

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**North American Electric Reliability
Corporation**)
)

Docket No. RC11-6-000

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION'S ANNUAL
REPORT ON THE FIND, FIX, TRACK AND REPORT AND COMPLIANCE
EXCEPTION PROGRAMS**

December 30, 2020

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I. INTRODUCTION

The North American Electric Reliability Corporation (NERC), as the Electric Reliability Organization (ERO),¹ respectfully submits this filing as its annual report on the Find, Fix, Track and Report (FFT) and Compliance Exception (CE) programs. This filing complies with the Federal Energy Regulatory Commission's (FERC or the Commission) March 15, 2012 Order,² June 20, 2013 Order,³ and September 18, 2014 Order⁴ requiring an annual report on NERC's FFT program. This filing also combines the evaluation of CEs with the annual sampling of FFTs in compliance with the Commission's November 13, 2015 Order.⁵

Since 2011, the ERO Enterprise⁶ has used the FFT program to resolve about 2,772 instances of noncompliance with the NERC Reliability Standards, 81% of which posed a minimal risk to the reliability of the bulk power system (BPS).⁷ The Commission agreed that the FFT program has "produced efficiencies in NERC's processing of compliance and enforcement matters" and that continuing to use the FFT program to address moderate risk noncompliance will result in a "more efficient enforcement process and allow NERC and the Regional Entities to focus on occurrences of severe risk violations."⁸

¹ The Commission certified NERC as the ERO in accordance with section 215 of the Federal Power Act on July 20, 2006. *N. Am. Elec. Reliability Corp.*, 116 FERC ¶ 61,062 (2006), *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa Inc. v. FERC*, 564 F.3d 342 (D.C. Cir. 2009).

² *N. Am. Elec. Reliability Corp.*, Order Accepting With Conditions the Electric Reliability Organization's Petition Requesting Approval of New Enforcement Mechanisms and Requiring Compliance Filing, 138 FERC ¶ 61,193 (2012) (March 2012 Order).

³ *N. Am. Elec. Reliability Corp.*, Order on Compliance Filing, 143 FERC ¶ 61,253 (2013) (June 2013 Order).

⁴ *N. Am. Elec. Reliability Corp.*, Order on Compliance Filing, 148 FERC ¶ 61,214 (2014) (September 2014 Order).

⁵ *N. Am. Elec. Reliability Corp.*, Docket No. RC11-6-004 (Nov. 13, 2015) (delegated letter order) (November 2015 Order).

⁶ The term "ERO Enterprise" refers to NERC and the six Regional Entities and NERC as a Compliance Enforcement Authority. The six Regional Entities are Midwest Reliability Organization (MRO), Northeast Power Coordinating Council (NPCC), ReliabilityFirst (RF), SERC Reliability Corporation (SERC), Texas Reliability Entity (Texas RE), and Western Electricity Coordinating Council (WECC).

⁷ The numbers and percentages in this filing are from data as of October 30, 2020.

⁸ September 2014 Order at PP 1, 35.

Building on the success of the FFT program, the ERO Enterprise developed the CE program in February 2014 to streamline further the resolution of lesser-risk noncompliance with NERC Reliability Standards. The ERO Enterprise has resolved about 4,870 instances of noncompliance posing a minimal risk to the BPS through CEs since the inception of that program.⁹

In 2020, NERC and Commission staff completed their annual coordinated review of FFTs and CEs and found, as they had in previous reviews, that the ERO Enterprise appropriately handles noncompliance posing a minimal or moderate risk through these programs.¹⁰ NERC and Commission staff jointly sampled 62 FFTs and CEs, reviewed the associated supporting evidence, and agreed with all the final risk determinations. FERC staff noted that overall, the risk assessments have demonstrated a sustained improvement. Specifically, the assessments included clear explanations of potential risk, actual risk, and/or actual harm. FERC staff noted that the identification of root cause in FFTs and CEs has improved significantly over the past five years, moving from five percent missing an identification of root cause in 2015 to all noncompliance in this year's sampling including an identification of root cause.

