

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

North American Electric Reliability Corporation )

Docket No. RC11-6-000

**MOTION TO INTERVENE AND COMMENTS OF THE EDISON ELECTRIC  
INSTITUTE, THE AMERICAN PUBLIC POWER ASSOCIATION, ELECTRICITY  
CONSUMERS RESOURCE COUNCIL, THE NATIONAL RURAL ELECTRIC  
COOPERATIVE ASSOCIATION, THE TRANSMISSION ACCESS POLICY STUDY  
GROUP, THE ELECTRIC POWER SUPPLY ASSOCIATION AND THE LARGE  
PUBLIC POWER  
COUNCIL**

The Edison Electric Institute (“EEI”), the American Public Power Association (“APPA”), the National Rural Electric Cooperative Association (“NRECA”), the Transmission Access Policy Study Group (“TAPS”), the Electricity Consumers Resource Council (“ELCON”), the Electric Power Supply Association (“EPSA”) and the Large Public Power Council (“LPPC”) (collectively referred to as the “Trade Associations”) submit this joint and several motion to intervene and comments in support of the Petition filed by the North American Electric Reliability Corporation (“NERC”) on September 30, 2011, in this docket asking the Federal Energy Regulatory Commission (“FERC” or “Commission”) for approval of NERC’s proposed new enforcement mechanism known as Find, Fix Track and Report (“FFTR”).<sup>1</sup>

**JOINT AND SEVERAL MOTION TO INTERVENE**

Pursuant to Rules 212 and 214 of the Commission's Rules of Procedure, the Trade Associations move to intervene in this proceeding.

EEI is the association of the nation’s shareholder-owned electric utilities, international affiliates, and industry associates world-wide.

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<sup>1</sup> Petition Requesting Approval of New Enforcement Mechanisms and Submittal of Initial Informational Filing Regarding NERC’s Efforts to Refocus Implementation of its Compliance Monitoring and Enforcement Program, Docket No. RC11-6-000 (“the Petition”).

APPA is the national service organization representing the interests of more than 2,000 not-for-profit, publicly owned electric utilities throughout the United States.

NRECA is the not-for-profit national service organization representing approximately 930 not-for-profit, member-owned rural electric cooperatives, including 66 generation and transmission cooperatives that supply wholesale power to their distribution cooperative owner-members.

TAPS is an association of transmission-dependent utilities in more than 30 states, promoting open and non-discriminatory transmission access.

ELCON is the national association representing large industrial users of electricity.

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers account for 40 percent of the installed capacity in the United States.

The Large Public Power Council represents 25 of the largest state-owned and municipal utilities in the nation, reflecting the views of the larger, asset owning members of the public power community.

The Trade Associations meet the requirements of Rule 214(b) for intervention. Many of the Trade Associations' members are users, owners, and operators of the bulk-power system and are subject to the Reliability Standards established by NERC, acting as the Commission-certified Electric Reliability Organization ("ERO"), and will be subject to the enforcement mechanisms that are the subject of the Petition. Therefore, the Trade Associations are interested parties with respect to this docket. The Trade Associations' respective members will be directly impacted by the outcome of this proceeding and cannot be adequately represented by another party to the proceedings. The intervention of the Trade Associations is in the public interest. Accordingly,

the Trade Associations respectfully request that the Commission grant their joint and several motion to intervene.

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**COMMENTS**

**Executive Summary**

The Trade Associations strongly support NERC’s decision to revamp how it deals with Possible Violations of reliability standards that pose a lesser risk to the bulk power system (“BPS”). NERC’s Petition for approval of new compliance enforcement mechanisms outlines a promising new strategy to differentiate among and address compliance issues according to their significance to the reliability of the BPS. While all Possible Violations will continue to be found, fixed, tracked and reported to Regional Entities, NERC and the Commission, lesser risk issues that have been corrected (*i.e.*, already mitigated/fixed-in-the-field by the registered entity) will be presented as Remediated Issues in a Find, Fix, Track and Report (“FFTR”) spreadsheet that will be submitted to the Commission in a monthly informational filing.

The Trade Associations strongly support NERC's proposal to exercise discretion in dealing with lesser risk enforcement matters and urge the Commission to accept NERC's petition as a well-designed first step in recognizing a significant and growing problem of resource misallocation in the ERO compliance and enforcement program. Minor administrative, documentation-related, and other violations that pose a lesser risk to reliability need to be addressed quickly and simply, so that NERC, the Commission and the industry can refocus their attention on actual and potential reliability issues, including but not limited to significant violations of reliability standards, that pose a significant risk to reliable operation of the BPS.

The Trade Associations support NERC's analysis that its FFTR proposal is consistent with the Commission's regulations and prior orders, NERC's Rules of Procedure and Commission policies on enforcement discretion. For example, all possible violations will be timely reported to the Commission, as required by 18 CFR Part 39.7(b). All Possible Violations will be identified and mitigated and will become part of the registered entity's compliance history.

NERC's proposal to submit six-month and twelve-month reports on its progress implementing the FFT proposal will provide evidence on the tangible experience of registered entities, NERC and Regional Entities. The initial NERC informational filing in mid-2012 will provide specific information on the status of FFTR and feedback on whether FFTR has begun to shift NERC, Regional Entity and industry resources by increasing the efficiency and effectiveness of documenting compliance and handling minor enforcement matters. The Commission should also consider convening a policy-level technical conference to address the broader goals, priorities, cost impacts, and practical challenges for NERC compliance and enforcement.

