

148 FERC ¶ 61,214
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

North American Electric Reliability Corporation

Docket No. RC11-6-004

ORDER ON COMPLIANCE FILING

(Issued September 18, 2014)

1. On June 20, 2014, the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted a compliance filing reporting on NERC's continued implementation of the Find, Fix, Track and Report (FFT) program, as well as responding to a Commission directive regarding inclusion in the program of moderate risk possible violations, as required in the Commission's June 20, 2013 Order.¹ In its filing, NERC also proposes to continue processing moderate risk possible violations as FFTs and to expand the pool of FFT candidates to include possible violations with mitigation completion targets of one year or longer. As discussed below, the Commission accepts the compliance filing and approves the continued FFT treatment of moderate risk possible violations and the inclusion of FFT candidates with longer mitigation timeframes, subject to certain conditions. While it is difficult to gauge the direct benefit of the FFT program to Bulk-Power System reliability, the FFT program has produced efficiencies in NERC's processing of compliance and enforcement matters.

I. Background

2. 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, and directing NERC to make a twelve-month compliance filing and report on the

¹ *North American Electric Reliability Corp.*, 143 FERC ¶ 61,253 (2013) (June 20 Order).

implementation and progress of the FFT program.² NERC responded on March 15, 2013 with a compliance filing and report. In addition to responding to the Commission's directives, NERC proposed five enhancements to the FFT program, including an expansion of the FFT program to a "limited pool" of possible violations involving moderate risk. In its June 20 Order, the Commission accepted in part and rejected in part NERC's proposed enhancements, and directed NERC to address specific topics regarding FFTs designated as a moderate risk to Bulk-Power System (BPS) reliability in a compliance filing.³

3. The Commission directed NERC to make a twelve-month compliance filing and report justifying continuation of the expanded FFT program. In particular, the Commission directed NERC to, at a minimum, provide the following information in the report: (1) the number and types of FFTs that were moderate risk possible violations since the date of the June 20 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; and (3) a detailed explanation of the steps that NERC has taken to ensure the Regional Entities are determining risk in a consistent manner, and identify any inconsistent outcomes and the reason for them.⁴

4. In the June 20 Order, the Commission stated that, based on the content of NERC's 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."⁵

5. The Commission also approved NERC's proposal to include some unmitigated possible violations in the FFT program. Specifically, the Commission approved NERC's proposal subject to the condition that any unmitigated possible violation included in an FFT posting or filing must be fully mitigated within 90 days from the date the FFT is posted or filed.⁶ In approving the inclusion of certain unmitigated possible violations in

² *North American Electric Reliability Corp.*, 138 FERC ¶ 61,193 (March 15 Order), *order on reh'g*, 139 FERC ¶ 61,168 (2012).

³ June 20 Order, 143 FERC ¶ 61,253 at PP 33-34.

⁴ *Id.* P 34.

⁵ *Id.*

⁶ *Id.* P 36.

the FFT program, the Commission stated that “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” and the failure to mitigate “should be treated as a continuing possible violation that is no longer eligible for FFT treatment.”⁷

6. In addition, the Commission approved, with one condition, 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.⁸ The Commission conditioned its approval, however, by requiring NERC to include FFTs with ongoing mitigation as part of its sample. The Commission also required NERC to submit an annual informational filing “reporting on the outcome of its sampling and other matters relating to the FFT program.”⁹

II. Description of NERC’s Compliance Filing and Report

A. Current State of FFT Program

7. In the June 20 compliance filing and report, NERC provides an overview of the current state of the FFT program. NERC states that the FFT program “is a mature processing mechanism that the Regional Entities are applying effectively to resolve lesser-risk issues in an efficient manner.”¹⁰ NERC reports that almost two thousand FFTs have been processed since the program began in September 2011. NERC states that a review of data on the noncompliance processed by the ERO enterprise “continues to support the utilization of streamlined processes and documentation requirements in processing most of the caseload.”¹¹ In addition to other benefits, NERC states that the FFT program has “allowed NERC and the Regional Entities to expand their experience with assessing the risk posed by noncompliance, including identifying minimal, moderate, and serious and substantial risk issues[.]”¹²

⁷ *Id.* P 37.

