

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

North American Electric Reliability Corporation) Docket No. RC11-6-004

MOTION TO INTERVENE AND COMMENTS OF THE ISO/RTO COUNCIL

Pursuant to Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 214, the ISO-RTO Council (“IRC”) hereby moves to intervene and comments in the above-captioned proceeding.

On March 15, 2013 the North American Electric Reliability Corporation (“NERC”) submitted a compliance filing and report (“NERC Petition”) in the above-referenced docket related to the NERC Find, Fix and Track (“FFT”) enforcement mechanism.¹ The NERC Petition proposes certain enhancements to the FFT program. On March 20, 2013 the Commission noticed the filing, establishing a comment date of April 15, 2013. The IRC hereby moves to intervene and files comments in support of NERC’s proposed revisions to the FFT program.²

¹ See *North American Electric Reliability Corporation*, “Petition Requesting Approval of New Enforcement Mechanisms and Submittal of Initial Informational Filing Regarding NERC’s Efforts to Refocus Implementation of its Compliance Monitoring and Enforcement Program,” Docket No. RC11-6-000 (“Initial FFT Petition”). The Commission approved the original NERC FFT proposal in *North American Electric Reliability Corporation*, “Order Accepting with Conditions the Electric Reliability Organization’s Petition Requesting Approval of New Enforcement Mechanisms and Requiring Compliance Filing,” 138 FERC ¶ 61,193 at PP 75-76 (2012) (March 15 Order).

² The IRC is comprised of the Alberta Electric System Operator, the California Independent System Operator Corporation, the Electric Reliability Council of Texas, Inc. the Independent Electricity System Operator, ISO New England, Inc., the Midwest Independent Transmission System Operator, Inc., the New York Independent System Operator, Inc., PJM Interconnection, L.L.C. and the Southwest Power Pool, Inc. The Alberta Electric System Operator is not FERC-jurisdictional and is not joining these comments. The Independent Electricity System Operator is joining the comments, but is not subject to the Commission’s jurisdiction, and these comments do not constitute agreement or acknowledgement that they can be subject to the Commission’s jurisdiction.

I. COMMENTS

The NERC Petition proposes five changes to the FFT Program. Specifically, NERC proposes the following modifications:

- (a) The inclusion of FFTs presenting moderate risk;
- (b) The inclusion of FFTs with mitigation completion timeframes in the near future;
- (c) Elimination of the requirement for senior officer certification of mitigation activities;
- (d) The public posting of FFTs in lieu of monthly informational filings; and
- (e) NERC sampling of FFTs and submission of an annual informational report.

All of the proposed revisions will enhance the effectiveness of the NERC Compliance and Monitoring Enforcement Program (“CMEP”), specifically enforcement, by mitigating unnecessary administrative and process obligations, thereby allowing the ERO and registered entities to focus resources on core reliability issues. Accordingly, the IRC respectfully recommends that the Commission approve all of the proposed program enhancements and authorize NERC to implement them as soon as practical.

With respect to expanding the scope of the FFT program to include moderate risk matters, as noted in the NERC petition, the Commission initially denied consideration of such matters for FFT processing, stating that until it could obtain “more experience on how the risk determinations are made for the purpose of qualifying possible violations for FFT treatment, the Commission will condition its acceptance of the FFT proposal on allowing only possible violations that pose a minimal risk to Bulk-Power System reliability to be eligible for FFT

treatment.”³ The NERC Petition describes how the initial phase of the FFT program (*i.e.* September 2011 - December 2012) has provided NERC and its Regional Entities with adequate experience in risk assessment, as evidenced by the development of risk determination procedures by each Regional Entity, and NERC’s oversight of the implementation of this aspect of the FFT program during the initial FFT phase. The risk assessment processes give NERC and its Regional Entities the necessary tools to determine that a moderate risk issue is suitable for FFT treatment based on risk, as guided by the application of the objective metrics in those procedures (*e.g.* internal controls that detect and correct the issue). The experience in performing risk assessments during the initial FFT phase provides reasonable assurance that consideration of moderate risk issues for FFT processing will accurately reflect the risk of the issue, and, therefore, will result in appropriate enforcement processing decisions. Because these decisions will be based on the application of objective criteria against the facts, this will provide NERC and/or FERC with the ability to effectively review the decisions. Finally, as NERC notes, expanding the scope of the FFT program in this manner does not mean all moderate risk issues will be afforded FFT treatment. In fact, NERC explicitly states that is not the case.⁴ Accordingly, allowing moderate risk issues to be considered for FFT processing will not create an undue risk to the bulk-power system. Rather, it will only enhance the efficiency benefits to be gained from the FFT program.

The second proposed improvement to the FFT program would allow matters to be processed as FFT issues if the mitigation activities will be completed in the near future - *i.e.* the matter does not have to be completely mitigated to receive FFT treatment. This is reasonable and reflects the reality associated with particular mitigation activities. As noted in the NERC

³ NERC Petition at 39-40.

⁴ *Id* at 37.