⁹ See *supra* n.7.

¹⁰ See June 2013 Order, September 2014 Order, November 2015 Order, *N. Am. Elec. Reliability Corp.*, Docket No. RC11-6-005 (Jan. 13, 2017) (delegated letter order); *N. Am. Elec. Reliability Corp.*, Notice of Staff Review of Compliance Programs, Docket No. RC11-6-005 (Jun. 27, 2017); *N. Am. Elec. Reliability Corp.*, Order on Compliance Filing, 161 FERC ¶ 61,187 (2017), *N. Am. Elec. Reliability Corp.*, Docket No. RC11-6-006 (Dec. 6, 2017) (delegated letter order), *N. Am. Elec. Reliability Corp.*, Docket No. RC11-6-008 (Jan. 24, 2019) (delegated letter order).

II. THE SUCCESSFUL EVOLUTION OF THE FFT AND CE PROGRAMS

The FFT and CE programs are important elements of the ERO Enterprise's risk-based approach to enforcement.¹¹ The FFT program resolves noncompliance posing a minimal or moderate risk to the reliability of the BPS, while the CE program resolves noncompliance posing a minimal risk outside of Section 5.0 of the Compliance Monitoring and Enforcement Program (CMEP). Both programs require: (a) mitigation of the noncompliance; (b) availability of the facts and circumstances of the noncompliance for review by NERC and Applicable Governmental Authorities; (c) tracking and analysis of the noncompliance as necessary to identify broader risks; and (d) providing the opportunity for the registered entity to opt out of the disposition method.¹²

The FFT program was the first major step in implementing a risk-based approach to the enforcement of Reliability Standards that recognizes the fact that not all instances of noncompliance require the same type of processing and documentation. Over the last seven years, the FFT program evolved from a processing track limited to minimal risk noncompliance to a vehicle for increased efficient and effective disposition of moderate and minimal risk noncompliance. The success of the FFT program in resolving lesser risk noncompliance led to the expansion of the FFT program to include resolution of moderate risk noncompliance and the development of the CE program.

¹¹ For a description of NERC's enforcement processes, CEs, and FFTs, *see* NERC Rules of Procedure, App. 4C §§ 3.8, 3A.0, 3A.1, & 5.2A, respectively, available at https://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/NERC_ROP_Effective_20190125.pdf.

¹² *See* NERC Rules of Procedure, App. 4C §§ 5.2A and 3A, respectively.

Because of the FFT and CE programs, the ERO Enterprise is able to process minimal and moderate risk noncompliance more efficiently and effectively,¹³ thereby allowing the ERO Enterprise to focus its resources on noncompliance posing a greater risk to the reliability of the BPS. The ERO Enterprise’s use of the FFT and CE programs has continued to increase since FERC initially approved the programs. Since the inception of the FFT program, the number of moderate risk noncompliance processed as FFTs on average has been going up, as shown in Figure 1 below. The effective use of streamlined processing for lower risk noncompliance allows the ERO Enterprise to focus on higher risk issues.