⁸ *Id.* P 40.

⁹ *Id.* P 41.

¹⁰ NERC Report at 4.

¹¹ *Id.* at 4-5.

¹² *Id.* at 5.

B. Report on Review of Annual Sample of 2013 FFTs**1. NERC Oversight of the FFT Program**

8. With regard to oversight, NERC explains that it monitors the FFT program by reviewing a sample of the FFTs posted each month by the Regional Entities, in addition to an annual sampling. NERC reports that it included all five moderate risk FFTs posted since July 2013 in its monthly reviews. NERC states that it plans to be more selective in its sampling of posted FFTs to focus on issues associated with more complex requirements, such as those in the Critical Infrastructure Protection (CIP) Reliability Standards CIP-005 and CIP-007. In addition, NERC states that it plans to coordinate with Commission staff to review the same sample during the next annual review “in an effort to reduce the burden on the Regional Entities and registered entities.”¹³

2. Annual Spot Check for 2013 FFTs

9. During the first quarter of 2014, NERC performed its annual review of the Regional Entities’ FFT programs. NERC explains that the purpose of the review was to “gather information on the implementation and effectiveness of the FFT program” as well as the “consistent application” of the FFT program across all Regional Entities.¹⁴ The review was based on four categories: (1) clarity of the description of FFTs and the sufficiency of facts included, (2) alignment of the risk with the facts and circumstances of each FFT, (3) timeliness and appropriateness of mitigation, and (4) consideration of the registered entity’s compliance history and internal compliance program.

10. Based on this review, NERC reports that “the quality of the FFTs submitted by the Regional Entities for posting has continued to improve” relative to FFTs submitted in prior years.¹⁵ NERC states that it did not identify any FFTs that were “inappropriate for FFT treatment.”¹⁶

¹³ *Id.* at 8.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

a. **Findings Regarding Description of the Issue and Risk Assessments**

11. For all FFTs in NERC's sample, NERC reports that the description of the FFTs contained information that "adequately addressed the cause of the issue." NERC adds, however, that in some cases there was a "lack of detail and adherence to the NERC FFT template."¹⁷ NERC states that its review of a few of the FFTs could have benefited from additional information that was present in the supporting documentation, but that was not provided in the posted FFTs.

12. NERC observes that Regional Entities occasionally omit "relevant facts and circumstances" from the descriptions of issues and risk assessments that would have "facilitated better understanding by NERC and FERC" of the FFT.¹⁸ However, NERC states that the Regional Entities "consistently and accurately addressed the actual risk" of each FFT, including supporting their minimal risk determinations with the facts that existed at the time of the underlying noncompliance.¹⁹ Regarding risk assessments in particular, NERC states that risk assessments "should not focus on after-the-fact determinations to justify a finding of minimal risk."²⁰ Therefore, NERC recommends that Regional Entities include additional background information regarding the considered factors of FFTs and regional risk assessment tools to provide more clarity for NERC and FERC review of the consistency of risk determinations.

b. **Findings Regarding Evaluation and Documentation of Mitigating Activities**

13. NERC states that the Regional Entities require timely mitigation of the FFTs to address the underlying issues and reduce likelihood of recurrence. NERC also reports that most of the sampled mitigating activities include measures designed to prevent recurrence of noncompliance. However, NERC does state that there were instances in which Regional Entities "omitted known information that would have facilitated NERC and FERC review of the mitigating activities."²¹

¹⁷ *Id.* at 11.

¹⁸ *Id.*

¹⁹ *Id.* at 12.