### **The Commission Should Approve the FFTR as a Promising New Approach**

The Trade Associations believe that the FFTR approach provides an effective means to handle the preponderance of NERC violations that have little or no impact on the reliability of the BPS. Registered entities are now overwhelmed by the demands of the compliance and enforcement “administrivia” associated with demonstrating compliance with many of the NERC standards. Such minor violations should be resolved quickly and simply so that personnel may devote the substantial resources now dedicated to handling these issues to matters that have a greater impact on BPS reliability. The Trade Associations believe that the FFTR proposal can serve as one remedy for this serious and growing problem and provide a means to re-focus resources on issues more important to BPS reliability.

On a consolidated basis, NERC and the regions propose to spend in 2012 approximately \$92 million on compliance and enforcement activities, almost 45% of the consolidated ERO budget. The current enforcement backlog of over 3,000 pending violations is growing. The average processing time for a NERC violation is not known with precision; however, the Trade Associations understand that it is not unusual for many minor enforcement matters to require two years to reach the Commission as filed Notices of Penalty.

The registered entity resources required to satisfy the broad range of compliance documentation and enforcement-related paperwork and other administrative demands are without doubt several multiples of the consolidated NERC spending. These expenditures include preparation for and participation in compliance audits and spot checks, self-reporting and mitigation plan development and management, violations settlement discussions and negotiations, and a broad range of other compliance monitoring, reporting and data submittals, and the attendant paperwork flow management and coordination within registered entities. The

work requires the involvement of field operations and maintenance personnel, technical subject matter experts, compliance program management, attorneys, outside consultants, and in some cases, senior management. This rough estimate does not include capital expenditures, or operating and maintenance expenses, required to plan and operate the bulk power system, but only the registered entity managerial and administrative overhead expense that supports NERC compliance and enforcement processes. FFTR is an important first step to ensure that the substantial resources devoted to compliance demonstration and enforcement are targeted on those matters that pose the greatest risk to the reliability of the BPS. This approach will better ensure the more effective deployment of NERC's compliance and enforcement resources.

Trade Associations also strongly support NERC's proposal to submit informational reports in six months and twelve months. Those reports will provide specific information on the status of FFTR implementation, and should be structured to enable the Commission and stakeholders to assess the effectiveness of the FFTR tool, its impact on NERC and industry costs, and whether the FFTR tool is yielding a reduction to the compliance violation backlog. The informational filings should also provide information to allow the Commission and stakeholders to understand how the Regional Entities are implementing FFTR. The informational reports will also provide a timely opportunity to identify any mid-course changes to NERC's plans needed to ensure that FFTR achieves its objectives.

Finally, in its filing in this docket, NERC also proposes additional work phases to address other issues in compliance and enforcement. The Trade Associations strongly agree that a broad range of work is needed, and recommend that the Commission convene a technical conference next year to address policy level issues. We outline our concerns and objectives below – but submit that these technical and policy issues are beyond the scope of the actual proposal and any

approvals that may be before the Commission in the instant filing. These long term improvements to NERC's compliance and enforcement program are more properly the subject of a new Commission proceeding, noticed as an AD docket, in which NERC, industry stakeholders, and the Commission can engage in an open dialogue on the direction of the NERC compliance and enforcement program.

Throughout 2009, stakeholders engaged both the Commission and NERC to discuss the problem in standards development that "everything is a priority." Significant efforts have been underway since that time to better define priorities for standards development, and the Commission has expressed general support that such efforts are both needed and timely. Now, NERC rightly has begun to address a similar prioritization issue from the perspective of compliance and enforcement. The present approach of more or less equal treatment of all violations, and the full enforcement of each and every violation under the process that has been developed and practiced to date, in effect creates an inefficient, unsustainable, costly, and unnecessary policy for compliance with the Commission-approved standards.

A Commission technical conference should address the range of policy issues and help focus the scope and content of subsequent NERC work plans and proposals for this core NERC program. We believe that such a technical conference should focus on how compliance and enforcement programs can be designed to create incentives for improved performance, avoid creating distractions for personnel and resources to cover matters largely irrelevant to reliability, address potentially unsustainable compliance-related costs, and ensure efficient program administration. Given the nature of the problem, the attention provided to standards development prioritization last year, and the costs involved, we believe that there is significant merit for using a technical conference process to address compliance and enforcement policy



issues. We envision that such a conference would include the involvement and participation of senior executive officers.

**The Trade Associations Support Opportunities for Open Discussion of the FFTR Proposal**

Given that the FFTR proposal impacts all users, owners, and operators of the bulk-power system and could result in a shift in the overall approach to NERC enforcement, the free exchange of ideas and concerns by industry participants with the Commission and its staff is essential. Indeed, the proposed FFTR procedure will be a significant topic of discussion at the NERC Board of Trustees (BOT) meetings, including many attended by Commissioners and Staff. The application of the *ex parte* rules to the FFTR proposal would prevent the free flow of information necessary for the Commission to adequately consider the FFTR proposal. The Trade Associations understand that the Commission will issue appropriate notice of the NERC BOT meetings so that Commissioners may participate without excusing themselves from discussion of the FFTR proposal. The Trade Associations appreciate this recognition of the importance of open discussion of the proposal. The Trade Associations also support the Commission considering other opportunities for discussion of FFTR. This may include the upcoming technical conference scheduled for November 29 and 30. By making this suggestion, the Trade Associations do not intend in any way to delay the Commission's consideration and hoped-for approval of the FFTR proposal.

**CONCLUSION**

For these reasons, the Trade Associations request that the Commission grant the Petition, recognizing the FFTR process as an important new approach to improve the compliance process

to redirect resources to the most important risks to reliability and hold a technical conference next year to discuss progress in achieving that goal.

Respectfully submitted,

/s/ Signed

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October 21, 2011

**Certificate of Service**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the Commission's Rules.

Dated at Washington, D.C. this 21st day of October, 2011.

/s/ Barbara A. Hindin

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