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

North American Electric Reliability Corporation)
)

Docket No. RR24-4-000

**SUPPLEMENTAL FILING OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
TO THE
FIVE-YEAR ELECTRIC RELIABILITY ORGANIZATION PERFORMANCE
ASSESSMENT REPORT IN ACCORDANCE WITH 18 C.F.R. § 39.3(c)**

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TABLE OF CONTENTS

I. EXECUTIVE SUMMARY	2
II. NOTICES AND COMMUNICATIONS	6
III. BACKGROUND	6
a. Regulatory Framework	6
b. NERC Reliability Standards Development Procedure	7
c. NERC Compliance Monitoring and Enforcement Program	8
IV. ENHANCEMENTS TO ERO ENTERPRISE PROCESSES.....	8
a. The ERO Enterprise will use a Potential Noncompliance abeyance period to enhance NERC standards development process agility that the ERO Enterprise and industry have focused on during the Assessment Period.	11
1. Standards Development	12
2. Monitoring During Abeyance Period.....	14
b. The ERO Enterprise Will Enhance Enforcement Activities By Streamlining the Compliance Exception Process.....	18
1. Background.....	18
2. Improvements to the Compliance Exception Process.....	22
c. The ERO Enterprise will focus on timely data analysis to report on trends, themes, and recommendations.	25
V. CONCLUSION.....	30

nimble and efficient organization. To that end, NERC and the Regional Entities have been working toward improved efficiencies in three key areas— Reliability Standards development; Compliance Monitoring and Enforcement Program (“CMEP”) processing; and more robust data collection to report on trends, themes, and recommendations.

As described further in the instant filing, the approach outlined below will provide benefits to FERC, the ERO Enterprise, and industry in addressing existing as well as new and emerging reliability risks in an efficient manner. NERC respectfully requests that the Commission:

- 1) accept this supplemental filing to the Performance Assessment as it informs the Commission in its decision-making process by providing relevant information on efficiencies that the ERO Enterprise is working to implement within the Reliability Standards development process and the CMEP to demonstrate that NERC continues to meet the statutory and regulatory criteria as the ERO; and
- 2) to the extent the Commission determines a public comment period on this filing is necessary, provide no more than 14 days so as to not delay the issuance of a Commission order on the underlying Performance Assessment.⁴

I. EXECUTIVE SUMMARY

As noted in the Performance Assessment, the electric industry is experiencing rapid change in how systems are planned, designed, operated, and secured, requiring significant collaboration to assure the reliability, resilience, and security of the interconnected Bulk Power System (“BPS”).⁵ This unprecedented transformation requires an unprecedented response in how the ERO Enterprise performs its day-to-day functions in ensuring reliability and security of the BPS.

⁴ Pursuant to FERC regulations, the Commission will issue an order finding the ERO and the Regional Entities meet statutory and regulatory criteria. 18 C.F.R. § 39.3(c)(2).

⁵ Performance Assessment at 6.

Accordingly, the ERO Enterprise is continuously evaluating programs, processes, and procedures to most effectively address the most significant risks to reliability and stay ahead of this transformation. This supplemental filing describes meaningful opportunities that elevate the ERO Enterprise's reliability focus and the response to the energy transformation.

As is required every five years, the Performance Assessment submitted on July 19, 2024 details how NERC and the Regional Entities meet statutory and regulatory criteria during the Assessment Period as well as highlights efforts in 2024 and beyond to ensure NERC and the Regional Entities continue to meet the certification criteria. Since that filing, the ERO Enterprise has continued to improve its operations. NERC submits this supplemental filing to the Performance Assessment to inform the Commission of the following additional ERO Enterprise efforts to ensure its activities are risk-driven, efficient, and effective:

- The ERO Enterprise will use a Potential Noncompliance⁶ abeyance period to enhance NERC standards development process agility that the ERO Enterprise and industry have focused on the past few years. This will help to reduce the concern over compliance risk during standards development so that the focus can be on addressing risks to reliability.
- The ERO Enterprise will enhance enforcement activities by streamlining the Compliance Exception process. This will hone enforcement oversight practices for minimal risk issues to promote regulatory certainty and predictability for future compliance issues.
- The ERO Enterprise will focus on timely data analysis to report on trends, themes, and recommendations. This will help to inform opportunities for future collaboration between FERC staff, the ERO Enterprise, and industry on observed trends and themes.

As explained in more detail below, most noncompliances are self-identified and reported by Registered Entities, ultimately assessed as minimal risk, and Registered Entities have typically

⁶ Unless otherwise indicated, all capitalized terms used in this filing shall have the meaning set forth in the NERC Rules of Procedure, Appendix 2 Definitions Used in the Rules of Procedure. The NERC Rules of Procedure are found at <https://www.nerc.com/AboutNERC/Pages/Rules-of-Procedure.aspx>.

mitigated the noncompliance either before it is reported to the Regional Entities or within 6-12 months from the date the noncompliance is reported. While these existing CMEP processes are effective in ensuring risks are being appropriately resolved and addressed, the ERO Enterprise, the Commission, and industry stakeholders spend a disproportionate amount of time on minimal risk issues. Over the last five years, it has taken Regional Entities more than 16 months on average to resolve minimal risk Compliance Exceptions (“CEs”) from the initial report of noncompliance to the Regional Entity to submittal of the CE to the Commission. As additional new resources (such as inverter-based resources) come online, these timelines and the noncompliance inventory may only increase.

The administrative burden created from these processes for minimal risk CEs detrimentally impacts the feedback loop into standards development needed to proactively identify trends and themes from noncompliance issues. Often, these processes are time-consuming with the focus more on documentation compared to the level of risk. Data is often stale by the time a case is closed, diminishing opportunities for lessons learned, themes, and takeaways. Extended timeframes for processing minimal risk noncompliances cause Registered Entities to spend time and resources on minimal risk issues rather than the more important task of proactive reliability and security risk avoidance and mitigation. The operational efficiencies identified in more detail below create opportunities to better incorporate monitoring observations and industry feedback into the standards development process.

In the spirit of collaboration, the Commission, the ERO Enterprise, and the energy industry can engage more transparently on reliability and security risks, resolve minimal risk noncompliance more expeditiously, share observations more quickly, and utilize timely data

collection and analysis to improve the standards feedback loop.⁷ These enhancements give the ERO Enterprise the tools to be more agile, both in compliance monitoring and enforcement violation processing and in the Reliability Standards development process.