Petition, some mitigation measures may require a long lead time due to the nature of the activity relative to the time it takes to process the underlying matter as an FFT issue. If that disconnect does not create a risk to the BPS, as determined by the application of the relevant risk assessment procedures and considerations, there is no reason to preclude FFT treatment for what is otherwise an administrative timing requirement. Such a result would reflect a form-over-substance outcome that is inconsistent with the goal of moving to a risk-based CMEP program that more effectively supports reliability. Conversely, approving this aspect of the proposal will facilitate the desired reliability and efficiency benefits by enabling NERC, its Regional Entities and registered entities to process these lower risk issues expeditiously, thereby limiting the resource impact so all relevant entities can focus on core reliability issues.

NERC also proposes to eliminate the requirement for senior officer certification of mitigation activities. This is consistent with the goal of improving the efficiency of the FFT process and reducing unnecessary administrative burdens. Although the Commission's prior reasoning for imposing this requirement may have conceptual merit, in practice it is not necessary to achieve full mitigation of issues or to facilitate organizational commitment to reliability issues. As noted in the NERC Petition, to receive FFT treatment one metric considered is an entity's compliance program. Effective compliance programs will necessarily reflect organizational commitment to supporting electric reliability generally, as well as dedicating appropriate resources and attention to compliance with the NERC reliability standards. Consistent with these overarching goals and commitments, entities with such programs will ensure mitigation activities are effectively implemented and completed. It is not necessary to require senior officer certification to accomplish this. In fact, it will typically be other individuals within the organization that are responsible for (and have knowledge of) the

mitigation activity and it is likely that these individuals will be in the best position to attest to completion of the activities. Alternatively, as noted in the petition, NERC and/or Regional Entity oversight of mitigation plans ensure completion of the relevant activities.

Consistent with the above comments, the senior officer certification provides marginal value at best. Arguably, it does nothing more than create an unnecessary administrative obligation that, on its own, does not enhance organizational commitment to reliability. Completion of mitigation activities should be verified, but the verification process should be flexible enough to allow entities to use certification processes that best suit the nature of the violation and their organizational structure, and/or allow the certification to occur via NERC/Regional Entity verification as part of their oversight activities.

NERC also proposes to implement a process that replaces monthly FFT informational filings with the public posting of FFTs. Replacing the monthly filing with a posting requirement that retains all the relevant information will increase the efficiency of the FFT program without compromising the ability of NERC or the Commission to review each matter, because the basis for review (the information associated with the FFT) would be the same, and, therefore, the Commission would continue to have access to all relevant information. This change would primarily benefit NERC and the Regional Entities by reducing the resources required to develop and process the monthly FFT filings. However, it would also benefit registered entities by facilitating NERC's and its Regional Entities' ability to efficiently and effectively process enforcement matters, which would reduce the impact to the resources registered entities are required to dedicate to these matters.

The final enhancement to the FFT program would align NERC's review of the FFT program with the Commission's. Specifically, NERC proposes to review the program by

sampling FFTs posted by the Regional Entities during and outside of the relevant 60-day review periods. On that basis it would submit an annual information report to the Commission. Like other aspects of the proposal, this change will increase the efficiency and effectiveness of the FFT program. Because of the experience gained to date, and the refinement of the FFT processes used by the Regional Entities as a result of this experience during the initial FFT phase, it is not necessary for NERC to review every FFT issue. The process has evolved to the point that prospective oversight and review can be managed by the proposed sampling process. This process, combined with future NERC efforts to enhance the FFT program, should be adequate to identify areas for improvement and areas that may merit additional attention or scrutiny by NERC and/or the Commission. By allowing NERC to implement its oversight/review function based on sampling, as opposed to reviewing each and every issue before it can be processed for completion, the Commission will free up significant resources to focus on other matters that focus on core reliability issues, which will result in achieving greater reliability benefits.

II. CONCLUSION

NERC's risk based initiatives have the potential to improve the efficiency and effectiveness of its functions. Accordingly, NERC and its Regional Entities should be commended for their efforts in this regard, as should the Commission for its support of those initiatives and goals. With respect to the FFT program, it has provided benefits to date. The proposed enhancements at issue in this proceeding will provide incremental benefits that facilitate the ability of all affected parties to focus more on core reliability issues, and less on marginal matters, such as administrative issues, or even substantive issues that do not pose a significant risk to reliability. Accordingly, the IRC supports the proposals in the NERC Petition

and requests that the Commission approves them and authorize NERC to implement as soon as practical.

In its petition, NERC also discusses specific improvements it intends to implement for the FFT program in the future, as well as its general intent to continue to review and improve the program. NERC also notes its intention to continue to evolve its risk based approach to compliance monitoring and enforcement. The IRC looks forward to working with NERC on future initiatives that enhance the FFT program, as well as on any other risk based compliance monitoring and enforcement initiatives.

Respectfully submitted,

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Date: April 15, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Austin, Texas, this 15th Day of April, 2013.

/s/ Matthew Morais

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ERCOT