were pleased that the Commission generally supported the direction in which NERC is moving with FFT.

I strongly support FFT, and its continued evolution and streamlining. To date, FFT's benefits have largely focused on enabling NERC and its Regional Entities to process possible violations more efficiently, and to reduce what had been a mounting

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

<sup>2</sup> *North American Electric Reliability Corp.*, 143 FERC ¶ 61,253 (2013).

backlog. Because FFT treatment involves no penalty, it also reduces the likelihood that registered entities will be hammered by penalties disproportionate to the risk their possible violations pose to BPS reliability. However, thus far, registered entities have generally not experienced the hoped-for efficiency gains from FFT.

As noted in NERC's March 15, 2013 FFT compliance filing (at 47),<sup>3</sup> it has taken an average of over 10 months to process an FFT arising from an audit. When a possible violation is identified to a Regional Entity—whether by self-report (as is the case approximately 70% of the time), self-certification, or audit—the registered entity may not know for months whether it will be accorded FFT treatment. Thus, the registered entity's enforcement-related efforts as to that possible violation, in terms of documentation, mitigation, legal review, etc., remain the same whether or not it is ultimately determined to be eligible for FFT treatment. I understand that NERC is undertaking efforts to speed up the FFT assessment process and to improve the processing of self-reports, but these improvements are crucial to providing registered entities the “administrivia” relief intended by the FFT initiative. In that regard, I also urge NERC to take more aggressive efforts to implement Phase II of FFT, as approved in the Commission's March 15, 2013 Order (at P 80; *see also* P 24), in which compliance personnel would be authorized to make FFT decisions in the field, thereby further increasing the resource prioritization benefits of FFT for registered entities, as well as NERC and its Regional Entities.

While identification of specific reliability enhancements produced by FFT is a challenge, those benefits should be real. In its more fully evolved state, FFT should free up resources to allow registered entities to focus on efforts that can yield greater benefits

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<sup>3</sup> eLibrary No. 20130315-5113.

to reliability and advance the goal of reliability excellence. FFT should also reduce the paperwork avalanche, in particular, the paperwork now generated as part of the enforcement process that imposes costs on all involved that far exceed any possible benefit to BPS reliability.

Consistency of application, both within and across regions, is essential to achieving the benefits of FFT. NERC and its regions have made progress on that front, but we're definitely not there yet. While NERC's March 15, 2013 FFT compliance filing (*e.g.*, at 11) shows some continued inconsistencies in the application of FFT across the regions, I'm encouraged by signs of increasing consistency, and strongly support NERC efforts to improve the consistency of FFT implementation through standardized instructions and templates, training and outreach, and use of other consistency-driving tools. The aim should be consistency of outcomes within and across regions. If all the relevant circumstances are the same (recognizing that is often not the case), a registered entity should not be subject to a Notice of Penalty ("NOP") for non-compliance that would be accorded FFT treatment by another region.

The Commission's June 20, 2013 Order directs NERC to make another compliance filing by next June. I am hopeful that NERC's 2014 FFT report to the Commission will show continued progress on consistency, as well as scope, efficiency, and processing time. I strongly encourage NERC to work with the industry to identify and develop additional improvements so that FFT can continue to evolve to deliver the intended efficiencies for registered entities as well as NERC and its Regional Entities, while advancing reliability.

## **II. RELIABILITY ASSURANCE INITIATIVE**

While FFT can be viewed as a continuing evolution from NERC's initial enforcement approach of penalizing all violations and processing them all the same way, regardless of their significance, RAI promises more of a revolution in the way NERC and its Regional Entities approach compliance and enforcement. It would move away from a "zero tolerance" approach in which all possible violations are treated as enforcement matters to be individually processed (through NOP or FFT), regardless of the BPS risk posed. While the RAI concept is still under development, RAI is intended to prioritize and customize compliance and enforcement resources based on risk, rather than continue a "one-size-fits-all" approach. NERC and its Regional Entities would take account of a registered entity's risk profile and the strength of its internal controls to develop and apply a more surgical approach to scoping audits for that entity, determining their frequency, and applying other compliance and enforcement tools. NERC and its Regional Entities would also exercise greater discretion in declining not to treat a deficiency as an enforcement matter. Registered entities are expected to take on greater responsibility for developing and implementing internal controls—management practices and tools that enable the registered entity to detect, correct, and prevent violations.