With the energy transition facing North America today, the ERO Enterprise must allocate its time proportionally to the most important risks to reliability. As a result, the approaches included herein are intended to achieve efficiencies in the specific areas of CMEP and Reliability Standards development, with an additional focus on enhanced data collection. By focusing disproportionately on known, understood, and mitigated risks, there is limited opportunity to focus on emerging and unknown risks. Currently the standards consensus-building process often unintentionally redirects focus from proactive risk identification to a compliance-mindset that has proven to be counterproductive during the standards development process. However, by using a more robust, data-driven approach to understanding new and emerging risks, the ERO Enterprise is committed to developing better Reliability Standards at the front end of the process (standards development) while spending more focused time on the most important reliability risks at the back end (violation processing). While no formal NERC Rules of Procedure changes are necessary for the ERO Enterprise to implement these enhancements, NERC respectfully requests the Commission accept this supplemental filing to the Performance Assessment as it informs the Commission in its decision-making process by providing relevant information.

⁷ Pursuant to the NERC Rules of Procedure, NERC will not disclose non-public United States compliance information to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure. Likewise, NERC will not disclose non-public non-United States compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the BPS to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

II. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to the following:⁸

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III. BACKGROUND

The following background information is provided below: (1) a description of the certification of the regulatory framework in establishing the ERO and requiring periodic Performance Assessments; (2) a description of the NERC Reliability Standards development process; and (3) an overview of the CMEP.

a. Regulatory Framework

By enacting the Energy Policy Act of 2005,⁹ Congress entrusted the Commission with the duties of approving and enforcing rules to ensure the reliability of the BPS, and with the duty of certifying an ERO that would be charged with developing and enforcing mandatory Reliability Standards, subject to Commission approval. The Commission certified NERC as the ERO in 2006 as NERC demonstrated that it met the criteria and developed the processes required under 18 C.F.R. § 39.3(b).¹⁰ The initial Performance Assessment assessing that NERC continued to meet

⁸ NERC respectfully requests a waiver of Rule 203 of the Commission's regulations, 18 C.F.R. § 385.203, to allow the inclusion of more than two persons on the service list in this proceeding.

⁹ 16 U.S.C. § 824o.

¹⁰ ERO Certification Order. The criteria under 18 C.F.R. § 39.3(b) for ERO certification include the following:

the criteria was submitted in 2009, with subsequent assessments due on a five-year cycle. The most recent Performance Assessment was submitted in this docket on July 19, 2024, and the instant filing further supplements the information in that filing to demonstrate NERC continues to meet its obligations as the ERO.

b. NERC Reliability Standards Development Procedure

NERC develops Reliability Standards in accordance with Section 300 (Reliability Standards Development) of its Rules of Procedure and the NERC Standard Processes Manual.¹¹ In its ERO Certification Order, the Commission found that NERC's proposed rules provide for reasonable notice and opportunity for public comment, due process, openness, and a balance of interests in developing Reliability Standards and thus satisfies certain criteria for approving Reliability Standards.¹² The development process is open to any person or entity with a legitimate interest in the reliability of the BPS. NERC considers the comments of all stakeholders. Further, a vote of stakeholders and adoption by the NERC Board of Trustees is required before NERC submits the Reliability Standard to the Commission for approval.

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1. Has the ability to develop and enforce, subject to § 39.7, Reliability Standards that provide for an adequate level of reliability of the BPS; and
 2. Has established rules that:
 - i. Assure its independence of users, owners and operators of the BPS while assuring fair stakeholder representation in the selection of its directors and balanced decision-making in any Electric Reliability Organization committee or subordinate organizational structure;
 - ii. Allocate equitably reasonable dues, fees and charges among end users for all activities under this part;
 - iii. Provide fair and impartial procedures for enforcement of Reliability Standards through the imposition of penalties in accordance with § 39.7, including limitations on activities, functions, operations, or other appropriate sanctions or penalties;
 - iv. Provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing Reliability Standards, and otherwise exercising its duties; and Provide appropriate steps, after certification by the Commission as the Electric Reliability Organization, to gain recognition in Canada and Mexico.

¹¹ The NERC Rules of Procedure are available at <https://www.nerc.com/AboutNERC/Pages/Rules-of-Procedure.aspx>. The NERC Standard Processes Manual is available at https://www.nerc.com/AboutNERC/RulesOfProcedure/Appendix_3A_SPM_Clean_Mar2019.pdf.

¹² ERO Certification Order at P 250.

c. NERC Compliance Monitoring and Enforcement Program

NERC and the Regional Entities are responsible for monitoring, assessing, and enforcing compliance with Reliability Standards in the United States in accordance with Section 400 (Compliance Monitoring and Enforcement) of the NERC Rules of Procedure and the CMEP. Over the past decade, the ERO Enterprise has continually streamlined its CMEP processes to focus activities on risk to the BPS. As noted in the most recent Performance Assessment, NERC's risk-based approach to CMEP has enabled the ERO Enterprise to focus resources on risks to the reliability and security of the BPS and risks specific to Registered Entities.¹³

IV. ENHANCEMENTS TO ERO ENTERPRISE PROCESSES

As NERC and the Regional Entities sought to enhance processes during the Assessment Period, a key theme emerged as to how these processes could be improved further in 2024 and beyond: building efficiencies in CMEP processes could make the NERC standards development process more efficient and effective. To that end, the need to shift the ERO Enterprise's resource allocation away from minimal risk issues garnered attention at the recent Commissioner-led FERC Reliability Technical Conference.¹⁴ In response to a question from the FERC Chairman about low-risk compliance issues taking too long and how that is impacting the efficiency of the ERO Enterprise,¹⁵ the president and CEO of NERC, Jim Robb, responded, stating in part that:

“[O]ver 80 percent of violations are self-reported. Entities have developed controls to figure out where they're out of compliance. They report them to us. . . [Entities] tell us that [they've] done it and assure us that [they've] done it and we'll check on that later or compliance exception, but we had to earn our stripes that we had to satisfy ourselves that the regions were doing that well and FERC had to satisfy itself that we're doing that well.

¹³ Performance Assessment at 21.

¹⁴ *Notice of Reliability Technical Conference*, Docket No. AD24-10-000 (July 9, 2024).