²⁰ *Id.*

²¹ *Id.* at 16.

c. **Findings Regarding FFTs with Ongoing Mitigating Activities**

14. NERC reports that, in 2013, a total of 25 FFTs with ongoing mitigating activities were submitted. NERC tracked these FFTs and contacted the Regional Entities periodically to ensure completion within 90 days. Of the 25 FFTs with ongoing mitigation, seven were included as part of NERC's annual sample. NERC observes from this review that, "although not required, in all these cases [sampled by NERC], the Regional Entities also verified completion of mitigating activities."²² NERC adds that all registered entities involved with the FFTs reviewed provided an affidavit or certification certifying completion within 90 days from the date of posting.

d. **Findings Regarding Consideration of Internal Compliance Programs and Compliance History**

15. NERC reports that Regional Entities, in general, evaluate registered entities' compliance histories, internal compliance programs, and management practices in determining if FFT treatment is appropriate. However, NERC states that there was some "inconsistency" in the information provided in FFTs, such as a lack of support documentation referencing how compliance history is considered, or a lack of documented consideration of an entity's negative compliance history.²³ To address this, NERC implemented an addition to the FFT posting to ensure that "the Regional Entities consistently provide consideration of the relevant compliance history."²⁴

C. **FFT Treatment of Moderate Risk Noncompliance**

1. **Response to Commission Directive**

16. As noted above, the Commission in the June 20 Order directed NERC to, at a minimum, provide the following information in the report: (1) the number and types of FFTs that were moderate risk possible violations since the date of the June 20 Order;

²² *Id.* See March 15 Order, 138 FERC ¶ 61,193 at P 15 (reciting NERC's explanation that "[a] registered entity must demonstrate that it has addressed the underlying possible violation, describe any corrective actions and maintain evidence of such corrective actions for possible later verification through an audit, spot check, random sampling or other inquiry").

²³ *Id.* at 17.

²⁴ *Id.* at 18.

(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; and (3) a detailed explanation of the steps that NERC has taken to ensure the Regional Entities are determining risk in a consistent manner, and identify any inconsistent outcomes and the reason for them.²⁵ In its compliance filing, NERC provides a discussion on each question and states that, with regard to the moderate risk FFTs, its analysis “shows that Regional Entities appropriately used the FFT process to reward self-identification of noncompliance by registered entities and recognize mature management practices in registered entities that self-assess compliance with the NERC Reliability Standards.”²⁶

17. With regard to the number and types of FFTs that were moderate risk possible violations, NERC states that since June 20, 2013, it has posted five FFTs that presented a moderate risk to Bulk-Power System reliability. NERC explains that it reviewed each of the five moderate risk FFTs before posting on the NERC website.²⁷ In response to the Commission’s query concerning 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, NERC provides detailed descriptions of the totality of circumstances that led to a determination by each Regional Entity that the moderate risk noncompliance was appropriate for FFT treatment. NERC explains that the determination on the five moderate risk FFTs was based on a review of the six factors presented in NERC’s September 2011 petition regarding the FFT program: (1) the underlying facts and circumstances, including what happened, why, where and when; (2) the Reliability Standard at issue; (3) the applicable Violation Risk Factor and Violation Severity Level; (4) the potential and actual level of risk to reliability, including mitigating factors during pendency of the Possible Violation; (5) the Registered Entity’s compliance program, including preventative and corrective processes and procedures, internal controls and culture of compliance; and (6) the Registered Entity’s compliance history.²⁸ NERC explains that the Regional Entities have used the six factors since the inception of the FFT program.

18. Regarding the steps that NERC has taken to ensure the Regional Entities are determining risk in a consistent manner, NERC explains that it, the Regional Entities and

²⁵ June 20 Order, 143 FERC ¶ 61,253 at P 34.

²⁶ NERC Report at 19.

²⁷ *Id.* at 20.

²⁸ *Id.* at 33.

a focus group of registered entities drafted a Self-Report User Guide which outlines the common methodology to assess the risk of specific instances of noncompliance, and then provided training to Regional Entity and registered entity personnel on the Self-Report User Guide. With regard to the differences between minimal and moderate risk, NERC states that “lack of harm is not sufficient justification, by itself, for a minimal or moderate risk assessment.”²⁹ In addition, NERC explains that, where an instance of noncompliance could result in “something serious” and the registered entity had only “some protections in place to reduce risk, then the risk assessment would likely be moderate.”³⁰ NERC also explains that it often reviews risk assessments to ensure that they follow the six criteria and, if not, seeks clarification or additional information from the Regional Entity as an oversight activity.

