

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

**North American Electric Reliability  
Corporation** )  
)

**Docket No. RC11-6-XXX**

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

September 26, 2023

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## I. INTRODUCTION

The North American Electric Reliability Corporation (“NERC”), as the Electric Reliability Organization (“ERO”),<sup>1</sup> 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,<sup>2</sup> June 20, 2013 Order,<sup>3</sup> and September 18, 2014 Order<sup>4</sup> 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.<sup>5</sup>

Since 2011, the ERO Enterprise<sup>6</sup> has used the FFT program to resolve 3,329 instances of noncompliance with the NERC Reliability Standards, 70% of which posed a minimal risk to the reliability of the bulk power system (“BPS”) and 30% of which posed a moderate risk to the reliability of the BPS.<sup>7</sup>

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

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<sup>1</sup> 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).

<sup>2</sup> *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*].

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

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

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

<sup>6</sup> 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”).

<sup>7</sup> The numbers and percentages in this filing are from data as of August 31, 2023.

NERC Reliability Standards. The ERO Enterprise has resolved 7,576 instances of noncompliance posing a minimal risk to the BPS through CEs since the inception of that program.<sup>8</sup>

In 2023, 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.<sup>9</sup> NERC and Commission staff jointly sampled 65 FFTs and CEs submitted to NERC by Regional Entities and then by NERC to the Commission during FY2022. NERC and the Commission reviewed the associated supporting evidence and agreed with all final risk determinations. Specifically, Commission staff found that “the FFT and CE programs are meeting expectations, with limited exceptions.”<sup>10</sup> Commission staff identified one instance where they believed that a moderate risk FFT would have been more appropriately disposed of as a moderate risk Spreadsheet Notice of Penalty (“SNOP”), but found that the risk determinations for all 65 noncompliances “clearly identified the factors affecting the risk prior to mitigation (such as potential and actual risk) and actual harm.”<sup>11</sup>

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<sup>8</sup> *Supra* note 7.

<sup>9</sup> 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); *N. Am. Elec. Reliability Corp.*, Notice of Staff Review of Enforcement Programs, Docket No. RC11-6-013 (June 29, 2022); *N. Am. Elec. Reliability Corp.*, Notice of Staff Review of Enforcement Programs, Docket No. RC11-6-015 (September 11, 2023).

<sup>10</sup> *N. Am. Elec. Reliability Corp.*, Notice of Staff Review of Enforcement Programs, Docket No. RC11-6-015 (September 11, 2023).

<sup>11</sup> *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.<sup>12</sup> 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:

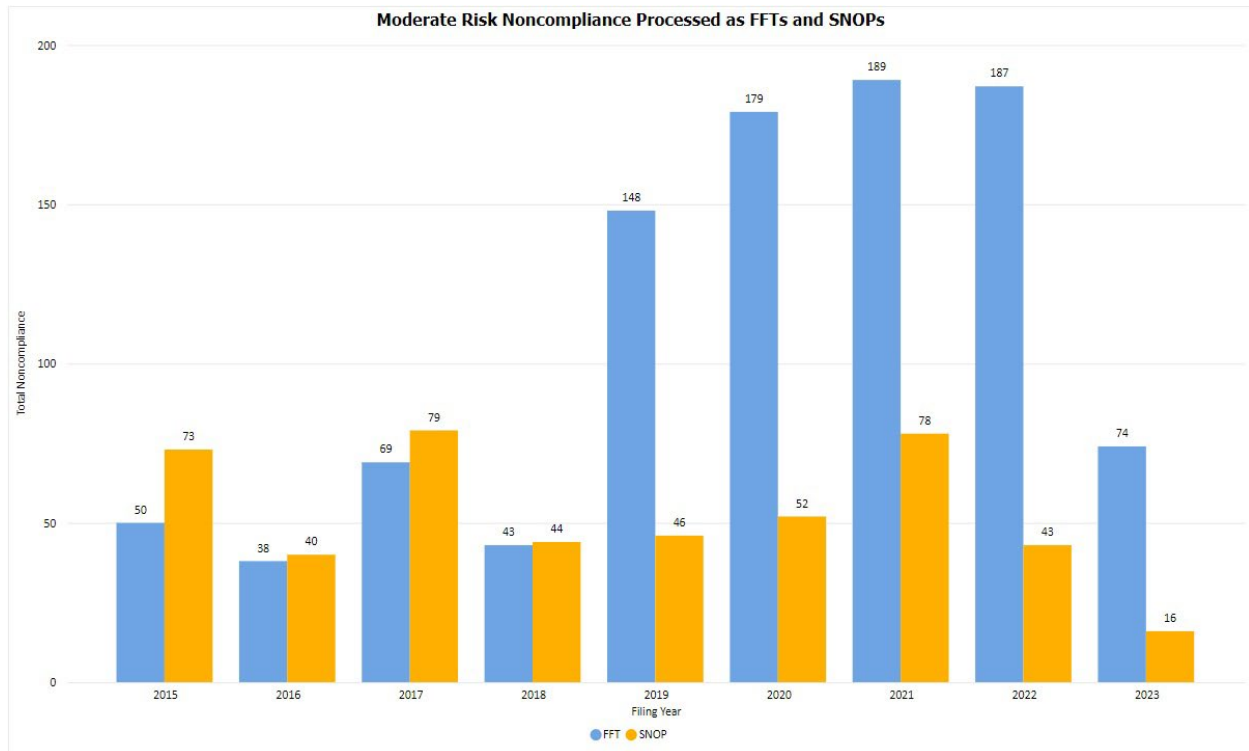
- (a) availability of the facts and circumstances of the noncompliance for review by NERC and Applicable Governmental Authorities;
- (b) tracking and analysis of the noncompliance as necessary to identify broader risks;
- (c) mitigation of the noncompliance; and
- (d) providing the opportunity for the registered entity to opt out of the disposition method.<sup>13</sup>