¹⁵ As of the date of this filing, the transcript has not yet been posted in Docket No. AD24-10-000.

Accordingly, this quote is from the transcript from the Commission's YouTube channel showing Panel 1 of the 2024 Reliability Technical Conference, https://www.youtube.com/watch?v=T_GMYmciZfM&t=4863s.

I think the track record suggests that we are, so I think we could move to a more statistical sampling [for minimal risk violations], maybe let's look at 1 in 10, and then maybe we go to 1 in 25 . . . I think we want to have the assurance that all the right things are happening out on the Grid.

That's why we created the standards in the first place, but the burden here isn't just on us and on [Office of Electric Reliability]. It's also a burden for the entities, because they have to respond to data requests. They carry these violations on their books. They have to report them to their boards, all this kind of stuff for a protracted period of time. So, that naturally impedes their appetite for more requirements.

So, as we start working on new standards . . . we get this demand for perfection because they want to know very specifically how they're going to be able to comply.

[So], let's clear out the administrative burden associated with the low-risk stuff, take a different approach to how we [develop] new and novel standards and requirements. As long as [entities are] making a good faith effort to comply . . . we should treat that differently and particularly with some of the early implementation.

I think we take a lot of risks off the table very quickly and get perfection in the next round [of standards development].

Mr. Robb's statement at the Reliability Technical Conference highlights the need for CMEP efficiencies to support Reliability Standards development that addresses new and emerging risks in a timely manner. After more than fifteen years of building programs under Section 215 of the Federal Power Act, the ERO Enterprise has matured its monitoring and oversight responsibilities. Industry has responded in kind by developing robust NERC compliance programs demonstrated through strong internal controls and self-reports, thereby positioning the prompt identification and mitigation of minimal risk noncompliances. For these reasons, the ERO Enterprise is shifting its focus toward existing high-risk areas as well as new and emerging risk areas and away from minimal risks that generally have lower impact on BPS reliability.

The ERO will start doing this in the following three ways:

- **Introducing, where appropriate, a Potential Noncompliance abeyance period after a Reliability Standard becomes effective, the ERO Enterprise will be able to utilize the trends, themes, and recommendations learned from initial implementation of new standards prior to full Enforcement, which may include identification of beneficial revisions to the new standard.**

The approach, further described below, would implement a Potential Noncompliance abeyance period for a specified amount of time after a new standard becomes enforceable that would allow NERC and the Regional Entities to develop insights from initial implementation of the standard that can then be fed back to NERC through the standards development processes to further refine standards as needed. Furthermore, the ERO Enterprise and industry would focus less time on processing minimal risk noncompliance that often occurs during an initial period of a standard becoming effective. This Potential Noncompliance abeyance period would encourage entities to share observations and experiences through implementation of new standards without fear of potential noncompliance (so long as they are acting in good faith) to mitigate reliability risks. This feedback loop, coupled with insights generated from more robust data collection from enforcement activities of trends, themes, and recommendations would collectively be used to inform the standards development process after initial compliance of new standards to revise the standards prior to full enforcement.

- **Enhancing enforcement efficiencies by streamlining the Compliance Exception (“CE”) process.**

Over the past five years, the ERO Enterprise has processed 4,884 minimal risk CEs. Approximately 0.3% of those minimal risk CEs submitted to FERC have been withdrawn by NERC at the request of Commission staff, which means the ERO Enterprise is operating at a 99.7% success rate in processing minimal risk CEs. Despite this nearly perfect success rate, the ERO Enterprise is spending a disproportionate amount of ERO Enterprise and FERC resources

processing minimal risk CEs by developing comprehensive records for every minimal risk submittal. This approach creates a bottleneck, decreasing the amount of ERO Enterprise resources focused on higher risks. Approaching these minimal risk CEs in a more streamlined manner, with the ability to sample, as needed, to verify findings, presents a more efficient approach to processing minimal risk CEs.

- **Timely data collection from enforcement activities to report on trends, themes, and recommendations that can be used to inform the standards development process.**

Streamlining the processing of minimal risk CEs would also open the door for the ERO Enterprise to generate more insights by collecting data from enforcement activities to report on trends, themes, and recommendations that can be used to inform the standards development process. This data collection is particularly important given the energy transformation facing our industry today. Feedback to the industry and standard drafting teams can help entities better prepare for reliability and security threats before vulnerabilities materialize. In other words, spending time on the higher priority risks better positions FERC, the ERO Enterprise, and industry to *anticipate and prepare* for emerging risks rather than *react* to emerging risks. The approach, described below, explains how the ERO Enterprise will collect data from enforcement activities to report on trends, themes, and recommendations.

This section is organized as follows: Section IV.a describes the Potential Noncompliance abeyance period; Section IV.b describes the streamlined CE process; and Section IV.c describes the approach to timely data analysis.

- a. The ERO Enterprise will use a Potential Noncompliance abeyance period to enhance NERC standards development process agility that the ERO Enterprise and industry have focused on during the Assessment Period.

As noted in the Performance Assessment, NERC is undertaking significant efforts to enhance all aspects of its Reliability Standards development program, with that work expected to

continue.¹⁶ Through this work, NERC has identified that one factor that increases the time to develop standards is stakeholders' considerations of compliance risk. To address this, the ERO Enterprise seeks to improve a risk focus in both the CMEP and the standards consensus-building process to avoid the compliance-mindset focus and facilitate productive collaboration with industry to address new or urgent reliability needs in a nimble and agile manner. The CMEP efficiencies in this supplemental filing seek to achieve this objective by using a data-informed, priority-driven CMEP process. As described below, using the Potential Noncompliance abeyance period during the standards development process helps ensure that refinements resulting from the CMEP data can be made quickly to address residual reliability risks and any implementation difficulties. These activities, in conjunction with other efficiency efforts underway with NERC standards development described in the Performance Assessment, would help streamline the standards development process.¹⁷ First, this section describes how the Potential Noncompliance abeyance period will be considered during standards development. Second, this section describes how the ERO Enterprise will perform monitoring and other activities during the Potential Noncompliance abeyance period.

1. Standards Development

During the standards development process of new and modified Reliability Standards, the ERO Enterprise will consider whether draft Reliability Standards are good candidates for a Potential Noncompliance abeyance period. Specifically, prior to any ballot periods, NERC, in consultation with the Regional Entities, will base this consideration on well-defined criteria, which may include the following:

¹⁶ Performance Assessment at 19.