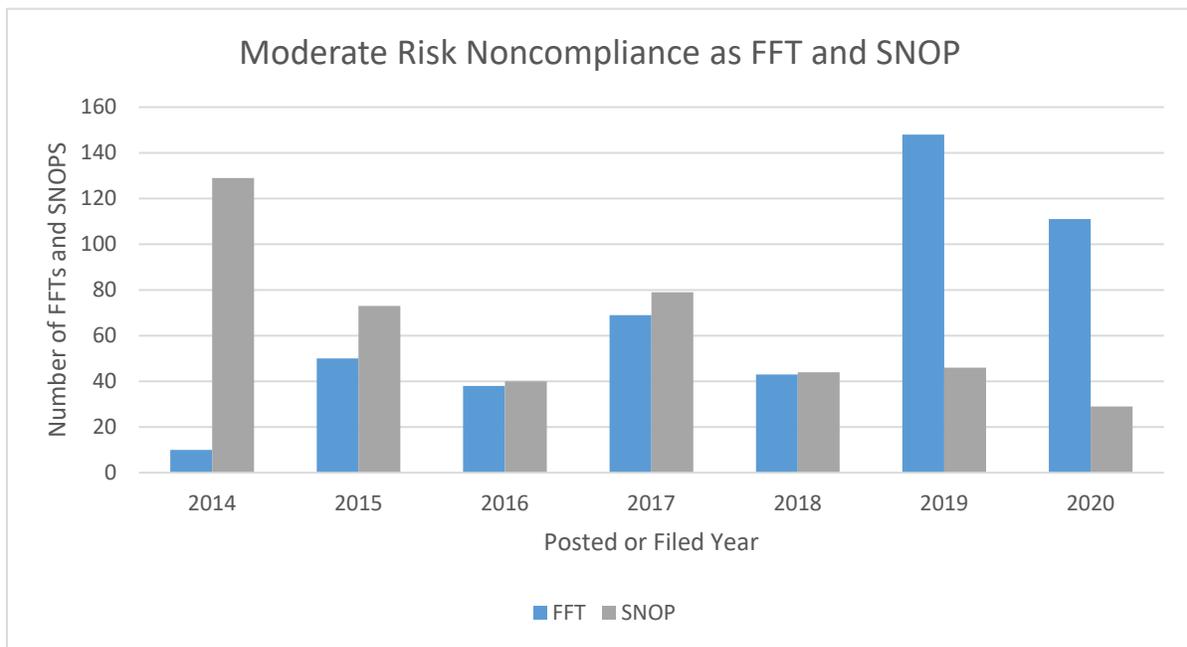


Figure 1: Moderate risk noncompliance processed as FFTs and SNOPs as of October 30, 2020

¹³ See September 2014 Order at PP 1, 25, n.37; see also *N. Am. Elec. Reliability Corp.*, NERC’s Annual Report on the Find, Fix, Track, and Report Program, Docket No. RC11-6-004, at 2 (Sept. 18, 2015); *N. Am. Elec. Reliability Corp.*, NERC’s Annual Report on the Find, Fix, Track, and Report and Compliance Exception Programs, Docket No. RC11-6-005, at 1-2 (Nov. 14, 2016); *N. Am. Elec. Reliability Corp.*, NERC’s Annual Report on the Find, Fix, Track and Report and Compliance Exception Programs, Docket No. RC11-6-000, at 1-2 (Oct. 4, 2017), and *N. Am. Elec. Reliability Corp.*, NERC’s Annual Report on the Find, Fix, Track and Report and Compliance Exception Programs, Docket No. RC11-6-008, at 1-2 (Nov. 1, 2018).

The number of minimal risk noncompliance processed as CEs has increased since 2016 and is the primary method of disposition for minimal risk noncompliance, as shown in Figure 2 below.

