

1. Key points in the realm of regulation

- a. WECC and the Electric Reliability Organization (ERO) can learn a great deal from other regulatory models, actions and challenges
- b. Regulators provide reasonable assurance of compliance to a set of rules, standards and regulations, and ensure entities return to compliance when there is a violation
- c. Understanding risk is critical to accomplishing the regulatory mission
- d. Regulators can collaborate with industry and still accomplish their mission
- e. WECC has several tools beyond compliance and enforcement to positively influence the industry
- f. Regulators need to drive out fear of compliance in the current environment and protect the industry when they voluntarily disclose information for the benefit of others
- g. As a fair and just regulator, enforcement is not about monetary penalties

2. Regulators provide reasonable assurance of compliance

- a. Regulators have enforcement authority and awesome responsibility
- b. The ERO regulatory process is a civil construct of law not crime—an important distinction for the relationship between the regulator and the regulated
- c. In a self-regulatory construct we do rely on industry to self-identify possible violations; over 80% of the possible violations are self-identified and reported by industry—we need give credit for this
- d. The Federal Aviation Administration (FAA) provides a great example of a Compliance Philosophy¹ that clearly articulates a purpose to “return an individual or entity... to full compliance and prevent recurrence”

3. Understanding risk is critical to accomplishing our mission

- a. On April 20, 2010, the Macondo well blew out and the resultant disaster of the dynamically positioned drilling vessel Deepwater Horizon provided a case study in risk assessment
 - o Eleven men died
 - o 83 days passed as crude oil spewed at 5000’ below the water’s surface
 - o Significant environmental damage impacted the Gulf of Mexico, wetlands, wildlife and economic damage to gulf residents
 - o The investigation found that the regulator failed to assess risk and the Minerals Management Service (regulator) is no more

¹ FAA Compliance Philosophy, dated June 26, 2016, internet, accessed 4/19/2016 at:
http://www.faa.gov/documentlibrary/media/order/faa_order_8000.373.pdf

- The entities involved failed to assess risk and made preventable mistakes and failed to comply with the rules, regulations and standards
- b. The rapid pace of technology and regulation’s ability to keep up is a challenge and risk
 - Regulation in the technology realm must consider the rapid pace of change and improved security technologies without binding entities to outdated and easily circumvented standards
 - Must consider other regulatory systems and potential interactions
 - Must consider inter-relationships of vendors and third parties

4. Regulators can collaborate with industry and still do the job

- a. Consider human performance
- b. Advocate for a just culture
- c. Encourage and reward higher levels of disclosure by the industry to assess events and make corrections in improving security, reacting to determined adversaries and improving the standards in a timely manner based on data and analysis—not anecdotes and fear mongering
- d. Regulators must drive out the fear and protect the industry when they voluntarily disclose information to improve security for themselves, their neighbors and the general public
- e. Data sharing is critical; when properly validated and analyzed, there is a direct correlation to greater improvements in security and operations

5. WECC has several tools beyond compliance and enforcement to influence and support the industry

- a. Reliably assessments
- b. Performance analysis
- c. Situational awareness
- d. Event Analysis

6. Drive fear of compliance out of the current environment and protect the industry when they voluntarily disclose information

- a. “Drive out fear...” is one of Deming’s 14 points of total quality management and is certainly relevant here
- b. The FAA in their Compliance Philosophy² draws a clear line between the deviations that “arise from factors such as flawed procedures, simple mistakes, lack of understanding, or diminished skills” and

² FAA Compliance Philosophy, dated June 26, 2016, internet, accessed 4/19/2016 at:
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failure to remediate repeated deviations. Further the FAA’s philosophy “views those reckless deviations from regulatory standards or deviations that present an unacceptable risk to safety as posing the highest risk and thus requiring strong enforcement.” The FAA has found a way to collaborate with the commercial airline industry using various tools beyond compliance and enforcement to achieve an unparalleled level of airline safety. The ERO and FERC need to continue the risk-based approach and collaborating with industry to focus on reliability and security.

- c. Standards that are technology driven, like the FERC-approved CIP standards, is that the rapid pace of change of technology far surpasses the ability of the regulator to keep up and may actually undermine the highest security efforts.
- d. We can’t lose sight of determined adversaries that are not easily dissuaded nor play by the rules. A good first place to assess security requirements obviously is by looking at the standards and then determining gaps and seems to exploit and cause harm.

7. As a fair and just regulator it is not about monetary penalties

- a. Regulatory and accountability systems based solely on punitive measures and sanctions do not work and there is a body of academic work that bears this out
- b. Regulators must be fair and just
- c. Regulators consider all the facts and circumstances for the entity and possible violations in question
- d. Regulators consider various factors that give the entity due credit; cooperation, root cause analysis of violations, rapid and thorough mitigation, and their culture of compliance
- e. When a penalty may be warranted, we first look toward the entity’s reliability enhancements, investments in their own system above and beyond mitigating the possible violation
- f. At a technical conference on the state of the ERO conducted by FERC in June 2014, two commissioners clearly noted that FERC is not about generating revenue [with heavy handed enforcement]; the ultimate goal of the regulatory oversight is about reliability³

³ Transcript from the June 14, 2014 FERC Tech Conference, accessed April 22, 2016, via internet at: <http://www.ferc.gov/CalendarFiles/20140718140816-AD14-9-06-10-14.pdf>