2. Enhanced Criteria for Moderate Risk FFTs

19. NERC states that it and the Regional Entities developed an enhanced set of criteria to guide the future treatment of moderate risk noncompliance in the FFT program. NERC explains that it developed the enhanced criteria based on a review of the moderate risk FFTs and a sample of 122 moderate risk Spreadsheet Notice of Penalty (SNOP) violations undertaken to determine the common factors justifying FFT treatment. NERC states that it selected the 122 moderate risk SNOPs “because the low penalty is an indicator that these items potentially could have been considered as moderate risk FFT candidates, if FFT treatment had been available for such issues at the time.”³¹

20. Based on its observations, NERC worked with the Regional Entities to develop the following enhanced criteria to facilitate the proposed expansion of the FFT program to additional moderate risk issues: (1) there were underlying facts and circumstances that justify FFT treatment; (2) there were mitigating factors during the pendency of the non-compliance that resulted in lower risk to BPS reliability; (3) the entity had a robust internal compliance program and culture of compliance; and (4) the entity’s compliance history supports FFT treatment.³² NERC states that it will continue to evaluate additional moderate risk issues as candidates for FFT treatment and anticipates increased use of the FFT program to resolve moderate risk issues by applying its enhanced criteria.

²⁹ *Id.* at 32.

³⁰ *Id.* at 35.

³¹ *Id.* at 38.

³² *Id.* at 40-46.

3. Continued Use of FFT to Resolve Moderate Risk Issues

21. NERC proposes to continue to evaluate moderate risk issues as candidates for FFT treatment. In support, NERC states that “FFT treatment of moderate risk noncompliance, particularly noncompliance that is self-identified by registered entities through internal controls, encourages registered entities continuously to self-monitor their compliance with Reliability Standards and self-report Possible Violations.”³³ NERC characterizes the FFT program as “a streamlined disposition method that rewards this behavior.”³⁴

D. Continued Development of the FFT Program

22. As mentioned above, NERC currently may submit an FFT pertaining to an unmitigated possible violation provided that full mitigation occurs within 90 days from the date the FFT is posted or filed.³⁵ NERC proposes to extend the time frame for completion of mitigation activities from 90 days to one year after posting. In addition, NERC proposes to allow more than one year to complete mitigation where such time is warranted and NERC has given prior approval. NERC states that some lower risk issues may still require mitigating steps that could extend beyond 90 days, especially for moderate risk noncompliance. Examples include staff training in large organizations, mitigation tied to outage schedules such as protection equipment replacement and testing, and activities that require a generating unit to be off-line, which can all take more than 90 days to complete. For mitigation that would extend beyond one year, NERC states that “Regional Entities would be required to explain the need for additional time and how the extended mitigation time frame affected the Regional Entity’s risk assessment of that particular issue.”³⁶

III. Notice of Filing, Interventions, and Comments

23. Notice of NERC’s June 20, 2014, filing was published in the *Federal Register*, 79 Fed. Reg. 36,800 (2014), with comments due on or before July 21, 2014. No interventions, comments or protests were filed.

³³ *Id.* at 46.

³⁴ *Id.*

³⁵ *See* June 20 Order, 143 FERC ¶ 61,253 at PP 36-37.

³⁶ NERC Report at 47-48.

IV. Discussion

24. We accept NERC's compliance filing and report regarding FFTs designated as a moderate risk to BPS reliability and NERC's annual evaluation of the FFT program. In addition, we accept NERC's proposal to continue the use of the FFT program to address noncompliance that poses a moderate risk to BPS reliability where the enhanced criteria described in NERC's filing are met. Further, we accept NERC's proposal to extend the time frame for completion of mitigation activities from 90 days after NERC posts an FFT to one year after posting, subject to the conditions discussed below. However, we reject NERC's proposal to allow for more than one year to complete mitigation activities associated with a posted FFT, as discussed below. We also require NERC to file an annual report on the FFT program, to be submitted within one year from the date of the issuance of this order, as discussed below.