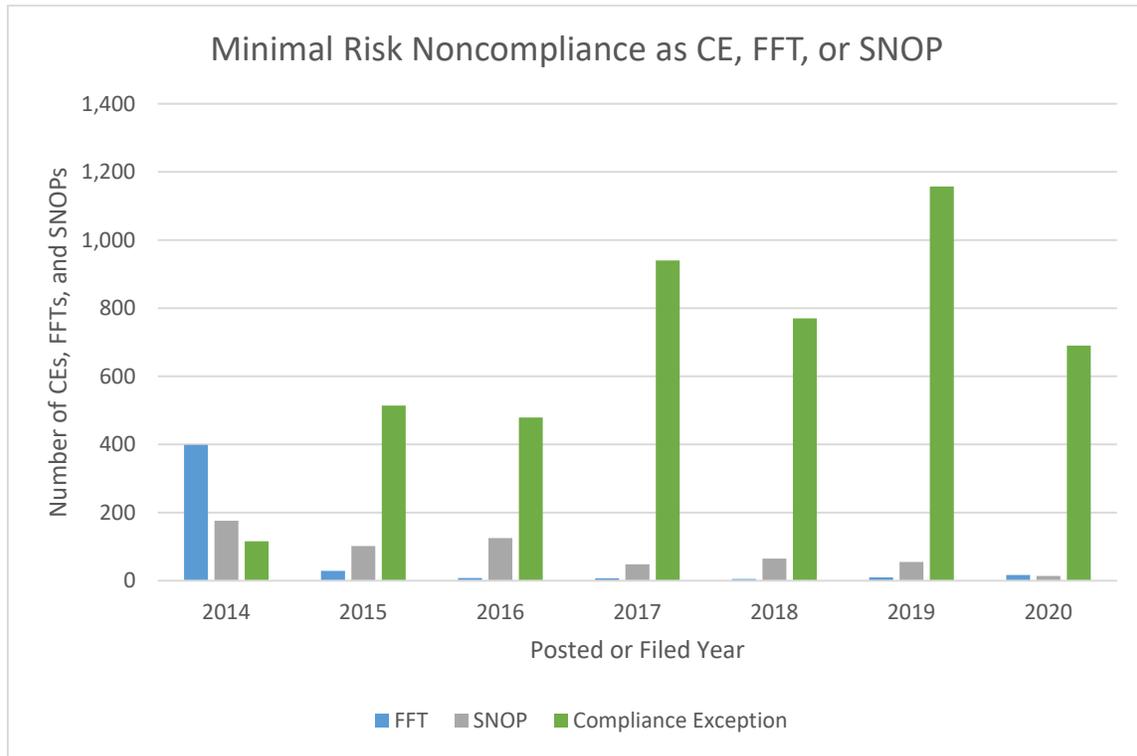


Figure 2: Minimal risk noncompliance processed as CEs, FFTs and SNOPs as of October 30, 2020.

As the ERO Enterprise has evolved in implementing risk-based CMEP, registered entities have also progressed, implementing more effective controls to improve compliance and maintain reliable and secure operations. The availability of dispositions not involving settlements or penalties makes registered entities more likely to conduct their own assessment of their compliance programs and possible noncompliance and, as a result, more likely to report noncompliance found during that assessment.

The Regional Entities’ effective use of FFTs and CEs shows increased consistency in processing and understanding of the risk associated with individual noncompliance across the

ERO Enterprise. Further, risk-based enforcement, including the CE and FFT programs, encourages sustainable reliability and security through comprehensive mitigation that addresses root causes with the implementation of internal controls that reduce the likelihood of recurrence of the noncompliance.

III. THE FFT AND CE PROGRAMS CONTINUE TO MEET EXPECTATIONS

As part of their oversight of the FFT and CE programs, NERC and FERC staff conducted a joint review of FFTs and CEs posted by NERC between October 2018 and September 2019. The annual joint review began in October 2019 and ended in June 2020. During the review, NERC and FERC staff: (a) evaluated the Regional Entities' current FFT and CE procedures and processes;¹⁴ (b) reviewed a sample of minimal and moderate risk noncompliance processed as FFTs and CEs; (c) assessed successful completion of mitigation for FFTs and CEs requiring the performance of ongoing mitigation activities; (d) evaluated the Regional Entities' assessment of registered entities' internal controls; (e) identified region-specific best practices and areas for improvement; and (f) provided observations to the Regional Entities related to the completeness of the programs. Through this review, NERC and FERC staff determined whether the Regional Entities were successfully implementing the CMERP as it applies to the FFT and CE programs. NERC and FERC staff selected 24 FFTs and 38 CEs, weighted to the number of FFTs and CEs per Regional Entity.¹⁵ The selected sample included 18 CIP and 6 O&P FFTs and 19 CIP and 19 O&P CEs.¹⁶

¹⁴ FY2019 review included six Regional Entities and NERC in its role as a Compliance Enforcement Authority (collectively, the Regional Entities).

¹⁵ In FY2019 (October 1, 2018 to Sept. 30, 2019), NERC posted 102 FFTs (74 CIP and 28 O&P) and 957 CEs (503 CIP and 454 O&P) from six Regional Entities and NERC as a Compliance Enforcement Authority.