¹⁷ Although other efforts are underway to improve efficiency of NERC's standards development process, NERC is not proposing in this supplemental filing to make any modifications to its Rules of Procedure, including Appendix 3A (Standard Processes Manual).

1. it is a high priority project given risks being addressed;
2. it is a new Reliability Standard or a modified Reliability Standard undergoing significant revisions; and
3. it involves one or more of the following attributes:
 - a. new technology likely will be needed to implement the Reliability Standard;
 - b. new, emerging reliability issue with no consensus on specific best practices
or
 - c. a high level of technical complexity.

These criteria reflect the scenarios in the standards development process where entities have often been more concerned about compliance risk. As a result, selecting Reliability Standards development projects based on these criteria should help minimize concern over compliance risk through use of a Potential Noncompliance abeyance period, thereby streamlining the consensus-building process and focusing it on developing standards that provide an adequate level of reliability.

Once a Reliability Standards development project is determined to be a good candidate for a Potential Noncompliance abeyance period, NERC and the Regional Entities will consider the appropriate period of time on a case-by-case basis. NERC will strive to ensure that the abeyance period will be the appropriate amount of time to allow ERO Enterprise staff to perform monitoring activities or other information gathering activities, analyze the information and data collected and develop recommendations, and vet recommendations among stakeholders, while also ensuring that the period is short enough to maintain incentives for industry stakeholders to move any needed changes through the process should recommendations indicate future revisions are needed.

To document which standard gets a Potential Noncompliance abeyance period, NERC will insert standardized language in the “Section C. Compliance” portion of each Reliability Standard. The compliance section is included in NERC’s Reliability Standards template to identify the Compliance Enforcement Authority, evidence retention requirements, and the compliance monitoring and assessment processes that NERC and the Regional Entities may use to monitor

compliance with the standard. A Potential Noncompliance abeyance period will now be added to this section for those standards when deemed appropriate by the ERO Enterprise.

According to Section 2.5 of the NERC Standard Processes Manual, the compliance section is included for “informational purposes” and to provide guidance on “how compliance will be assessed by the Compliance Enforcement Authority.”¹⁸ It is not part of the enforceable components of a Reliability Standard that are subject to industry ballot; rather, NERC uses this section to inform entities how the ERO Enterprise will conduct compliance monitoring. The language inserted into the compliance section will address the length of time of the abeyance period and state that the Compliance Enforcement Authority will not identify a Potential Noncompliance or pursue an enforcement action during the abeyance period if Registered Entities implement the Reliability Standard in good faith. “Good faith” in this context refers to a sincere intention to comply with the standard, following a reasonable and serious assessment by the entity in determining how this standard should be applied to its particular facts and circumstances.

Once NERC submits its petition for approval of any Reliability Standard with a Potential Noncompliance abeyance period to the Commission, the Commission will have the Potential Noncompliance abeyance period on record in the relevant docket. After Commission approval of the Reliability Standard, entities will implement the Reliability Standards in accordance with the timeframes under the applicable implementation plan and a Potential Noncompliance abeyance period will begin on the effective date of the Reliability Standard.

2. Monitoring During Abeyance Period

The Potential Noncompliance abeyance period will provide the opportunity for ERO Enterprise CMEP staff to strengthen the feedback loop into standards development. By eliminating

¹⁸ NERC Rules of Procedure, Appendix 3A Standard Processes Manual, Section 2.5 at 6. The NERC Rules of Procedure are found at <https://www.nerc.com/AboutNERC/Pages/Rules-of-Procedure.aspx>.

the identification of Potential Noncompliance during the abeyance period, the ERO Enterprise can focus monitoring and other activities on whether the new or modified Reliability Standard is addressing the risks to the reliability of the BPS or whether any issues in implementation are caused by ambiguous or ineffective language. Moreover, resources will be better allocated by eliminating the processing of minimal risk noncompliances that can occur during initial implementation of a Reliability Standard. Accordingly, the ERO Enterprise can more quickly turn around the standards feedback gathered during the abeyance period.

During a Potential Noncompliance abeyance period, the ERO Enterprise can engage in monitoring activities as normal for the new or modified Reliability Standards but will not identify any Potential Noncompliance for Registered Entities that implement the Reliability Standard in good faith.¹⁹ The ERO Enterprise expects Registered Entities to implement the Reliability Standard by the effective date just as they would with Reliability Standards not subject to a Potential Noncompliance abeyance period.

For instance, once a new or modified Reliability Standard with an abeyance period becomes effective, the ERO Enterprise can engage in monitoring or other activities, such as webinars or small group advisory sessions, to understand how entities are implementing the requirements. Through these activities, ERO Enterprise staff may identify weaknesses in the Reliability Standard or identify implementation concerns. If the ERO Enterprise determined that the Registered Entity implemented the requirement in good faith, this identification would not be processed as a Potential Noncompliance; rather, it would be captured as potential standards development feedback or implementation lessons learned.

¹⁹ As noted above, “good faith” in this context refers to a sincere intention to comply with the standard, following a reasonable and serious assessment by the entity in determining how this standard should be applied to its particular facts and circumstances.

If a Registered Entity was found not to act in good faith in implementing the Reliability Standard during the abeyance period, the Registered Entity would no longer be eligible for the Potential Noncompliance abeyance period and could be subject to a Potential Noncompliance. Furthermore, the lack of good faith would be factored into the Registered Entity's Inherent Risk Assessment or compliance oversight plan, likely indicating the Registered Entity's culture of compliance may need improvement. The ERO Enterprise determined that this will be an effective mechanism for ensuring Registered Entities implement Reliability Standards by the effective date in good faith during any Potential Noncompliance abeyance period.

While there will be no Potential Noncompliance processed if the entity is acting in good faith, the ERO Enterprise will track the issues identified during the abeyance monitoring activities to perform further analysis. The ERO Enterprise will review the data to determine whether there are trends indicating opportunities for clarifying ambiguous language in a Reliability Standard or whether there is a difference in understanding implementation of the Reliability Standard that necessitates further education. Any recommendations resulting from the analysis would be vetted with industry stakeholders to support any further consensus-building needed. Should the recommendations ultimately lead to the need for further Reliability Standards revisions, the ERO Enterprise or a NERC standing committee would submit a Standard Authorization Request ("SAR"). The SAR would be eligible for an informal comment period under the NERC Standard Processes Manual due to existing industry vetting. If necessary, the NERC Board of Trustees may exercise its authority in extraordinary circumstances and consider, as appropriate, whether to direct the Standards Committee to complete a stakeholder-initiated project with a deadline or issue a directive to NERC staff to develop the SAR to address any reliability issues expeditiously pursuant to Section 322 of the NERC Rules of Procedure.

