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I. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to the following:⁶

James McGrane
Senior Counsel
North American Electric Reliability
Corporation
1401 H Street NW, Suite 410
Washington, D.C. 20005
(202) 400-3000
james.mcgrane@nerc.net

Amy Engstrom
Associate Counsel
North American Electric Reliability
Corporation
1401 H Street NW, Suite 410
Washington, D.C. 20005
(202) 400-3000
amy.engstrom@nerc.net

II. SUMMARY

The annual sampling review of FFTs and CEs ensures Commission and NERC oversight of the FFT and CE programs and provides information about the continued success of the programs.⁷ Since 2011, the ERO Enterprise⁸ has used the FFT program to resolve 3,554 instances of minimal and moderate risk noncompliance with the NERC Reliability Standards.⁹ Building on the success of the FFT program, the ERO Enterprise developed the CE program in February 2014

⁶ Persons to be included in the Commission’s official service list.

⁷ See *March 2012 Order* at 73 (discussing Commission plans to survey a random sample of FFTs annually to gather information on how the FFT program is working) and NERC, *Compliance Filing and Report on the Compliance Enforcement Initiative and Proposed Enhancements to the FFT Program*, Docket No. RC11-6-004 at 46 (March 15, 2013) [hereinafter *NERC Report on CE Initiative and FFT Program*] (discussing NERC’s proposal to conduct an annual sampling of FFTs to “keep the Commission and the public informed about the status and progress of the FFT program”); see also NERC, *Annual Report on the FFT Program*, Docket No. RC11-6-004 at 8 (Sept. 18, 2015) [hereinafter *2015 Annual FFT Report*] (stating the purpose of the review is also to analyze the consistent application of the FFT program across the Regional Entities) and *June 2013 Order* at PP 40 -42 (approving NERC’s proposal to conduct an annual FFT sampling and directing NERC to submit to the Commission an informational filing “annually reporting on the outcome of its sampling and other matters relating to the FFT program”).

⁸ 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”).

⁹ Of the noncompliance resolved by FFT, 67% posed a minimal risk to the reliability of the bulk power system and 33% posed a moderate risk to the reliability of the BPS. The numbers and percentages in this filing are from data as of August 31, 2024.

to streamline further the resolution of minimal risk noncompliance with NERC Reliability Standards. The ERO Enterprise has resolved 8,627 instances of noncompliance posing a minimal risk to the Bulk-Power System (“BPS”) through CEs since the inception of that program.¹⁰

In 2024, NERC and Commission staff completed their annual coordinated review of FFTs and CEs.¹¹ NERC and Commission staff jointly sampled 62 FFTs and CEs submitted to NERC by Regional Entities and then by NERC to the Commission during fiscal year (“FY”) 2023.¹² As they had in previous reviews, the NERC and Commission staffs reviewed the associated supporting evidence and found that the ERO Enterprise appropriately handles noncompliance posing a minimal or moderate risk through these programs.¹³ NERC and the Commission also agreed with all final risk determinations for the sampled noncompliances. Commission staff also found that “the FFT and CE programs are meeting expectations.”¹⁴ Specifically, Commission staff found that

¹⁰ *Supra* note 8.

¹¹ NERC and the Commission conduct separate reviews of sampled FFTs and CEs and file separate reports on their annual review of the FFT and CE programs, but review the same sample set to reduce the burden on the Regional Entities. *See September 2014 Order* at P 29 (supporting “NERC’s plan to coordinate with Commission staff to review the same sample during the next annual review” and agreeing “that a review of a coordinated sample will likely help reduce the burden on the Regional Entities and registered entities associated with FFT sampling”).

¹² FY2023 spans October 1, 2022 to September 30, 2023.

¹³ *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 (Jun. 29, 2022); *N. Am. Elec. Reliability Corp.*, Notice of Staff Review of Enforcement Programs, Docket No. RC11-6-015 (Sept. 11, 2023).

¹⁴ *N. Am. Elec. Reliability Corp.*, Notice of Staff Review of Enforcement Programs, Docket No. RC11-6-018 (Aug. 16, 2024).

all sampled FFTs and CEs “have been adequately remediated and the root cause of each noncompliance was clearly identified.”¹⁵

III. 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.¹⁶ 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.¹⁷

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.

¹⁵ *Id.*

¹⁶ 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%2020240627_with%20appendicies_signed.pdf.

¹⁷ *See* NERC Rules of Procedure, App. 4C §§ 4A.1 and 4A.2, respectively.