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 SNOPs, due to the maturation of the FFT program, as shown in Figure 1 below.

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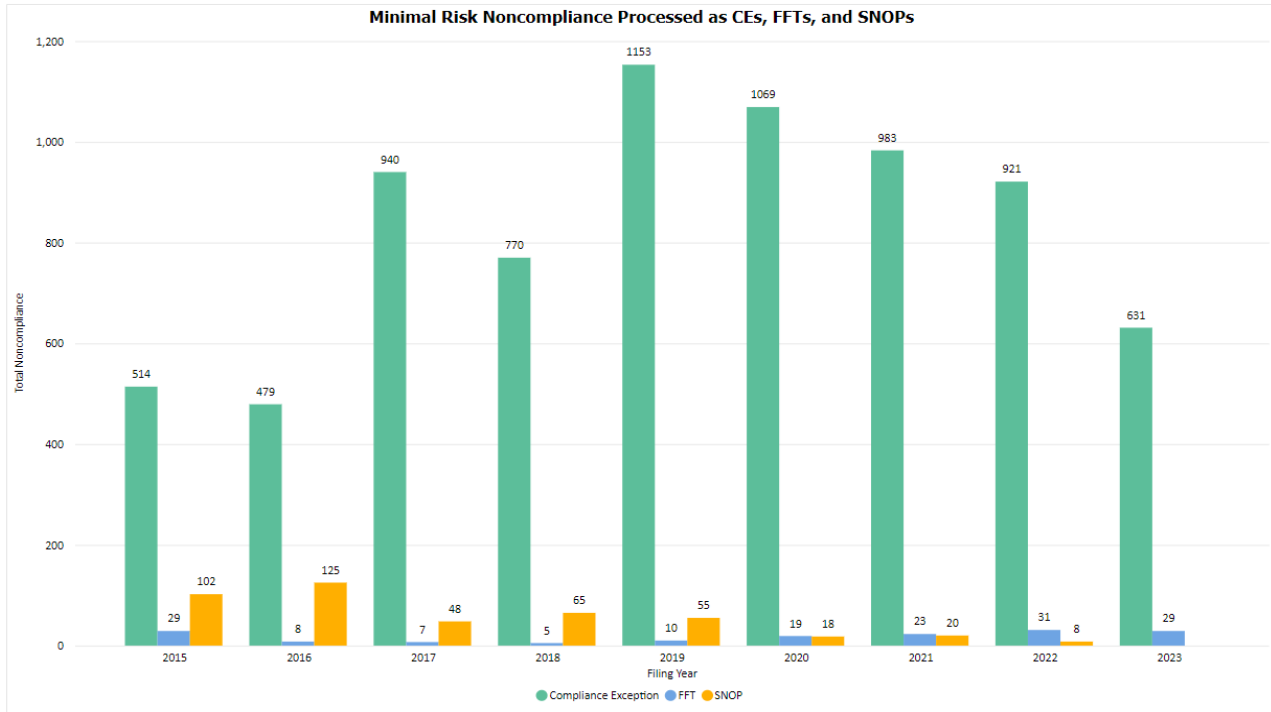
<sup>12</sup> For a description of NERC's enforcement processes, CEs, and FFTs, see NERC Rules of Procedure, App. 4C §§ 4.8, 4A.0, 4A.1, & 4A.2, respectively, available at [https://www.nerc.com/AboutNERC/RulesOfProcedure/NERC%20ROP%20effective%2020220825\\_no%20appendices.pdf](https://www.nerc.com/AboutNERC/RulesOfProcedure/NERC%20ROP%20effective%2020220825_no%20appendices.pdf).