¹⁶ Using NERC's Sampling Guidelines, an independent population of 41-100 elements requires 23 samples. NERC and FERC agreed to include four additional FFTs. The guidelines are available at: http://www.nerc.com/pa/comp/Documents/Sampling_Handbook_Final_05292015.pdf. Similar to the method used for FFTs, according to NERC's Sampling Guidelines, an independent population of 101-1,000 elements requires 29 samples. NERC and FERC agreed to include an eight additional CEs.

On September 14, 2020, FERC staff issued its Notice of Staff Review of Enforcement Programs.¹⁷ FERC staff agreed with NERC that the FFT and CE programs are meeting expectations.¹⁸ FERC staff also agreed with the Regional Entities' final risk determinations for all samples.¹⁹ Overall, FERC staff noted that: (1) the risk assessments demonstrated a "significant improvement in the clear identification of factors affecting the risk prior to mitigation," specifically, all the assessments included clear explanations of potential risk, actual risk, and actual harm; and (2) the sampled noncompliance did not contain any material misrepresentations by the registered entities.²⁰

On June 17, 2020, NERC Enforcement staff provided individual feedback with specific findings and recommendations for each Regional Entity. NERC determined that all of the posted noncompliance were consistent with the evidence provided in response to the annual review. Additionally, all the affidavits required for noncompliance processed as FFTs were appropriately signed by officers within the companies. NERC determined that most descriptions of the noncompliance were adequate and included in the disposition documents, but there were some instances where additional details were included in supporting documents that could have provided more clarity in the CE and FFT descriptions. Overall, all the Regional Entities had detailed and thorough descriptions of the noncompliance and the Regional Entities provided detailed internal case notes to reflect their review and analysis of the noncompliance to determine risk and disposition.

¹⁷ *N. Am. Elec. Reliability Corp.*, Notice of Staff Review of Enforcement Programs, Docket No. RC11-6-010 (2020), available at https://elibrary.ferc.gov/eLibrary/filelist?accession_num=20200914-3028.

¹⁸ *Id.* at p. 1.

¹⁹ *Id.* at p. 2.

²⁰ *Id.*

NERC Enforcement staff determined that the minor issues that were discovered did not affect the risk or disposition in any case. The dispositions generally included detailed risk statements with factors to support the assessed risk. In one case, NERC determined the posted risk assessment was generic and could have included additional mitigating factors to support the risk assessment. NERC provided feedback to Regional Entities that they should follow up with the registered entity if a notice of completion was not received in a timely manner. NERC also identified some areas of opportunities related to improvements in distinguishing where a prior noncompliance with the same or similar Standards could be indicative of a systemic issue. NERC shared Region-specific feedback with each Regional Entity, identifying positive feedback points and areas of improvement.

The results of the annual joint review show consistent improvement in program implementation. They also reflect significant alignment across the ERO Enterprise, particularly in the processing and understanding of the risk associated with individual noncompliance.

IV. FERC AND ERO ENTERPRISE STAFF COMMUNICATION AND COLLABORATION

In addition to the Annual FFT and CE Review, NERC and FERC staff conduct a 60-day review after posting of the FFTs and CEs.²¹ During this time, NERC and FERC staff reserve the right to withdraw or escalate any FFT or CE if it does not meet the requirements of the applicable programs. NERC and FERC staff communicate after the filing at the end of each month to address any concerns or questions that FERC staff might have. The review involves a

²¹ “In addition, the Commission retains the discretion to review a possible violation reported in an FFT informational filing even after the sixty day period if it finds that FFT treatment was obtained based on a material misrepresentation of the facts underlying the FFT matter.” March 2012 Order at P 72.

collaborative process where NERC and the Regional Entities provide responses to any concerns or questions within a few weeks after receiving the request.

V. CONCLUSION

NERC respectfully requests that the Commission accept this report in compliance with the March 2012 Order, June 2013 Order, September 2014 Order, and November 2015 Order.

Respectfully submitted,

/s/ James McGrane

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Dated: December 30, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 30th day of December 2020.

/s/ James McGrane

James McGrane
*Senior Counsel for the North American
Electric Reliability Corporation*