A. NERC Report on Current State of the FFT Program

25. Based on the information provided in NERC's filing, we determine that the FFT program has improved the ability of NERC and the Regional Entities to more efficiently process lesser-risk possible violations. While it is difficult to gauge the direct benefit of the FFT program to Bulk-Power System reliability, the FFT program has produced efficiencies in NERC's processing of compliance and enforcement matters that support the continued use of the program.³⁷ In addition, NERC's report suggests continuing improvement in the implementation of the FFT program. As noted by NERC, its recent review showed that "the quality of the FFTs submitted by the Regional Entities for posting has continued to improve from the FFTs submitted to NERC for review in prior years."³⁸ NERC also discusses certain observations, particularly in the reporting of FFTs,

³⁷ During 2013, the average FFT processing time was about six months compared with a one year average for violations processed as a Notice of Penalty. The improved processing time has allowed NERC to reduce its active caseload. Further, the FFT program has helped reduce NERC's pre-2013 compliance and enforcement backlog from 2,511 cases to 545 cases, a reduction in the pre-2013 backlog of 1,966 cases. See NERC Board of Trustees Compliance Committee, *Key Compliance Enforcement Metrics and Trends*, at 2-3 (August 14, 2013). Available online at: http://www.nerc.com/gov/bot/BOTCC/Compliance%20Committee%202013/CC_August_2013_Presentations_080813.pdf.

³⁸ NERC Report at 8-9.

where further improvement or refinement is needed and NERC indicates how it plans to address such matters.³⁹

26. Further, NERC's report shows that there have been improvements by NERC and the Regional Entities in assessing the risk posed by a specific instance of noncompliance. NERC notes that it "found that the Regional Entities are no longer providing general information on the inherent risk related to any Possible Violation of the particular reliability standard at issue," but "determining potential risk as it is specifically related to the facts of the noncompliance in question."⁴⁰ NERC does note, however, that the potential risk assessments conducted by the Regional Entities "may need some improvement" in certain instances. Specifically, NERC states that "risk assessments should not focus on after-the-fact determinations to justify a finding of minimal risk."⁴¹ Instead, NERC states that a risk assessment "should describe the compensating measures in place during the violation which reduced the risk and would have protected reliability[.]"⁴² We agree with NERC's statement that a risk assessment should not rely on after-the-fact determinations, but should focus on compensating measures in place during the violation.⁴³

27. The assessment of risk is a critical component of the FFT program, especially in light of the continued expansion of the program to moderate risk issues. We note that NERC has taken steps to improve risk assessments and FFT postings in general. Specifically, NERC, the Regional Entities and a focus group of registered entities drafted a Self-Report User Guide, which outlines the common methodology to assess the risk of specific instances of noncompliance, to "provide more clarity for NERC and FERC review of consistency across FFTs from all Regional Entities."⁴⁴ In addition, NERC and the Regional Entities recently revised the FFT posting template to "ensure the Regional

³⁹ *Id.* at 11, 12, and 16.

⁴⁰ *Id.* at 12.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *See, e.g.*, March 15 Order, 138 FERC ¶ 61,193 at P 51 ("a possible violation does not pose a minimal risk simply because there was no adverse impact to the Bulk-Power System during the period of the possible violation").

⁴⁴ NERC Report at 14.

Entities consistently provide consideration of the relevant compliance history,” such as whether an entity has a prior violation of the requirement at issue.⁴⁵

28. The Commission supports the continued development of tools to aid in the risk assessments associated with the FFT program. While we recognize that NERC and the Regional Entities are making progress in the quality and consistency of risk assessments, NERC should continue to work with the Regional Entities to improve the overall nature of risk assessments in the FFT program.

