

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

**North American Electric Reliability
Corporation**

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Docket No. RC11-6-000

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

November 29, 2022

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. THE SUCCESSFUL EVOLUTION OF THE FFT AND CE PROGRAMS..... 3

III. THE FFT AND CE PROGRAMS CONTINUE TO MEET EXPECTATIONS..... 5

**IV. COMMISSION AND ERO ENTERPRISE STAFF COMMUNICATION AND
COLLABORATION..... 8**

V. CONCLUSION 9

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 (“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 3,192 instances of noncompliance with the NERC Reliability Standards, 71% of which posed a minimal risk to the reliability of the bulk power system (“BPS”) and 29% of which posed a moderate risk to the reliability of the BPS.⁷

Building on the success of the FFT program, the ERO Enterprise developed the CE program in February 2014 to streamline further the resolution of minimal risk noncompliance with

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) [hereinafter *March 2012 Order*].

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

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

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

⁶ The term “ERO Enterprise” refers to NERC and the six Regional Entities and NERC as a Compliance Enforcement Authority (“CEA”). 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 31, 2022.

NERC Reliability Standards. The ERO Enterprise has resolved 6,834 instances of noncompliance posing a minimal risk to the BPS through CEs since the inception of that program.⁸

In 2022, NERC and Commission staff completed their annual coordinated review of FFTs and CEs. As they had in previous reviews, the NERC and Commission staffs found that the ERO Enterprise generally appropriately handles noncompliance posing a minimal or moderate risk through these programs.⁹ NERC and Commission staff jointly sampled 61 FFTs and CEs submitted to NERC by Regional Entities and then by NERC to the Commission during FY2021. NERC and the Commission reviewed the associated supporting evidence, and agreed with all but one of the final risk determinations. Specifically, Commission staff “found that the FFT and CE programs are meeting expectations, with limited exceptions.”¹⁰ Commission staff identified one instance where the CE would have been more appropriately filed as an FFT with moderate risk, but found that the risk determinations of the remaining violations “clearly identified the factors affecting the risk prior to mitigation (such as potential and actual risk) and actual harm.”¹¹

⁸ *Supra* note 7.

⁹ 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.*, Notice of Staff Review of Enforcement Programs, Docket No. RC11-6-007 (July 25, 2018); *N. Am. Elec. Reliability Corp.*, Docket No. RC11-6-008 (Jan. 24, 2019) (delegated letter order); *N. Am. Elec. Reliability Corp.*, Notice of Staff Review of Enforcement Programs, Docket No. RC11-6-009 (Aug. 12, 2019); *N. Am. Elec. Reliability Corp.*, Notice of Staff Review of Enforcement Programs, Docket No. RC11-6-010 (Sept. 14, 2020); *N. Am. Elec. Reliability Corp.*, Docket No. RC11-6-011 (Feb. 19, 2021) (delegated letter order); *N. Am. Elec. Reliability Corp.*, Notice of Staff Review of Enforcement Programs, Docket No. RC11-6-012 (Aug. 24, 2021); *N. Am. Elec. Reliability Corp.*, Docket No. RC11-6-014 (Feb. 25, 2022).

¹⁰ *N. Am. Elec. Reliability Corp.*, Notice of Staff Review of Enforcement Programs, Docket No. RC11-6-013 (June 29, 2022).

¹¹ *Id.*

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 Compliance Monitoring and Enforcement Program (“CMEP”) and represent streamlined alternatives to the enforcement process outlined in Section 5.0 of the CMEP.¹² The CE program resolves noncompliance posing a minimal risk to the reliability of the BPS. The FFT program resolves noncompliance posing a minimal or moderate risk to the reliability of the BPS. 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.¹³

The ERO Enterprise’s use of the FFT and CE programs has continued to increase since the Commission initially approved the programs. The ERO Enterprise now processes the majority of moderate risk noncompliance as FFTs, instead of Spreadsheet Notices of Penalty (“SNOPs”), due to the maturation of the FFT program, as shown in Figure 1 below.

¹² For a description of NERC’s enforcement processes, CEs, and FFTs, see NERC Rules of Procedure, App. 4C §§ 4.8, 4A.0, 4A.1, & 4A.2, respectively, available at https://www.nerc.com/AboutNERC/RulesOfProcedure/NERC%20ROP%20effective%2020220825_with%20appendices.pdf.

¹³ See NERC Rules of Procedure, App. 4C §§ 4A.1 and 4A.2, respectively.