The ERO Enterprise envisions the Potential Noncompliance abeyance period analysis to function similar to how feedback from compliance was provided to Reliability Standards development for current Project 2023-06 CIP-014 Risk Assessment Refinement. In response to a Commission directive,²⁰ NERC evaluated the effectiveness of the Physical Security Reliability Standard (CIP-014) in mitigating the risks to the BPS associated with physical attacks. NERC issued a report with recommendations to further revise CIP-014. To arrive at this conclusion, NERC reviewed information from ERO Enterprise CMEP activities indicating that while the overall objective of the CIP-014 Requirement R1 risk assessment is sound, there are inconsistent approaches to performing the risk assessment.²¹ In further analysis, the ERO Enterprise observed that Registered Entities were using insufficient technical studies that were leading to noncompliance.²² NERC determined that these inconsistent approaches were due to a lack of specificity in the requirement language in providing the nature and parameters of the risk assessment,²³ leading to the initiation of Project 2023-06.

While the ERO Enterprise notes the success of this feedback loop on CIP-014 to Reliability Standards during the Assessment Period, the Potential Noncompliance abeyance period described herein will enhance any future feedback loops. In the CIP-014 scenario, noncompliance observed due to the nonspecific requirement language still went through CMEP disposition processing. In contrast, a Potential Noncompliance abeyance period would permit the ERO Enterprise the benefit of a feedback loop from monitoring activities without the administrative burden of processing a noncompliance that could have been avoided through Reliability Standards revisions. Registered

²⁰ *N. Am. Elec. Reliability Corp.*, 181 FERC ¶ 61,230 (2022).

²¹ NERC, *Evaluation of the Physical Security Reliability Standard and Physical Security Attacks to the Bulk-Power System*, Docket No. RD23-2-000 at 24 (Apr. 14, 2023), <https://www.nerc.com/FilingsOrders/us/NERC%20Filings%20to%20FERC%20DL/NERC%20Report%20on%20CIP-014-3.pdf>.

²² *Id.*

²³ *Id.*

Entities benefit from both the lack of noncompliance processing and the fixed Reliability Standards language. The ERO Enterprise asserts these are appropriate incentives for Registered Entities to engage in the compliance feedback loop, further enhancing the effectiveness of the process.

Finally, during an abeyance period, the ERO Enterprise will determine whether to conduct additional efforts beyond monitoring activities to collect more data. For instance, the ERO Enterprise will consider whether to conduct studies, like the recent activity to evaluate approaches to establishing Interconnection Reliability Operating Limits (“IROLs”) or the assessment of cyber security incident reporting and response.²⁴

b. The ERO Enterprise Will Enhance Enforcement Activities By Streamlining the Compliance Exception Process.

This section is organized as follows: Section IV.b.1 describes the development of the risk-based CMEP and the ERO Enterprise’s successes and challenges in implementation; and Section IV.b.2 describes the enhancements that the ERO Enterprise intends to implement to streamline the CE process.

1. Background

Since its inception, the ERO Enterprise has continuously strived to improve the CMEP to ensure a more reliable and secure BPS. As part of these efforts, the ERO Enterprise has matured from the early years of zero tolerance and financial sanctions for each noncompliance and transformed the CMEP into a risk-based program focused on addressing reliability and security risks to the BPS stemming from noncompliance with Reliability Standards.

In 2012, the Commission approved the first step toward a risk-based CMEP by accepting the ERO Enterprise’s use of the Find, Fix, Track and Report (“FFT”) disposition method, which

²⁴ *ERO Enterprise Joint IROL Activity Report* (July 2024), <https://www.nerc.com/pa/comp/CAOneStopShop/ERO%20Enterprise%20Joint%20IROL%20Activity%20Report%20-%20July%202024.pdf>.

allowed for flexibility to more efficiently process and track lesser risk violations in order to focus resources on issues that pose the greatest risk to reliability.²⁵ Subsequently, in 2015, the Commission approved the expansion of the ERO Enterprise’s enforcement discretion by approving the use of CEs and self-logging for processing minimal risk noncompliances.²⁶ In the years since the Commission approved these processing mechanisms, the ERO Enterprise has gained valuable experience while also continuously demonstrating its ability to properly assess and address risk. Over the last five years of annual FFT and CE reviews, Commission staff have found that the FFT and CE programs are meeting expectations and have agreed with nearly all the risk assessments and disposition methods.²⁷ This is further supported by the fact that, since 2020, NERC has withdrawn only 13 out of 4,884 CEs, approximately 0.3%, at the request of Commission staff.

While the use of CEs was intended to allow for flexibility in processing noncompliances, the full potential of these approaches has not been realized. The ERO Enterprise spends a considerable amount of time on fundamentally minimal risk noncompliances because they still require significant review and assessment. Over time, as NERC and FERC staff have asked questions to better understand these noncompliances, the Regional Entities have often responded by incorporating those questions into future Requests for Information (“RFIs”) to send to Registered Entities, even when the NERC or FERC staff questions were limited to specific fact scenarios. As a result, the RFIs often serve to further develop a record that includes extraneous

²⁵ *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 P 2 (2012).

²⁶ *Order on Electric Reliability Organization Reliability Assurance Initiative and Requiring Compliance Filing*, 150 FERC ¶ 61,108 (2015).

²⁷ *See 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.*, Notice of Staff Review of Enforcement Programs, Docket No. RC11-6-012 (Aug. 24, 2021); *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 (Sept. 11, 2023); and *N. Am Elec. Reliability Corp.*, Notice of Staff Review of Enforcement Programs, Docket No. RC11-6-018 (Aug. 16, 2024).

information that is not needed to support the minimal risk assessment or disposition as a CE. Moreover, these cases have usually been self-reported and fully mitigated by the time the CE is submitted to FERC. The extensive record developed by the Regional Entities has grown over time as NERC and Commission staff have posed questions to better understand minimal risk cases.