I support RAI as an essential maturation of NERC's compliance and enforcement program so that it can achieve its goals without becoming increasingly and needlessly bogged down by its own weight. Even with FFT, the current approach is not sustainable. Nor is it smart. The beauty of RAI is that it aligns compliance and enforcement efforts with registered entity management tools—internal controls—that are designed to improve reliability and reinforce a culture of reliability excellence, instead of merely fostering

compliance with NERC standards. By directly tasking registered entities with identifying, correcting, and preventing deficiencies, RAI focuses registered entities on developing procedures that are more effective in avoiding future deficiencies, rather than just mitigating the last violation. It not only promises to reward registered entities for vigilance (rather than crushing them with paperwork or penalties for identifying deficiencies), but also allows significant efficiency gains by leveraging the registered entity's internal controls in the design and implementation of the NERC and Regional Entity compliance efforts. Where a registered entity's internal controls are determined to be "strong," NERC and its Regional Entity can be more scalpel-like in their auditing efforts and deployment of other compliance tools, saving time and resources for all involved. Where the registered entity's internal controls are found to be insufficiently robust, auditors will need to look more comprehensively to confirm compliance.

While RAI is revolutionary for NERC, it is not by any means new, much less revolutionary. NERC is merely incorporating audit and compliance approaches that have long been a standard feature of financial and other auditing processes. I can personally speak to the effectiveness of this type of approach based on my seven-year stint as a field auditor for the Rural Electrification Administration (now the Rural Utilities Service) in the 1960s.

That being said, the Commission is asking the right questions about RAI:<sup>4</sup>

What progress has been made in developing criteria for evaluating internal controls and risk assessments? . . . How will NERC ensure consistency among the regions?

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<sup>4</sup> Reliability Technical Conference Agenda (June 19, 2013), eLibrary No. 20130619-3054.

Detailed criteria, that are available to registered entities and can be consistently applied by Regional Entities, are indispensable elements to making RAI work fairly and consistently. Development of internal controls is necessarily registered entity-specific, and can be expected to look quite different for a large entity with a significant footprint from a BPS risk perspective than for a small entity, with limited staff and resources, that poses limited BPS risk. However, clear, scalable criteria must be developed so that the large and small entity can each know what is expected of them and have confidence that their internal controls will be considered “strong” by NERC and its Regional Entities. In short, the criteria must identify a set of parameters that a small entity with simple, but effective, internal controls can satisfy, without undue expenditures, and thereby qualify as having “strong” internal controls.

As part of its RAI development, NERC is planning to move forward with pilot programs. I support proceeding with some pilots in advance of developing criteria so that the pilots may provide useful “lessons learned” that can be applied to developing the criteria. However, criteria development is a crucial step that cannot be skipped or glossed over. NERC’s draft 2014 business plan contemplates developing guidance for registered entities on internal controls, but makes no express reference to developing and sharing the criteria that will be used by Regional Entities in assessing internal controls and entity risk. This omission is very troubling. RAI will not be successful unless clear, but scalable, criteria are developed to assess registered entity risk and internal controls so that this Commission, registered entities, and NERC and its Regional Entities understand how the compliance and enforcement flexibility allowed by RAI will be consistently applied,

both within and across regions. The criteria are also essential to effective auditor training, another key ingredient to making RAI effective.

To achieve its important goals, RAI will have to revamp the treatment of self-reports. As noted above, they account for some 70% of the possible violations, and cannot all continue to be individually processed as enforcement matters. The Commission itself exercises flexibility not to pursue all matters that are self-reported to its enforcement staff. Likewise, to make RAI a tool that promotes enhanced identification, correction, and prevention of deficiencies, NERC, its Regional Entities, and registered entities will need flexibility on self-reports, including allowing NERC and its Regional Entities to decline to treat a self-report as an enforcement matter, and allowing records of identified deficiencies to be maintained at the registered entity in certain circumstances.

RAI remains a work in progress. NERC faces significant challenges in developing the program, and associated criteria for internal controls and risk assessment, to ensure that the program operates consistently and fairly for all registered entities and across all regions. Special care must be taken to make sure that RAI does not turn into an additional layer of administrative burdens on registered entities. While the task is daunting, I am hopeful that NERC will continue to work closely with industry in designing and implementing RAI to achieve the program's important objectives.

I look forward to your questions and the panel's discussion of these critical issues.

June 27, 2013