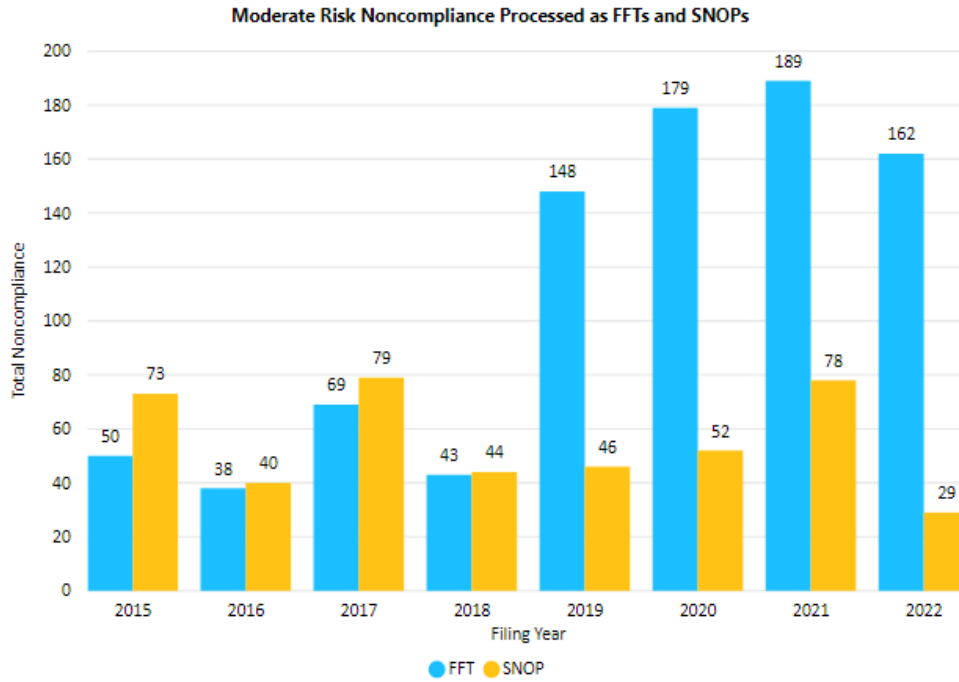


Figure 1: Moderate risk noncompliance processed as FFTs and SNOPs as of October 31, 2022

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.

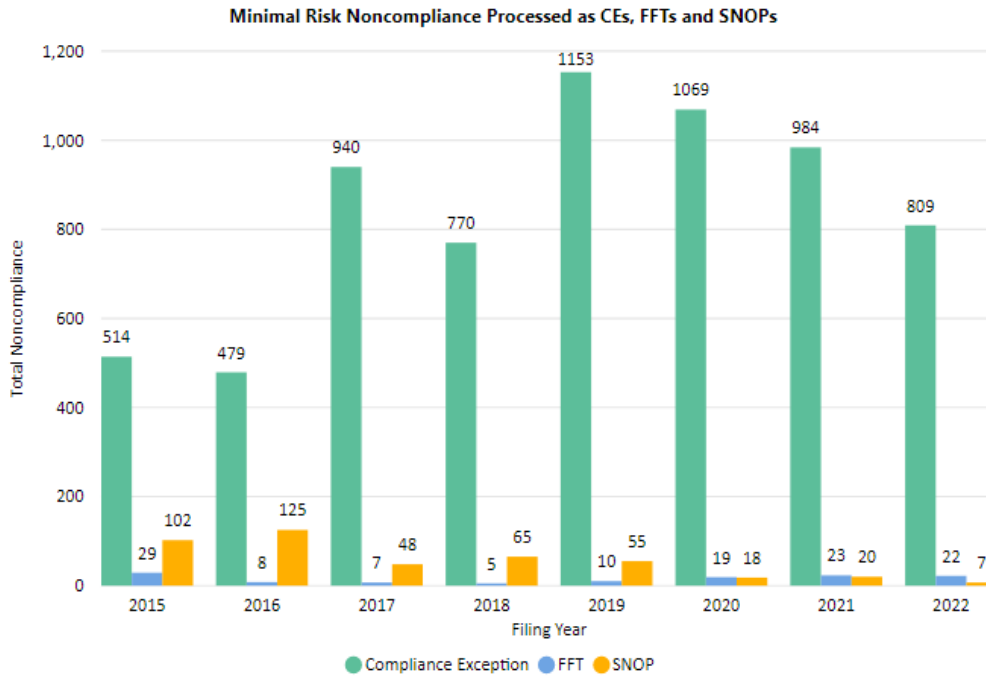


Figure 2: Minimal risk noncompliance processed as CEs, FFTs and SNOPs as of October 31, 2022.

