



NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL

Princeton Forrestal Village, 116-390 Village Boulevard, Princeton, New Jersey 08540-5731

Before the Federal Energy Regulatory Commission

TECHNICAL CONFERENCE

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**Comments of
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Panel III: Compliance and Enforcement

What process should be used to monitor reliability standards compliance and determine violations?; How should the ERO coordinate and oversee the regional entities' compliance efforts; How should penalties be determined?; How should violations be disclosed?; What data should the Commission and the ERO collect to enforce reliability standards?; Should there be different levels of penalties for different types of reliability standards?; How do self-regulatory organizations assure compliance, conduct investigations, and coordinate enforcement with federal agencies?

Good afternoon, I am David Hilt, Vice President of Compliance for the North American Electric Reliability Council. We appreciate the opportunity to participate in this technical conference and discuss how compliance with reliability standards can be effectively monitored and enforced throughout North America.

NERC recognized the need for monitoring and enforcing its reliability standards a decade ago. As a result, NERC developed a compliance enforcement program whose design was based on a critical review of enforcement programs in other industries, including financial securities and nuclear power.

The NERC compliance enforcement program began in 1999 with a pilot program designed to monitor compliance with a select set of standards in order to evaluate and verify the program design and processes used. We have continually worked to incorporate lessons learned and improve the program in preparation for implementation of a mandatory enforcement program.

Moving to mandatory standards with effective compliance monitoring and enforcement under the ERO will require a strong, top-down, consistent, and fair compliance enforcement program. NERC believes that an effective compliance enforcement program must have the following attributes:

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- Independence — An effective compliance enforcement program must be carried out by individuals with no vested interest in the outcome of the decisions. It is also important for the compliance program to be organized independently to avoid undue influence by those responsible for complying with the standards. The program must address conflicts of interest and antitrust issues.
- Compliance monitoring — An effective compliance enforcement program must identify and monitor all entities responsible for complying with the reliability standards. The design of the program must ensure that all approved standards of the ERO are monitored — some actively and others based on events and investigations. The program must contain effective processes for evaluating compliance including self-reporting and periodic reporting of performance results. Reporting must be verified through compliance audits, investigation of system events or reports of noncompliance, and spot checks of self-reporting.
- Due process — Those being monitored for compliance must be afforded due process regarding all alleged compliance violations and enforcement actions with appeals heard by an independent body with established process timelines. Processes must also exist for maintaining confidentiality during audits and investigations.
- Enforcement — Enforcement actions must be designed to encourage compliance. They should be based on the relative reliability risk of violating the standard, the actions of the entity involved, and consistency across North America. Enforcement actions should be based on a schedule of monetary penalties rather than a single monetary penalty, and should escalate with increasing risk to reliability, including the relative reliability importance of the standard and the degree by which a standard is violated. Enforcement actions should also escalate as a result of continuing poor compliance performance. Enforcement actions should be structured to encourage compliance with the reliability standards by reducing monetary penalties when entities self-report and correct standards violations.
- Mitigation — Reliability is only preserved by correcting standards violations. For certain violations, mitigation plans must be collected, evaluated, and monitored for implementation.

Monitoring compliance with the current reliability standards is no small task. NERC reliability standards contain hundreds of requirements and apply to hundreds of operating entities throughout North America. To effectively monitor compliance with these standards and their requirements, NERC designed its compliance enforcement program to be implemented through regional programs.

In the future, compliance monitoring and enforcement activities of regional programs must meet the requirements of the regulatory authorities and the ERO to ensure coordination and consistency throughout North America. The ERO will prescribe certain aspects of regional program design to ensure consistency.

Evaluations of compliance and all penalty and sanction activities should be carried out by an independent compliance program staff. Active oversight and audits of the regional programs by the ERO will provide accountability and authority to the ERO for regional programs. In some instances, industry experts may be needed to provide technical advice and input for regional staff to make final determinations of compliance or noncompliance.

Compliance enforcement program authority and responsibilities assigned to regional programs must be carried out by the regional compliance program staff to ensure effective implementation of the ERO compliance enforcement program. Regional entities will need resources to

implement their programs, and include these requirements in their portion of the ERO budget. Certain compliance enforcement and monitoring tasks may be delegated to others, such as delegating certain information and data collection to reliability coordinators.

All information related to compliance findings and enforcement actions from regional programs must be reported to the ERO. The ERO will report and disclose information regarding confirmed compliance violations and penalties or sanctions in accordance with rules established by the ERO in conjunction with applicable regulatory authorities.

The ERO will oversee regional programs through ERO staff participation in selected regional activities, including compliance audits of entities within a region. The ERO will audit regional programs to identify areas for improvement and confirm that they meet all applicable requirements.

In summary, NERC intends to implement a strong, top-down, consistent, and fair compliance enforcement program throughout North America. We believe the requirements described here provide for such a program. NERC's compliance enforcement program has provided NERC with the insight necessary to implement an effective ERO compliance enforcement program throughout North America.

Thank you.