B. NERC Report on Review of Annual Sample of 2013 FFTs

1. NERC Oversight of the FFT Program

29. With regard to ongoing oversight of the FFT program, the Commission supports NERC’s plan to be more selective in its sampling of posted FFTs to focus on issues associated with more complex requirements. As NERC gains experience with the FFT program and the associated risk assessments, we believe that it is appropriate for NERC to focus more resources on the FFTs that could pose greater risk to BPS reliability, while continuing to sample FFTs that cover the full range of Reliability Standards reflected in the FFT program. In addition, we support NERC’s plan to coordinate with Commission staff to review the same sample during the next annual review. We agree that a review of a coordinated sample will likely help reduce the burden on the Regional Entities and registered entities associated with FFT sampling.

2. Annual Spot Check for 2013 FFTs

30. The Commission notes that NERC’s report on the annual spot check of FFTs shows improvement in the quality and consistency of the posted FFTs, but also reflects the need for improvement in the information provided to support FFTs in certain circumstances. We note that Commission staff identified similar issues in its review of a sample of FFTs.⁴⁶ For the 2013 FFT program year, Regional Entities filed or posted 796 FFTs, consisting of 456 CIP and 340 non-CIP issues. Commission staff conducted a review of a sample of these FFTs, consisting of 50 CIP and 50 non-CIP FFTs.

⁴⁵ *Id.* at 18.

⁴⁶ See March 15 Order, 138 FERC ¶ 61,193 at P 73 (discussing Commission plans to survey a random sample of FFTs filed each year to gather information on how the FFT program is working).

31. Commission staff's sampling for the 2013 program year indicated that NERC and the Regional Entities appropriately included possible violations in the FFT program and that all 100 sampled FFTs appear to have been successfully remediated. Commission staff's sampling also indicated certain documentation concerns, particularly with regard to the quality of the information contained in the FFT filings and posting. For example, Commission staff found that, while Regional Entities regularly included in the posted or submitted FFTs a statement describing the root cause of the possible violation, approximately 30 percent of those statements lacked clarity. On a review of the supporting information provided through the sampling, however, Commission staff determined that the percentage of the filed or posted FFTs lacking a clear identification of the root cause decreased to approximately 20 percent. The accurate identification of root cause is critical in preventing future recurrence. Similarly, Commission staff's initial review of the FFT postings and filings suggested that about 50 percent of the sampled FFTs lacked clear start date or end dates, making the duration of the underlying noncompliance unclear. Commission staff subsequently reviewed the supporting information for these FFTs, which indicated that the percentage of sampled FFTs lacking clear start date or end dates was significantly less, approximately 15 percent. Finally, while Commission staff observed that the information provided for about 25 percent of the sampled FFT postings did not adequately address potential risk and, similarly, the information provided for about 35 percent of the sampled FFT postings did not adequately address actual harm, Commission staff ultimately agreed with the final risk determinations provided for the sampled FFTs after a more in depth review of supporting documentation.

32. The above observations indicate that there is room for improvement. NERC should work with the Regional Entities to continually improve the quality and consistency of the posted FFTs. We support efforts identified by NERC in its Report, such as the development of the Self-Report User Guide and revised FFT posting template to aid in this effort. As discussed above, the Self-Report User Guide outlines the common methodology to assess the risk of specific instances of noncompliance in order to "provide more clarity for NERC and FERC review of consistency across FFTs from all Regional Entities."⁴⁷ In addition, the revised FFT posting template should aid in ensuring that adequate information is provided to support each posted FFT. However, the Commission expects clear improvement in the posted FFTs as the FFT program continues to mature.

⁴⁷ NERC Report at 14.

C. FFT Treatment of Moderate Risk Noncompliance

1. Response to Commission Directive

33. The Commission accepts NERC's compliance filing as it relates to the directive in the June 20 Order to provide specific information on the treatment of moderate risk possible violations eligible for the FFT program. NERC provides a discussion of the general factors used by the Regional Entities to identify moderate risk possible violations as candidates for the pilot program and, more specifically, the particular factors that supported FFT treatment for the five moderate risk FFTs in NERC's review sample.⁴⁸ NERC also relates the efforts taken over the past year to help ensure consistency in the assessment of risk, in particular the Self-Report User Guide, which outlines the common methodology to assess the risk of specific instances of noncompliance.