Since 2020, approximately 85% of noncompliances were self-reported to the ERO Enterprise as Self-Reports or Self-Logs.

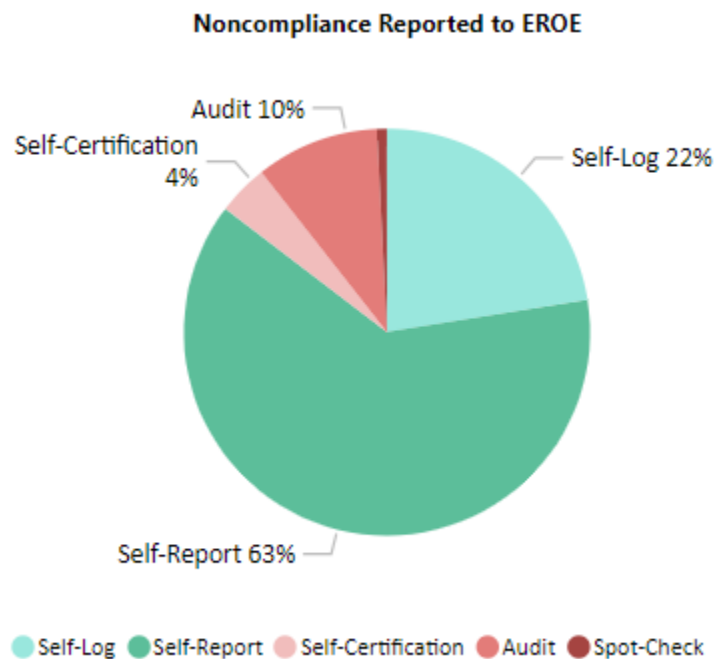


Figure 1. Noncompliance Reporting Method (January 1, 2020 – November 5, 2024)

Moreover, during the same time period 74% of dispositions were processed as minimal risk CEs (including self-logged CEs). However, the average processing time over the last five years for these issues was more than 16 months. The time spent on developing a complete record for these minimal risk CEs is disproportionate to the risk posed by the noncompliance.

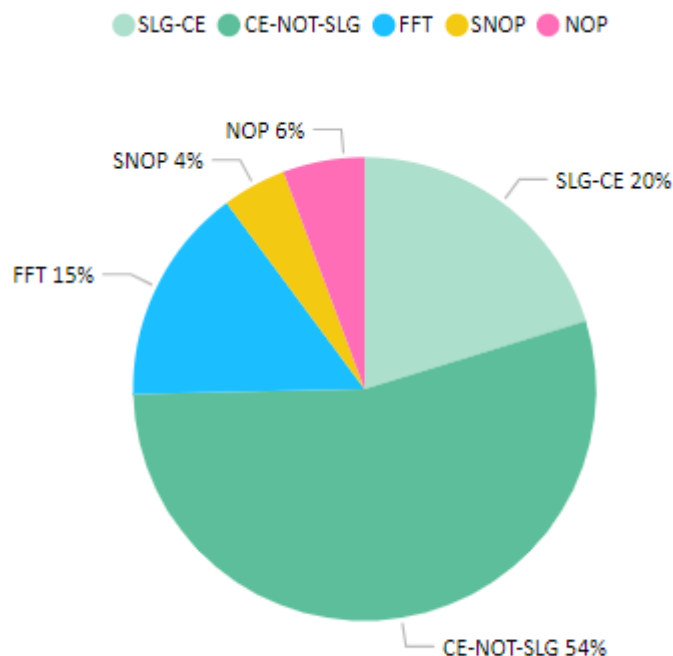
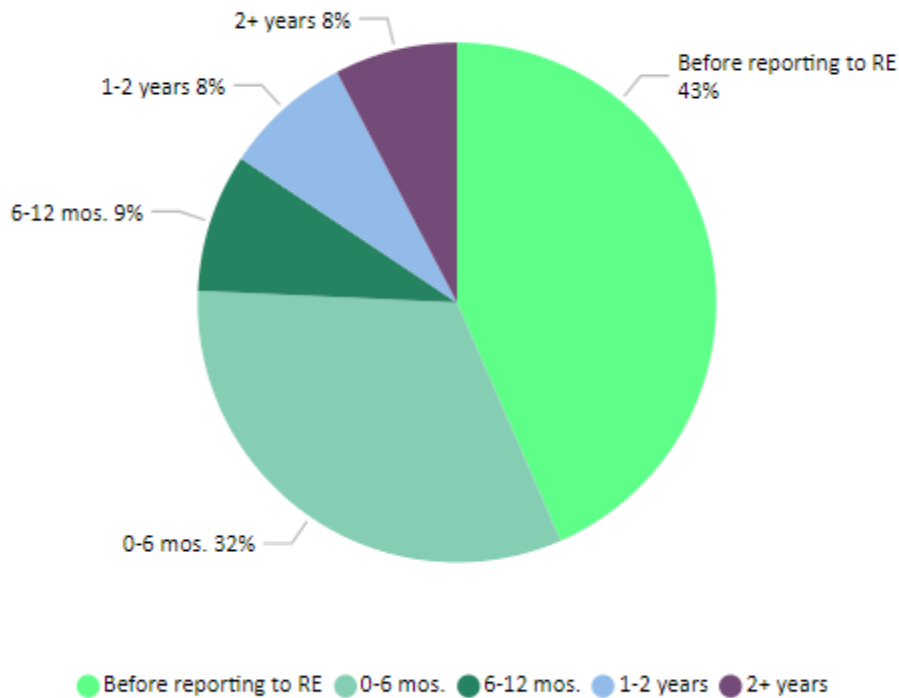


Figure 2. Disposition Method of Noncompliance Submitted to FERC (January 1, 2020 – November 5, 2024)²⁸

Additionally, 84% of noncompliances are mitigated within a year of being reported to the Regional Entity (43% are mitigated before the noncompliance is reported to the Regional Entity; 32% are mitigated within six months of being reported; and 9% are mitigated within six to twelve months of being reported).

²⁸ In Figure 2, the term “SLG-CE” stands for Self-Logged Compliance Exception, indicating that the noncompliance was initially reported to the Regional Entity by the Registered Entity as a Self-Log, which results in a presumption that the noncompliance will be processed as a CE. The term “CE-NOT-SLG” stands for Compliance Exception not Self-Logged, indicating that the noncompliance was initially reported to the Regional Entity via discovery methods other than a Self-Log, such as a Self-Report, Compliance Audit, etc.