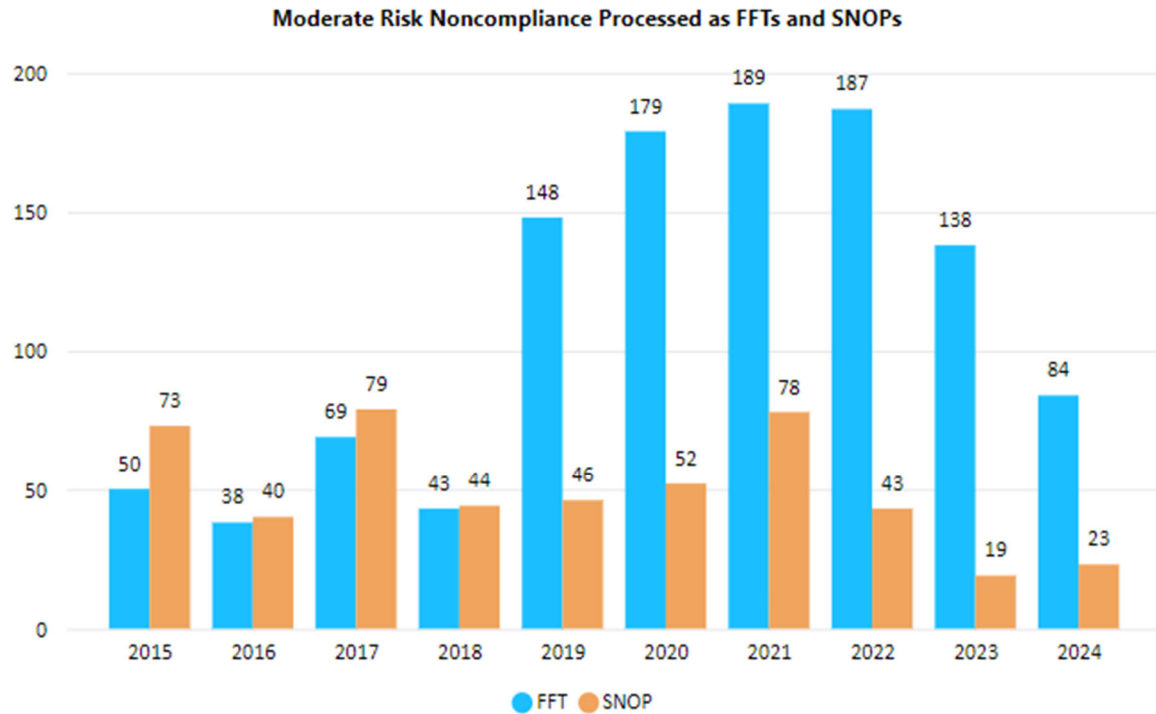


Figure 1: Moderate risk noncompliance processed as FFTs and SNOPs as of August 31, 2024

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.