34. In addition, NERC provides a discussion of the enhanced criteria that it developed in concert with the Regional Entities to facilitate the expansion of the FFT program to additional moderate risk issues. As discussed above, NERC and the Regional Entities will only consider an instance of moderate risk noncompliance for the FFT program where: (1) there were underlying facts and circumstances that justify FFT treatment, (2) there were mitigating factors during the pendency of the noncompliance that resulted in lower risk to BPS reliability, (3) the entity had a robust internal controls and culture of compliance, and (4) the entity's compliance history supports FFT treatment. While the criteria are somewhat subjective, the Commission recognizes that the Regional Entities generally are in a better position to judge a specific entity's overall compliance culture and internal compliance mechanisms. Therefore, we encourage NERC and the Regional Entities to continue to develop the criteria as they gain more experience with moderate risk FFTs.

2. Continued Use of FFT to Resolve Moderate Risk Issues

35. We accept NERC's proposal to continue the use of the FFT program to address noncompliance that posed a moderate risk to BPS reliability where the enhanced criteria discussed above are met, subject to one condition discussed below. Continuing to use the FFT program to address moderate risk issues will result in a more efficient enforcement process and allow NERC and the Regional Entities to focus on occurrences of severe risk violations. NERC references the use of internal controls as a significant factor to be considered when determining whether a moderate risk issue should be afforded FFT treatment. For instance, NERC states that "FFT treatment of moderate risk

⁴⁸ *Id.* at 18-31.

noncompliance, particularly noncompliance that is self-identified by registered entities through internal controls, encourages registered entities continuously to self-monitor their compliance with Reliability Standards and self-report Possible Violations.”⁴⁹ Further, NERC states that “Regional Entities should strongly consider FFT treatment even for repetitive conduct when the registered entity has identified and reported the issue as a result of its internal controls.”⁵⁰

36. The Commission acknowledges the benefit of encouraging entities to self-identify potential noncompliance. NERC, however, has not provided sufficient detail concerning the evaluation of internal controls. Therefore, we direct NERC to provide additional information on the evaluation of internal controls and their direct role in self-reporting and correcting programmatic deficiencies that led to noncompliance in the next annual report on the FFT program, to be submitted within one year from the date of the issuance of this order. This condition will enable the Commission to gain an understanding of whether and how NERC and the Regional Entities are using a common method of evaluating internal controls and, therefore, ensuring appropriate levels of consistency across the Regions, and whether the internal controls are effective in improving reliability performance.

D. Continued Development of the FFT Program

37. The Commission accepts NERC’s proposal to extend the time frame for completion of mitigation activities from 90 days after NERC posts an FFT to one year after posting. However, we believe that there is a need for additional information for filed FFTs with extended mitigation periods. Thus, we condition our approval of NERC’s proposal on the basis that for each FFT with ongoing mitigation when the FFT is posted, the Regional Entities must clearly indicate: (1) the expected completion date; (2) the justification for the length of time required; and (3) a description of all compensating measures in place during the period of noncompliance which reduce the risk to reliability while mitigation is ongoing. Additionally, we direct NERC to provide notification to Commission staff when the mitigation is completed for each FFT with an extended mitigation period. These conditions will assist the Commission’s understanding of circumstances in which extended mitigation is permitted, and that Bulk-Power System reliability is not significantly put at risk during the mitigation period.

⁴⁹ *Id.* at 46.

⁵⁰ *Id.* at 45.

38. We reject NERC's proposal to allow an indefinite period extending more than one year to complete mitigation.⁵¹ We do not believe that NERC has provided adequate support for the need for this proposal. Further, we are concerned that mitigation periods of greater than one year could weaken the incentive for entities to expeditiously mitigate possible violations and delay necessary corrections, exposing the BPS to further increased risk.

The Commission orders:

(A) The Commission hereby accepts NERC's compliance, and NERC's proposed modifications to the FFT program as set forth in NERC's annual 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 the date of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁵¹ *Id.* P 36.