Timeframe for Completed Mitigation for the Reported Noncompliance in the Past 5 years



**Figure 3. Timeframe for Completed Mitigation for Noncompliance Submitted to FERC
(January 1, 2020 – November 5, 2024)**

The ERO Enterprise’s success rate is clear. With a track record of Commission acceptance of over 99.7% of minimal risk CEs submitted to FERC over the past five years, the ERO Enterprise has identified further improvements to the Compliance Exception process to expedite processing of minimal risk issues, share lessons learned and trends with industry and the Commission, and continue to address more serious risk noncompliance with the attention those cases deserve.

2. Improvements to the Compliance Exception Process

To complement the changes to the Standards drafting process, the ERO Enterprise must gain efficiencies in its processing of minimal risk noncompliances to ensure timely data is available to provide feedback for new and existing Reliability Standards regarding the

circumstances of the noncompliances and underlying causes, including but not limited to Registered Entities misunderstanding Reliability Standards due to unclear or ambiguous language. The recently updated Registered Entity Self-Report and Mitigation Plan User Guide describes the types and quality of information that Registered Entities should provide to their Regional Entity to allow for an effective evaluation regarding the circumstances and risk of a noncompliance and the mitigation activities needed to address them.²⁹ This information includes:

- 1) a description of the noncompliance (i.e., what happened, how it was discovered, the types and number of devices or assets affected);
- 2) the cause of the noncompliance;
- 3) a description of the extent-of-condition (including the methodology and results);
- 4) the duration of the noncompliance;
- 5) a description of the risk including all risk mitigating factors; and
- 6) mitigation actions that address the current noncompliance and focus on preventing reoccurrences of the same or similar conduct.

NERC's existing drafting template for CEs and FFTs, which is publicly accessible on the NERC website, calls for similar information.³⁰

As noted above, the Regional Entities spend an inordinate amount of time asking for and obtaining detailed information from Registered Entities as a result of prior questions from NERC and Commission staff on similar cases, even though all of that information is not needed to validate the risk assessment or disposition method of the noncompliance. Reducing unnecessary

²⁹ NERC, *Registered Entity Self-Report and Mitigation Plan User Guide* (Oct. 15, 2024), available at <https://www.nerc.com/pa/comp/CE/Enforcement%20Actions%20DL/Registered%20Entity%20Self-Report%20and%20Mitigation%20Plan.pdf>.

³⁰ Drafting Templates for CEs, FFTs, and SNOPs, available at https://www.nerc.com/pa/comp/CE/Templates/Drafting%20Templates%20for%20CE%20FFT%20and%20SNOP%20for%20Regional%20Entities_08012023.xlsx.

information in minimal risk CEs would streamline the time spent on processing minimal risk noncompliances by the ERO Enterprise and would also reduce the administrative burden on Registered Entities. Therefore, the ERO Enterprise has identified and will implement improvements to its templates that clearly lay out the six pieces of information identified above and will focus on clearly and concisely describing only that information needed to make a determination about the risk assessment, disposition method, and effectiveness of the mitigating activities for the noncompliance in question.

All Registered Entities will be eligible for this streamlined approach to CEs provided that the Regional Entity assesses the risk of the noncompliance as minimal and there are no aggravating factors that would warrant escalation to a different disposition method. While the ERO Enterprise believes this improved approach will improve processing times, Registered Entities can also improve processing times by providing the needed information in their Self-Reports or in response to RFIs in a clear, concise manner. If Registered Entities can provide the information required for Regional Entities to make a minimal risk determination and ensure that the violation is mitigated (or will be mitigated within twelve months of the submittal to FERC), then the resolution of that noncompliance will occur in a timelier manner than it would under the current construct. The ERO Enterprise is committed to working with industry to ensure Registered Entities understand what is required in a Self-Report or in responses to RFIs to ensure that noncompliance is processed timelier under the streamlined approach. These efforts are likely to include compliance seminars, newsletter articles, self-report user guides, and targeted training for individual Registered Entities as needed.

This streamlined approach does not require changes to the NERC Rules of Procedure. The Regional Entities will continue to triage, investigate, and perform risk assessments as they are

performed today. Additionally, the Regional Entities will continue to perform a cause analysis and compliance history assessment while also ensuring the Registered Entity performs an extent of condition (where appropriate) and that mitigation sufficiently addresses the cause of the noncompliance and prevents reoccurrence. NERC will also continue to submit the streamlined CEs on a monthly basis and the Commission will retain its existing opportunities for oversight of the CE and FFT processes, including its 60-day reviews and annual sampling review of CEs and FFTs. As noted above, the only change to the existing CE process will be that submitted CEs will be more abbreviated, with clear and concise descriptions of the noncompliance using a common template for clarity and consistency across the ERO Enterprise. NERC will continue to ensure the Regional Entities are consistent in processing matters, including CE submittals.

- c. The ERO Enterprise will focus on timely data analysis to report on trends, themes, and recommendations.

The ERO Enterprise recognizes that the identification of trends, themes, and recommendations is imperative to help industry understand risks that impact reliability and security and how best to proactively address those risks. Data collection must be timely and relevant, which is why it is critical that the ERO Enterprise expedite the time it takes to process minimal risk CEs. Slow processing of CEs creates an administrative burden on Registered Entities and diminishes the ability of the ERO Enterprise and industry to proactively identify trends and themes from noncompliance issues because the data could be stale by the time a case is closed, and therefore reduces the opportunity for real-time lessons learned. Furthermore, open enforcement actions at Registered Entities will keep their focus on compliance rather than sharing information with the ERO Enterprise that could help proactively address risks before they impact reliability or security. Additionally, when new risks emerge, a robust feedback loop from early

implementation of a Reliability Standard could help educate Standard Drafting Teams on best practices to address the risk, from real lessons learned in the field through implementation.

The ERO Enterprise's data analysis efforts will focus on timely data collection from enforcement cases and compliance monitoring activities, including evaluation of root causes, Standard and Requirement violations, and durations that will help identify themes, patterns, and generate insights. Collecting this data will also assist in evaluating the effectiveness of current standards and inform recommendations for future modifications or retirements of standards. This feedback loop back to the industry will help Registered Entities prepare for and mitigate reliability and security threats before vulnerabilities can materialize or worsen.