As the ERO Enterprise has implemented the risk-based CMEP, registered entities have implemented improved controls to maintain reliable and secure operations and ensure compliance. 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 Commission staff conducted a joint review of FFTs and CEs posted by NERC between October 2020 and September 2021. The annual joint review began in October 2021 and ended in June 2022. During the review, NERC and Commission 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 Regional Entity-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 Commission staff determined whether the Regional Entities were successfully implementing the CMEP as it applies to the FFT and CE programs. NERC and Commission staff selected 29 FFTs and 32 CEs, weighted to the number of FFTs and CEs per Regional Entity.¹⁵ The selected sample included 21 CIP and 8 O&P FFTs and 20 CIP and 12 O&P CEs.¹⁶

¹⁴ FY2021 review included six Regional Entities and NERC in its role as a CEA (collectively, the Regional Entities).

¹⁵ In FY2021 (October 1, 2020 to Sept. 30, 2021), NERC posted 190 FFTs (139 CIP and 51 O&P) and 1,042 CEs (641 CIP and 401 O&P) from six Regional Entities and NERC as a CEA. At the time of sampling, NERC had posted 191 FFTs and 1,050 CEs, but CE and FFT treatment was revoked for some of these after filing due to various issues such as mitigation not being completed within the required timeframe of 12 months after posting.

¹⁶ Using NERC's Sampling Guidelines, an independent population of 101-1,000 elements requires 29 samples. 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 1,001+ elements requires 33 samples. During the Annual FFT CE Survey Review, one of the violations selected for

On June 29, 2022, the Commission issued its Notice of Staff Review of Enforcement Programs.¹⁷ Commission staff agreed with NERC that the FFT and CE programs are meeting expectations, with limited exceptions.¹⁸ The Commission also agreed with the Regional Entities' final risk determinations for all but one sample.¹⁹ The Commission noted that there were two FFTs sampled where "the originally posted description of the noncompliances were incomplete," but found that the sampled FFT and CE noncompliance did not contain any material misrepresentations by the registered entities.²⁰ Overall, Commission staff concluded that "all 61 FFTs and CEs have been adequately remediated and the root cause of each noncompliance was clearly identified."²¹

On May 18, 2022, NERC Enforcement staff provided individual feedback with specific findings and recommendations to each Regional Entity. NERC determined that the majority of posted noncompliance were consistent with the evidence provided in response to the annual review. Additionally, officers within the companies appropriately signed all the affidavits required for noncompliance processed as FFTs. 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, the Regional Entities had detailed and thorough descriptions of the noncompliance and the Regional Entities provided detailed internal

the Annual FFT CE sampling was revoked as a CE because the entity extended the expected mitigation completion date past the 12 month rule for completing mitigation for CEs. NERC and the Commission agreed to proceed with the Annual Survey with one less CE.

¹⁷ See *supra* note 10.

¹⁸ *Id.*

¹⁹ *Id.*, finding that one CE would have been more appropriately filed as a moderate risk FFT.

²⁰ *Id.*

²¹ *Id.*

case notes to reflect their review and analysis of the noncompliance to determine risk and disposition.

NERC Enforcement staff determined that the minor issues that were discovered did not affect the risk or disposition, with the exception of the CE the Commission staff noted would have been more appropriately filed as a moderate risk FFT.²² The dispositions generally included detailed risk statements with factors to support the assessed risk. In two CE instances, NERC determined the posted risk assessment did not discuss the potential risk caused by the noncompliance. NERC provided feedback to Regional Entities that they should ensure the posted risk assessment includes a discussion of the potential risk as this (1) establishes what might have occurred but did not due to mitigating circumstances or actions, and (2) supports the assessment of the risk as minimal and not moderate or serious. NERC shared 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. COMMISSION AND ERO ENTERPRISE STAFF COMMUNICATION AND COLLABORATION

In addition to the Annual FFT and CE Review, NERC and Commission staff conduct a 60-day review after posting of the FFTs and CEs.²³ During this time, NERC and Commission staff reserve the right to withdraw or escalate any FFT or CE if it does not meet the requirements of the

²² *See supra* note 19.

²³ March 2012 Order at P 72. (“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.”).

applicable programs. NERC and Commission staff communicate after the filing at the end of each month to address any concerns or questions that Commission staff might have. The review involves a 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: November 29, 2022

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 29th day of November 2022.

/s/ Amy Engstrom

Amy Engstrom
*Associate Counsel for the North American
Electric Reliability Corporation*