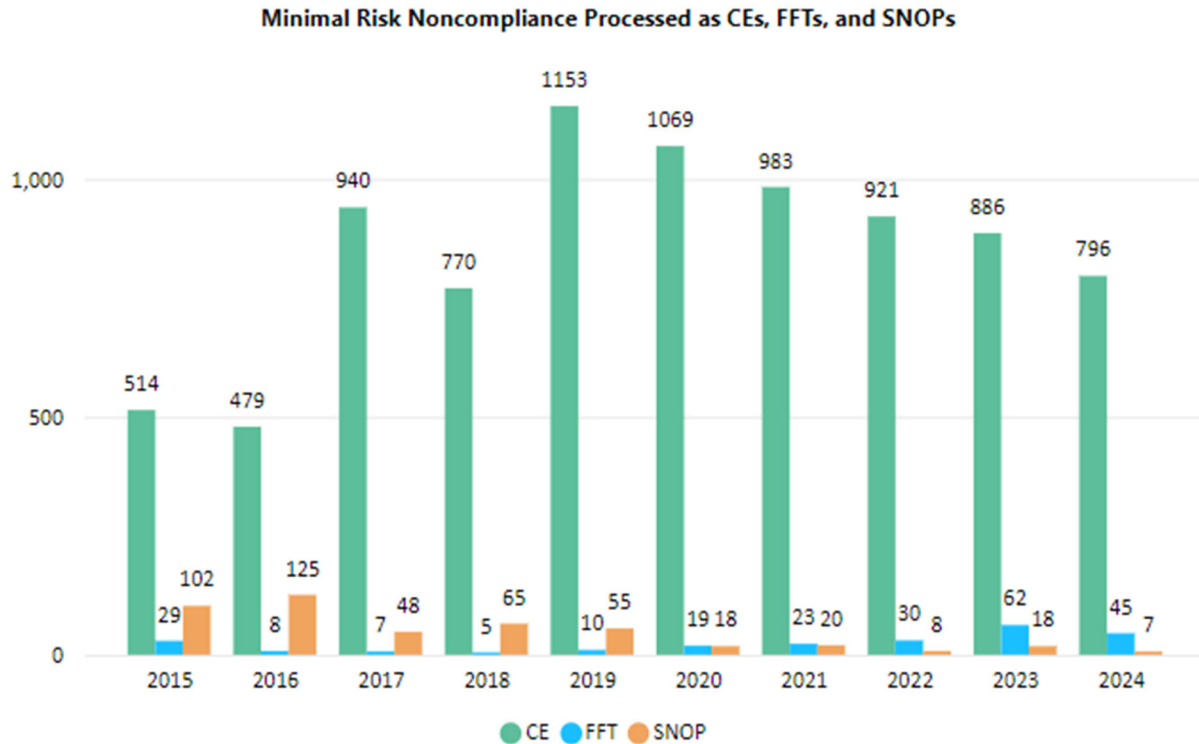


Figure 2: Minimal risk noncompliance processed as CEs, FFTs and SNOPs as of August 31, 2024

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.

IV. 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 to the Commission between October 2022 and September 2023. The annual joint review began in October 2023 and ended in August 2024. During the review, NERC and Commission staff:

- (a) evaluated the Regional Entities' current FFT and CE procedures and processes;
- (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 32 FFTs and 30 CEs, weighted to the number of FFTs and CEs per

Regional Entity.¹⁸ The selected sample included 21 CIP and 11 O&P FFTs and 18 CIP and 12 O&P CEs.¹⁹ Of those sampled, 1 FFT and 0 CEs were submitted with ongoing mitigation.²⁰

On August 16, 2024, the Commission issued its Notice of Staff Review of Enforcement Programs.²¹ Commission staff agreed with NERC that the FFT and CE programs are meeting expectations.²² Commission staff also agreed with the Regional Entities' final risk determinations for all 62 samples and found that the final risk determinations for all sampled noncompliance "clearly identified the factors affecting the risk prior to mitigation (such as potential and actual risk) and actual harm."²³ Overall, Commission staff found that "no FFTs or CEs sampled contained any material misrepresentations by the registered entities" and concluded that "the Regional Entities appropriately identified all 62 of the sampled noncompliances as appropriate to be processed as FFTs and CEs."²⁴

On August 16, 2024, 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 review. NERC staff determined that Regional Entities generally had thorough descriptions of the noncompliance, and that Regional Entities provided detailed internal case notes in supporting

¹⁸ In FY2023, NERC posted 173 FFTs (111 CIP and 62 O&P) and 888 CEs (567 CIP and 321 O&P) from the Regional Entities. At the time of sampling, NERC had posted 173 FFTs and 890 CEs, but CE or 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.

¹⁹ Using NERC's Sampling Guidelines, an independent population of 101-1,000 elements requires at least 29 samples. The guidelines are available at: https://www.nerc.com/pa/comp/Documents/Sampling_Handbook_Final_05292015.pdf.

²⁰ At the time of sampling, NERC had posted 9 FFTs and 48 CEs with ongoing mitigation.

²¹ *See supra* note 14.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

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 the root cause relates to internal controls, mitigation should include the appropriate detective and preventative internal controls. 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.

V. 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 to ensure consistency and exercise oversight over the FFT and CE programs.²⁵ During this time, NERC staff reserve the right to withdraw, and subsequently escalate the disposition method if appropriate any FFT or CE that does not meet the

²⁵ See *March 2012 Order* at P 72 (stating that “the Commission...will not reopen an FFT matter for review unless the Commission provides notice during that [sixty day] period that it will review a specific matter” and that “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”) and *NERC Report on CE Initiative and FFT Program* at 45 (proposing a 60-day review window, in part to ensure consistency and exercise oversight over the FFT process); see also *June 2013 Order* at P 40 (approving NERC’s proposed 60-day review as a way to align its FFT review practice with FERC’s practice) and *N. Am. Elec. Reliability Corp., Order on Electric Reliability Organization Reliability Assurance Initiative and Requiring Compliance Filing*, 150 FERC ¶ 61,108 (2015) (accepting, conditionally, CEs as a disposition mechanism; also incorporating CEs into the sixty-day period of review) [hereinafter *Order on ERO RAI*].

requirements of the applicable programs.²⁶ NERC and Commission staff communicate after the submittals 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 from the Commission within a few weeks after receiving the request.

VI. CONCLUSION

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

Respectfully submitted,

/s/ James McGrane

James McGrane
Senior Counsel
Amy Engstrom
Associate Counsel
North American Electric Reliability
Corporation
1401 H Street, NW, Suite 410
Washington, DC 20005
(202) 400-3000
(202) 644-8099 – facsimile
james.mcgrane@nerc.net
amy.engstrom@nerc.net

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²⁶ See *supra* note 25; see also *March 2012 Order* at P 72 and *Order on ERO RAI* at P 48 (stating that the Commission expects to exercise its authority to review FFT and CE matters “infrequently and only in limited and rare circumstances”).

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 15th day of October 2024.

/s/ Amy Engstrom

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