While no rule changes or modifications are necessary to implement the efficiencies highlighted throughout this Supplemental Filing, these enhancements advance the Commission's core tenets of: "(1) meaningful Commission oversight; (2) NERC's oversight of the Regional Entities; (3) fair and impartial procedures for enforcement; (4) consistency between the Regional Entities; (5) balanced transparency, and; (6) data-driven metrics to evaluate success."³¹

1. Commission Oversight

As discussed above, the Commission will continue to receive minimal risk CEs on a monthly basis and retain its existing review and oversight abilities. The streamlined CE approach will allow Regional Entities to more expeditiously review and process minimal risk CEs through a standardized, abbreviated approach. This in turn will allow the ERO Enterprise and the Commission to quickly collect relevant enforcement data and organize it to generate data-driven trends and themes in a timely manner. For example, if there are numerous violations of a certain Standard and Requirement with similar root causes, the ERO Enterprise can use that information

³¹ *Order Approving in Part and Denying in Part Revisions to North American Electric Reliability Corporation Rules of Procedure*, 179 FERC ¶ 61,129 at P 18 (2022) (footnotes omitted).

to evaluate the effectiveness of the existing Standard and Requirement and determine whether modifications may be warranted. Further, ERO Enterprise staff will engage with Commission staff on a periodic basis to share trends in risk assessments and identify opportunities to share observations with the industry through reports, technical conferences, seminars, etc.

2. NERC Oversight

NERC will establish metrics around noncompliance processing, with oversight from the NERC Board of Trustees Regulatory Oversight Committee, to ensure Regional Entities are realizing efficiency gains offered by a more streamlined minimal risk CE process. Efficiencies gained by these process changes will enable the ERO Enterprise to focus resources on higher risk matters or areas of emerging risk.

3. Fair and Impartial Procedures

The ERO Enterprise will use the upcoming year to engage with Registered Entities on the efficiency enhancements. Specifically, the ERO Enterprise will continue to highlight its recently updated Registered Entity Self-Report and Mitigation Plan User Guide to promote stronger Self-Reports from Registered Entities, which will help accelerate CE processing and help Regional Entities to meet processing metrics. Likewise, the feedback loop for standards development processes will help promote industry alignment on compliance expectations and use data-driven monitoring observations and feedback to improve future versions of Standards.

4. Consistency Between the Regional Entities

NERC will continue to oversee Regional Entities' adoption of the streamlined CE approaches described above, track Regional Entity progress in meeting noncompliance processing metrics, and work with Regional Entities to promote Registered Entity use of the Registered Entity

Self-Report and Mitigation Plan User Guide to ensure consistency in enforcement activities and practices.

5. Balanced Transparency

The ERO Enterprise has been developing enforcement cause codes for future use in Align. Training for industry is anticipated in Q1 2025. The use of these cause codes will help the ERO Enterprise provide the industry with common themes and trends from Enforcement processes in a timely manner. This targeted data can be used to generate insights that can be shared broadly with industry without disclosing confidential information or risks. NERC will use its Organization Registration and Certification Program and Compliance Monitoring and Enforcement Program annual report (“ORCP and CMEP annual report”), publicly available on the NERC website³², to highlight the trends and best practices around mitigation, supported by data accumulated through standards and enforcement processes. In addition, NERC will use the ORCP and CMEP annual report to share potential areas of ambiguity and opportunities to enhance Standards with the industry.

6. Data-Driven Metrics

As discussed above, NERC will establish metrics for the Regional Entities around noncompliance processing to ensure the streamlined CE process is producing intended efficiencies and will encourage the industry to engage with the ERO Enterprise and provide strong Self-Reports to assist with faster processing of minimal risk noncompliance. For the next calendar year, NERC will collect and aggregate data around CE submittals to determine appropriate noncompliance processing metrics to ensure timely processing of inventory and avoid the build-up of older open noncompliance. With the understanding that noncompliance processing metrics

³² Annual and semi-annual versions of the ORCP and CMEP report are available here: <https://www.nerc.com/pa/comp/CE/Pages/CMEP%20and%20Vegetation%20Reports.aspx>.

are a work-in-progress and subject to modification, and that Regional Entities have different noncompliance inventory volumes and staffing levels, NERC is ultimately targeting a future processing time of 180 days on average for all CEs. NERC will work with the NERC Board of Trustees Regulatory Oversight Committee and the Regional Entities to establish a reasonable and achievable timeframe for reaching that goal. As NERC obtains more data, it will consider other noncompliance processing metrics as appropriate.

Finally, NERC will also track and monitor Standards that have been modified as a result of data derived from the streamlined processes to ensure the reporting requirements are yielding industry benefits. The data from the timely processing of CEs will not only help to determine the effectiveness of existing Standards but may also support evaluation of whether a Standard should be modified or enhanced.

In addition to collecting trends and themes, NERC Compliance Assurance and Enforcement will also provide the NERC Reliability Standards team with a quarterly status report that includes data, observations, and insights from CE activities. NERC will also incorporate information, as appropriate, into its ORCP and CMEP annual and semi-annual reports so that industry can learn from the data, observations, and insights from CE activities. This information may also be used by the ERO Enterprise when meeting with FERC staff to discuss the data, observations, trends, and potential recommendations from three core areas: 1) new Standards that may be needed; 2) existing Standards that may need to be modified or retired; and 3) any emerging trends that the ERO Enterprise and FERC should monitor through other mechanisms (such as a Section 1600 data request or Section 800 alert).

V. CONCLUSION

For the reasons set forth above, NERC respectfully requests that the Commission:

- 1) accept this supplemental filing to the Performance Assessment as it informs the Commission in its decision-making process by providing relevant information on efficiencies that the ERO Enterprise is working to implement within the Reliability Standards development process and the CMEP to demonstrate that NERC continues to meet the statutory and regulatory criteria as the ERO; and
- 2) to the extent the Commission determines a public comment period on this filing is necessary, provide no more than 14 days so as to not delay the issuance of a Commission order on the underlying Performance Assessment.

Respectfully submitted,

/s/ Marisa Hecht

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Counsel for the North American Electric Reliability Corporation

Date: November 8, 2024

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 the above-referenced proceeding.

Dated at Washington, D.C. this 8th day of November 2024.

/s/ Marisa Hecht

Marisa Hecht
*Counsel for North American
Electric Reliability Corporation*