NERC Requests Approval of “Find, Fix, Track and Report” Compliance Enforcement Initiative

On September 30, 2011, the North American Electric Reliability Corporation (“NERC”) filed a petition with the Federal Energy Regulatory Commission (“FERC”) requesting that FERC approve new enforcement mechanisms for addressing potential violations of mandatory electric Reliability Standards. Among other things, NERC proposes to utilize a “find, fix, track and report” (“FFT”) compliance enforcement mechanism for potential violations that pose minimal or moderate risks to the bulk power system (“BPS”). NERC is encouraging parties to file comments on the proposal, which are due to FERC by October 21, 2011.

NERC is proposing to treat potential compliance violations differently depending on the risk they pose to the reliability of the BPS. There would be three options for dealing with a potential violation: dismissal, an FFT informational filing or a Notice of Penalty (“NOP”). Factors to be taken into account to determine whether an issue should be addressed through an FFT filing or an NOP include (1) the underlying facts and circumstances; (2) the Reliability Standard at issue; (3) the applicable Violation Risk Factor and Violation Severity Level; (4) the potential and actual level of risk to reliability, including mitigating factors during the Possible Violation; (5) the Registered Entity’s compliance program, including preventive and corrective processes and procedures, internal controls and culture of compliance; and (6) the Registered Entity’s compliance history. A Notice of Possible Violation (“NOPV”) would be issued for every item that does not warrant dismissal. Possible Violations that pose less risk would be processed as Remediated Issues in a new FFT format, and Possible Violations that pose more serious risks would be included in an NOP. Registered Entities could opt out of the FFT process and choose to proceed down the NOP path.

FIND, FIX, TRACK AND REPORT

Under the FFT mechanism, potential compliance violations would be found, fixed, tracked and reported—with no associated monetary penalty imposed on the Registered Entity if the violation is properly remediated. NERC describes potential compliance violations to be addressed using the FFT mechanism as those that pose minimal or moderate risks, including administrative, documentation, and certain maintenance and testing program implementation failures. Other factors that may be taken into account include whether there was prompt, robust self-reporting of the issue and the Registered Entity’s compliance program, compliance history, mitigation and corrective action plans, internal controls, and culture of compliance.

NERC states that processing violations under the FFT mechanism generally would not require the development of an exhaustive record. The record could consist simply of a few sentences or a paragraph describing the compliance deficiency and subsequent corrective action.

Upon a Registered Entity’s submittal of a statement of completion of mitigating activities that shows resolution of every compliance issue, the Possible Violation will be referred to as a Remediated Issue. Formal mitigation plans would not be required for FFT Remediated Issues, but the Registered Entity must demonstrate that the issue has been addressed, describe corrective actions and delineate evidence to facilitate later verification. Remediated Issues would be described on an FFT spreadsheet and submitted to FERC on a monthly basis as an informational filing.

No penalty or sanction would be assigned to a Remediated Issue in an FFT. The Remediated Issue would be included in a Registered Entity’s compliance history. Once a Remediated Issue has been included in an FFT informational filing, the Remediated Issue may not be contested in any subsequent enforcement action. Repeat issues of the same, similar or different standards would not foreclose FFT treatment.

NOP SPREADSHEET AND FULL NOP

Possible compliance violations posing the most serious risks to the BPS would be included in Full NOPs and processed as they are today. Issues that NERC categorizes as presenting the most serious risks include potential violations involving or resulting in: (1) extended outages; (2) loss of load; (3) cascading blackouts; (4) vegetation contacts; and (5) systemic or significant performance failures. They would also include potential violations involving intentional or willful acts or omissions, gross negligence or other misconduct.

For compliance violations posing moderate to serious risks to the BPS, NERC proposes to process NOPs using an abbreviated Spreadsheet NOP format. The Spreadsheet NOP would be filed with FERC and include: (1) name of the entity; (2) identification of each Reliability Standard violated; (3) factual description of the issue resulting in each violation; (4) statement describing any penalty or sanction imposed; (5) description of the risk assessment; (6) statement of corrective actions taken or to be taken to mitigate the issue and prevent recurrence; and (7) identification of any other mitigating or aggravating factors taken into
consideration. The Spreadsheet NOP would also include information regarding the prior compliance history of the entity or its affiliate, internal compliance program elements, and the findings and ultimate disposition of the issues. No record documents would be submitted as part of the filing.

CONCLUSION

The FFT reporting mechanism and the Spreadsheet NOP provide an opportunity for streamlined processing of NOPVs. This streamlining could benefit Registered Entities by allowing them to reduce the time and resources devoted to resolving NOPVs related to low-risk issues, including administrative or “paperwork” deficiencies, and to focus those resources instead on matters that more directly contribute to the reliability of the BPS. Registered Entities that support NERC’s proposed initiative or would like to suggest modifications are encouraged to file comments with FERC on or before October 21, 2011.

1 N. Am. Elec. Reliability Corp., Docket No. RC11-6-000 (Sept. 30, 2011). Concurrently with the FFT filing, NERC also submitted a filing that reported certain NOPs using the new Spreadsheet NOP format, along with others using the Full NOP format. N. Am. Elec. Reliability Corp., Docket No. NP11-270-000 (Sept. 30, 2011).

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