<sup>13</sup> 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 August 31, 2023*

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 August 31, 2023*

As the ERO Enterprise has implemented the risk-based CMEP, the ERO Enterprise has encouraged the implementation of, and registered entities have implemented, improved controls to maintain reliable and secure operations and ensure compliance. The availability of dispositions not involving settlements or penalties encourages registered entities to conduct their own assessment of their compliance programs and possible noncompliance and to report noncompliance found during that assessment knowing that they will not face a settlement or penalty for lower risk noncompliance.

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 submitted by NERC between October 2021 and September 2022. The annual joint review began in October 2022 and ended in August 2023. During the review, NERC and Commission staff:

- (a) evaluated the Regional Entities' current FFT and CE procedures and processes;<sup>14</sup>
- (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 34 FFTs and 31 CEs, weighted to the number of FFTs and CEs per

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<sup>14</sup> FY2022 review included six Regional Entities and NERC in its role as a CEA (collectively, the Regional Entities).



Regional Entity.<sup>15</sup> The selected sample included 21 CIP and 13 O&P FFTs and 19 CIP and 12 O&P CEs.<sup>16</sup> Of those sampled, 1 FFT and 3 CEs were submitted with ongoing mitigation.<sup>17</sup>

On September 11, 2023, the Commission issued its Notice of Staff Review of Enforcement Programs.<sup>18</sup> Commission staff agreed with NERC that the FFT and CE programs are meeting expectations, with limited exceptions.<sup>19</sup> Commission staff also agreed with the Regional Entities' final risk determinations for all 65 samples.<sup>20</sup> Commission staff found that there was one FFT sampled that they believed would be more appropriate as a SNOP.<sup>21</sup> Commission staff noted that there were three instances where “the posted description of the noncompliances were incomplete or had minor errors,” but found that “no FFTs or CEs sampled contained any material misrepresentations by the registered entities.”<sup>22</sup> Overall, Commission staff concluded that “[a]ll 65 FFTs and CEs have been adequately remediated and the root cause of each noncompliance was clearly identified.”<sup>23</sup>

On June 29, 2023, NERC Enforcement staff provided individual feedback with specific findings and recommendations to each Regional Entity. NERC staff determined that the majority of submitted noncompliance were consistent with the evidence provided in response to the annual

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<sup>15</sup> In FY2022 (October 1, 2021 to Sept. 30, 2022), NERC posted 223 FFTs (136 CIP and 87 O&P) and 944 CEs (606 CIP and 338 O&P) from six Regional Entities and NERC as a CEA. At the time of sampling, NERC had posted 223 FFTs and 946 CEs, but CE 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.

<sup>16</sup> 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](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.

<sup>17</sup> At the time of sampling, NERC had posted 5 FFTs and 69 CEs with ongoing mitigation.

<sup>18</sup> *See supra* note 10.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*, stating that the Commission staff “agreed with the final risk determinations for all 65 noncompliances.”

<sup>21</sup> *Id.*, stating that there was “one identified instance where an FFT would have been more appropriately processed as a spreadsheet notice of penalty.”

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

review. Additionally, officers within the companies appropriately signed all the affidavits required for noncompliance processed as FFTs. NERC staff determined that Regional Entities generally had thorough descriptions of the noncompliance and that Regional Entities provided detailed internal case notes in supporting documents to reflect their review and analysis of the noncompliance to determine risk and disposition.

NERC staff also found that dispositions generally included detailed risk statements with factors to support the assessed risk and disposition. NERC staff provided feedback to Regional Entities that they should ensure the submitted mitigating activities adequately address the root cause of the noncompliance. Specifically, when processes and procedures are updated or new ones are introduced, mitigation should include a training component to ensure that knowledge is transferred to relevant personnel. NERC staff shared specific feedback with each Regional Entity, identifying positive feedback points and areas of improvement.

The results of the annual joint review show continued overall 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 submittal of the FFTs and CEs.<sup>24</sup> 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 applicable programs. NERC and Commission staff communicate after the submittals at the end of

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<sup>24</sup>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.”).

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: September 26, 2023

**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 26<sup>th</sup> day of September 2023.

*/s/ Amy Engstrom*

Amy Engstrom  
*Associate Counsel for the North American  
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